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AVIATION

OF THE

COMMITTEE ON
TRANSPORTATION AND
INFRASTRUCTURE
HOUSE OF REPRESENTATIVES

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CONTENTS

Page

Summary of Subject Matter vi

TESTIMONY

Baldanza, Ben, President and Cheif Executive Officer, Spirit Airlines, Inc. 2
Dillingham, Dr. Gerald, Director of Civil Aviation Issues, U.S. Government Accountability Office 2
Mitchell, Kevin, Chairman, Business Travel Coalition 2
Moore, Kyle, Vice President, Marketing, Sabre Holdings, and on behalf of the Interactive Travel Services Association, American Society of Travel Agents, Consumer Travel Alliance 2
Ridley, Dave, Senior Vice President, Marketing and Revenue Management, Southwest Airlines 2
Rivkin, Robert S., General Counsel, U.S. Department of Transportation 2

PREPARED STATEMENTS SUBMITTED BY MEMBERS OF CONGRESS

Cohen, Hon. Steve, of Tennessee 40
Costello, Hon. Jerry F., of Illinois 41
Mitchell, Hon. Harry E., of Arizona 48
Oberstar, Hon. James L., of Minnesota 49
Petri, Hon. Thomas E., of Wisconsin 53

PREPARED STATEMENTS SUBMITTED BY WITNESSES

Baldanza, Ben 61
Dillingham, Dr. Gerald 72
Mitchell, Kevin 132
Moore, Kyle 138
Ridley, Dave 152
Rivkin, Robert S. 158

SUBMISSIONS FOR THE RECORD

Baldanza, Ben, President and Cheif Executive Officer, Spirit Airlines, Inc., response to request for infmoration from Hon. Costello, a Representative in Congress from the State of Illinois 33
Dillingham, Dr. Gerald, Director of Civil Aviation Issues, U.S. Government Accountability Office, supplementary report entitled, "Commercial Aviation, Consumers Could Benefit from Better Information about Airline-Imposed Fees and Refundability of Government-Imposed Taxes and Fees" 82
Ridley, Dave, Senior Vice President, Marketing and Revenue Management, Southwest Airlines, response to request for infmoration from Hon. Costello, a Representative in Congress from the State of Illinois 035
Rivkin, Robert S., General Counsel, U.S. Department of Transportation, response to request for information from Hon. Duncan, a Representative in Congress from the State of Tennessee 29

ADDITIONS TO THE RECORD

Consumers Union, William J. McGee, written statement 164
FlyersRights.org, Kate Hanni, Executive Director and Spokesperson, written statement 167
National Business Travel Association, written statement 176

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July 12, 2010

SUMMARY OF SUBJECT MATTER

TO: Members of the Subcommittee on Aviation

FROM: Subcommittee on Aviation Staff

SUBJECT: Hearing on "Airline Fees"

PURPOSE OF THE HEARING

The Subcommittee on Aviation will meet on Wednesday, July 14, at 2:00 p.m., in room 2167 of the Rayburn House Office Building to receive testimony regarding airline fees. The hearing will cover a number of issues pertaining to the trend of unbundling airfares to require passengers to pay for particular services individually. The hearing will also explore requirements for disclosure of fares, taxes, and fees, options for passengers to recover the costs of some fees, and revenue potentially available to the Airport and Airway Trust Fund (Trust Fund) if certain ancillary fees were subject to the Federal tax on airline tickets.

BACKGROUND

From 2001 through 2009, the U.S. airline industry, including air cargo carriers, posted a cumulative net loss of $58.1 billion. Yearly industry-wide net losses, which were offset by modest profits in 2006-07, were the result of many factors, including the aftermath of the September 11, 2001, terrorist attacks, the SARS epidemic, excess capacity, record oil prices of up to $147 per barrel, and an economic recession. According to an airline association, high fuel prices, in particular, have created persistently challenging conditions. From January to April of 2010, U.S. airlines paid 26.8 percent more for jet fuel than in the same period of 2009.[1]

Starting in mid 2007, in response to these economic challenges, many airlines began to unbundle services by instituting separate fees for checked baggage. Airlines next introduced "a la carte" fees for passenger services, some of which traditionally have been considered as included in

[1] Bureau of Transportation Statistics (BTS), *Airline Fuel Cost and Consumption (U.S. Carriers - Scheduled)*, http://www.transtats.bts.gov/fuel.asp.

the cost of a ticket. By the end of 2009, airlines charged for numerous ancillary services, including seat selection, extra leg room, beverages, meals, and more.

According to the BTS, U.S. airlines collected a total of $7.8 billion in ancillary fees in 2009,[2] including $2.7 billion in baggage fees alone. In the fourth quarter of 2009, U.S. airlines collected 18.3 percent more in ancillary revenue than in the fourth quarter of 2008. Collectively, U.S. passenger airlines incurred $5.5 billion in operating losses in 2008, but reported operating profits of approximately $1.2 billion in 2009.[3]

The proliferation of ancillary fees over a relatively short period of time has raised concerns over the costs and transparency of such fees. Often, consumers are not entirely aware of the range of fees that they may encounter in the ticket booking process, at check-in, and at the gate. A recent poll conducted by Consumer Reports of consumers on what "annoys travelers the most," luggage charges and added fees rated the highest, at 8.4 and 8.1, respectively, based on a 10 point scale.[4]

I. Nature of Ancillary Fees

It is estimated that airlines present passengers with more than 100 ancillary fee options in the course of travel. The table below provides a description of items and services for which some airlines currently charge ancillary fees. The actual fees charged vary widely depending on each individual airline's policies.

Ancillary Fees Charged by Airlines

Baggage	Ticketing	In-Flight Services
1st Checked Bag	Change or Cancellation	Food
2nd Checked Bag	Booking (phone/in person/online)	Beverage
Additional Bags	Unaccompanied Minors	Blankets
Overweight Bags	Pets	Pillows
Oversized Bags	Seat Selection (location, additional legroom, exit row)	Wireless Internet
	Early Boarding	In-flight entertainment
	Holiday Travel Surcharge	Misc. (e.g., antlers, firearms, extra seats for overweight passengers)
	Fuel Surcharge	
	Standby	
	Frequent Flyer Redemption	
	Club Membership	

[2] BTS' definition of ancillary fees includes: baggage fees, reservation change fees and miscellaneous operating revenue, including pet transportation, sale of frequent flyer award miles to airline business partners, and standby passenger fees. Revenue from seating assignments and on-board sales of food, drink, pillows, blankets, entertainment, or any other ancillary items are reported as Transport Related Revenue and cannot be identified separately.

[3] Source: BTS and the Government Accountability Office (GAO). Calculated based on operating losses for passenger airlines with revenues over $20 million, excluding cargo carriers.

[4] ConsumerReports.org, *Things That Annoy Travelers Most: Consumer Reports Survey Results*, www.consumerreports.org/cro/magazine-archive/2010/june/money/top-travel-gripes/overview/index.htm.

Although critics have suggested that ancillary fees are merely a means for airlines to "nickel-and-dime" passengers, the Air Transport Association (ATA) maintains that ancillary fee policies are beneficial to passengers because such policies allow passengers to pay only for services that they use. In addition, the ATA states that many airlines offer "restricted" tickets, which are less expensive but carry greater fees and penalties for changes to itineraries, as opposed to "full-fare" tickets, which allow changes free of additional charge. ATA argues that this price difference allows the cost of air travel to remain much lower for consumers who do not make changes to their itineraries.[5]

In addition to ancillary fees levied by airlines, the Federal Government imposes direct taxes and fees on passengers for their ticket purchase. Some of these fees vary according to each traveler's itinerary.

Government-Imposed Taxes on Passengers[6]

Government Tax or Fee	Amount and Description
Passenger Ticket Tax	7.5 percent: A tax levied as a percentage of the fare that the passenger pays for a domestic airline ticket.
Flight Segment Tax	$3.70 per flight segment: Paid by the passenger based on the number of segments in the passenger's itinerary for domestic travel. A segment is single flight from a takeoff to landing. This tax is not applicable to passengers departing from rural airports.[7]
Alaska/Hawaii Ticket Tax and Facilities Tax	7.5 percent: A tax imposed on passengers on domestic flights to or from Alaska or Hawaii. $8.10 is also charged for any ticket not subject to the ticket tax.
Frequent Flyer Award Tax	7.5 percent: A tax on amounts paid by companies with frequent flyer marketing arrangements with airlines (including credit card companies).
International Departure/ Arrival Tax	$16.10: Imposed on passengers on international flights departing or arriving in the United States.
September 11 Security Fee	$2.50: Funds the Transportation Security Administration at up to $5 per one-way trip and $10 per round trip
U.S. Customs Fee	$5.50: Funds inspections by U.S. Customs. Assessed for travel on tickets issued to passengers arriving from outside the U.S. Customs territory.
Immigration Fee	$7.00: Assessed for travel from any international point into the United States.
Agricultural Inspection Fee	$5.00: Assessed for travel from any international point into the United States and Puerto Rico. Funds agricultural quarantine and inspection.

In addition, airports may also impose a passenger facility charge (PFC) of up to $4.50 per flight segment.

For nonrefundable tickets that are unused by the passenger, the question has been raised as to whether government taxes and fees can be refunded to the passenger. According to the GAO, the 7.5 percent passenger ticket tax is generally not refundable. In addition, it is not always clear to

[5] ATA, *Airline Ancillary Revenues*, http://www.airlines.org/PublicPolicy/IssueBriefs/Pages/AirlineAncillaryRevenues.aspx.

[6] See Airlines Reporting Corporation, *Industry Agents' Handbook, Taxes Fees and Charges.*

[7] A rural airport tax is levied at 7.5 percent on passengers whose flights depart or arrive at rural airports. This is assessed in lieu of the general passenger ticket tax. When the rural airport tax applies, there no segment fee is assessed.

the passenger whether other government taxes and fees are refundable and, if they are, how the passenger can obtain a refund.

II. Revenue

According to the GAO, airlines have reported a four-fold increase from 2008 to 2009 in revenue from ancillary fees. However, the GAO notes that precise comparisons are difficult, because airlines report ancillary revenue from fees other than baggage fees differently. In 2008, checked baggage revenue was reported to be $1.1 billion. For 2009, airlines collected $2.7 billion from baggage fees, $2.4 billion from reservation change fees, and $2.7 billion from other ancillary fees. The table below shows ancillary revenues by airline, ranked by the total amount collected in 2009.

Airlines' Ancillary Fee Revenue (in millions of dollars)

Airline	4th Quarter 2008	4th Quarter 2009	Percent Change 4Q 2008-4Q 2009 (%)	Total 2009 Ancillary Fee Revenue
Delta	289.0	425.7	47.3	1,647.6
American	246.2	253.3	2.9	1,002.4
US Airways	227.0	231.8	2.1	912.1
Northwest	185.2	156.7	-15.4	718.7
United	151.3	146.2	-3.4	619.5
Southwest	140.6	157.2	11.8	617.1
Continental	77.5	129.1	66.6	539.7
AirTran	36.2	61.2	69.1	249.7
JetBlue	49.5	48.1	-2.8	193.1
Alaska	30.2	42.2	39.7	147.0
Industry Total	**1,615.1**	**1,911.1**	**18.3**	**7,825.7**

Source: BTS, Form 41; Schedule P1.2.

In terms of ancillary fee revenue as a percentage of total operating revenue for 2009, Spirit reported the highest with 20 percent of operating revenue from fees, followed by AirTran at 10.7 percent, Allegiant at 10 percent, Delta at 9.1 percent, and US Airways at 8.5 percent.[8]

Ancillary fees and the associated revenues they generate have prompted some policymakers to question whether such fees should be subject to the 7.5 percent tax on airline tickets, especially if the services provided for such fees were traditionally included in base ticket prices. The Internal Revenue Code imposes a 7.5 percent excise tax on the amount a passenger pays for "taxable transportation"[9] – essentially, the passenger's airline ticket. Certain airline charges, however, are not taxable; Federal regulations (last amended in 1962) exclude, from the excise tax, fees for "transportation of baggage" as well as fees for "nontransportation services," among others.[10]

[8] Press Release, BTS, *4th-Quarter 2009 Airline Financial Data: Low-Cost and Regional Airlines Report Profits, Network Carriers Report Loss* (May 3, 2010), http://www.bts.gov/press_releases/2010/bts021_10/html/bts021_10.html.
[9] 26 U.S.C. § 4261(a) (2010).
[10] 26 C.F.R. §§ 49.4261-8(f)(1), (4) (2010).

Last year, the Internal Revenue Service (IRS) issued a private letter ruling,[11] which stated that an ancillary fee is subject to the excise tax only if it is "paid as a condition to receiving air transportation" and is not paid for an "optional" service that is "not reasonably necessary to the air transportation itself."[12] The IRS concluded that fees for the following services are not subject to the excise tax: checked baggage, headsets for use with in-flight entertainment systems, food and alcoholic beverages in flight, and ticket changes.

The Trust Fund – the source of money for the Federal Aviation Administration's (FAA) capital programs to maintain and improve airports and facilities, and for some FAA operations – draws revenue from excise taxes such as the tax on passenger tickets.[13] At a time when the FAA's primary fund for capital programs is in decline, a hypothetical application of the 7.5 percent tax to ancillary fees could generate additional revenue for necessary aviation programs. In 2009, the GAO found that, if the Trust Fund's uncommitted cash balance fell below $752 million (its then-forecast balance), the "decline . . . could pose budgetary challenges for FAA."[14] At the end of calendar year 2009, however, the Trust Fund's uncommitted cash balance had fallen to $299 million, according to information provided by FAA officials to staff.

Adding ancillary fees to the taxable charges that arise as part of air transportation could increase the Trust Fund's balance.[15] Based on BTS data, if all baggage fees charged in 2009[16] had been subject to the tax, Trust Fund revenue would have increased by approximately $202.5 million, assuming all other factors (including demand) remained constant. That revenue would have represented a roughly 1.1 percent increase in Trust Fund income from excise taxes in 2009, according to FAA-provided data.

III. Legal Requirements for Disclosures of Fees: Current and Proposed

As the number of fees charged by airlines grows increasingly complex, with requirements for disclosure not yet updated to reflect the pricing changes, consumers are oftentimes left confused about what they will really pay for the total cost of their travel itinerary. The Department of Transportation's (DOT) Office of Aviation Enforcement and Proceedings is responsible for economic regulation of airlines and for protecting consumers.

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[11] A private letter ruling is directed solely to the taxpayer who requests it and is limited to the facts as presented by that particular taxpayer; the ruling is not binding on other taxpayers and holds no precedential value. Whether or not the IRS would rule that ancillary fees are not taxable in all cases remains an unsettled question.

[12] IRS, Private Letter Ruling 118216-09 (Jan. 15, 2010), at 8.

[13] 26 U.S.C. § 9502(b) (2010).

[14] GAO, *Airline Industry Contraction Due to Volatile Fuel Prices and Falling Demand Affects Airports, Passengers, and Federal Government Revenues*, GAO-09-393 (April 2009), at 38.

[15] Unless otherwise indicated, all estimates discussed in this summary are based on data reported by the BTS. Estimates of tax revenue are the product of total reported fees multiplied by the 7.5 percent excise tax and do not account for variables such as changes in demand.

[16] Figures reported by the BTS. *See* BTS, *1st-Quarter 2010 Airline Financial Data: Low-Cost and Regional Airlines Report Profits, Network Carriers Report Loss*, Table 1A: "Baggage Fee Collections" (June 28, 2010), http://www.bts.gov/press_releases/2010/bts031_10/html/bts031_10.html.

A. Current Law

1. Full Fare Advertising Rule

By statute, airlines may not engage in unfair or deceptive practices when advertising airfares.[17] In 1984, the DOT adopted the "full fare advertising rule." Under the rule, an advertisement that states an airfare advertisement is "an unfair or deceptive practice, unless the price stated is the entire price to be paid by the customer to the air carrier, or agent, for such air transportation."[18] The Secretary of Transportation has authority to investigate violations of these requirements and to assess a civil penalty of up to $2,500 for each violation.[19]

The DOT interprets the rule to permit an airline to disclose government taxes and fees separately from the base fare quoted in an advertisement, but only if, among other things, the taxes and fees are levied or approved by a government agency and the advertisement, on its face, clearly indicates the amounts of such taxes and fees, so that the prospective passenger can calculate the total cost of travel.[20] An Internet advertisement that, on the customer's first encounter, merely displays a certain fare "plus taxes/fees," without specifying the amounts of those taxes and fees or directing the customer to another page that lists their amounts, does not comply with these requirements.[21]

Through various rulings and guidance, the DOT has required that airlines and ticket agents disclose the following fees in airfare advertisements: fuel surcharges, peak travel and holiday surcharges, and government fees, among others.

2. Baggage and Change Fees

In May 2008, in response to the growing trend of airlines levying fees for checked baggage (which traditionally were not levied for up to two bags of up to 50-70 pounds), the DOT issued guidance on disclosure of policies and charges associated with checked baggage, by stating:

> The [DOT's] long-standing policy has been to require carriers to clearly disclose significant conditions applicable to air fares. Failure to disclose such conditions has been considered an unfair and deceptive practice and unfair method of competition. . . . [and DOT] considers such significant conditions to include limiting passengers to fewer than two free checked bags of the size and weight that have generally been free on the carrier in the past and to assessing passengers a charge in addition to the air fare for such checked baggage.[22]

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[17] 49 U.S.C. § 41712(a) (2010).
[18] 14 C.F.R. § 399.84 (2010).
[19] *See* 49 U.S.C. §§ 41712, 46301 (2010).
[20] *See United Air Lines, Inc., Violations of 49 U.S.C. § 41712 and 14 C.F.R. § 399.84,* DOT Dkt. No. DOT-OST-2009-0001, Order No. 2009-8-17 (Aug. 25, 2009).
[21] *Id.; Spirit Airlines, Inc., Violations of 49 U.S.C. § 41712 and 14 C.F.R. § 399.84,* DOT Dkt. No. DOT-OST-2008-0031, Order No. 2008-12-14 (Dec. 23, 2008).
[22] DOT, *Guidance on Disclosure of Policies and Charges Associated with Checked Baggage,* 73 Fed. Reg. 28854 (May 19, 2008).

The guidance requires that airlines disclose baggage fees and baggage policies in Internet advertising "on the first screen in which the carrier offers a fare quotation of a specific itinerary selected by the customer," and it requires disclosure of the baggage fee in close proximity to the fare for print advertising. Similarly, airline reservation agents must disclose fees during telephone and counter sales.

B. Proposed Rulemaking

The DOT recently issued a notice of proposed rulemaking (NPRM) that includes both a number of proposed enhancements to existing consumer protections and poses a number of questions for comment. The NPRM expresses the DOT's conclusion that "there is a need to enhance protections for air travelers by establishing rules to ensure adequate notice of such fees for optional services to consumers . . . . Consumers are not always made aware of the extra charges that a carrier may impose . . . [including] services that traditionally been included in the ticket price."[23]

To address these issues and to help passengers determine the full price of air travel (the airfare, which includes government taxes and fees, plus ancillary fees for services), the NPRM solicits public comments on whether *two prices* should be provided with respect to an advertised airfare: (1) full fare, including all mandatory charges (i.e., anything the passenger must pay to fly); and (2) "full fare-plus," which DOT tentatively proposes to mean the full fare plus baggage fees and fees for carry-on items (the costs of which were traditionally included in ticket prices).

The DOT is seeking comment on whether the second price – the "full fare-plus" – should include all services that traditionally have been included in the prices of the ticket, as opposed to just those services relating to the transport of baggage, and what exactly such services would include. In the alternative, the DOT is seeking comment on whether sellers of air transportation should be required to display on their Web sites information regarding optional fees selected by the passenger when conducting a query and information on the passenger's "full price," which would be tailored based each passenger's indication of his or her needs.

The DOT further proposes to amend its current price advertising rule to prohibit carriers and ticket agents from automatically including "opt-out" provisions in price advertising. According to the NPRM, the DOT has found that some sellers of airline tickets add, into the total price of air transportation, fees for ancillary services, which the consumer "is deemed to have accepted unless he or she affirmatively opts out of the service and related charges."[24] These optional fees, for items such as seat selection, are preselected for the passenger and added to the total fare, without the passenger affirmatively selecting the add-on.

Additionally, the DOT's NPRM proposes to require carriers to disclose all applicable fees, including those for ancillary services, through a prominent link on each carrier's Web site that leads to a listing of all fees for optional services.

The NPRM also indicates the DOT may require carriers to provide up-to-date, comprehensive fee information to the operators of Internet Web sites that sell airline tickets and to travel and ticket agents. It is estimated that at least half of all airline tickets in the United States are

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[23] Enhancing Airline Passenger Protections, 75 Fed. Reg. 32329 (June 8, 2010) (to be codified at 49 C.F.R. Part 399).
[24] *Id.* at 32328.

sold by travel agencies. In a recent letter to the DOT, two organizations that represent ticket agents and global distribution systems (GDSs)[25] stated, "The critical problem that remains is the practical inability of travel agencies to obtain from each airline on whose behalf they sell tickets the needed baggage and other ancillary fee information in a usable, reliable and efficient manner."[26] In response to this issue, the DOT has indicated that it is considering whether to require carriers to make ancillary fee information available to GDSs. The current system through which airlines provide fare information to ticket agents and GDSs is administered by the Airline Tariff Publishing Company (ATPCO), which has developed a new database system for ancillary fees with more than 100 unique fields for airlines to input information on their specific fees.

Many airlines oppose a mandate to provide GDS companies with access to information on optional services and pricing because they believe it would place airlines at a competitive disadvantage in the marketplace, further strengthen GDS market power, thwart the entry of new competitors in the GDS market, and expose consumers to higher prices necessary to recoup GDSs' fees.

The proposal also seeks to require each carrier that issues electronic ticket confirmations to passengers to include information on the carrier's baggage fee policies. The DOT believes these requirements will ensure that passengers avoid unexpected baggage charges at the airport and will save time for airline personnel and passengers at the airport.

IV. The Future of Ancillary Fees

Ancillary fees – a newfound source of significant revenue for airlines in a challenging marketplace – are still a fairly new concept for the airline industry and are constantly evolving. The DOT, consumer groups, GDSs, airlines themselves, and industry stakeholders are working to make fees more transparent for consumers. For example, the Institute of Travel and Meetings recently announced the formation of a group to set standards and policies for airlines regarding product unbundling.[27] An airline consulting firm recently proposed a "passenger bill of rights" on a la carte fees to provide passengers with greater transparency.[28] On June 8, 2010, the International Air Transport Association (IATA) announced a new database called Automated Carrier Baggage Rules (ACBR) that will contain airlines' varying rules on baggage. IATA hopes the ACBR will enable airlines, travel agents, and passengers to better understand what baggage rules apply to any given itinerary, given that baggage rules have become "increasingly complex and confusing."[29]

Most industry analysts suggest that the nature and scope of airline fees may continue to expand. Airlines are still testing fees and consumer reactions to them. For example, US Airways instituted a fee for nonalcoholic beverages, but withdrew it after negative passenger reaction.

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[25] A GDS generally refers to a computer reservation system that includes reservation databases of airlines. This term has largely replaced the term "computerized reservation system" (CRS).

[26] Letter from Paul M. Ruden, Senior Vice President, Legal and Industry Affairs, American Society of Travel Agents and Arthur B. Sackler, Executive Director, Interactive Travel Services Association to Sam Podberesky, Assistant General Counsel for Aviation Enforcement and Proceedings, DOT (Mar. 10, 2010).

[27] Jennifer Michels, "Industry Solutions Group Aims to Set Airline Unbundling Standards," *Aviation Daily* (Nov. 12, 2009).

[28] Andrew Compart, "Ancillary Revenue Conference Host Pushes for 'Bill of Rights' on Fees," *Aviation Daily* (Nov. 24, 2009).

[29] IATA Press Release, *IATA Brings Transparency to Baggage Rules – New Simplifying the Business Project* (June 8, 2010).

Industry analysts suggest that the next chapter of the story on ancillary fees will involve "rebundling" the fees into packages of options that the passenger can purchase in advance. There has also been discussion as to whether airlines will make the fees easier to refund when services are not actually delivered, and whether "elite" frequent flyers will be subjected to fewer ancillary fees. In addition, there is discussion about options available to passengers in purchasing ancillary fees. Under some concepts, for example, passengers may be able to pay for checked baggage in advance using GDSs. What is clear is that ancillary fees have generated revenue for the airline industry and will likely be the subject of regulation and continuing scrutiny.

WITNESSES

Dr. Gerald Dillingham
Director of Civil Aviation Issues
U.S. Government Accountability Office

Mr. Robert S. Rivkin
General Counsel
U.S. Department of Transportation

Mr. Ben Baldanza
President and CEO
Spirit Airlines, Inc.

Mr. Dave Ridley
Senior Vice President
Marketing and Revenue Management
Southwest Airlines

Mr. Kevin Mitchell
Chairman
Business Travel Coalition

Mr. Kyle Moore
Vice President, Product Marketing
Sabre Travel Industry Group
and on behalf of
Interactive Travel Services Association
American Society of Travel Agents
Consumer Travel Alliance

Domestic Checked Baggage and Other Airline-Imposed Fees of 17 U.S. Airlines as of July 1, 2010													
Airline	First bag (airport/ online)	Second bag (airport/ online)	Additional bags (each)	Overweight bags	Oversized bags	Ticket change or cancellation (domestic ticket)	Booking phone/ in person	Unaccompanied minor	Pet in cabin	Seat selection	Inflight		Blanket and pillow
											Food	Beverage	
Air Tran	$15	$25	3+: $50	51-70 lbs: $49 71-100 lbs: $79	$49-$79	$75	$15/$0	$39 direct/non-stop $59 connecting	$69	$6 advance $20 exit row	NA	$6	NA
Alaska[a]	$20	$20	3: $20 4+: $50	51-100 lbs: $50	$50-$75	$100 ($75 online)	$15/$15	$25 direct/non-stop $50 connecting	$100	NA	$3.50-$7	$6	NA
Allegiant	$35/$15-$30	$35/$25-$35	$35/$50	51-74 lbs: $50 75+ lbs: $100	$35	$50 per segment	$15+$14.99 per segment/$0	NA	NA	$4.99-$24.99 varies by flight length and seat	$2-$5	$2-$7[d]	NA
American	$25	$35	3-5: $100 6+: $200	51-70 lbs: $50 71-100 lbs: $100	$150	$150	$20/$20-$30	$100	$100	NA	$3-$10	$6-$7	$8
Continental	$25/$23	$35/$32	3+: $100	51-70 lbs: $50	$100	$150	$20/$20	$100	$125	NA	$0	$6	NA
Delta	$25/$23	$35/$32	3: $125 4-10: $200	51-70 lbs: $90 71-100 lbs: $175	$175-$300	$150	$20/$35	$100	$125	NA	$2-$8	$5-$7	NA
Frontier	$20	$30	3+: $50	51+ lbs: $75	$75	$50 - $100	$0/$0	$50 direct/non-stop $100 connecting	$75	$15-$25	$3-$7	$2-$5[d]	NA
Hawaiian	$25/$23 inter-island: $10	$35/$32 inter-island: $17	3-6: $125 7+: $200 inter-island: $25	51-70 lbs: $50 inter-island: $25	$100 inter-island: $25	$100-150 inter-island: $25-$30	$25/$35 inter-island: $15/$35	$100 inter-island: $35	$175	NA	$5.50-$10	$6.50-$14	NA
Jet Blue	$0	$30	3: $75	51-70 lbs: $50 71-100 lbs: $100	$75	$100	$15	$75	$100	$10 extra legroom	$0	$6	$7
Midwest	$20	$30	3+: $50	51-100 lbs: $75	$75	$100	$0/$0	$50 direct/non-stop $100 connecting	$75	NA	$3-$7	$2-$5[d]	NA
Southwest	$0	$0	3-9: $50 10+: $110	51-100 lbs: $50	$50	$0	$0/$0	$50	$75	$10 priority boarding	$0	$3-$5	NA
Spirit[b]	$25/$19	$25	3-5: $100	51-70 lbs: $50 71-99 lbs: $100	$100-$150	$110 ($100 online)	$5/$0 ($5 each way online)	$100	$100	Varies based on location	$2-$5	$2-$6[d]	NA
Sun Country	$25/$20	$35/$30	$75	51-100 lbs: $75	$75	$75	$15/$0	$75/segment	$100	$8	$3-$6	$5	$5
United[c]	$25	$35	3+: $100	51-100 lbs: $100	$100	$150	$25/$30	$99	$125	$9/$109	$3-$9	$6	NA
USA3000	$25/$15	$25	$25	51-70 lbs: $25	$25-$50	$75	$0/$0	$50	$75	$9-$25	NA	NA	NA
US Airways	$25/$23	$35/$32	3-9: $100	51-70 lbs: $50 71-100 lbs: $100	$100	$150	$25-$35	$100 (non-stop flights only)	$100	$5+ Varies by location	$3-$7	$7-$8	$7
Virgin America	$25	$25	3-10: $25	1st <70 lbs: free 51-70 lbs: $50 71-100 lbs: $100	$50	$100 ($75 online)	$15/$10	$75	$100	NA	$2-$10		$12

Source: GAO analysis.

[a]Alaska Airlines does not charge for the first 3 checked bags for trips wholly within the state of Alaska.
[b]Spirit revised its checked baggage fee for travel on or after August 1, 2010 to $25 domestic/$30 international for each of the first two bags, and $85 domestic/$90 international for the 3rd to 5th bag.
[c]United also offers a $249 annual fee to check one or two bags per flight without charge.
[d]Fee for some nonalcoholic beverages.

Airline-Imposed Fees and Surcharges Subject to the 7.5 Percent Excise Tax According to IRS	
Subject to 7.5 percent excise tax	**Not subject to 7.5 percent excise tax**
• **Fee to upgrade to higher class of accommodation (first or business class)** An additional charge, paid in cash, for changing the class of accommodation is a payment for transportation and is subject to tax by regulation.[a]	• **Fee for checked baggage** The fee is excluded from the tax base by regulation.[h]
• **Fee for ticket cancellation when passenger requests refund** If an airline keeps a portion of the amount paid for a ticket as a cancellation fee when refunding the ticket amount to the customer, the consumer does not get a refund of tax already paid on that portion of the ticket amount (cancellation fee)[b]. There is no additional tax on the amount retained.	• **Fee for seat selection/seat preference within class of accommodation** If the service is optional and not a change in the class of accommodation, it is not included in the tax base.[i]
• **Fee for ticket change of destination or time of travel** Additional charges for changing the destination or route, extending the time limit of a ticket, or as "extra fare" are payments for transportation and subject to tax by regulation.[c]	• **Fee for early boarding within class of ticket purchased** As long as the fee for early boarding is optional, it is not included in the tax base.[j]
• **Fee for frequent flyer award redemption** Service charge for a passenger to redeem frequent flyer miles.[d]	• **Fee to apply already-purchased unused fare to new ticket** If a fee were charged so that the customer could apply the fare (on which tax was already paid) for an unused nonrefundable ticket to a new ticket, then that fee is not included in the tax base because it is optional.[k]
• **Fee for unaccompanied minors** If the fee charged to provide support and care to an unaccompanied traveling minor is mandatory, such fee is taxable because the amount is paid as a condition of receiving air transportation. If it is optional, however, (e.g., for children of a certain age), then it is not included in the tax base.[e]	• **Fee for reservation by phone; reservation by Internet** If the airline provides a mechanism for the customer to book travel for free, the use of a mechanism to book that charges a fee is then optional and the reservation fee is not subject to a tax. If there is no mechanism for the customer to book travel for free, the reservation fee is included in the tax base, regardless of the mechanism used.[l]
• **Charge for peak travel/holiday travel** The fee is subject to tax because it must be paid as a condition of receiving air transportation.[f]	• **Fee for pet/animal transportation** The fee is treated as a baggage fee and not included in the tax base, per regulation.[m]
• **Fuel surcharge** The charge is subject to tax because it must be paid as a condition of receiving air transportation.[g]	• **Fee for standby** Assuming the fee is optional, the fee is not included in the tax base.[n]
	• **Fees for pillows and blankets** The fees are not included in the tax base because they are for non-transportation service.[o]
	• **Charges for food and alcoholic beverages** The charges are not included in the tax base because they are non-transportation services, as described in regulation.[p]

Source: GAO analysis of applicable statutes, regulations, and guidance.

Note: IRS determinations of the applicability of the 7.5 percent excise tax depend on the facts and circumstances of the imposition of the fee and, accordingly, may vary from airline to airline for similar services.

[a] 26 C.F.R. § 49.4261-7(c). See also Priv. Ltr. Rul. 118216-09.

[b] Rev. Rul. 89-109; but see *United Airlines, Inc. v. U.S.*, 929 F. Supp. 1122 (N.D. Ill., 1996).

[c] 26 C.F.R. § 49.4261-7(c).

[d] Rev. Rul. 73-508. See also Priv. Ltr. Rul. 118216-09.

[e] Rev. Rul. 73-508. See also Priv. Ltr. Rul. 118216-09.

[f] Rev. Rul. 73-508.

[g] Priv. Ltr. Rul. 118216-09 (Sept. 28, 2009); Rev. Rul. 73-508.

[h] 26 C.F.R. § 49.4261-8(f)(1).

[i] Rev. Rul. 80-31.

[j] Rev. Rul. 80-31.

[k] Rev. Rul. 80-31. See also Priv. Ltr. Rul. 118216-09.

[l] Rev. Rul. 80-31. See also Priv. Ltr. Rul. 118216-09.

[m] 26 C.F.R. § 49.4261-8(f)(1).

[n] Priv. Ltr. Rul. 118216-09; Rev. Rul. 80-31.

[o] 26 C.F.R. § 49.4261-8(f)(4).

[p] 26 C.F.R. § 49.4261-8(f)(4).

HEARING ON AIRLINE FEES

Wednesday, July 14, 2010

HOUSE OF REPRESENTATIVES,
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE,
SUBCOMMITTEE ON AVIATION,
Washington, DC.

The Subcommittee met, pursuant to call, at 2:04 p.m., in room 2167, Rayburn House Office Building, the Honorable Jerry F. Costello [chairman of the Subcommittee] presiding.

Mr. COSTELLO. The Subcommittee will come to order. The Chair will ask all Members, staff, and everyone to turn electronic devices off or on vibrate.

The Subcommittee is meeting today to receive testimony regarding airline fees. I intend to give a brief opening statement and then call on Mr. Petri to give an opening statement or his remarks.

I might mention that we are going to have votes at 2:45. We were just notified. So what I think I will do is first welcome everyone to the hearing today. Secondly, I want to especially recognize and thank the families of Colgan Flight 3407 for being with us today and for their steadfast support for improving pilot training and safety in the industry.

With that, Mr. Petri, in order to move things along so that we can get to our witnesses, I will enter my entire statement into the record. But before I recognize you for your opening statement, I would ask unanimous consent to allow two weeks for all Members to revise and extend their remarks and to permit the submission of additional statements and materials by Members and witnesses.

With that, my entire statement will appear in the record without objection.

The Chair recognizes Mr. Petri.

Mr. PETRI. Thank you very much, Mr. Chairman. And to demonstrate how effective your leadership of this panel is, I will ask unanimous consent that my statement be entered into the record.

Mr. COSTELLO. Without objection, so ordered.

Obviously, we are trying to get to the witnesses to hear your testimony before we are interrupted for votes; that is why we have entered our statements into the record.

Let me now recognize our witnesses today. First, Dr. Gerald Dillingham, who is the Director of Civil Aviation Issues with the U.S. Government Accountability Office; Mr. Robert Rivkin, who is the General Counsel with the United States Department of Transportation; Mr. Ben Baldanza, who is the President and CEO of Spirit Airlines; Mr. Dave Ridley, who is the Senior Vice President of Marketing and Revenue Management, Southwest Airlines; Mr.

Kevin Mitchell, Chairman, Business Travel Coalition; Mr. Kyle Moore, who is the Vice Presidente of Marketing, Sabre Holdings, and on behalf of The Interactive Travel Services Association, American Society of Travel Agents, Consumer Travel Alliance as well.

With that, I will now recognize Dr. Dillingham. As is the policy of this Subcommittee, we would ask that you summarize your written testimony that you have submitted to the Subcommittee and try and summarize your statement in five minutes so that we will have time to ask questions.

With that, the Chair now recognizes Dr. Dillingham.

TESTIMONY OF DR. GERALD DILLINGHAM, DIRECTOR OF CIVIL AVIATION ISSUES, U.S. GOVERNMENT ACCOUNTABILITY OFFICE; ROBERT S. RIVKIN, GENERAL COUNSEL, U.S. DEPARTMENT OF TRANSPORTATION; BEN BALDANZA, PRESIDENT AND CEO, SPIRIT AIRLINES, INC.; DAVE RIDLEY, SENIOR VICE PRESIDENT, MARKETING AND REVENUE MANAGEMENT, SOUTHWEST AIRLINES; KEVIN MITCHELL, CHAIRMAN, BUSINESS TRAVEL COALITION; AND KYLE MOORE, VICE PRESIDENT, MARKETING, SABRE HOLDINGS, AND ON BEHALF OF THE INTERACTIVE TRAVEL SERVICES ASSOCIATION, AMERICAN SOCIETY OF TRAVEL AGENTS, CONSUMER TRAVEL ALLIANCE

Mr. DILLINGHAM. Thank you, Mr. Chairman, Mr. Petri, Members of the Subcommittee. My statement today summarizes the findings of GAO's study of aviation-related fees and their potential impact on the Airport and Airway Trust Fund and the flying public.

Our full report was published this morning on the GAO's website. This study addressed four questions: first, what are the nature and scope of these fees, including the fees' relationship to the cost of the services provided and their degree of transparency; second, what is the potential impact of such fees on revenues used to help fund FAA through the Trust Fund; and, third, how have the fees affected the number of checked bags and airline policies associated with checked and mishandled bags; and, lastly, what processes are available for refunding government-imposed taxes and fees to passengers who do not use their non-refundable tickets.

With regard to the nature and scope of the fees, starting in about 2007, airlines began to charge for many services for which separate charges did not previously exist, such as first and second checked baggage, carry-on bags, meals, blankets, and seat selection. Prior to 2007, the flying public generally considered these kinds of services were included in the price of the ticket. Since these services were unbundled and fees established, the revenues from these fees have become an important part of the profit and loss statement of many airlines.

During 2008 and 2009, U.S. passenger airlines posted operating losses of about $4.4 billion; however, during that same period airlines reported fee revenues of at least $7.9 billion. This $7.9 billion represents only a portion of the revenues that were generated from optional fees. According to airline officials, the fees are based on a combination of factors, including the cost of providing the services, competition, and consumer demand.

I think it is worth noting that the fees are not assessed equally. For example, some passengers, such as business class and elite frequent fliers, do not pay for certain services such as checked bags and early boarding. In addition, airline operational fees are not fully transparent. Specifically, DOD does not require the disclosure of most of these fees by airlines or ticket distribution channels that are used by consumers. Therefore, consumers cannot readily compare the total cost of flights offered by different carriers.

With regard to the potential impact of these fees on the Trust Fund, the IRS has determined that many of the fees that have been established by airlines are not related to the transportation of a person; therefore, they are not subject to the 7.5 percent excise tax which would be deposited into the Trust Fund. However, if checked bag fee revenues that airlines reported in fiscal year 2009 had been subject to the excise tax on domestic travel, it would have generated about $186 million, or somewhat less than 2 percent of the Trust Fund revenues for 2009.

With regard to our question on checked baggage issues, since the airlines established check baggage fees, the number of checked bags per passenger and the rate of mishandled bags have both declined. According to airline officials that we talked to, their airlines have generally not changed their baggage handling policies or their compensation methods. Consequently, it would be reasonable to conclude that the decline in the number of checked bags was likely a factor in the decline in the rate of mishandled bags.

Finally, regarding the processes available for refunding government taxes and fees to passengers who do not use their non-refundable tickets, government taxes and fees include a 7.5 percent excise tax, a September 11 security fee, and various inspection fees. We found that the refundability of these taxes and fees on unused, non-refundable tickets varies depending on the tax and the fee. We also found that clear information was not generally available to consumers about the eligibility of refund for these fees and taxes.

Mr. Chairman and Members of the Subcommittee, to address the issues that we identified through this study, our report contains a matter for congressional consideration on the taxation of optional fees and six recommendations to various fellow agencies that generally focus on disclosure and transparency issues. Thank you, Mr. Chairman.

Mr. COSTELLO. Thank you, Dr. Dillingham.

The Chair now recognizes Mr. Rivkin.

Mr. RIVKIN. Chairman Costello, Ranking Member Petri, and Members of the Committee, thank you for the opportunity to appear before you to discuss airline fees.

Secretary Ray LaHood is committed to protecting the interests of airline consumers. During this Administration, the Department has implemented a number of initiatives to further that commitment. Last December we established a new foundation in consumer protection through a rule that attacked several persistent and pernicious practices, including lengthy tarmac delays, chronically delayed flights, and lack of consumer information about on-time performance. In the last year we issued 37 cease and desist orders against airlines and agents, assessing more than $3 million in civil

penalties, and we are very focused on the impact of new airline fees on consumers.

We believe that the proliferation of these fees and the manner in which they are presented to the traveling public can be confusing and, in some cases, misleading. Many travelers still expect that the basics of air travel are included in the ticket price, but that is no longer the case. The published fare used by many consumers to choose a flight does not clearly represent the actual cost of travel once the new fees are added. These include fees for services that used to come included in the fare, like checking bags, carrying bags onboard, and now even getting soft drinks. As a result, it is difficult for consumers to compare fare offerings and make rational economic decisions based on the full cost of their travel.

We believe consumers should have complete information about the full cost of their trip at the time they make their decisions about travel. We believe that information should be presented in a clear, straightforward way so that consumers can make informed decisions. The Department recently issued a Notice of Proposed Rulemaking that would apply these basic principles of transparency and fairness to the airline industry's new fee structure, among other consumer protections proposed. On fees, here is what we proposed:

First, we would require true, full price advertising. Advertised tickets would be required to include all mandatory taxes, fees, and charges. If you have to pay a charge to fly, like what some airlines call a fuel surcharge or a convenience fee, it must be included in the total price presented to the consumer.

Second, we propose that airlines' optional fees be fully disclosed on airline websites. By optional fees we mean charges for things like checking baggage or seat assignments that passengers can choose to avoid and yet still fly. We would also require more detailed and prominent disclosure for fees related to carry-on and checked bags, and that such fees be affirmatively agreed to by the consumer with no opt-out requirements or shenanigans.

Third, we propose to require reimbursement of baggage fees when the bags are not delivered or not delivered on time.

Fourth, we are seeking comment on a proposal that airlines report both a full fare, the carrier's base fare plus the mandatory charges, as well as what we have referred to as "full fare plus", which would be the full fare ticket price plus the cost of baggage charges that consumers are traditionally used to seeing included in the price of the ticket. We are seeking comment on that; we haven't made any determination of what the Department thinks is appropriate.

And, fifth, the Department proposes to require airlines to provide their agents and global distribution systems complete, accurate, and up to date information on ancillary fees so that the information is readily available to consumers.

Among other key provisions of the rule unrelated to fees, we also propose to increase compensation and transparency for bumped passengers and to require airlines to allow cancellation of a reservation without penalty within 24 hours of booking a flight.

Our proposed rule addresses most, but not all, the recommendations of the General Accountability Office report that was released

today. One recommendation in the report involves the TSA $2.50 security fee that is imposed per flight segment, up to $10.00, to cover the cost of screening and related services, as well as other fees imposed by government agencies. Although these fees are beyond the scope of our current rulemaking, we would be happy to work with you and the GAO on this issue.

We are committed to acting swiftly to try to complete the rulemaking by the end of this calendar year.

In closing, I want to thank this Committee for invigorating our consumer protection program. Your leadership and support have enabled us to redouble our efforts to protect consumers. We are committed to the mission you have given us and we look forward to continuing to work with you. I would be happy to answer any questions you may have, and I ask that my written statement be made part of the record. Thank you.

Mr. COSTELLO. Thank you, Mr. Rivkin. You have made mention of Secretary LaHood and the action that he has taken thus far. We applaud him for his swift action and look forward to working with you on these issues.

The Chair now recognizes Mr. Baldanza.

Mr. BALDANZA. Chairman Costello, Mr. Petri, and the Subcommittee, thank you for the opportunity to appear today in connection with the review of airline fees. Spirit Airlines is based in Fort Lauderdale, Florida. We currently have a fleet of 31 aircraft serving 44 cities in the U.S., the Caribbean, Central and South America. We carry approximately 6.5 million passengers a year, and over the next five years will add 35 new aircraft to meet the growing demand for our unique ultra low cost carrier service.

Spirit believes that unbundling, and by that I mean separating out optional customer services from the fare that are not essential to transporting a passenger, allows the customers the choice to purchase services or not, and this benefits the traveling public through lower total cost. This approach generates increased tax revenue by stimulating more travel. These unbundled services do not impose any cost on airport infrastructure, on the Nation's air traffic control system or any other government services funded by the aviation Federal excise tax. As such, no additional tax burden should be imposed on the cost of these ancillary services.

Over the past decade, the U.S. airline industry has lost approximately $60 billion in light of a continuing weak economy and reduced demand for air transportation, as well as volatile and uncertain fuel prices. Imposing additional taxes on the industry and its passengers will be counterproductive and result in less, rather than more, tax revenue.

In 1978, Congress passed the Airline Deregulation Act, which stressed competition as the way to stimulate efficiency, innovation, and low prices. Spirit Airlines takes this policy to heart. Our goal is to offer consumers a real choice in selecting an airline for their travel needs. Since 2007, when we adopted our unique Ultra Low Cost Carrier, or ULCC, business model to provide basic air transportation at the lowest possible price, in every market Spirit serves it provides an important public interest service by disciplining fares.

Spirit's impact was clearly demonstrated when our pilots went on strike last month and other carriers, including low fare carriers, immediately raised prices. For example, Jet Blue raised its round-trip fare in the Fort Lauderdale-San Juan, Puerto Rico market. We and Jet Blue are the only carriers who serve that market nonstop. They released their fare from under $200 to over $600, while at the same time putting out a press release saying that they were helping Spirit's customers.

In an effort to make airfares as low as possible, in 2007, Spirit unbundled the charge for checked bags and, despite rising fuel costs, lowered our base fare to adjust for the unbundling. This April we announced our decision to charge for carry-on luggage that is too big to fit under the seat beginning on August 1st. This charge does not apply to such items as medical equipment, baby strollers, and the like. Carry-on bags have become a nightmare for passenger boarding and deplaning; they create a safety risk for both passengers and flight attendants, and lead to costly flight delays.

Carrying more than one bag is not necessary for all travelers, and we believe it is unfair to charge those customers for extra services they do not use. The carry-on fee for most passengers is $20 to $30, and Spirit reduced its base fares by about $40 to offset these charges. Spirit also lowered its checked bag charge to encourage passengers to check their bags. The carry-on fee has not affected Spirit's bookings because the total cost to customers for travel on Spirit remains far lower than on other airlines.

As a group, low fare carriers already pay a greater percentage of the total ticket cost in taxes than do the higher fare legacy carriers. This is because much of the tax burden on airlines is in fixed charges. On a domestic flight, these include an addition to the 7.5 percent excise tax, a $3.70 segment fee, $2.50 September 11 fee, PFCs at airports of up to $4.50, and a 4.3 cents per gallon commercial fuel tax. So, for example, on a 300 mile trip with $180 round-trip fare, the customer could pay a total of about $35.40 in taxes, or 20 percent of the fare, including the Federal excise tax.

Since Spirit has the lowest fares in the industry, our lower income passengers are already effectively paying the highest taxes as a percentage of the total fare. This is an unfortunate and highly regressive result of the existing tax structure. Our average fare is under $85. Most of the industry is well over $100. And our passengers pay over $11 in Federal excise tax between the ticket price and the fuel, or 13 percent on this amount just for the ticket, tax, and fuel.

The primary impact of charging for nonessential ancillary services will be to raise prices for all consumers and thereby dampen travel demand and likely result in less total government excise tax revenue. At a time when the industry has serious financial issues and the Secretary of Transportation has formed a commission on how to strengthen the industry for the benefit of employees, consumers, and shareholders, it would be counterproductive to impose yet another tax burden.

As noted, the services Spirit has unbundled do not involve activities that drive up the cost of air traffic control or other services paid for by the Aviation Trust Fund. They are not charges for the

transportation of any person. For example, the handling of checked bags impose high labor cost on the airline but doesn't touch air traffic control. Another non-transportation ancillary fee for flight charges involving non-refundable tickets covers the cost imposed on the airline by such a change. These include both the direct cost for the time of the reservation agents and the potential lost revenue from empty seats. Passengers who want to avoid such fees can purchase a higher priced refundable ticket or purchase low cost travel insurance.

Recent articles in the press based on a first quarter DOT report said Spirit had the highest ancillary revenue as a percent of total revenue. We believe this comparison is highly misleading. Spirit's percentage of ancillary revenue to total revenue is higher than other carriers simply because our fares are so low. For example, if Spirit had the same average fares as American Airlines, our percentage of ancillary fees would only be 14 percent.

Over 70 percent of Spirit revenue that comes from ticket sales is subject to the aviation excise tax. Of the 25 percent of the revenue that could be labeled ancillary, about 60 percent is related to an itinerary. Of this, about 50 percent is from baggage fees and 10 percent from seat selection fees. So, in total, only about 15 percent of Spirit total revenue is from ancillary fees selected by passengers in connection with their travel.

We are certain that Spirit's decision to unbundle services not essential to the transportation of services have had minimal, if any, negative impact on the total excise taxes paid for travel on Spirit. This is because our lower fares have enabled more people to fly, despite the difficult economy of the last several years. Imposing excise taxes on these fees will simply raise fares, dampen the public's ability to afford travel, and therefore result in lower overall tax revenue.

Lastly, Spirit firmly believes that customers deserve to have access to as much information as reasonably available on the cost of their travel. Spirit's website provides information on all of its charges, and customers can see the total cost of their flights, including all optional services they have selected, before confirming their purchase. This makes it easy for customers to comparison shop to confirm that Spirit's total price is still the lowest.

Unfortunately, under the DOT policy, airlines must include the Federal excise tax as part of the base fare, so this tax is hidden from the customer. We are not aware of any retailer of a retail product where, by government fiat, merchants are prevented from showing customers how much of their payment is for tax.

In closing, I would like to note two of the particularly onerous proposed new rules recently announced by the DOT. First, after decades of permitting airlines to list certain government taxes and fees separately from the base fare in advertising, the Department proposes to require airlines to include all applicable taxes and fees in the advertised fare. This new requirement will further obfuscate the portion of the ticket price going to the government. We believe Congress should direct the Department to permit airlines to display fares on their websites in a totally transparent way so customers can immediately see the full tax component of their fare.

Secondly, the Department proposes to require that all airlines allow customers to hold a booking without payment or allow booking to be canceled without charge for at least 24 hours, even for non-refundable tickets. Many of our promotions are for one-day sales only. Allowing a 24-hour hold would circumvent the sale, resulting in a term which adds lower revenue and means higher fares.

Also, holding the fare for 24 hours allows customers to take away valuable selling time, potentially resulting in an empty seat. Most low fare carriers, including Southwest, do not permit either of these options for non-refundable tickets. Such a rule would require substantial and costly changes in our IT reservation system, as well as changing the contract with our credit card processing agent. As noted, on Spirit, passengers can shop and compare prices before they buy.

In conclusion, we believe ancillary fees and other consumer protections, Congress must be guided by the objectives established by the Airline Deregulation Act, namely, the encouragement of innovation, competition, and the expansion of low fare service. Tax revenue should be generated by promoting economic expansion and taking steps to encourage more people to fly.

Imposing new taxes on fees for nonessential customer services unrelated to costs imposed by the system must be avoided. Such taxes would surely harm competition, raise costs, and slow the industry's require from a decade of losses. In addition, Congress should look carefully at the new rules proposed by the DOT. Rules that benefit few customers but raise costs for all should not be imposed on the industry. Such rules create inefficiency, reduce innovation, and lead to higher fares.

Thank you for your consideration.

Mr. COSTELLO. Thank you.

The Chair now recognizes Mr. Ridley.

Mr. RIDLEY. Chairman Costello, Ranking Member Petri, and Members of the Subcommittee, thank you for inviting Southwest Airlines to testify at today's hearing. My name is Dave Ridley, and I am Senior Vice President of Marketing and Revenue Management. I have been a Southwest employee since 1988. In my role, I am accountable for the company's top line revenue performance. My responsibilities include, among other things, pricing, advertising, and the maintenance of our brand image as America's leading low fare, high customer service airline.

Today, Southwest is the Nation's largest airline in terms of domestic passengers, carrying more customers than any other U.S. airline. We now carry over 100 million passengers a year, serving 69 cities in 35 States. We are the most heavily unionized airline in the Country and we are the only airline that has not had an involuntary furlough of an employee since our inception in 1971.

After 39 successful years in the airline business, Southwest continues to look for ways to differentiate ourselves from other airlines beyond our consistently low fares and our great customer service. Most recently we chose to make our affordable, transparent, and easy to understand pricing structure a focal point in winning the hearts and minds of the flying public by not following the industry trend toward nickel-and-diming of our customers. Our overriding

philosophy at Southwest Airlines is to not charge customers for things they have historically received for free. That is why Southwest is committed to low fares with no hidden fees. What you see is what you pay.

When you book a ticket on Southwest, you will not pay a fee to check your first or second bag, or to carry on a bag, for that matter; you will not pay a fee to check your bags curbside; you will not pay up to $150 to change your reservation; you will not pay a fee to sit in a window or aisle or an exit seat; you will not pay a fee to make your reservation over the phone; and you will not pay a fuel or peak travel surcharge fee, either. And, as always, snacks, sodas, smiles, and the occasional bad jokes are all complimentary at Southwest Airlines.

Our position on fees aligns our corporate goal to generate positive financial results with the passion of our people to provide good customer service. We listen to our people. They, in turn, do not shy away from telling us exactly what they think. Our people told us that they don't want to nickel-and-dime their customers.

Allowing our people to do what they do best in a customer-friendly way is just one reason why, since 1987, when the Department of Transportation began tracking customer satisfaction statistics, Southwest has consistently led the entire airline industry with the lowest ratio of complaints per passengers boarded. This is further evidence that our policy of not nickel-and-diming is not a gimmick; it is good business and it makes our people feel better about who they are and what they do.

Due in large part to our Bags Fly Free campaign, Southwest has experienced a domestic market share shift worth close to $1 billion since the introduction of this campaign. As a result, our customers, employees, and shareholders have been the beneficiaries of this decision.

While we are not fans of fees for services that historically have been part of the base fare, we believe strongly that the decision on whether or not to charge a fee for an airline product or service is a business decision best made by each individual airline. Southwest made the conscious decision to limit our customers' exposure to what we view as unreasonable and annoying fees. That was our choice. Other airlines have chosen a different business model and should have every right to do so.

However, we do think the Federal Government should focus on ensuring the full disclosure of any and all fees to consumers, making sure that airfares are advertised fairly and honestly. Only an informed consumer can make apples-to-apples fare comparisons, which allows them to shop for a flight that best meets their needs and preferences. To protect the traveling public, fees should be prominently disclosed to consumers wherever tickets are sold. We generally agree that the fee-related elements of the DOT's NPRM would achieve this goal.

On behalf of Southwest Airlines, thank you for this opportunity to testify, and I would be happy to answer any questions.

Mr. COSTELLO. Thank you, Mr. Ridley.

The Chair now recognizes Mr. Mitchell.

Mr. MITCHELL. Mr. Chairman, Ranking Member Petri, and Members of the Subcommittee, thank you for inviting the Business

Travel Coalition to appear before you today to represent passenger and corporate managed travel interests on airline product unbundling and fees.

Today's hearing is critically important because of the potential for consumer abuse in this fast changing, unbundled marketplace for airline services. BTC is not against unbundling as a matter of principle, but, rather, it is opposed to the absence of full disclosure of all add-on fees and charges such that all consumers cannot make genuine apples-to-apples comparisons of all-in airline fares.

Without timely and complete airline disclosure of an increasing array of add-on charges to global distribution systems and the travel agencies that they automate, consumers deprived of all-in information will become as economically trapped by airlines as they would be physically trapped during a seven hour tarmac delay. The need for consumer protection in this area is acute, but the remedy need not be burdensome.

The highlights of BTC's survey results of 188 travel industry experts released yesterday are revealing of a sea change in thinking about Government oversight in commercial air transportation. Consider: 100 percent of corporate travel managers indicated that unbundling and extra fees have caused serious problems in their manage travel programs; 86 percent believes that airlines, absent Government rules, will not make fare adequate and readily accessible disclosure of their add-on fees and charges so that travel managers and their travel management companies can do comparison shopping of the all-in prices for air travel across carriers; and 95 percent support the proposal that the USDOT require airlines to make add-on data available and easily accessible to the travel agency channel through any GDS in which that airline or an airline has agreed to participate.

These survey participants, I should point out, are business people who do not generally favor government intervention in a marketplace. However, they see a market failure coming at them with the speed and impact of a Stephen Strasburg fast ball to the side of the head. With across-the-board unbundling of air travel services, and absent the government empire stepping in, consumers will not have the ability to evaluate the full price of air travel options available to them. For decades, the transparency of airfare information through all channels has been a marvel of modern technology and has benefitted consumers immeasurably.

Unbundling without disclosure threatens to catapult us out of the 21st century and back into an opaque Stone Age where a telephone, calculator, pen and paper, and a lot of unproductive time were needed to figure out how to compare airline services. Add-ons, like checked bags, are material to air transportation the way a chair is material to a restaurant meal. What some airlines are doing is akin to a restaurant advertising a $20 business person's luncheon special and then surprising the patron with a $10 add-on fee for use of a chair when handed the menu. The patron is given partial information and essentially tricked into coming to the restaurant. The stakes, of course, are much higher at the airport for families and businesses on tight budgets, which is why you are having this hearing today.

Of significance is that major airlines remain at a 30 to 35 percent cost disadvantage vis-a-vis the low cost carriers and, as such, cannot offer the kinds of across-the-board low fares that the low cost carriers do. There is, therefore, a motivation present to obfuscate the true all-in price by keeping fares opaque and especially resisting efforts to have fees and fares displayed transparency for travel agents via the global distribution systems.

Importantly, the Airline Tariff Publishing Company has a new airline-tested data system ready to facilitate the loading of add-on fares in the global distribution systems. However, not a single major U.S. airline has signed on, to BTC's knowledge, to permanently use this new system because the first airline to do so would likely show all-in higher airfares of 30 percent or more compared with its competitors.

This is an industry where a few dollars can make a difference for a consumer in choosing one airline over another, so no one airline can rationally be expected to make the first potentially suicidal move. That is why a reasonable measure of Government help is needed, to ensure that all airlines jump together for the benefit of consumers. Moreover, except to the extent that Congress or DOT mandates specific consumer protections, airline passengers are without legal rights and remedies because of Federal preemption and a lack of FTC oversight in this area.

In conclusion, Mr. Chairman, the International Airline Passengers Association, IAPA, and its 400,000 members, join BTC in encouraging this Committee to urge the DOT in its NPRM to require airlines to make add-on fare data easily accessible not only on their own websites, but also to the travel agency channel through any GDS in which an airline has agreed to participate. Congress could also provide this relief in the FAA Reauthorization Act through Senator Menendez's sensible disclosure proposal. Either way, consumers would finally have the batting helmet needed to step up to the plate confidently in today's unbundled marketplace.

Thank you, and I look forward to your questions.

Mr. COSTELLO. Thank you, Mr. Mitchell.

The Chair now recognizes Mr. Moore.

Mr. MOORE. Thank you, Mr. Chairman.

Sabre Holdings owns both Sabre Travel Network, the part of our business that runs the Sabre GDS, and Travelocity, one of the Nation's largest and most popular online travel companies.

Today in my testimony, I am representing three groups: The Interactive Travel Services Association, the trade association for online travel companies and GDSes; the American Society of Travel Agents, the largest association of professional travel retailers in the world; and the Consumer Travel Alliance, a nonprofit member of the Consumer Federation of America created to inform and educate legislators and regulators about policy decisions about consumer travel. I am responsible for the systems that manage the sale of air travel across all channels where airlines distribute through Sabre, which has recently been heavily focused on airline unbundling.

Up until recently, air travel shopping in the U.S. has been one of the closest things you will find to an Adam Smith perfect marketplace. Consumers have enjoyed access to near perfect informa-

tion on air products and prices. Through the Internet, travelers can shop anytime, day or night; and the prices, while constantly changing, are also constantly updated. They can book when they feel the product is appropriately priced for themselves, and travelers are extremely price sensitive. The vast majority of travelers select air travel at or very near the lowest fare offered.

Unfortunately, that perfect model is now broken. Mr. Mitchell and the rest of the panelists outlined this very well, but, in short, with the removal or repackaging of many services from what has traditionally been included in the fare, shoppers have a very difficult time finding out the true cost of travel for their proposed trips. They are left to find out the true cost only when they have completed the return flight for their trip, when they have paid for the last baggage fee and picked their seats for themselves and their families, to the painful surprise of blown budgets.

Consumer Travel Alliance has just released information that outlines the impact on consumers from hidden fees, with effective price increases of 20, 40, 60 percent and higher. But it doesn't have to be this difficult or harmful. Solutions are coming online that will bring back transparency for the consumers. But this can only happen if the airline community makes information on ancillary fees readily available. Let me repeat that. It can only happen if the airline community makes information on ancillary fees readily available, something that ITSA, ASTA, and CTA strongly believe the airlines should be compelled to do.

A broad collection of airlines, agencies, GDS, and standard setting bodies such as ATPCO, ARC and IATA have outlined how the information for ancillaries can be shared within the industry. ATPCO, the airline-owned fare clearinghouse, has adapted their systems to support ancillary fee information with the same level of specificity that airlines have for base fares. Targeting the ancillaries to specific dates, routes, flights, fares, traveler groups, corporations or agencies, and many, many, many, many other variables.

At Sabre, we are on the cusp of being able to make this information available to the shopper as they shop, whether online or through a traditional travel agent. At the end of this month, Sabre is poised to introduce the ancillaries and their prices into the shopping workflow of the traditional travel agent.

In referencing the graphic you see in front of you, next month we will take this a step further, a big step, enabling it in the low fare search process. Low fare search is something you would liken to online shopping, where you ask for flights and fares for your desired departure and return dates. Next month we will allow shoppers to choose what ancillaries are important to them for their trip. If they believe they are going to need to check a couple of bags, they can specify that up front. If they are traveling with their family, they can indicate the need to be able to select seats together. The system then finds the lowest fares that meet those specific needs, inclusive of the ancillaries, giving the consumer the total price for their trip, with no surprises at the airport.

These standards can solve yet another problem: that today's corporations and agencies have virtually no ability to manage where the money is going. The systems can fix that too. And it is impor-

tant to note that Sabre and the rest of the industry are all going down this path concurrently.

Of course, all of this only happens if the airlines are compelled to provide that information to the channels that represent approximately half of the air travel sold in the United States. Absent this, consumers will invariably selecting flights only to find that things weren't as they appeared on their screen.

And, to be clear, this isn't about compelling an airline to participate in the GDSes. Airlines have the choice to participate or not. This doesn't change that at all. This is unequivocally about the consumer. If the airline chooses to sell through the GDSes, the airline should show the consumers their full prices, not something that dramatically understates the real price travelers pay.

Finally, airlines have a powerful disincentive to actually provide this information to consumers, as this gives that last holdout airline the added advantage of appearing lower priced than their competitors, who might actually be providing the information on their full cost. This is why the Government must step in. We don't believe airlines will do this on their own. We at ITSA, ASTA, and the CTA believe it is important that those airlines selling the GDSes provide the information in a way that allows consumers to shop with full knowledge of and confidence in the travel costs in total, as you can see above.

At the same time, consumers deserve the opportunity to know what to expect when they are buying. In this manner, the cost of compliance for the airlines are negligible and the benefits are enormous. And I too thank you for your time.

Mr. COSTELLO. The Chair thanks you, Mr. Moore, and now recognizes the distinguished Member of the Full Committee, Chairman Oberstar.

Mr. OBERSTAR. I greatly appreciate your holding this hearing, Mr. Chairman, and the participation of Mr. Petri as well.

There are few issues of more lively interest to air travelers than these checked baggage fees and other fees that airlines are charging. Hardly a weekend goes by in my travels that I am not asked by passengers: Aren't you going to do something about these fees? Can't something be done about these fees? Well, we are starting. We are at least having a hearing. We started with Mr. Costello and I asking GAO—thank you, Dr. Dillingham, for your very thorough report—to evaluate and report to us.

I would say it looks to me like the airlines are learning from units of government. It is a back door price increase. It is not a tax if it is a fee. If you call it a fee, it is not a tax, so you can impose these taxes with impunity by calling them a fee. That is just back door financing.

Look, passengers are paying for meals, for pillows, for blankets, for headphones, for beverages, to check the luggage, and some or at least one airline proposed a carry-on luggage fee. In Europe, a low fare carrier proposed a fee for using the potty on board the airplane. That didn't last very long, but at least they proposed that up front.

And then you have premium services, early boarding and early access to overhead space. But there is never anybody on board those planes, flight attendant or others, who say, no, no, you are

in row 24, you can't park your bag in row 3. They can do these things themselves, but they aren't doing it.

In 2009, US Airlines collected $7.8 billion in fees, $2.7 billion of which is from checked baggage. The first quarter of this year, $770 million in checked baggage fees, while the network carriers are losing money and the industry, as a whole, reported a profit of only $12 million.

So, look, you have additional effect. And I make it a point, Mr. Chairman, every airport I go through, I talk to the TSA agents. What does this mean for you, the fee for checked baggage? Well, it means more carry-ons, more densely packed carry-ons, and carry-ons that are more difficult too screen, thus taking us longer to screen and more difficult to find things that are jammed in and packed in. We frequently have to have backup TSA persons to read and back up the primary screener. I found that all around the country.

Those are hidden consequences of this rush to bag more money by imposing fees for bags. And then those fees are not subject to the airline ticket tax. And, as the GAO report indicated, that could be the equivalent of 2 percent of the revenues into the Aviation Trust Fund, which benefits primarily the airlines, air traffic control, the facilities and equipment account, airport construction improvement program. All of that would benefit, but you have the airlines saying, well, we have lower ticket prices.

But if you add in the cost of all these charges that I listed a moment ago, those ticket prices are back up where they were before the fees, and probably higher.

I think the GAO report recommendations of disclosure and some of the testimony we have heard today at least is a starting point.

But I just want to say to the airlines, who I am sure are in great number here or back in their offices listening in, if they don't exercise restraint, there is going to be a continuing outcry from the traveling public and you are going to have some kind of regulation that you won't like. So if you don't exercise self-restraint, then you are going to get push-back from the traveling public, they will come to the Congress, and then the Congress will act. And that is not a threat, that is history.

Thank you.

Mr. COSTELLO. The Chair thanks you and now recognizes Mr. Petri.

Mr. PETRI. Thank you very much.

I have a couple of questions for Mr. Rivkin, and maybe others would care to respond. Focusing on fees and disclosure of fees on airlines, what about discounts and undisclosed discounts? I mean, the strategy of a lot of these airlines seems to have all these fees and then to have affinity programs with lots of discounts, so if you belong to this thing you don't pay for the bag or you get into a fast find or you get free drinks, or you get 101 different perk, so to speak, or upgrade and all.

I mean, is it legitimate to have a strategy that differentiates in that way and unbundles, so that customers more or less get the benefits and charges that they want to pay for, rather than one size fits all?

Mr. RIVKIN. Thank you for the question, Congressman Petri. The focus of the Department of Transportation since deregulation has been to ensure, to the extent we are able, with the great support of this Committee and the Congress, that we can guard against unfair and deceptive practices, unfair methods of competition, and to ensure safe and adequate transportation. All we are trying to do is to fulfill that charge.

We have, as you know, a current rulemaking proposal, which I can't discuss beyond describing it under the rules related to regulatory proposals, but if there are other suggestions that are not included within the scope of the rule that we have put forward, which is rather broad, we would be very happy to consider them in discussions with you or your staff.

Mr. PETRI. OK. I am really just kind of curious because I know if you are a customer of Mr. Moore or someone else, and you knew you flew four times with AirTran you could get a free first class upgrade or you could save baggage charges or God knows what, or some other airline, that might make a difference because you might figure, well, we are taking several trips and it would be better to go with the airline that would charge $5 more, but would give us all these extra discounts.

So you are looking at extra charges, but you are not looking at the other side of it in this disclosure, and it seems to me a lot of these airlines have a strategy to try to capture the business and higher price customer by giving the individual business traveler all kinds of perks through these affinity plans that the boss is paying for and might not even realize is going into this because he is making the decision; he has to choose between two trips and he will choose the one that gets him the extra personal perks that he would like.

Is that what they are doing or is this a problem, or is this something we should be addressing here in this Congress?

Mr. MOORE. I think it is a wonderful observation and I think it is exactly right. But I also believe that this was an unintended consequence out of this. You had airlines that were introducing these additional fees, but they did not want to anger their most loyal and highest revenue-driving passenger, so they were waiving them for that. That actual drove greater loyalty for those most loyal passengers, because now they had even greater differentiation in the products and services that they could expect relative to somewhere where they are not a loyal traveler.

And that really just kind of speaks to why all this stuff is so important. This has made it even more complex than it used to be, and that is why consumers are unhappy. This is an incredibly complex process, and that is why we believe it is incredibly important for the airlines to provide the information so that you can differentiate between those that may be frequent travelers versus not in comparison shopping. The systems are ready to do that; we need the data.

Mr. PETRI. OK, thank you.

I just have one other quick question. It is slightly unrelated to the subject before us, but as long as Mr. Rivkin is here, we do have a pretty strong rule currently to protect the traveling public, which says if an airline stays more than three hours, I guess holds pas-

sengers on the ground for more than three hours, there is this tremendous fine. We are starting to hear from various carriers that, to avoid that, they are asking people, after about two hours, to get off the plane, even though it might actually mean flights are more delayed than they would otherwise be and people are, overall, more inconvenienced.

So I am just curious as to whether you or the Department, people dealing with this rule and its wise implementation, would be open to sitting down and reviewing various ideas for fine-tuning it with the idea of ending up conveniencing, rather than inconveniencing, the traveling public so far as unanticipated delays are concerned.

Mr. RIVKIN. Of course we would be, Congressman. We just got our first full month of comparative data, which showed that three-hour tarmac delays are down substantially from, I believe, 34 a year ago to 5 this last May. We are investigating those 5 and any that we have become aware of that have occurred since then. We are always looking for ways to improve on our regulatory responsibilities and would be very happy to work with you.

Mr. PETRI. Thank you.

Mr. DILLINGHAM. Mr. Petri?

Mr. PETRI. Yes.

Mr. DILLINGHAM. Just wanted to let you know that the GAO has been asked by Committees of the Congress to evaluate the impact and implementation of the rule, and, as Mr. Rivkin said, there has only been a month of data to this point, and we are waiting on a little more time to pass so we can have something to base our study on. So we will be looking at that as well.

Mr. PETRI. Good. We are just hearing from various people in the industry. A big fine concentrates the mind and there are some ideas that people think they have that they would like evaluated not to set aside the rule, but to implement it in a way that would benefit the traveling public more than a rigid one size fits all approach, which they currently fear is the case.

There are some unanticipated consequences in airlines' behavior because, facing a big rule, when they get near the three hours, or fear they might, get everyone back in the airport and then maybe they will have to sit there for six hours or eight hours, waiting for another flight; whereas, they could have, if they had gotten taken off knowing the weather change or whatever was causing the delay was about to be overcome. But airlines are afraid of paying a couple million dollars because they hit the three hour point. They would rather save that money and inconvenience the customers than give them true convenience.

Anyway, this is the concern that they have, that it is not a voluntary delay; they are trying to work with some real world situations, but to save this money they are faced with really inconveniencing customers or spending $3 million of their money, so they currently are really inconveniencing the customers, which is not our intention.

Mr. DILLINGHAM. Right. We will, in fact, be looking for unintended consequences as well, as we undertake that work.

Mr. MITCHELL. Mr. Petri, may I, very briefly?

Mr. COSTELLO. Mr. Mitchell, go ahead.

Mr. MITCHELL. Very brief comment. The reason that the rule is working so far is because finally the airline senior management teams have been made to prioritize this problem. One month of data, six months of data will not really matter. What is going to matter is that the airlines will have a period of time over the next 12 months to do the enormous work required in their systems and their operations to make this work for the passenger. I would virtually guarantee, a year from now, this will be a nonissue; the airlines will adjust.

Mr. COSTELLO. Mr. Rivkin, to follow up on Mr. Petri's point and question, let me ask did you say that the Department has one month or was that a quarter, the five tarmac delays?

Mr. RIVKIN. That was in the month of May of 2010. So we can only compare that month to May of 2009.

Mr. COSTELLO. To Mr. Petri's point of the industry raising concerns about consumers, conversely, have you had any complaints, the Department? Have you received any complaints from passengers or consumers?

Mr. RIVKIN. Yes, of course we have, sir. We have a staff of lawyers and investigators who field complaints every day.

Mr. COSTELLO. Specifically about the five delays during that period of time?

Mr. RIVKIN. We are investigating those five delays, but we also, in addition, investigate media reports and call-in complaints. So, yes, we are investigating whether those are actionable delays.

Mr. COSTELLO. The Chair now recognizes the gentleman from Oregon, Mr. DeFazio.

Mr. DEFAZIO. Thank you, Mr. Chairman.

Mr. Baldanza, you said that you unbundled the charge in 2007 for checked bags and lowered base fares. Was that a net to the airline? Did you lower base fares as much as your revenue or did you actually increase revenue although you unbundled?

Mr. BALDANZA. Mr. DeFazio, we increased revenue because we carried more passengers.

Mr. DEFAZIO. OK, per passenger per average, did you realize more by unbundling and charging them a little bit less on the fare but a lot more for the bag?

Mr. BALDANZA. No. The average fare we collected from each customer has dropped each year since 2007.

Mr. DEFAZIO. OK, so you did it as a public service. That is good. So when you begin to charge for people to carry bags on and put them in the overhead, are you going to lower fares again?

Mr. BALDANZA. We already have.

Mr. DEFAZIO. OK. That is good. I tell you what, I have flown about 4 million miles since I have been in Congress; had a hell of a lot of conversations with people getting between here and there, and the first thing they care about is whether they get there alive and safely, but the second thing is the conditions under which they travel and what they paid for their ticket.

Now, they don't care where that money goes. They just want to know how much the ticket is going to cost them. So why would you object to a system where people would be able to meaningfully compare what they are going to pay in total to go from A to B?

Mr. BALDANZA. We don't object to that system. In fact, we have spent a lot of money changing our website so that it is fully disclosed. When you buy a ticket on Spirit Airlines, you know exactly what your price is for the choices you choose.

Mr. DEFAZIO. On the first page or when I finally get to the point———

Mr. BALDANZA. Before you pull out your credit card and put your money up.

Mr. DEFAZIO. But you are not providing the data to the marketers.

Mr. BALDANZA. Absolutely, because as customers go through the shopping process, they say I want to fly from A to B, then maybe I want to check two bags, maybe I want to buy travel insurance or not, maybe I want to join this club or not, or whatever, and at the end they see the whole piece of what they are going to buy———

Mr. DEFAZIO. Excuse me, excuse me. I reclaim my time.

Mr. Moore, could you comment on this? I saw you shaking your head. I thought I understood from Dr. Dillingham and from your testimony that they are not cooperating with the secondary marketers in terms of these fees and charges.

Mr. MOORE. Thank you for the question. In terms of the data that we would need, that a consumer would need to say, up front, I am going from point A to point B, as you have said, and I am going to check a couple of bags, and I want to be able to preselect my seat, that type of information is not made available today; and there has been no airline that has said that they are going to do this permanently. I mean, there has been no airline that has said that we are doing this expressly right now.

Mr. DEFAZIO. I think you said that there is a system that could accommodate that.

Mr. MOORE. Absolutely.

Mr. DEFAZIO. And I think you said that airlines, some are more or less interested, but they are worried about the effect, if they go first, then consumers are getting fully honest what it is going to cost me in total for this trip, for me and my kids, and get a meaningful comparison of the bottom line across all the airlines that you report on, as opposed to when you go to a captive site, yes, maybe they give you the information, but you can't compare it unless you want go close that down, go over to another site, then do a comparison there, and then go to another site and do a comparison there. They can't go to a one-stop shopping site and get this information. That is correct, right?

Mr. MOORE. That is absolutely correct.

Mr. DEFAZIO. OK.

Mr. MOORE. That is absolutely correct.

Mr. DEFAZIO. This kind of reminds me of when I was trying to ban smoking in my early days on this Committee on airplanes. The CEO would say, oh, I would love to do it, but we would be at a competitive disadvantage—I tried to convince him it would be a competitive advantage because I hate smoking—if we did that, if we stepped out. So the Government had to stand in and say we are not going to allow smoking; now you have a level playing field. So I guess my question would be why wouldn't we create a level play-

ing field here, especially since, what, half the tickets are purchased through secondary marketing, not principally through airline sites?

Mr. MOORE. That is right.

Mr. DEFAZIO. Why wouldn't we create a level playing field there by requiring the meaningful transfer of the necessary data to those secondary marketers?

Now, why wouldn't we do that, Mr. Baldanza?

Mr. BALDANZA. Well, Mr. DeFazio, proving that our airline is quite different from the airlines that my competitor———

Mr. DEFAZIO. The ones that give us one price, like Southwest? You are very different.

Mr. BALDANZA.—is that less than 10 percent of our customers buy from third-party intermediaries.

Mr. DEFAZIO. Well, that is great.

Mr. BALDANZA. So 92 percent of our customers buy direct from our airline. We fully disclose 100 percent to that customer base.

Mr. DEFAZIO. OK.

Mr. BALDANZA. So if we would not———

Mr. DEFAZIO. You are not answering my question. If the Government orders you to do this, is this going to be a big imposition on you?

Mr. BALDANZA. No, because if we would do it for 92 percent of our customers, why wouldn't we do it for 8 percent?

Mr. DEFAZIO. Well, that is true. Well, because maybe you would get more customers if you were marketed more honestly on those other sites.

Mr. BALDANZA. The 92 percent of the customers that buy from us feel very good about our products.

Mr. DEFAZIO. Thank you very much, sir. Thank you. I appreciate it.

Dr. Dillingham, do you have any comment on whether this would be overly burdensome on the airlines to provide this data to the system that Mr. Moore described?

Mr. DILLINGHAM. Mr. DeFazio, based on the work that we have done, we do not think that it would be a tremendous burden on the airlines to provide the kind of information in a way that customers could make meaningful comparisons. Airlines already have administrative mechanisms in place that would facilitate doing this kind of thing. It would not be free, but it would not be overly burdensome either.

Mr. DEFAZIO. OK.

Mr. Rivkin, why wouldn't we have a comprehensive rule to require that, as opposed to your sort of picking around the edges with what you are proposing?

Mr. RIVKIN. We have asked that question in our current rulemaking and propose that it be a Government mandate, and we are awaiting comment.

Mr. DEFAZIO. OK, thank you.

Thank you, Mr. Chairman.

Mr. COSTELLO. Thank you.

The Chair now recognizes the gentleman from North Carolina, Mr. Coble.

Mr. COBLE. Thank you, Mr. Chairman.

Good to have you all with us today.

Dr. Dillingham, how would you rate the transparency of current airline fees, and in what ways could transparency be improved?

Mr. DILLINGHAM. Thank you, Mr. Coble. I think the findings of our report indicate that the fees are not very transparent. In fact, what Mr. Rivkin is talking about in terms of the way the Notice of Proposed Rulemaking is being developed and put out to the public is closer to or at least we would consider it a first step in terms of making it more transparent so that the consumers can in fact compare what they are going to be buying from across websites.

Mr. COBLE. Mr. Rivkin, how does DOT define deceptive advertising?

Mr. RIVKIN. Mr. Congressman, our mandate is unfair or deceptive practices. That is similar to State consumer protection rules around the Country where there is a body of case law that describes when there is a misrepresentation or a misleading assertion.

Mr. COBLE. How specifically, Mr. Rivkin, does DOT plan to require full disclosure of optional fees and what would this require?

Mr. RIVKIN. Mr. Congressman, in our current rulemaking, which is now out for comment, we have set forth a whole series of proposals that ancillary fees, as I described in my oral testimony, must be fully and prominently disclosed. The key proposal is that the total mandatory price must be disclosed the same way by every airline and agent so that the consumer can actually compare the real price the consumer would have to pay as the final price the ticket.

Mr. COBLE. I thank you.

Mr. Mitchell, how will more transparency on the part of airlines and their ancillary fees benefit corporate travel programs? Or will it benefit corporate?

Mr. MITCHELL. Well, the direction of the DOT's NPRM will solve several problems for corporate travel departments. First of all, with knowledge of the fares and the fees, they will be able to budget more effectively; they will be able to administer the programs, do the accounting and the auditing correctly; they will be able to enforce travel policy.

Currently, a fee is indistinguishable between a checked baggage fee or an upgrade to business class, for example. So there is a whole host of benefits, including their travelers not being surprised at the airport by these fees, and confused. So there are great benefits that would come from full disclosure and transparency as laid out in the NPRM.

Mr. COBLE. Thank you.

Thank you, gentlemen, for being with us.

Mr. Chairman, I yield back.

Mr. COSTELLO. The Chair thanks the gentleman and now recognizes the gentlelady from California, Ms. Richardson.

Ms. RICHARDSON. Thank you, Mr. Chairman.

Mr. Baldanza, I realize you are the President of Spirit, but I would appreciate not being yelled at like you just did with my colleague here. So let me just lay that out in the front. Here, you are in Congress and I am going to talk to you with respect, and I would like for you to do the same with me.

My first question is—and let me ask this to Mr. Dillingham when a plane is unloaded, is it generally done by a general employee on

an airport or is it done by a specific carrier? I seem to recall, and I fly two times a week, I don't always see that it is a specific carrier. So could you clarify that for me?

Mr. DILLINGHAM. Ms. Richardson, when you say when a plane is unloaded?

Ms. RICHARDSON. Like, for example, when Spirit Airlines, if they are unloading their passengers in Florida, let's say, we get off the plane. Is it the Florida airport, their employees that are unloading it or is it Spirit's employees? Or does it vary from airport to airport?

Mr. DILLINGHAM. Right. I think the latter, it varies from airport to airport.

Ms. RICHARDSON. OK. That is an important point, because I think it gets to the question of, well, why are we charging more fees.

My next question is, Spirit, have you collected data on your passengers and what do you know in terms of the number of packages, has it increased or decrease, of your passengers since you have added this fee?

Mr. BALDANZA. Since we began charging for checked luggage, we are checking less luggage than before we did, so it has decreased.

Ms. RICHARDSON. OK.

And, Mr. Dillingham, in your professional opinion, in your evaluation, what I see on the plane and I can tell you is that I have noticed a dramatic increase with people who have on bags, how much longer it takes to get everybody onboard, and it does become dangerous. You have people slinging high bags. Not everyone is strong enough to lift it and it becomes a problem. Is there a safety issue that we might have a concern with with this new policy, Mr. Dillingham?

Mr. DILLINGHAM. Ms. Richardson, there is the potential for a safety issue here, and I think when we talked with the flight attendants, for example, they are really concerned because they are usually the ones that are trying to lift those heavy bags over into the bin as well. There is also the issue of flight delays that are associated with that, trying to get all the bags on.

And then you have situations where people, for a while they would bring a bag that wouldn't fit. They didn't have to pay for it by checking it in, but then they could get it free by taking it down to the gate. So there are all kinds of unintended consequences and gaps that are going on at this point in time.

Ms. RICHARDSON. OK. And then I have two quick last questions, and I realize we are calling for votes, so the answers, if we could have them be brief.

I believe you had said that the DOT had not responded to the recommendations, Mr. Dillingham. Is it that they didn't respond or just that they have not agreed or disagreed?

Mr. DILLINGHAM. The recommendations in our report?

Ms. RICHARDSON. Yes.

Mr. DILLINGHAM. They have not responded; it wasn't an agree or disagree. And usually they have 60 days to fully comply in one way or another, so it is not unusual that we are in this situation, since we just issued.

Ms. RICHARDSON. OK.

And then my last question is back to you again, Mr. Baldanza. I apologize if I butchered your name. I understand and I read in your testimony that the information is available on your website; however, the community that I represent, not everyone has a computer, not everyone has access to websites, and many people are utilizing services, as Mr. Moore has mentioned, calling their local travel agent, who helps them to answer all the questions. So if you are providing the information on the website, really, what is your objection to providing the information to the agencies and to the GDS system?

Mr. BALDANZA. We don't have that objection. What I have said is———

Ms. RICHARDSON. If you don't have the objection, why aren't you doing it, then?

Mr. BALDANZA. It is simply because we have not had the ability to see how the system works yet, and we won't put ourselves at the competitive disadvantage yet.

Ms. RICHARDSON. So———

Mr. BALDANZA. And only a small———

Ms. RICHARDSON. Excuse me. I am reclaiming my time. That is how it works here. So are you saying to me that neither two of these gentlemen here, Mr. Mitchell or Mr. Moore, have provided you an example of how you could provide that information?

Mr. BALDANZA. No. What I am saying is that

Ms. RICHARDSON. No, yes or no?

Mr. BALDANZA. No.

Ms. RICHARDSON. Has anyone supplied you with the information of how you could incorporate it?

Mr. BALDANZA. Not that I am aware of.

Ms. RICHARDSON. And if you were provided it, would you be open to adjusting that system for consumers?

Mr. BALDANZA. We would be open to considering it, yes.

Ms. RICHARDSON. Thank you, sir.

Mr. COSTELLO. The Chair thanks the gentlelady and now recognizes the gentleman from Arkansas, Mr. Boozman.

Mr. BOOZMAN. Thank you, Mr. Chairman.

Mr. Rivkin, what are the top priorities in the fee rulemaking, your top priorities?

Mr. RIVKIN. What are the top priorities in the current rulemaking?

Mr. BOOZMAN. Yes, sir.

Mr. RIVKIN. Well, we don't list them in order of priority, but this is a rulemaking that encompasses a broad number of consumer issues that we issued in the wake of our last rulemaking, so we have tried to be as comprehensive as we could be, understanding that there are always going to be other issues. I would say that true full price advertising is one of the key principles; that baggage fees be fully disclosed and reimbursable when not delivered; we have also proposed increased compensation for involuntarily bumped passengers; and cancellation of a reservation within 24 hours without charge.

So there are a number of additional provisions and, in fact, we have tried with this rulemaking to achieve the maximum public involvement we could by partnering with Cornell University at

RegulationRoom.org so that the public might find it easier to go to that website and actually comment on the proposal, Cornell will summarize those comments and place them on the rulemaking docket.

Mr. BOOZMAN. So you don't really, then, feel that certain ancillary fees should be included in the base fare? You are not going that way with the rulemaking?

Mr. RIVKIN. We do not have the authority to regulate fees, routes, or service, so we are trying to discharge our mandate to ensure that what the airlines do, they do openly and transparently.

Mr. BOOZMAN. When do you think the final rule will be issued?

Mr. RIVKIN. We are hoping, but we can never be sure, to issue the final rule before the end of this calendar year.

Mr. BOOZMAN. And we only have literally just a minute or so, but in separating out the baggage, and, again, I am a guy that is flying all the time and that is an extra fee and things, is it such, though, that in having the increased fee and, thus, not having as much baggage, is that a good thing as far as transporting people and using less fuel? I guess what I am saying is are there any positive consequences as a result of people not having two bags every time they go someplace? Does that make sense?

Mr. RIVKIN. I am sure there are arguments, and I have heard some of them on different sides of that issue. We just heard some comments from Mr. Dillingham that more carry-on bags could be dangerous and could delay the loading and unloading of flights. On the other hand, perhaps people are incentivised to carry less with them that they don't actually need. I personally really don't have an opinion.

Mr. BOOZMAN. How about you, Mr. Dillingham? I guess what I am saying is do you carry more people on top? Is weight a factor so that you can actually carry more people and thus, theoretically, you are not having as many planes in the air to affect the environment and fuel and all those kinds of things? Is that a factor in reducing the weight?

Mr. DILLINGHAM. Mr. Boozman, as you have indicated, weight is a factor in terms of flights, and, therefore, you could make that argument in weight taken altogether. We haven't done any work that would indicate sort of what the increment is between baggage and persons, but the logic is there.

Mr. BOOZMAN. OK. Thank you very much.

Mr. COSTELLO. The Chair thanks the gentleman and will announce that we have three votes pending on the floor right now. We will return. Members have questions and I have some questions as well. I would ask everyone to be back in the room in your chairs, if you will, by 3:40.

The Subcommittee will stand in recess until 3:40.

[Recess.]

Mr. COSTELLO. The Subcommittee will come to order.

Dr. Dillingham, in your statement you describe potential revenue for the Airport and Airway Trust Fund if these checked bags were taxed at the 7.5. How much did you say it would generate for the Trust Fund, $200 million?

Mr. DILLINGHAM. Around $200 million, yes, sir.

Mr. COSTELLO. OK. And obviously it is not in Trust Fund. While the airlines have made a substantial amount of money off of these fees, the Trust Fund has shown a deficit in the same period of time, is that correct?

Mr. DILLINGHAM. The uncommitted balance in the Trust Fund has in fact been going down. Mr. Chairman, I wanted to point out that part of what we say in our report is that we only are talking about a proportion of the fees that have been charged by airlines because we couldn't disaggregate some of the other fees, so the total amount is yet to be determined.

Mr. COSTELLO. But it is clear from what you have seen that revenue for the airlines as a result of these fees, obviously the revenue has gone up, while at the same time the Trust Fund is going down.

Mr. DILLINGHAM. That is correct. But I am not sure I would link them, but both of those statements are true.

Mr. COSTELLO. But we would generate $200 million more if in fact the fees that are collected were in fact part of the tax and going into the Trust Fund.

Mr. DILLINGHAM. Yes, sir.

Mr. COSTELLO. OK. Let me ask you, there are a number of recommendations, several recommendations that you have made to the Secretary to improve disclosure and information on airline-and government-imposed fees to improve airline reporting of revenues to the Department of Transportation. Can you walk us through, just for the record, to be clear, what some of those recommendations are in the GAO report?

Mr. DILLINGHAM. Yes, sir. They fall into two basic categories. The first one is the matter for consideration that we offered to the Congress in the sense of if the Congress wants to consider taxing the fees, and that is a policy decision that the Congress needs to make, but with regard to the recommendations that we made to the various departments, DHS, Agriculture, it was the same basic principle, that is, full disclosure, transparency of fees. Let those departments, DHS to let the DOT know what their refund policies is, let the airlines know what those refund policies are across those agencies. Again, it is an attempt to be transparent and disclose to the flying public.

Mr. COSTELLO. Mr. Rivkin, in your testimony you state that in the proposed rulemaking that you are asking for comments on the cost and benefits of requiring that two prices be provided in certain airfare advertising. I wonder if you might explain that.

Mr. RIVKIN. Certainly, Mr. Chairman. The basic principle is that we want there to be a full fare price that includes all the non-optional prices so that, really, apples to apples could be compared. We are seeking comment really in an agnostic way and hoping that we can become educated and learn through the rulemaking process what would be useful. In addition to that price, the mandatory price that includes fees, we seek comment on whether it would be helpful to the public to have another price that would be essentially the bare minimum price plus what people are normally used to having included in the price of a ticket such as a bag or two and perhaps a seat being selected. We are asking if there might be some standardized way of comparing that notional price, as well, to give more information to consumers.

Mr. COSTELLO. I mentioned earlier, when I recognized you, that I commend the Department of Transportation and the Secretary for being proactive and taking regulatory actions concerning consumer protection issues, and I am pleased that you are moving forward with additional regulatory protections. Regarding deceptive fares and deceptive advertising and greater transparency for airline fees, I, frankly, do not believe that we are going to get where we need to be unless we do this either through rulemaking or through action taken by the Congress.

Mr. Baldanza said earlier that he did not object. I think he talked about an unfair competitive advantage if one airline does it and the other one doesn't. Obviously, if you do not have an objection to posting all of the fees, if everyone has to do the same, and he said he wouldn't have an objection.

I assume, Mr. Ridley, you would say the same, is that correct?

Mr. RIDLEY. Given our situation, where we have very few fees, we would not object.

Mr. COSTELLO. Mr. Baldanza, let me ask you. In your written testimony you indicate that Spirit believes it is unfair to charge passengers for extra services that they do not use. What do you mean by that?

Mr. BALDANZA. Thank you, Chairman. What I mean by that is that different customers ask for different things in terms of their air travel, and we think it is unfair to presume that a customer might want, might need to check two bags or might need to have a certain service onboard.

So at Spirit we think it is very important to only charge them what is necessary for their trip, but then make available in an optional basis other services and options that they may be able to use. We think this benefits consumers. We think this results in lower fares and it gives customers the option to say this is valuable to me, so I will pay for it, or it is not valuable to me and I can save the money.

Mr. COSTELLO. You also indicate in your written testimony that unbundled services do not impose any cost on airport infrastructure, that there is no cost imposed on airport infrastructure as a result of unbundled services. What do you mean by that? Are you saying that checked bags do not put additional cost on an airport?

Mr. BALDANZA. What I mean by that is that the costs of transporting the passenger are all included in the base fare, and the things we charge extra for we don't believe add to the burden that the Aviation Trust Fund funds. So checked bags, for example, add cost to the airline, but they don't particularly use air traffic control, they don't particularly add airport related costs to the airport, they add to the airline.

Mr. COSTELLO. I would respectfully disagree with you. I think it is pretty clear that it does.

But at this point I will recognize the Ranking Member, Mr. Duncan.

Mr. DUNCAN. Well, thank you, Mr. Chairman, and thank you for calling this hearing. I just have a couple of questions.

First of all, does anyone on the panel disagree with the statement by Mr. Ridley when he said that Southwest strongly believes that the decision on these charges should be a business decision

and left up to the airlines. Anybody disagree with that statement? Yes, Mr. Moore?

Mr. MOORE. I am not sure that I would disagree with the statement. What I felt like I heard Mr. Ridley say is that it should be left to the airlines as to how they actually market their products and services. So whether they choose to bundle or not, I too believe that that is an airline decision. The thing that I think was important, that I believe that Mr. Ridley would also support, is transparency. So if that means that you have an airline that is bundling and one that is not, it just needs to be made clear to the consumer about how you compare those apples and apples.

Did I characterize that right for you, Dave?

Mr. RIDLEY. I think that is fair, yes.

Mr. DUNCAN. Well, let me ask Mr. Dillingham and Mr. Rivkin. In our briefing it says through various rulings and guidance, the DOT has required that airlines and ticket agents disclose the following fees in airfare advertisements: fuel surcharges, peak travel and holiday surcharges, and government fees, among others. Do you think it would add substantially to airline costs or would really substantially decrease airline travel if the airlines were required to disclose these things like extra charges for bags and the kind of fees that we have been talking about here today?

Mr. DILLINGHAM. Mr. Duncan, from the work that we have done, we have seen no indications that the showing of fees and transparency of fees and disclosure would decrease travel.

Mr. DUNCAN. Well, would it be a substantial cost for the airlines to do that in some ways?

Mr. DILLINGHAM. Again, based on the work that we have done, we do not think that it would be a substantial cost to the airlines. The airlines have administrative mechanisms in place starting as a base, and the technologies that we currently have make these kinds of disclosures relatively easy. And as you heard some of the witnesses today, the market is beginning to rev up to produce all kinds of mechanisms that will make this an easy thing to do. It then becomes the airlines' choice. As the Chairman said, short of congressional action, then it becomes the airlines' choice whether they want to participate.

Mr. DUNCAN. Mr. Rivkin?

Mr. RIVKIN. I agree, Congressman Duncan, with Mr. Dillingham that there is not a substantial cost to disclosing fully the fees in the way that our regulations have suggested. Of course, the Committee needs no reminding that every rulemaking goes through a rather rigorous cost-benefit analysis, and it won't get through OMB if it doesn't have benefits commensurate with its cost.

Mr. DUNCAN. I will let all of you respond, but let me ask the airlines not only about that question I just asked, but also, and maybe you have covered this, but I have had votes in other Committees and haven't been able to hear all of the hearing, but what is the problem with the travel agents? They say that the airlines won't give the information about these additional fees to them and it has caused some problems for them.

Mr. Baldanza and Mr. Ridley, what do you say about that in response to the travel agents?

Mr. BALDANZA. Well, this may be a bit of a clarification on my earlier testimony as well, but I can confirm that Spirit provides full detail about its fees and services to all of our GDS partners today. And perhaps we are not providing it in a format or timeliness or way that they can use it properly, but if we are not doing it that way, we just need to know and we will do that, because we are very open to that idea.

Mr. DUNCAN. All right. Mr. Ridley?

Mr. RIDLEY. Mr. Duncan, I am not sure that Mr. Moore might be a better one to answer this, but since you ask the airlines' perspective, in Southwest in particular, where we sell less than 5 percent of our bookings through either an online travel agent or a travel agent, this is kind of a de minimis issue that I am really not———

Mr. DUNCAN. Is your main concern that you don't mind disclosing all these ancillary charges, but you just don't want to be taxed on them? Is that the main concern of the airlines, Mr. Baldanza?

Mr. BALDANZA. Well, we are fine with full disclosure because, again, we believe with full disclosure we still will often have the lowest total price. But in regards to tax, we don't believe it is appropriate to tax the ancillary fees because, in most cases, they do not use the infrastructure that the tax is intended to pay for.

Mr. DUNCAN. And if they help you make any profit, you are going to pay taxes in that way anyway, is that correct?

Mr. BALDANZA. That is correct, and it also allows lower fares to the consumer, which generates more travel, which also generates more tax revenue.

Mr. DUNCAN. Mr. Ridley?

Mr. RIDLEY. Well, at Southwest in particular, we are talking about $100 million, which is a lot of money, even in this town. While that is a lot of money, it should be compared to the billions of dollars of fees that are the subject of this hearing. The industry is overtaxed, I will make that point. But in terms of whether the ancillary revenues that are the discussion of today's hearing should come under the excise tax ambit, we just take the position that the airline industry is already too heavily taxed.

Mr. DUNCAN. Mr. Mitchell and Mr. Moore wanted to comment either on the earlier questions or the later parts too, so go ahead.

Mr. MOORE. Mr. Duncan, thank you. My comment that I wanted to make just surrounded the question you were asking on difficulty, and what I would suggest to you is today there are a number of airlines, 26 airlines, that are test piling this information through ATPCO. They are experimenting with, you know, if I have this ancillary fee how would I file it, all that kind of stuff.

So they have done some good work to lay the groundwork even internally for this. Those 26 airlines represent 86 percent of the U.S. point of sale bookings in Sabre, meaning from today the airlines that actually know how to do this represent the vast majority of bookings that we already do. Airlines can do this, it doesn't have to be that difficult.

Mr. DUNCAN. All right. Mr. Mitchell?

Mr. MITCHELL. Yes, Congressman. I think that there are five reasons why the airlines are resisting this. The first is, as we said ear-

lier, a few of us, the first airline to jump into this system and show fares that are 30 percent higher than their competitor is going to lose.

Mr. DUNCAN. Right, I heard that.

Mr. MITCHELL. The second reason is that there is great profitability from complexity and confusion. When you purchase a fare, you purchase it thinking, many times, that that is what my all-in price is going to be. Then you get to the airport and you are paying 30 percent or 40 percent more. Had you know about that earlier, you may have made different choices of airlines or transportation. So there is money to be made in complexity.

The third point is that by withholding this information from the GDSes and the travel agencies, it is the common view of many industry participants that what the airlines are endeavoring to do is force the agencies to actually pay them for this content. What that will do, in effect, is shift the cost of merchandising and distribution onto the backs of consumers.

And, finally, or fourth, let's move passengers in droves to Airline.com, where they do not have comparative shopping capabilities and where they are going to get higher yields and higher fares.

And, finally, there is the tax avoidance issue.

Mr. DUNCAN. All right. Well, let me ask Mr. Rivkin this. Has the Department of Transportation received a large number of complaints about these extra fees? Have you gotten thousands of complaints or hundreds of complaints?

Mr. RIVKIN. I don't have those with me, but we do get complaints from a lot of people that are unhappy with fees. They just are.

[The information follows:]

Insert for the Record

House Transportation and Infrastructure Committee, Subcommittee on Aviation

Hearing on Airline Fees

July 14, 2010

PAGE 71, LINES 1636-1642

Mr. DUNCAN: All right. Well, let me ask Mr. Rivkin this. Has the Department of Transportation received a large number of complaints about these extra fees? Have you gotten thousands of complaints or Hundreds of complaints?

Mr. RIVKIN: I don't have those with me, but we do get complaints from a lot of people that are unhappy with fees. They just are.

After LINE 1642, INSERT the following:

"A review of the Aviation Enforcement office's database for the period January 1, 2009 through July 13, 2010, reveals 284 airline consumer complaints about ancillary baggage fees."

Mr. DUNCAN. All right. Thank you very much, Mr. Chairman.

Mr. COSTELLO. I thank the gentleman.

Mr. Moore and Mr. Mitchell, you heard Mr. Baldanza say that Spirit fully discloses all of their fees online. You don't agree with that, do you?

Mr. MOORE. My perspective would be that the, and I have shopped Spirit.com. It is a more arduous process than I would like as a consumer. I have to pick my city pair. I then get what I feel like is a fare that I can rely on and then I find out that there are taxes and fees that get added on top of that. That is not the ancillary fees we are talking about, just basic security fees, those kind of things, that weren t disclosed initially.

And then I am going to have to put in my personal information on where I live, all that kind of stuff, to actually get what I believe is the true price. And then after all of that, I find out that there might be a seat fee, and that actually might take place after I have paid. It is troublesome to me as a consumer.

Mr. COSTELLO. Mr. Mitchell?

Mr. MITCHELL. Mr. Chairman, the way I would answer that is that I think Spirit should be free to unbundle until the cows come home and price to their heart s content. But so long as a carrier is in a GDS and providing agencies with fare data, they need to provide complete data, and they need to do it in a way that is very transparent.

I think the marketplace will reward or punish Spirit Airlines based upon how they conduct their business.

Mr. COSTELLO. And that is what we hear from consumers is that, look, they set the prices and, as you said, they are setting fees. Just tell us what we are getting. What is the price going to be, so we don't have to spend a half hour or an hour shopping around on a website.

As I see it, as you said, Mr. Mitchell, that the first airline who jumps out there and does this and shows a 30 percent increase over the cost in comparison to other airlines, they are not going to do it voluntarily and they are not going to do it in a uniform manner that consumers can easily understand, unless they are required to do it.

Now, would you disagree with that?

Mr. MITCHELL. I would agree with that 100 percent. I am going to file with the DOT a comment on behalf of a major corporation whose travel manager came here last month with a family friend and took a flight from Boston to L.A. The surprise at the airport on baggage fees increased their total trip cost by 20 percent.

He went back to Belgium and looked through the GDS to find any mention whatsoever of these fees. He went back to the travel management company and looked. There was no mention anywhere. And this is a professional corporate travel manager. If it can happen to him, what does that portend for the average consumer?

Mr. BALDANZA. Mr. Costello, may I make a comment?

Mr. COSTELLO. Yes.

Mr. BALDANZA. Thank you.

The booking process that Mr. Moore described for Spiritair.com was accurate as of six months ago, but Spirit has invested hun-

dreds of thousands of dollars to change our website to where today you don't go through the arduous process he described, which again was accurate as the way we used to work.

Today, the process is very simple and fully disclosed.

Mr. COSTELLO. Wouldn't it be in the best interests of your consumers, your passengers, as well as Southwest and every other airline out there, if there was a uniform way of posting prices, if they go to Spirit or they go to United or Delta or Southwest Airlines, all the same, easy to find and easy to understand. Isn't that in the consumer s best interest?

Mr. BALDANZA. Well, it may be, and that is interesting. I would like to be able to buy a refrigerator that way, too, when I go to Sears and know what it costs me at Lowe's and at Home Depot. The reality is that different airlines offer different things to customers, and that diversity is a wonderful thing.

The world would't be a great place if every airline were like Spirit. I would also argue it would't be a great place if everyone was like Southwest. The world is a better place because customers have the choice of airlines like Spirit and Southwest and many, many other airlines.

Mr. COSTELLO. One of the problems when it comes to pricing, though, is that many people do not understand what their choices are; and number two, that they are getting services that they didn t know; paying for services that they didn t know that they wanted, nor did they ask for.

So I think I have made my point and I think you have made your point.

Final question. As I think all of you know, we passed in this Committee and out of the House of Representatives an airline safety bill where we increased the requirements for pilots, both in training and in number of hours in the cockpit, and also a number of other things, flying conditions.

Just out of curiosity, since we have both of you here, what is the starting pay, the entry level pay for a first officer with Spirit Airlines, the unbundled?

Mr. BALDANZA. I don't know the starting pay. I can give you the average pay, and we tend to be a pretty low seniority airline. So our average first officer is about three years senior with the airline, and last year they earned about $70,000 a year on their W-2. Our average captain is about eight years senior and last year earned about $145,000 on their W-2.

Mr. COSTELLO. But you don't know what the starting salary is of the first officer that is hired?

Mr. BALDANZA. The starting wage rate and how that translates to their W-2, I don't have that information with me right now, but we can certainly provide that.

Mr. COSTELLO. We would request that information.

Mr. Ridley?

Mr. RIDLEY. Chairman Costello, that is not my area of expertise, but we will get you the answer as soon as possible.

Mr. COSTELLO. I understand the business model where we have, I think in your written testimony, Mr. Baldanza, you say that since 2007 when we adopted our ultra low-cost carrier business model,

our goal has been to provide basic quality air transportation at the lowest possible cost. I understand what that means.

My concern is about safety, and that is why I am interested to know at the lowest possible cost, what are your airline and other airlines paying a starting First Officer, the entry level. We found with a number of regional carriers that in at least one instance that we know of that the First Officer was hired and paid less than $20,000 a year. I am certain that is not the case at Southwest and hopefully it is not at Spirit, but I would like to have that information if you would supply it to the Committee staff.

[The information follows:]

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September 30, 2010

The Honorable Jerry F. Costello
Chairman, Subcommittee on Aviation
U.S. House of Representatives
2251 Rayburn House Office Building
Washington, D.C. 20515

Re: Entry level pay and hiring requirements for First Officers at Spirit Airlines

Dear Representative Costello,

In response to your question posed during the July 14, 2010 Aviation Subcommittee hearing on "Airline Fees." I am pleased to provide you with the following information regarding entry level pay for First Officers at Spirit Airlines. The "Date of Signing" baseline, referred to as DOS, equates to June 2010.

Spirit Airlines First Officer Pay Rates					
Years of Service	**DOS**	**DOS+1**	**DOS+2**	**DOS+3**	**DOS+4**
1	$38.50	$38.50	$38.50	$38.50	$38.50
2	$61.31	$66.22	$67.54	$70.63	$72.05

On a monthly basis pilots will receive flight pay at the applicable hourly rate with a contractual minimum guarantee of seventy two (72) hours. This equates to $33,264.00 annually in base salary for an entry-level First Officer. In addition, Spirit provides an 8% matching contribution for each pilot's 401k and also provides one of the best, if not the best, health care plans in the low-cost sector (in fact, more generous than several so-called "legacy" carriers). Considering these other benefits, we estimate a first-year pilot's aggregate compensation exceeds $40,000, assuming they fly only at the minimum.

It is worth noting that, at the moment, Spirit has no first-year pilots on its seniority list. In year 2 of service, our pilots' base salary jumps to almost $53,000, before benefits.

By way of comparison, the Year 1 and 2 First Officer Pay Rates at some of our competitors are:

Air Tran First Officer Pay Rates*	
Years of Service	**Rate**
1	$ 43.00
2	$ 56.00

* Based upon a minimum guarantee of seventy (70) hours a month.

jetBlue First Officer Pay Rates	
Years of Service	Rate
1	$ 47.00
2	$ 69.00

* Based upon a minimum guarantee of seventy (70) hours a month.

On a related and equally important issue, Spirit and its management consider safety a central priority, and this priority is reinforced by our stringent initial qualification requirements for new pilots.

Spirit currently utilizes the following minimum criteria when screening pilot candidates:

- 2500 hours total time in fixed wing aircraft, and at least 1000 hours in multi-engine aircraft (at least 50 hours flown within the last 12 months).
- Preference is given to candidates with previous Part 121 Airline experience, an A320 Type Rating, operational experience with Flight Management Systems (FMS), and/or operational experience with Electronic Flight Instrument Systems (EFIS).

Compared to similar airlines, we are confident that our minimum experience criteria ensure that we are drawing from a group of pilots that are some of the most competent, skilled, and qualified in the industry.

Air Tran Airways

- 2500 hours total time
- 1000 hours multi-engine time
- 500 hours PIC (Pilot in Command) time

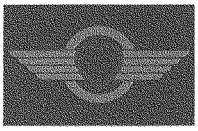
Jet Blue Airways

- 1500 hours total time (including Helicopter)
- 500 hours fixed wing time

I would be happy to answer any other questions you may have.

Sincerely,

B. Ben Baldanza
President and CEO



SOUTHWEST AIRLINES CO.

Dave Ridley
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September 30, 2010

The Honorable Jerry F. Costello
Chairman, Subcommittee on Aviation
U.S. House of Representatives
2251 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Costello:

I am writing to provide information following my testimony on July 14, 2010. During the hearing you requested additional information concerning First Officer starting pay at Southwest Airlines.

Per our negotiated contract with our Pilots, our First-Year First Officers make roughly $55,000 per year excluding "premium pay" (additional pay for holidays and scheduling inconveniences), per diems and benefits (e.g., Company 401K match [up to 9.3%], profit sharing, health and dental insurance).

Thank you for the opportunity to testify. If you or your staff would like additional information, please feel free to contact me.

Sincerely,

Dave Ridley

Dave Ridley

The Chair now recognizes Mr. Petri.

Mr. PETRI. Thank you.

I just had one question, which probably reveals my ignorance about the web information is collected and works and so on, but I think it is mainly directed at Mr. Moore as to why, if Mr. Baldanza s airline is posting all this information on its website and presumably other airlines post it in maybe somewhat different formats and so on, the burden shouldn t be on you to just visit their websites every day or upgrade it and say what is available. And if you want a matrix and that airline does not provide that information, put an X there or something and the public would be informed, but they would then have the diversity of choice.

Or is this a legal issue? Are the lawyers for you saying you want it provided by the airline so that if there is confusion or some difference, the liability is on them and you can show a piece of paper or something? Is this what we are really talking about? Because the information is there on different websites, so it must be someone is trying to shift legal liability to the airlines from themselves who wants to present that information.

Or am I misrepresenting the situation?

Mr. MOORE. I appreciate the question, Mr. Petri.

It is one of those things where I look at it, and I don't look at it as a legal issue at all. I do look at it as a question of complexity. When you have 600 airlines in the world that have their schedules in Sabre, and to actually try to go out and gather all this information in a very laborious fashion, it would be incredibly challenging to try to keep that stuff fresh because as soon as you do, it has been made stale. Things change.

And the other thing that makes this incredibly hard or impossible, basically, is that these charges are often applied and then many times aren t, and that level of granularity is just not made available on the website. So if one of Mr. Mitchell s corporate customers has negotiated away a baggage fee, well, that is not posted on the website. We have no means to know that.

It is an imperative of the airline to provide that information because we have no knowledge of that level of granularity. And particularly that those things might apply at very low fares, but perhaps they don't apply at the higher fares. And the fees are applied for seat fees, but perhaps not baggage.

It is a level of granularity that could never be gathered by going out and trying to get it from the carrier websites.

Mr. PETRI. Excuse me, I am serious, but I thought there were search engines and that half the websites are being hit automatically by Google or someone and they have ways of updating this practically instantaneously. And people may want to change their business model, and if you had to go through a government regulatory process, it could take months. And there are seasonal differences.

Do you buy a new airplane that may have different requirements as to what type of bundling or unbundling would be appropriate? I mean, this could retard a lot of flexibility in the industry if it is not handled right. Or am I misunderstanding the situation?

Mr. MOORE. I would believe it actually introduces the flexibility that we would need to allow a consumer to shop in the way they

want. When you think about some of the stuff I was discussing earlier around how a consumer can suggest up front, I am an elite frequent traveler on United, as an example, and I am flying from New York to L.A.

And with that, I go and shop. Well, perhaps I am not elite on anybody else. The fees that might apply to me, those aren t available on the website. I don't know that. They are certainly not applicable to me. And particularly the fact that they may be applied for one corporation or not, just based on the negotiated agreement that I have with those.

There is no level of specificity that would be required in order for that shopping mechanism to really work for the traveler. It is just way too much data that changes far too rapidly. When you think about the way a consumer shops, and this speaks to something you were talking about earlier, Mr. Chairman, fully half the consumers that shop in the online space buy at the lowest fare, and it is a curve on total price.

So in other words you get to about 70 percent of travelers, they will have bought within 120 percent or 130 percent of the lowest fare, but half of those people, if they have missed that $20 charge that may have been incurred, they might have made a very different decision.

And so there is a level of information that is just going to be lost that consumers would benefit from tremendously and would actually change the products they may be buying because they are better informed. It is just too much information to try to be gathering laboriously all the time.

Mr. PETRI. Anyone else have any comment on that?

Mr. MITCHELL. Yes, Congressman.

The ATPCO, the airline-owned company that distributes all these fares to the GDS s and is in a position to distribute the fees, they have identified 100 ancillary fees. That is what they are ready to go to market with.

So if you do the possible combinations just with one airline, you do the math 100 times 100, that means that a consumer has a possibility of 10,000 combinations for that one airlines; perhaps 9:00 o clock to 11:00 o clock on a Wednesday morning. If you are comparing against nine other airlines, that is 100,000 possible combinations.

This is orders and orders and orders of magnitude more complex than anything this industry has ever known or faced before. And it strongly begs for the technology and the standards to get into place so that the consumer has the full disclosure he or she needs.

Mr. COSTELLO. I thank Mr. Petri.

Mr. Mitchell, you in fact state in your testimony that airlines often have a strong incentive to mislead consumers on prices.

Mr. MITCHELL. Mr. Chairman, that is correct. Whether it is trying to look in the GDS and the travel agent as if you are matching a Southwest or an AirTran, or whether it is just simply misleading the consumer to think he or she has an all-in price, and then they get to the airport and they are surprised.

But in addition to that, this is the no man s land for consumer protection. Mr. Baldanza mentioned going to the store for a refrigerator. Well, luckily for him and the rest of us, we are protected

in large part by the FTC. The FTC has no oversight responsibility here and the consumer has no rights or legal remedies because of Federal preemption, which the airlines have fought and championed and fought to expand.

So that is central to this idea that the consumer needs protection here.

Mr. COSTELLO. Well, we know that there is one person at the witness table that recently went through and examined all of the airlines and the fees that they charge, and the GAO submitted this report to us.

So I would ask Dr. Dillingham, was it a simple process to go and understand what fees each airline charges? You just went through this, you and your staff. Is it pretty simple for the average consumer to understand?

Mr. DILLINGHAM. Mr. Chairman, the GAO cannot own up to it being a simple process. But we were able to identify those fees that we in fact show in the handout that we passed to you.

Mr. COSTELLO. With a highly professional staff.

Mr. DILLINGHAM. Yes, with our highly professional staff.

Mr. COSTELLO. Not the average consumer.

Mr. DILLINGHAM. Not the average consumer, absolutely. We agree that the permutations can be never-ending. So we are on the side of making it completely accessible and transparent for the consumer.

Mr. COSTELLO. And that is the goal of what we are trying to achieve here, and I think what Senator Menendez and his amendment, what he is trying to achieve is transparency so people understand and know what they are getting for the money and they can compare one price to another and what their options are.

Mr. Petri, do you have any further questions?

If not, I will ask very quickly if anyone on the panel has anything to add before we close out the hearing.

Mr. Ridley?

Mr. RIDLEY. Mr. Chairman, I just cannot let it lie here. While we are on record that we believe in greater transparency, I cannot sit here and be lumped among all airlines that believe where there is confusion, there is a chance for profit. I would argue that where there is simplicity, there is a chance for profit, and that is the tack Southwest has taken. So I don't want to be lumped in with all my brethren in Mr. Mitchell's description.

Mr. COSTELLO. Anyone else?

Mr. BALDANZA. I would as well, Chairman, thank you.

I would like to say that this has been extremely interesting to us and I think the whole industry. And while there may be differences among Spirit and many other airlines in fees that measure generally in the tens or twenties of dollars, the real outrage we think at Spirit should be on the fares where the differences measure in the hundreds and thousands of dollars.

And when customers are asked to pay enormously high fares and taken advantage of because the supply-demand relationship or their inability to be flexible takes advantage of them, that is a more outrageous situation for consumer exploitation than charging of fees.

Mr. COSTELLO. And that is an issue for a different hearing.

Mr. BALDANZA. That is right.

Mr. COSTELLO. Let me just thank all of you for being here today and offering your testimony and answering questions of the Members of the Subcommittee.

And Mr. Rivkin, I hope you will go back and pass on to the Secretary and the Administrator as well that we encourage the Department to stay on schedule and to move quickly with their rulemaking.

Mr. RIVKIN. I certainly will.

Mr. COSTELLO. With that, this Subcommittee stands adjourned.

[Whereupon, at 4:31 p.m., the Subcommittee was adjourned.]

OPENING STATEMENT OF REP. STEVE COHEN

The Subcommittee on Aviation

"Airline Fees"

July 14, 2010

I am pleased to be here today to receive testimony from representatives of the U.S. Department of Transportation and U.S. Government Accountability Office as well as representatives from the airline industry.

It is no secret that after the unfortunate tragedy that occurred on September 11th, 2001 the airline industry has been struggling mightily. This tragedy combined with oil prices that continue to skyrocket and a global economic recession have devastated the aviation industry. Revenues are down and profits have all but disappeared. Having posted a cumulative net loss of $58.1 billion from 2001 to 2009, it is no surprise that the aviation industry has developed new mechanisms to generate revenue.

My district of Memphis, Tennessee is home to the largest cargo airport in the world, the FedEx headquarters, and a hub for the world's premier global airline, Delta. The aviation industry is directly or indirectly responsible for every 1 out of 3 jobs in the district, so I can guarantee you that I am fully committed to ensuring the health and wellbeing of the aviation industry. That being said, customers have a right to know the true cost of the services they are purchasing. It is my belief that the federal government must ensure that the industry creates true pricing transparency, while also ensuring that the aviation industry flourishes.

I thank the witnesses for being here today and look forward to hearing their thoughts on this important subject.

STATEMENT OF
THE HONORABLE JERRY F. COSTELLO
SUBCOMMITTEE ON AVIATION
HEARING ON
AIRLINE FEES
JULY 14, 2010

- I welcome everyone to the Aviation Subcommittee's hearing on airline fees. I especially want to recognize and thank the Families of Colgan Flight 3407 for being with us today and for their steadfast support to improve pilot training and safety in the industry.

- From 2001 through 2009, the U.S. airline industry, including air cargo carriers, reported a $58.1 billion net loss. Starting in 2007, many airlines began to unbundle services that were traditionally included in the cost of a ticket and started charging separate fees for checked bags and meals. Today, it is estimated that the airlines present passengers with more than 100 additional fee options in the course of travel. In addition, the amount of the

fee charged varies depending on each of the individual airline's policies.

- According to the Bureau of Transportation Statistics, in 2009, U.S. airlines collected approximately $7.8 billion in additional fees, including $2.7 billion in baggage fees alone. U.S. passenger airlines experienced operating profits of approximately $1.2 billion. Between the first quarter of 2008 and the first quarter of 2009, revenue from additional fees increased by 18 percent.

- By comparison, airports only generated $2.5 billion in passenger facility charges (PFCs) in 2009. With a cap of $4.50 per flight segment, the PFC is significantly less than the total amount of additional airline fees a passenger would pay for roundtrip travel in the majority of cases.

- The House FAA Reauthorization bill would increase the current $4.50 cap on PFCs to $7.00, which would generate an additional $1.3 billion. PFCs, unlike additional airline fees, directly benefit passengers because they are invested in airport projects. Nevertheless, airlines have vigorously opposed increasing the PFC cap, stating they cannot absorb an increase and that their passengers will not pay it. I believe the fact that airlines are charging passengers $25, $30 and sometimes $40 dollars a bag and pocketing the money seriously undermines their own argument against a PFC increase that will benefit the entire aviation system.

- In addition, I am concerned the fees the airlines are charging are excessive and that they are resulting in revenue being diverted from the Airport and Airway Trust Fund. Last August, Chairman Oberstar and I requested that the Government

Accountability Office (GAO) undertake a study that among other issues, examines whether additional fees are related to the cost of providing those services to passengers and ways Congress can effectively capture these fees for the Airport and Airway Trust Fund. This study is being released today and I look forward to hearing from the GAO on its findings.

- The majority of additional fees airlines are charging are not subject to the 7.5 percent passenger ticket tax, which is deposited into the Airport and Airway Trust Fund and is used to fund the Federal Aviation Administration (FAA). This pays for necessary facilities and equipment, some operations, and aviation safety improvements. According to the GAO, Trust Fund revenues have decreased by $1 billion over the last few years.

- If baggage fees alone in 2009 would have been subject to the 7.5 passenger ticket tax, the Trust Fund would have taken in about an additional $200 million. This is revenue that could help to keep the Trust Fund more stable. All users – especially airlines – are better off in a system built with modern infrastructure. There needs to be a fair and equitable way to return the money that passengers pay as part of their air travel so it goes back into the aviation transportation system. I look forward to hearing from witnesses on this subject.

- In addition to the amount of the airline fees, I am concerned that airline passengers do not have clear and accurate information regarding the full cost of their air transportation before they purchase a ticket. The full amount that a passenger will ultimately end up paying, taking baggage and other fees into

account, is often not clearly communicated to the passenger before purchasing a ticket.

- I commend the Department of Transportation (DOT) for being proactive and taking regulatory action in its first consumer protection rulemaking, which went into effect this year, to address tarmac delays, chronically delayed flights, and the lack of information provided to consumers on the on-time performance of flights. I am pleased the DOT recognizes that additional regulatory protections are needed to address deceptive fare advertising and greater transparency of airline fees and issued a second Notice of Proposed Rulemaking (NPRM) in June. I encourage the Department to stay on schedule and quickly complete its rulemaking.

- I look forward to hearing from the other witnesses today about the issue of transparency in the advertised fare and other impacts of these fees on consumers.

- Before I recognize Mr. Petri for his opening statement, I ask unanimous consent to allow 2 weeks for all Members to revise and extend their remarks and to permit the submission of additional statements and materials by Members and witnesses.

Statement of Rep. Harry Mitchell
House Committee on Transportation and Infrastructure
Subcommittee on Aviation
7/14/10

--Thank you Mr. Chairman.

--As you know, increasingly, airline passengers continue to face new fees by airlines for services that were previously included in the price of their tickets, and many feel they are being "nickel and dimed".

--But far from nickels and dimes – these fees add up to literally billions of dollars.

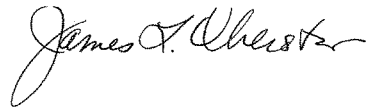
--According to the Government Accountability Office (GAO), from 2008 to 2009, airlines reported approximately $7.9 billion in revenues from baggage fees and reservation change and cancelation fees.

--And the revenues from these fees are growing. According to the GAO, in the first quarter of 2010, airlines reported a 33 percent increase in revenues from baggage fees compared to the first quarter of 2009.

--Today we will hear from the GAO which has studied the implementation of these new fees, and raised a number of issues relating to them. Chief among them, is the GAO's finding that that the fees for optional services are not fully disclosed to passengers at the time of booking.

--I look forward to hearing from today's witnesses.

--At this time I yield back.



STATEMENT OF
THE HONORABLE JAMES L. OBERSTAR
SUBCOMMITTEE ON AVIATION
HEARING ON
AIRLINE FEES
JULY 14, 2010

I thank Chairman Costello and Ranking Member Petri for holding this hearing on airline fees. In 2007, Spirit Airlines became the first airline to unbundle airfares by adopting an "a la carte" pricing plan. Other carriers rapidly followed suit and announced separate fees for checked baggage. Today, airlines charge fees for items and services that were traditionally included in a ticket price. Passengers pay extra for meals, pillows, blankets, headphones, beverages, checked luggage – and, as we will hear from Spirit Airlines today, now carry-on luggage.

Airlines argue that ancillary fee policies enable them to keep base ticket prices low, and allow passengers to pay only for the services they want. In addition, there are new fees for certain "premium" services, like early boarding, which provides passengers early access to overhead space for their carry-on bags.

According to the Bureau of Transportation Statistics, in 2009, U.S. airlines collected $7.8 billion in ancillary fee revenue, including $2.7 billion in baggage fees alone. In the first quarter of 2010, U.S. airlines collected almost $770 million in baggage fee revenue. This represents a 33 percent increase over the collections

reported for the first quarter of 2009. Despite these gains, network air carriers lost $163 million in the first quarter of 2010, and the industry as a whole – including low cost and regional carriers – only reported a profit of $12 million.

In August 2009, due to the proliferation of ancillary fees charged by the airline industry, Chairman Costello and I requested a study by the Comptroller General. We were concerned that fees – many of them inescapable – were becoming excessive and were diverting revenue from the Airport and Airway Trust Fund, the balance of which is nearing zero. We were also concerned about the impact of such fees on consumers.

For example, a family of four traveling on a week-long vacation with each person checking a bag could pay up to $200 in baggage fees on top of airfare. This does not include fees for meals, beverages, blankets, pillows, early boarding, and more, which can quickly add up. While some have said that ticket prices have decreased, I am concerned with the addition of baggage and other fees, passengers may be paying the same price, if not more, for the total cost of their air travel.

I look forward to hearing from the Government Accountability Office (GAO) on its findings and recommendations, but I am particularly interested in its recommendation to the Department of Transportation (DOT) to require airlines to

disclose all airline-imposed optional fees that passengers should know, and to require consistent disclosure of fees across distribution channels. This is important because it is far from evident to passengers, during the booking process, what fees airlines will charge for the services they want. Travelers often experience difficulty understanding what airlines charge since fees are not printed on boarding passes, are not displayed on travel Web sites, and are often not clearly displayed on airlines' Web sites. We need to ensure that, at the very least, if ancillary fees continue to be charged, the consumer is made fully aware prior to their travel of what to expect. I also look forward to hearing from the DOT regarding its proposed rulemaking, which seeks to ensure that airlines, and potentially ticket agents, make such fees more transparent during booking.

Unbundling of fares, combined with a decline in passenger traffic, have driven down average ticket prices according to the GAO, but at the same time ancillary fees have skyrocketed. However, few of these fees are taxed for the Airport and Airway Trust Fund, the primary means for funding airport improvement and air traffic control modernization. Aviation excise taxes are necessary to support the Trust Fund, which in recent years has provided about 80 percent of the Federal Aviation Administration's budget. I am extremely concerned about how unbundling fees will affect the future of the Trust Fund. According to the GAO, in 2009, if baggage fees

were subject to the 7.5 percent passenger ticket tax, approximately $200 million in additional revenue would have gone into the Trust Fund.

Mr. Chairman, thank you for holding this timely hearing to explore this subject. We need to ensure that passengers are protected and understand what they will pay for air travel, and we must preserve the solvency of the Trust Fund.

STATEMENT OF
REP. THOMAS E. PETRI, Ranking Member
SUBCOMMITTEE ON AVIATION
HEARING ON

"Airline Fees"

July 14, 2010, 2:00 p.m.

I want to thank the Chairman for holding this hearing today.

Since the tragic events of 9/11, the airline industry has been in economic turmoil. Volatile fuel prices, worldwide epidemics, and the global recession are just a few of the outside influences airlines have endured in the last decade.

In response to the economic conditions, airlines have done what any business would do, they have sought ways to reduce costs and increase revenues.

Much to the chagrin of airline passengers, airlines' revenue boosting efforts have included increasing the number and amount of fees for services offered to passengers, including fees for checked baggage, early boarding, seat selection, and even leg room.

The increase in the number and amount of service fees charged by airlines has not gone unnoticed by the federal government.

The Internal Revenue Service reviewed the fees and determined that they are not taxable. The Department of Transportation has proposed rules to address transparency for consumers.

As frequent flyers ourselves, several bills have been introduced in both the House and the Senate in response to the growing number of airline service fees.

The GAO has also reviewed the issues related to airline service fees and is prepared to share with the Subcommittee its findings and recommendations they have on the subject.

There are more than 100 types of fees charged by airlines and their combinations are very complex. It is imperative that consumers have access to clear and complete information on airline service fees.

It is also important that the Federal government's taxes and fees are made known to consumers. The Department of Transportation should be sure that all Federal taxes and fees remain fully disclosed and not hidden in the total fare price.

Additionally, as airline pricing changes, it is critical that consumers have all the information they need to make educated and well-informed travel decisions.

In preparing for this hearing, staff went on-line and called a random sampling of airlines to see what could be learned about service fees being charged. Not surprisingly, some airline websites were easy to navigate and provided clear and helpful information on their service fees. Others were not as easy to navigate.

The phone calls did not go as well. A few airlines would not provide information on their service fees unless we had already bought a ticket and provided a confirmation number.

To this end, I am interested in what the Department of Transportation is proposing as far as new regulations to address transparency for consumers. By this I mean the transparency of all fees, airline service fees and fares, as well as Federal government taxes and fees.

I am also interested to hear from the airlines on their service fee policies and how they share fee information with their customers. From consumer groups I would like to hear how they believe the information sharing can be improved.

Finally, we all know that the airline industry is an ever-evolving segment of the economy. As airlines respond to changing conditions-- economic or otherwise-- Congress must monitor the potential impact to the Airport and Airway Trust Fund.

The uncommitted balance of the Trust Fund is already much too low. In fact, many in the aviation community fear that the Trust Fund is in real trouble. Service fees are not subject to the 7.5% Federal excise tax that funds the Trust Fund. Therefore, if airlines raise or add service fees in order to lower their air fares, the impact to the Trust Fund could be enormous.

I look forward to hearing from all of our witnesses and I yield back the balance of my time.

TESTIMONY OF BEN BALDANZA
PRESIDENT AND CEO - SPIRIT AIRLINES, INC.
BEFORE THE SUBCOMMITTEE ON AVIATION
OF THE
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
U.S. HOUSE OF REPRESENTATIVES

JULY 14, 2010

Thank you for the opportunity to appear today before the Subcommittee in connection with its review of airline fees. Spirit is based in Fort Lauderdale, Florida. We currently have a fleet of 31 aircraft, serving 44 cities in the U.S., the Caribbean, Central and South America. We carry approximately 6.5 million passengers a year. Spirit believes that "unbundling" - *i.e.*, separating out optional customer services from the fare that are not essential to transporting a passenger allows customers the choice to purchase services or not - benefits the traveling public through lower total costs. This approach generates increased tax revenue by stimulating more travel. These unbundled services do not impose any costs on airport infrastructure, on the nation's air traffic control system or any other government services funded by the aviation federal excise tax. As such, no additional tax burden should be imposed on the cost of these ancillary services.

Over the past decade, the U.S. airline industry has lost approximately $60 billion. In light of the continuing weak economy and reduced demand for air transportation as well as volatile and uncertain fuel prices, imposing additional taxes on the industry and its passengers, will be counterproductive and result in less, rather than more tax revenue. Air transportation is critical to the health and growth of the Country's small and medium sized businesses – indeed its impact is geometric. Raising the cost of travel for these businesses hurts their ability to hire employees and expand.

The best way to enhance tax revenue is to generate more passengers as the country weathers difficult economic times. And the best way to grow traffic is by keeping the total cost of flying as low as possible for the vast majority of travelers.

In 1978 Congress passed the Airline Deregulation Act. The Statement of Policy in the Act specifically found as in the public interest:

> *encouraging, developing, and maintaining an air transportation system relying on actual and potential competition-*
> *(A) to provide efficiency, innovation, and low prices; and*
> *(B) to decide on the variety and quality of, and determine prices for, air transportation services.*

Spirit Airlines takes this policy to heart. Our goal is to offer consumers a real choice in selecting an airline for their travel needs. Since 2007 when we adopted our Ultra Low Cost Carrier (Ultra LCC) business model, our goal has been to provide basic quality air transportation at the lowest possible price. Spirit's business model to provide maximum choice to passengers to purchase the specific services they want, while keeping fares as low as possible - is unique among U.S. airlines. (See Attachment 1). In many markets Spirit is the only low fare operator and even where other so-called "low cost" carriers operate, Spirit provides an important public interest service by disciplining fares. Spirit's impact was clearly demonstrated when its pilots went on strike last month and other carriers, including low fare carriers, immediately raised prices. For example, JetBlue raised its roundtrip fare in the Fort Lauderdale-San Juan, Puerto Rico market from under $200 to over $600, while at the same time putting out a press release that it was "helping Spirit's customers." Spirit would never seek to take advantage of customers this way. Our approach is to offer the lowest fare all the time on all the routes we fly. While Spirit offers the lowest possible fares, thereby disciplining prices in the 300 plus markets it serves, it operates the most modern fleet of aircraft in the U.S. Over

the next five years we will add 35 new aircraft to meet the growing demand for our unique Ultra LCC service.

In an effort to make air fares as low as possible, in 2007 Spirit unbundled the charge for checked bags and, despite rising fuel costs, lowered our base fares to adjust for the unbundling. The per-bag price was set by taking into account our variable and fixed costs associated with processing checked bags. Some other carriers later added similar fees, but only in reaction to higher fuel prices and not with the corresponding drop in the base fare.

This April we announced our decision to charge for carry-on luggage that is too big to fit under the seat, beginning August 1, 2010. This charge does not apply to such items as required medical equipment, baby strollers, etc. The primary reason for the carry-on charge was to reduce the amount of baggage brought into the cabin. Carry-on bags have become a nightmare for passenger boarding and deplaning. They create a safety risk for both passengers and flight attendants and lead to costly flight delays. Significantly, last March the Association of Flight Attendants reported that 80 percent of flight attendants had been injured during the last year by moving carry-on bags in and out of overhead bins.

Carrying more than one bag is not necessary for all travelers and we believe it is unfair to charge those customers for extra services they do not use – indeed, it is the basis for Spirit's policy to unbundle services not essential to passenger transport. The carry on fee for most passengers is $20 - $30. Spirit reduced its base fares to offset these charges. Spirit also lowered its checked bag charge to encourage passengers to check their bags. Passengers can get the lowest price by making these purchases on-line, either when making the booking or prior to check-in. The imposition of the carry-on fee has not

affected Spirit bookings, because the total cost to customers for travel on Spirit remains far lower than on other airlines. (See Attachment 2). Overall, bag fees have led to customers packing less and reduced total baggage on flights. This has lowered operating costs and resulted in even fewer lost or damaged bags.

Ancillary Fees Should Not Be Subject to the Federal Excise Tax

As a group, low fare carriers already pay a greater percentage of the total ticket cost in taxes than do the higher fare legacy carriers. This is because much of the tax burden on all airlines is in fixed charges. On a domestic flight, these include, in addition to the 7.5 percent excise tax, the:

- $3.70 segment fee,
- $2.50 September 11th fee
- In many places, a $4.50 per airport PFC, and
- 4.3 cents per gallon commercial jet fuel tax

So for example, on a 300 mile trip with a $180 roundtrip fare, the customer could pay a total of $35.40 in taxes, or approximately 20 percent of the fare including the federal excise tax. Since Spirit has the lowest fares in the industry (See Attachment 2), its lower income passengers are already effectively paying the highest taxes as a percentage of the total fare. This is the unfortunate and regressive result of the current tax structure. We emphasize in this connection that fuel, which has constituted from 35 percent to well over 40 percent of Spirit's total operating costs, is already taxed, which given current fuel prices, is equal to approximately two percent of Spirit fuel costs. Since the cost of fuel is included in the base air fare, there is already clearly some double taxation of air fares. Our average fare is under $85, and our passengers pay over $11 in Federal Excise tax, or 13%, on this amount for just the ticket tax and the fuel tax. Imposing an excise tax on

certain ancillary charges, such as for baggage and seat selection will theoretically raise some revenue for the government. However, the primary impact of such a change will be to raise prices for all consumers and thereby dampen travel demand and likely result is less total government excise tax revenue. At a time when the industry has serious financial issues and the Secretary of Transportation has set up a Commission to determine how to strengthen the industry for the benefit of employees, consumers and shareholders, it would be counterproductive to impose yet another tax burden. And we emphasize that given the ultra low fares Spirit offers – fares that enable many to fly for the first time – any additional tax burden will disproportionately hurt the lowest income consumers – the very Americans most hurt by the depressed economy.

As noted, the services Spirit has unbundled do not involve activities that drive up the cost of air traffic control (ATC) services or other services paid for through the aviation trust fund. They are not charges for the "transportation of any person." The handling of checked baggage imposes high labor costs on the airline, but does not touch the ATC system. Allowing passengers to buy specific seats in advance if they choose to do so, is a convenience to passengers, which imposes no system cost. Similarly, the carry on bag charge was imposed to enhance safety and make the travel experience more efficient and enjoyable for our customers. Indeed by reducing delays, it will lessen the pressure on the air traffic control system. The decision to add this fee had nothing to do with avoiding taxes.

Another non-transportation ancillary fee - that imposed for flight changes involving non-refundable tickets - is intended to cover the costs imposed on the airline by such a change. These costs include the direct cost for the time of the reservation agents who process the change. They also contribute to covering other possible lost revenue.

For example a flight change may result in the original flight going out with empty seats – seats which otherwise would have been occupied. Passengers who want to avoid such fees can purchase a higher priced refundable ticket or purchase low-price travel insurance.

Recent articles in the press indicate that based on a 1st Quarter DOT report, Spirit has the highest ancillary revenue as a percent of total revenue. This comparison is highly misleading. Spirit's percentage of ancillary revenue to total revenue is higher than for other carriers simply because our fares are the lowest. For example, if Spirit had the same average fare as American Airlines, its ancillary fees would be only 14.2 percent of total revenue. If its fares were the same as United, Spirit's ancillary fees would be 11.8 percent. Like Continental – 12.3 percent and like Delta – 15 percent.

Over 70 percent of Spirit revenue comes from ticket sales and is subject to the aviation excise tax. Of the 25 percent of revenue that could be labeled ancillary, approximately 60 percent is itinerary related. Within this itinerary related amount, about 50 percent is from baggage fees and 10 percent from seat selection fees. The remaining 40 percent of ancillary revenue comes from subscriptions to our $9 Fare Club, credit card fees, commissions on hotel, car rentals and flight insurance, change fees, on-board food, unaccompanied minor charges, and pet transport. <u>In total only about 15 percent of Spirit total revenue is from ancillary fees selected by passengers in connection with their travel.</u>

We are certain that Spirit's decision to unbundle services not essential to the transportation of passengers, has enabled more passengers to fly at lower cost. Indeed given our low fares, it has allowed many to travel who otherwise simply could not afford to do so. Spirit believes these changes have had minimal, if any, negative impact on the total excise taxes paid for travel on Spirit. This is because our lower fares have enabled

more people to fly, despite the difficult economy of the last several years. Imposing the excise tax on these fees will simply raise fares, dampen the public's ability to afford travel, and thereby result in lower overall tax revenue.

There Should Be Greater Transparency On Fares

Spirit firmly believes it is in the interest of consumers to be able to access as much information as is reasonably available on the cost of their air travel. Spirit's website provides information on all its charges. Indeed, when booking on Spirit's website, a customer can see the total cost for their flight including all the optional services they have selected before they confirm the purchase. This makes it easy for customers to comparison shop to confirm that Spirit's total price is the lowest.

Unfortunately, under Department of Transportation policy, airlines must include the federal excise tax as part of the base fare whenever a specific fare is listed. Accordingly, under this rule the excise tax component is hidden in the base fare. We are not aware of any other retail product where, by government fiat, merchants are prevented from showing consumers how much of their payment is for tax.

In closing, it is important to point out several particularly onerous proposals recently made by the Department of Transportation. First, although for years the Department has permitted airlines to list certain government taxes and fees - such as the segment fee and the September 11 fee - separately from the base fare when a specific fare is first displayed, it now proposes to require airlines to include all applicable taxes and fees in any initial fare quote. Such an approach will only further obfuscate what is being charged by the airline as opposed to what is going to the government and to airports. We believe Congress should direct the Department to permit airlines to display fares on their websites in a totally transparent way, and specifically in a way that consumers can

immediately see how much of their fare goes to pay taxes and other governmental fees.

Second, the Department has asked for comments on requiring carriers to actually show two fares when advertising air fares. One fare would be the carrier's real fare, including all mandatory charges. The other fictional fare would include the "cost of baggage charges that traditionally have been included in the price of the ticket." Such a requirement would not only be costly to implement but would serve no purpose other than to confuse customers who neither need nor want to buy traditional high priced bundled service.

Third, the Department is proposing that all airlines be required to allow customers to hold a booking without payment, or allow a booking to be cancelled without charge for at least 24 hours, even for non-refundable tickets. Many of our promotions are one day sales. Allowing a 24 hour hold would circumvent the sale, resulting in a churn which adds cost and lowers revenue. This will lead to higher fares, again disproportionately penalizing the lowest income American consumers. Holding a product for 24 hours inside a week would be like telling a grocery store they must sell you milk, allow you to hold it for a day and then bring it back, allowing the customer to take away valuable selling time. Most low fare carriers, including Southwest, do not permit either of these options for non-refundable tickets. Such a rule would require substantial and costly changes in our IT reservations system as well as changing the contract with our credit card processing agent. As noted, on Spirit passengers can shop and compare prices before they buy. The proposed rule would not benefit the vast majority of travelers and would simply raise costs. At this painful time of economic malaise, it is essential that government "do no harm" by imposing excessive regulatory requirements.

Conclusion

Spirit believes in considering ancillary fees and other consumer "protections," Congress must be guided by the objectives established by the Airline Deregulation Act – namely the encouragement of innovation, competition and the expansion of low fare service. It is of course important for the government to generate sufficient tax revenue to fund that portion of our National airway system that is used by commercial airlines. However, these revenues should be generated by promoting economic expansion and taking steps to encourage more people to fly. Imposing new taxes on fees for customer services that are not essential to the transportation of passengers and are unrelated to costs imposed on the system, must be avoided. Such taxes would surely harm competition, raise costs and slow the industry's recovery from a decade of losses. Most consumers today are very sophisticated about air travel. They have multiple websites from which to obtain fare information. They do not need to see hypothetical, make-believe fares, but rather should be permitted to see what applicable ancillary fees are and how much of their fare goes to the federal excise tax, as well as other government charges. Rules that simply result in higher fares but provide no substantive benefit to customers are not in the public interest and hinder the kind of innovation airline deregulation was intended to promote.

Thank you for your consideration.

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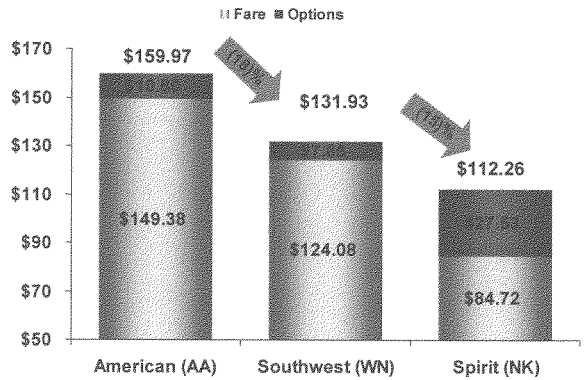

Spirit Customers Are Smart! They Get It.

Sources: US DOT DB1B YE3Q08 Spirit "optional" + YE3Q08 Spirit Total NonstopOne-way Plus, Formal I Distinction. AA blended calculated excluding Mail, Freight, Charter, and Transport Related Revenues
Note: These represent one way wage adjusted CED Facts. Excludes Europe, Asia, Deep South America and other long-haul flying for comparison.

spirit

United States Government Accountability Office

GAO

Testimony

Before the Subcommittee on Aviation, Committee on Transportation and Infrastructure, House of Representatives

For Release on Delivery
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COMMERCIAL AVIATION

Better Information about Airline-Imposed Fees and the Refundability of Government-Imposed Taxes and Fees Could Benefit Consumers

Statement of Gerald L. Dillingham, Ph.D.
Director, Physical Infrastructure Team

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GAO-10-885T

Mr. Chairman and Members of the Subcommittee:

I am pleased to be here today to discuss various issues affecting airline passengers, including airline-imposed fees, mishandled baggage, and the refundability of various government-imposed taxes and fees to passengers. The U.S. passenger airline industry has been under tremendous financial pressure over the last decade, first from security threats that inhibited air travel, then from volatile fuel costs, and more recently from falling demand due to an economic recession. Only recently has air traffic begun to recover. In response to these pressures, passenger airlines have adapted their business models. In 2008, for example, many airlines introduced fees for a variety of passenger services, most notably for a first or second checked bag, for which separate charges did not previously exist. Fees represent an important source of revenues to U.S. passenger airlines, which collectively posted operating losses of $4.4 billion during calendar years 2008 and 2009. During that same period, airlines reported approximately $7.9 billion in revenues from baggage fees and reservation change and cancellation fees—the two largest sources of fee revenues. The revenues from baggage and many other fees are not subject to the 7.5 percent excise tax on amounts paid for domestic air transportation, which, via the Airport and Airway Trust Fund, is used to help fund the Federal Aviation Administration (FAA), including its operation and development of the air traffic control system and oversight of aviation safety. In addition, charging separate fees for checked baggage raises questions about whether the quality of checked baggage service has improved since the fees were introduced. Other government fees on airline tickets help pay for other government services, such as for security, immigration, customs, and agricultural inspections. However, with the exception of fees for security services, it is not clear if and how these various government-imposed fees are refundable to passengers who do not use their nonrefundable tickets. However, the refundability of these fees is not always clear or communicated to airlines or consumers.

My statement today summarizes our most recent report on these issues, which is being released publicly at this hearing today.[1] In this report we examined (1) the nature and scope of the fees airlines charge to passengers, including the fees' relationship to the costs of the services

[1]GAO, *Commercial Aviation: Consumers Could Benefit from Better Information about Airline-Imposed Fees and Refundability of Government-Imposed Taxes and Fees*, GAO-10-785 (Washington, D.C.: July 14, 2010).

provided and the transparency of the fees; (2) the potential impact of such fees on revenues used to help fund FAA; (3) changes in the numbers of checked and mishandled bags, the amount of compensation paid to passengers for mishandled bags, and other related consumer issues; and (4) the process, if any, for refunding government-imposed taxes and fees to passengers who do not use their nonrefundable tickets. We have previously reported on issues related to these objectives.[2]

To address these issues, we developed a list of airline fees based on research of travel and 17 airline Web Sites and corroborated the data with airline officials;[3] analyzed Department of Transportation (DOT) financial and operating data; reviewed applicable laws, regulations, guidance, and past studies; and interviewed officials from the airline industry, trade associations, consumer groups, global distribution systems, DOT, and the Internal Revenue Service (IRS). More detail on scope and methodology is available in the full report, which we completed in accordance with the Generally Accepted Government Auditing Standards.

Background

Increasingly, airlines are charging fees to supplement fare revenues. Some fees, such as those for unaccompanied minors, reservation changes or cancellation, and oversized or overweight baggage, have existed for years. Other fees are new, including those introduced since 2008 for services that did not previously entail separate charges, such as fees for a first and second checked bag, early boarding, seat selection, and meals. New services, such as Wi-Fi access, also generate fee revenue. Information on many airlines' fees for services is available through the airlines' Web Sites but not through the global distribution systems[4] that make fare

[2]See GAO, *Commercial Aviation: Airline Industry Contraction Due to Volatile Fuel Prices and Falling Demand Affects Airports, Passengers, and Federal Government Revenues*, GAO-09-393 (Washington, D.C.: Apr. 21, 2009); *Federal User Fees: Key Aspects of International Air Passenger Inspection Fees Should Be Addressed Regardless of Whether Fees Are Consolidated*, GAO-07-1131 (Washington, D.C.: Sept. 24, 2007); and *Summary Analysis of Federal Commercial Aviation Taxes and Fees*, GAO-04-406R (Washington, D.C.: Mar. 12, 2004).

[3]We chose these 17 U.S. passenger airlines based on several factors. All 17 airlines reported annual operating revenues of at least $20 million and together collected more than 99 percent of the checked baggage fees reported to the Bureau of Transportation Statistics in 2008 and transported about 77 percent of domestic revenue passengers in 2008.

[4]The three main global distribution systems are Amadeus, Sabre, and Travelport, which combined, generated more than $9.6 billion in revenue in 2008.

information available to online (e.g., Expedia and Travelocity) and traditional brick-and-mortar travel agencies.

The Internal Revenue Code imposes several excise taxes to help fund FAA, including a 7.5 percent tax on amounts paid for the transportation of a person for domestic air transportation. This tax applies to fees such as for peak/holiday travel and unaccompanied minors, but does not apply to many other fees, including fees for checked baggage. The federal government also imposes fees to help other agencies cover their costs for security screening, customs, immigration, and agricultural inspections among other things.[5] DOT requires the airlines to include the costs of certain government-imposed excise taxes in their advertised fares. In addition, DOT requires the airlines to disclose their fees and associated policies for checked baggage but not for other optional fees; to separately report their revenues from baggage fees and reservation change and cancellation fees; and to report the incidence of mishandled checked bags as well as compensate passengers for damages. Finally, according to DOT, it has the authority to ensure passengers are not misled regarding their rights, such as their eligibility for refunds of government-imposed taxes and fees.

Summary of Key Issues

- **Fees for optional services are based on costs and other factors and are not fully disclosed to passengers at the time of booking.** Airlines have imposed a variety of fees on a range of optional services, such as checked and, most recently, carry-on bags; meals; blankets; early boarding; and seat selection. According to airline officials, the fees are based on a combination of factors, including the cost of providing the service, competition, and consumer demand. The fees have supplemented airline revenues, providing at least $7.9 billion in 2008 and 2009 from baggage fees and reservation change and cancellation fees alone—the only fees revenues airlines are required to separately to DOT. Although small compared with total airline operating revenues, fee revenues are growing. In the first calendar quarter of 2010, airlines reported $1.3 billion in baggage fees and reservation change and cancellation fees—a 13 percent increase from the corresponding quarter in 2009. However, information

[5]Immigration inspection fees are divided between two Department of Homeland Security agencies—Customs and Border Protection and Immigration and Customs Enforcement. Agricultural inspection fees are divided between Customs and Border Protection and the U.S. Department of Agriculture. According to the interagency agreements, fees are intended to be distributed among the agencies according to the cost of the activities for which the agencies are responsible.

about the fees is not fully disclosed through all ticket distribution channels used by consumers, making it difficult for them to compare the total cost of flights offered by different carriers. Meanwhile, the airlines could fully disclose all of their fees to consumers searching for fares, but according to global distribution systems representatives, are unlikely to do so unless compelled because such disclosure will make airlines less competitive as fares displayed would be higher if fees were included.[6] On June 8, 2010, DOT issued a Notice of Proposed Rulemaking that would, among a number of other things, if adopted, require U.S. and foreign airlines to disclose all fees for optional services, including those for checked baggage, advance seat assignments, and seat upgrades through a prominent link on their website's homepage.[7] DOT also states in the proposed new rule that it is considering requiring that U.S. and foreign airlines make this fee information available to applicable global distribution systems that package fare information for online and traditional travel agencies, which combined sell the majority of tickets.[8]

- **Airlines' increasing reliance on fee revenues reduces the proportion of total passenger revenue that is taxed to help fund FAA.** The IRS has determined that many airline-imposed fees are not related to the transportation of a person—the basis for imposing the 7.5 percent excise tax on domestic air transportation[9]—according to applicable Treasury regulations and IRS guidance[10]—and, thus, only a

[6]To improve travel agencies' ability to provide information on and payment for airline-imposed fees, the Airline Tariff Publishing Company, which provides fare information to global distribution systems has developed a product to distribute fee information. Currently, 12 U.S. airlines constituting 79 percent of the operating revenues reported by U.S. airlines in 2009 are test filing this information with the company, which is allowing global distribution systems to access it on a test basis.

[7]DOT, *Enhancing Airline Passenger Protections*, Notice of Proposed Rulemaking, 75 Fed. Reg. 32318 (proposed June 8, 2010). The comment period closes August 9, 2010. In this context, DOT is seeking comment on whether this requirement should be limited to disclosure of "significant fees" for optional services, including the definition of "significant fee" and whether it should be defined as a particular dollar amount. Comment is also sought on alternatives to this option. DOT is also seeking comment as to whether this provision, proposed 14 C.F.R. 399.85(c), should apply to ticket agents, as defined in 49 U.S.C. § 40102.

[8]DOT, *Enhancing Airline Passenger Protections*, Notice of Proposed Rulemaking, 75 Fed. Reg. 32318 (proposed June 8, 2010).

[9]26 U.S.C. § 4261(a).

[10]IRS guidance includes Revenue Rulings, Private Letter Rulings, and other guidance documents. See 26 C.F.R. §§ 49.4261-7, 26 C.F.R. § 49.4261-8; Priv. Ltr. Rul. 118216-09.

proportion of the total fee revenue is subject to taxation. These excise tax collections are deposited into the Airport and Airway Trust Fund (Trust Fund),[11] which is the primary source of funding for FAA. Trust Fund revenues have fallen in recent years, from about $12 billion in fiscal year 2007 to about $11 billion in fiscal year 2009, owing to a variety of factors, including lower fares and fewer passengers in 2009 than in 2007. In fiscal year 2009, airlines reported nearly $2.5 billion in fee revenue from checked baggage (the largest and only measurable untaxed fee).[12] If baggage fees in that year had been subject to the 7.5 percent excise tax, an additional approximately $186 million in excise taxes or less than 2 percent of total Trust Fund revenues would have been credited to the Trust Fund.[13] Although this percentage is relatively small, it is likely to grow based on recent trends. In the first quarter of 2010, airlines reported a 33 percent increase in revenues from baggage fees compared to the corresponding quarter in 2009. Since DOT guidance requires airlines to report separately only revenues from baggage fees and reservation change and cancellation fees, we were unable to estimate potential collections from other untaxed optional fees.

- **The imposition of checked baggage fees has contributed to declines in the amount of checked baggage and the rate of mishandled bags per thousand passengers as well as an increase in the amount of carry-on baggage.** Since airlines first imposed checked baggage fees, the number of checked bags per passenger has declined, contributing to a decline in the rate of mishandled bags. However, it is unknown whether baggage fees have had an effect on the rate of mishandled bags per thousand passengers as this information is not available. Despite the introduction of fees, airlines have not significantly changed their compensation methods. Checked baggage fees have also led to greater amounts of carry-on baggage in the cabin, resulting in greater competition for limited overhead storage space. A recent survey of flight attendants

[11]26 U.S.C. § 9502.

[12]Because U.S. airlines charge fees for overweight and oversize bags as well as for additional bags, these fees are included in the $2.5 billion. In fiscal year 2007, before U.S. airlines began charging for first and second checked bags, airlines reported about $457 million in baggage fee revenues. Revenues from reservation change and cancellation fees are already subject to the 7.5 percent excise tax as they are considered fees paid for the transportation of persons.

[13]For this analysis, we are making the simplifying assumption that the additional tax due would not have caused any passengers to choose not to purchase tickets. Any such reduction in purchases would presumably have been small and would have had the effect of making the increase in taxes collected a little smaller than our estimate.

found that more than half had concerns about the amount of carry-on bags, while a third of the attendants noted concerns about the safety of crew and passengers due to injuries from lifting carry-on bags.

- **Refundability of government taxes and fees is not always clear and communication of refund eligibility to the airlines and consumers is lacking.** The refundability of government taxes and fees on unused nonrefundable tickets varies depending upon the tax or fee. According to IRS, aviation excise taxes on unused nonrefundable tickets are not refundable; however, to the extent that a portion of the ticketed fare is refunded, the collected tax attributable to that portion of the fare may be refunded to the consumer.[14] In contrast, consumers with unused nonrefundable tickets are entitled to a full refund of the September 11th Security Fee, in accordance with Department of Homeland Security (DHS) Transportation Security Administration (TSA) guidance, but few consumers request a refund because airlines are not required to proactively inform consumers of their right to a fee refund. According to Customs and Border Patrol (CBP), its applicable statutes and regulations authorize the refund of its customs and immigration inspection fees on unused nonrefundable tickets; however, CBP has not issued policy or guidance that clarifies this interpretation or whether airlines can or must refund fees if requested by consumers. The U.S. Department of Agriculture's (USDA) applicable statutes and regulations regarding its inspection fee are silent on whether the fee is refundable on unused nonrefundable tickets, according to the agency.

Report's Matter for Congressional Consideration and Recommendations

In our report, we note that if Congress determines that the benefit of added revenue to the Airport and Airway Trust Fund from taxation of airline-imposed optional fees is important, then it should consider amending the Internal Revenue Code to tax certain or all airline-imposed fees and deposit the revenue in the Airport and Airway Trust Fund. We also make several recommendations to the Secretary of Transportation to improve the disclosure of information on airline-imposed fees and government-imposed fees for consumers and to improve airlines' reporting of fee revenues to DOT. Among these are recommendations for DOT to require that U.S. passenger airlines and foreign airlines that fly within or to or from the United States disclose optional airline-imposed fees and policies that the agency deems important to passengers to know and further require that this information be consistently disclosed across all

[14]Rev. Rul. 89-109 (1989) 1989-2 CB 232, as applicable to the 7.5 percent excise tax.

distribution channels used by the airline. Similarly, we recommend that DOT require that U.S. passenger airlines and foreign airlines that fly within or to or from the United States disclose to consumers applicable government-imposed fees on nonrefundable tickets that may be eligible for refunds as these determinations are made by relevant agencies. We also recommend that DOT require U.S. passenger airlines to report to DOT all revenues from optional fees paid by passengers related to their trip in a separate account, exclusive of revenues from baggage fees and reservation change and cancellation fees.

In addition, our report also contains recommendations to the Secretaries of Homeland Security and Agriculture to eliminate the ambiguity regarding their fees which are eligible for refunds. To DHS, we recommend that the department issue guidance to airlines regarding the refundability of its customs and immigration inspection fees. To USDA, we recommend that the department determine whether its inspection fee is refundable and convey this to airlines.

In commenting on a draft of the report on which this testimony is based, DHS and USDA agreed with our recommendations to their respective departments. DOT did not agree or disagree with our recommendations.

Mr. Chairman, this concludes my statement. I would be pleased to respond to any questions you or other Members of the Subcommittee may have.

For questions about this testimony, please contact Dr. Gerald L. Dillingham at (202) 512-2834 or dillinghamg@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this testimony. Individuals who made key contributions to this testimony include Paul Aussendorf, Assistant Director; Amy Bowser; Brian Chung; Lauren Calhoun; Jay Cherlow; Elizabeth Eisenstadt; Christopher Jones; and Maureen Luna-Long.

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Report to Congressional Requesters

July 2010

COMMERCIAL AVIATION

Consumers Could Benefit from Better Information about Airline-Imposed Fees and Refundability of Government-Imposed Taxes and Fees

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GAO-10-785

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Highlights

Highlights of GAO-10-785, a report to congressional requesters

July 2010

COMMERCIAL AVIATION

Consumers Could Benefit from Better Information about Airline-Imposed Fees and Refundability of Government-Imposed Taxes and Fees

Why GAO Did This Study

To supplement fare revenues, airlines are increasingly charging fees for optional passenger services, notably for checked baggage, for which separate charges did not previously exist. While air fares are subject to a 7.5 percent excise tax that funds the Airport and Airway Trust Fund, which helps fund the Federal Aviation Administration (FAA), many new optional fees are not.

As requested, this report addresses (1) the nature, relationship to cost, and disclosure of airline fees, (2) the potential impact of such fees on the Airport and Airway Trust Fund, (3) checked and mishandled baggage issues; and (4) the process, if any, for refunding government-imposed taxes and fees when passengers do not use nonrefundable tickets. To perform this work, GAO analyzed financial data; reviewed applicable laws and regulations; and interviewed airline and government officials.

What GAO Recommends

If Congress wants to tax currently untaxed airline fees, it would need to amend the Internal Revenue Code. GAO recommends that DOT require airlines to consistently disclose optional fees and notify passengers of any refundable government fees; USDA determine whether its fee is refundable on unused nonrefundable tickets; and DHS issue guidance on the refundability of its fees. USDA and DHS agreed with the recommendations and DOT did not comment on them.

View GAO-10-785 or key components. For more information, contact Gerald Dillingham at (202) 512-2834 or dillinghamg@gao.gov.

What GAO Found

Airlines have imposed a variety of fees on a range of optional services, such as checked and carry-on bags; meals; blankets; early boarding; and seat selection. According to airline officials, the fees are based on a combination of factors, including the cost of providing the service, competition, and consumer demand. The fees have supplemented airline revenues, providing at least $3 billion in 2009—a small but growing amount of total revenues. However, information about the fees is not fully disclosed through all ticket distribution channels used by consumers, making it difficult for them to compare the total cost of flights offered by different carriers. The Department of Transportation (DOT) does not currently require disclosure of airline-imposed optional fees, apart from those for checked bags, but recently issued a Notice of Proposed Rulemaking (NPRM) considering different forms of disclosure of such fees. Meanwhile, a system is being tested to fully disclose all of the fees to consumers searching for fares, but airlines are not likely to disclose them unless compelled to do so.

Airlines' increasing reliance on fees reduces the proportion of their total revenue that is taxed to fund FAA. The Internal Revenue Service (IRS) has determined that many of these fees, including checked baggage fees, are not related to the "transportation of a person"—the basis for imposing the 7.5 percent excise tax. According to GAO's calculations, the checked baggage fee (the largest and only measurable untaxed fee) if taxed in fiscal year 2009 would have accounted for about 2 percent of total Trust Fund revenues but is likely to grow in future years given recent trends. Since DOT guidance requires airlines to report separately only revenues from baggage fees and reservation change and cancellation fees, GAO was unable to estimate potential collections from other untaxed fees.

Since airlines first imposed checked baggage fees, the number of checked bags per passenger has declined, contributing to a decline in the rate of mishandled bags. Despite the introduction of fees, airlines have not substantially changed their baggage service or compensation methods. Checked baggage fees have also led to greater amounts of carry-on baggage, resulting in greater competition for limited overhead storage space.

According to IRS, aviation excise taxes on unused nonrefundable tickets are not refundable, but if an airline refunds the ticket, a proportionate amount of tax may be refunded. In contrast, consumers with unused nonrefundable tickets with expired or lost value are entitled to a full refund of the September 11th Security Fee, but few consumers request a refund because airlines are not required to inform consumers of this. According to the Department of Homeland Security (DHS), applicable statutes and regulations authorize the refund of its customs and immigration inspection fees if services aren't rendered, but DHS has not issued any policy or guidance that makes this clear. The Department of Agriculture's (USDA) statutes and regulations are unclear as to whether its fee is refundable on unused nonrefundable tickets.

Contents

Letter		1
	Background	3
	New Fees for Optional Services Are Based on Cost and Other Factors and Are Not Always Fully Disclosed to Passengers at the Time of Booking	10
	Airlines' Increasing Reliance on Fees Reduces the Proportion of Total Revenue That Is Taxed to Fund FAA	20
	Imposition of Checked Baggage Fees Has Contributed to Decrease in the Rate of Mishandled Bags and More Carry-on Bags	25
	Refundability of Government-Imposed Taxes and Fees Is Not Always Clear and Communication of Refund Eligibility to the Airlines and Consumers Is Lacking	30
	Conclusions	33
	Matter for Congressional Consideration	35
	Recommendations for Executive Action	35
	Agency Comments and Our Evaluation	36
Appendix I	**Scope and Methodology**	38
Appendix II	**Sample of Airline-Imposed Fees for Optional Services**	41
Appendix III	**Comments from the U.S. Department of Homeland Security**	43
Appendix IV	**GAO Contact and Staff Acknowledgments**	45
Tables		
	Table 1: Airline-Imposed Fees and Surcharges on Domestic Air Transportation Subject to the 7.5 Percent Excise Tax According to IRS	22
	Table 2: Government-Imposed Taxes and Fees and Amounts Paid by Passengers and Legal Basis for Their Refundability on Unused Nonrefundable Tickets	32

Table 3: Domestic Checked Baggage Fees of 17 U.S. Airlines as of July 1, 2010 41
Table 4: Other Airline-Imposed Fees of 17 Airlines as of July 1, 2010 42

Figures

Figure 1: U.S. Passenger Airlines Average 3rd Quarter Domestic Fares and Domestic Passengers, 2000-2009 (2010 dollars) 4
Figure 2: Select Fees Imposed by U.S. Passenger Airlines and Example Locations Where Offered for Purchase 6
Figure 3: Distribution Path to Agency Accounts of Passenger-Paid Government-Imposed Taxes and Fees Collected by Airlines 9
Figure 4: Total Collections of Baggage Fees and Reservation Change and Cancellation Fees by U.S. Airlines, 2000-2009 (2010 dollars) 12
Figure 5: Reported Rate of Mishandled Bags per 1,000 Passengers for Reporting U.S. Airlines, 2000-2009 26

Abbreviations

ARC Airlines Reporting Corporation
ATPCO Airline Tariff Publishing Company
BTS Bureau of Transportation Statistics
CBP Customs and Border Protection
DHS Department of Homeland Security
DOT Department of Transportation
EMD Electronic Miscellaneous Document
FAA Federal Aviation Administration
GDS Global Distribution System
IATA International Air Transport Association
ICE Immigration and Customs Enforcement
IRS Internal Revenue Service
TSA Transportation Security Administration
USDA U.S. Department of Agriculture

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United States Government Accountability Office
Washington, DC 20548

July 14, 2010

The Honorable James L. Oberstar
Chairman
Committee on Transportation and Infrastructure
House of Representatives

The Honorable Jerry F. Costello
Chairman
Subcommittee on Aviation
Committee on Transportation and Infrastructure
House of Representatives

The Honorable Bill Pascrell, Jr.
House of Representatives

The U.S. passenger airline industry has been under tremendous financial pressure over the last decade, first from security threats that kept passengers away, then volatile fuel costs, and more recently falling demand due to an economic recession. In response, passenger airlines have adapted their business models. One significant change since 2008 is the introduction of fees for a variety of passenger services, such as a first or a second checked bag, for which separate charges did not previously exist. These fees represent an important source of revenues to U.S. passenger airlines, which collectively posted operating losses of $4.4 billion during calendar years 2008 and 2009.[1] During that same period, airlines reported approximately $7.9 billion in revenues from baggage fees and reservation change and cancellation fees—the two largest sources of fee revenues. However, the revenues from baggage fees, along with many other fees, are not subject to the 7.5 percent excise tax on amounts paid for domestic air transportation, the revenue from which is deposited in the Airport and Airway Trust Fund and which partially funds the Federal Aviation Administration (FAA), including the operation and development of the air traffic control system, among other things. In addition, the payment of separate fees by passengers, especially for checked bags, raises questions about whether the quality of checked baggage service has improved since baggage fees were introduced. The federal government

[1]In this report, references to airlines are specific to U.S. passenger airlines, unless otherwise noted.

also imposes various taxes and fees on passengers to help fund the costs of security, immigration, customs, and agricultural inspections, among other things. However, the refundability of these fees is not always clear or communicated to airlines or consumers.

In this context, you asked us to address the following questions: (1) What is the nature and scope of the fees airlines charge to passengers, are the fees commensurate with the costs of the services provided, and are the fees transparent to passengers? (2) What is the potential impact of such fees on revenues available to the Airport and Airway Trust Fund? (3) What changes have taken place in the numbers of checked and mishandled bags, amount of compensation paid to passengers for mishandled bags, and other consumer issues since airlines began charging more widely for checked baggage? (4) What, if any, is the process for refunding government-imposed taxes and fees to passengers who do not use their nonrefundable tickets?

To address these objectives, we analyzed Department of Transportation (DOT) financial and operating data; reviewed applicable laws, regulations, and past studies; and interviewed officials from the airline industry, trade associations, consumer groups, global distribution system (GDS) companies, DOT, the Department of Homeland Security (DHS), U.S. Department of Agriculture (DHS), and the Internal Revenue Service (IRS). Specifically, to identify the nature and scope of airline-imposed fees, we developed a list of fees based on research of airline and travel Web Sites and corroborated the data in interviews with officials from 17 airlines.[2] To assess the potential impact of such fees on the Airport and Airway Trust Fund, we reviewed existing tax laws and regulations. We spoke with IRS officials about the applicability of the 7.5 percent excise tax imposed on amounts paid for the domestic air transportation of persons to the airline-imposed fees we identified. To examine issues with checked baggage, we reviewed data reported by airlines to the DOT's Bureau of Transportation Statistics (BTS), interviewed officials from BTS and other DOT offices, airlines and trade associations, and other interest groups about compensation for mishandled baggage. To identify mechanisms for returning government-imposed fees and taxes, we reviewed relevant agencies' applicable statutes, regulations, and guidance and interviewed

[2]We chose these 17 U.S. passenger airlines based on several factors. All 17 airlines report annual operating revenues of at least $20 million and together collected more than 99 percent of the checked baggage fees reported to BTS in 2008 and transported about 77 percent of domestic revenue passengers in 2008.

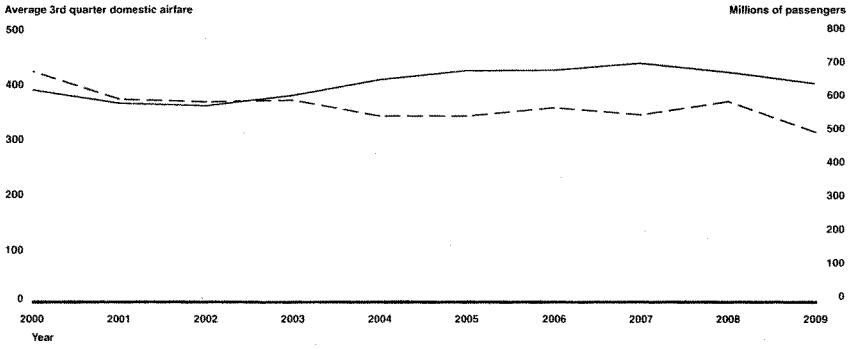
officials from IRS, DHS's Customs and Border Protection (CBP), Immigration and Customs Enforcement (ICE), and Transportation Security Administration (TSA); and the U.S. Department of Agriculture (USDA) responsible for federal taxes and fees applied to airline tickets. We conducted this performance audit from October 2009 through July 2010 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. See appendix I for more information on our scope and methodology.

Background

In recent years, airlines have faced challenging times as fuel costs increased followed by a steep decline in passenger demand due to the economic downturn. The U.S. passenger airline industry[3] incurred nearly $4.4 billion in operating losses during calendar years 2008 and 2009. Volatile jet fuel prices—the airlines' biggest operating expense in 2008—was the chief contributor to airline losses in 2008. Lower passenger traffic measured as enplanements, due to the economic downturn in 2008 and 2009, has also put pressure on many airlines' operating revenues and average 3rd quarter domestic airfares fell in 2009. See figure 1 for average 3rd quarter domestic airfares and domestic passenger traffic from 2000 through 2009.

[3]This covers only passenger airlines with revenues of at least $20 million annually.

Figure 1: U.S. Passenger Airlines Average 3rd Quarter Domestic Fares and Domestic Passengers, 2000-2009 (2010 dollars)



Source: GAO analysis of DOT data.

In response to these economic challenges, airlines began in 2008 to charge for many services for which separate charges did not previously exist.[4] These services include fees for a first or second checked bag, early boarding, seat selection and meals. Charges for other services, such as unaccompanied minors, reservation changes or cancellations, and oversized or overweight baggage, have existed in the airline industry for many years. In addition, other services that are assessed fees, such as for Wi-Fi access, are new offerings. Revenues from fees for all these services have supplemented airlines' fare revenues.

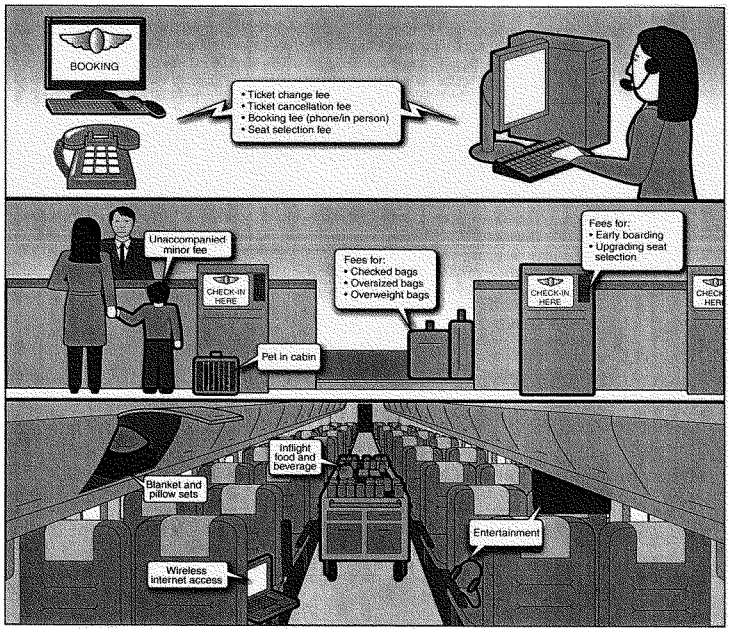
Airlines provide airfare information to the Airline Tariff Publishing Company (ATPCO), the tariff publishing house owned by a consortium of airlines, which, in turn, provides the fare information to GDSs[5] that

[4]Charging fees for services is also known as unbundling of charges, offering a la carte pricing, or charging ancillary fees.

[5]The three main GDSs are Amadeus, Sabre, and Travelport, which combined generated more than $9.6 billion in revenue in 2008.

package this information for use by online (for example, Expedia and Travelocity) and brick-and-mortar travel agencies and airline Web Sites. Once an airline ticket is purchased, the financial transaction is reconciled by the Airlines Reporting Corporation (ARC), another company owned by an airline consortium, which offers payment and settlement services for approximately 170 passenger airline and rail companies worldwide. However, while airfare information and some airline-specific information about fees for optional services is available on airline Web Sites and through GDSs, information on airlines' fees for the majority of optional services is available only through the airlines' Web Sites at booking and check-in, at their airport kiosks, and on board. Travel agencies, which sell the majority of airline tickets in the U.S., can provide fee information to customers only if the agents first search airline Web Sites or contact airline telephone reservation agents. Because airlines differ in how they impose fees for purchase of services, figure 2 depicts selected services and at what point they can currently be paid—during booking, at the airport, and onboard a flight. Fees for services can also be paid at other points besides those shown in the figure; for example, a passenger can often pay checked baggage fees when checking in online before departure.

Figure 2: Select Fees Imposed by U.S. Passenger Airlines and Example Locations Where Offered for Purchase



Source: GAO.

DOT's Office of Aviation Enforcement and Proceedings (OAEP) enforces airline economic regulations, including advertising requirements related to the disclosure of the full fare to be paid by the consumer.[6] DOT requires government taxes imposed on an *ad valorem* (percentage) basis to be included in the advertised fare as well as those airline-imposed fees that are required to purchase a ticket, such as fuel surcharges and peak travel day charges.[7] In addition, in May 2008, DOT issued guidance which requires disclosure of fees and associated policies for checked baggage.[8] Additional DOT guidance also requires that U.S. passenger airlines report revenues from certain fees as part of their Form 41 quarterly financial filings to BTS. In accordance with this guidance, U.S. airlines are required to separately report revenues from baggage fees and reservation change and cancellation fees but not other optional service fees. DOT also prescribes regulations for U.S. airlines regarding the reporting of and compensation for passengers who have had mishandled baggage, for instance, baggage that is lost, damaged, or delayed. Major U.S. passenger airlines are required to report monthly to DOT the number of mishandled baggage reports filed with the carrier and DOT then publishes the data.[9]

[6]The full-fare advertising rule states "[t]he [Civil Aeronautics] Board considers any advertising or solicitation by a direct air carrier, indirect air carrier, or an agent of either, for passenger air transportation, a tour (i.e., a combination of air transportation and ground accommodations), or a tour component (e.g., a hotel stay) that states a price for such air transportation, tour, or tour component to be an unfair or deceptive practice, unless the price stated is the entire price to be paid by the customer to the air carrier, or agent, for such air transportation, tour, or tour component." 14 C.F.R. § 399.84. Through 25 years of enforcement case precedent, DOT has permitted carriers and ticket agents to separately state government taxes and fees imposed on a per passenger basis, such as passenger facility charges and international departure taxes, so long as their existence and amounts are disclosed clearly at the first point in an advertisement where a fare is presented. See e.g., United Airlines, Order 2009-8-17 (Aug. 25, 2009). See also 14 C.F.R. § 399.84 and 49 U.S.C. § 41712.

[7]Fuel charges must be included in the advertised fare; they cannot be stated separately. If they are stated separately, it violates the full-fare advertising rule. See 14 C.F.R. § 399.84 and 49 U.S.C. § 41712. DOT Guidance, *Prohibition of Deceptive Practices in the Marketing of Airfare to the Public Using the Internet*, (Jan. 18, 2001). See also Condor Flugdienst GmbH Consent Order, Order 2009-4-1 (Apr. 1, 2009).

[8]DOT, *Guidance on Disclosure of Policies and Charges Associated with Checked Baggage*, 73 Fed. Reg. 28854 (May 19, 2008).

[9]14 C.F.R. § 234.6. Reports are required of an air carrier certificated under 49 U.S.C. § 41102 that accounted for at least 1 percent of domestic scheduled passenger revenues in the 12 months ending March 31 of each year, as reported to the Department pursuant to part 241 of this title. 14 C.F.R. § 234.2. A mishandled baggage report is a report filed with a carrier by or on behalf of a passenger that claims loss, delay, damage, or pilferage of baggage. 14 C.F.R. § 234.2.

DOT specifies that an airline cannot limit its liability for damages due to disappearance of, damage, or delay to lost baggage, to an amount less than $3,300 per passenger.[10] Compensation is subject to negotiation between the passenger and the responsible airline. TSA, which conducts security screening of checked bags, also submits monthly reports to DOT for mishandled baggage claims filed by passengers against TSA.[11] TSA reviews complaints to determine validity and compensation if TSA liability is determined.

The Internal Revenue Code imposes a 7.5 percent tax on amounts paid for the taxable transportation of a person for domestic air travel.[12] Treasury regulations and IRS guidance set general parameters for which airline fees are subject to the 7.5 percent excise tax. There is also a tax of $3.70 imposed on amounts paid for each segment of domestic travel,[13] and, if applicable, a tax on the use of international air travel facilities (also known as the international arrival/departure tax) of $16.10, for international travel that begins or ends in the United States.[14] Excise taxes collected by airlines are remitted to the IRS and deposited into the Airport and Airway Trust Fund, from which Congress funds FAA programs. FAA operates the air traffic control system, provides grants to airports, and oversees the safety of the industry. In addition to these excise taxes, the government imposes several fees on air travel that are collected by U.S. and foreign

[10]14 C.F.R. § 254.4. This section applies to any flight segment using a large aircraft, or on any flight segment that is included on the same ticket as another flight segment that uses large aircraft. A large aircraft is defined as an aircraft designed to have a maximum passenger capacity of more than 60 seats. 14 C.F.R. § 254.3. This is also applicable only to domestic flights. This monetary limit is recalculated every 2 years based on the CPI-U. 14 C.F.R. § 254.6. Baggage liability requirements for all flights to and from the United States. are established in the Montreal Convention.

[11]Per 49 U.S.C. § 329(e)(2), the Secretary of Transportation may request that the Secretary of Homeland Security periodically report on the number of complaints about security screening.

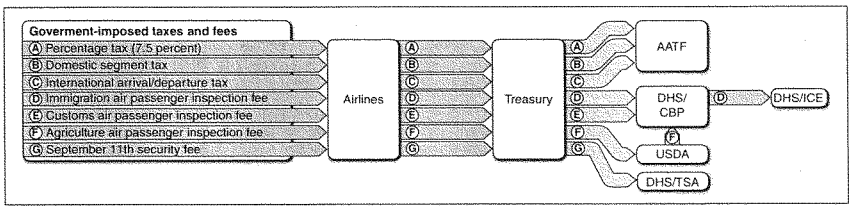
[12]26 U.S.C. § 4261(a). Taxable transportation is defined as transportation by air which begins and ends in the United States or in a 225-mile zone into Canada and Mexico from the continental United States. 26 U.S.C. § 4262. Throughout we refer to this as domestic air transportation.

[13]26 U.S.C. § 4261(b). The domestic segment tax is a flat tax based on the number of segments traveled and is not a percentage of amounts paid for transportation.

[14]26 U.S.C. § 4261(c). Section 4261(c)(3) provides a modified international arrival/departure tax rate of $8.10 for segments that begin or end in Alaska or Hawaii (applies only to departures). The domestic segment tax and international arrival/departure tax are annually adjusted for inflation. Amounts listed are current for 2010.

airlines and remitted to various other government departments and agencies. For example, TSA imposes the September 11th Security fee of $2.50 per enplanement, not to exceed $10 per roundtrip, for aviation security inspection services.[15] Other government-imposed fees are remitted to agencies including CBP and USDA to help pay for customs, immigration, and agricultural inspection activities respectively.[16] See figure 3 for the distribution to agency accounts of passenger-paid government-imposed taxes and fees collected by U.S. and foreign airlines.

Figure 3: Distribution Path to Agency Accounts of Passenger-Paid Government-Imposed Taxes and Fees Collected by Airlines



Source: GAO.

[15]49 U.S.C. § 44940, 49 C.F.R. part 1510. TSA began imposing this fee in February 2002.

[16]Immigration inspection fees are divided between CBP and ICE. Agricultural inspection fees are divided between CBP and USDA. According to the interagency agreements, fees are intended to be distributed among the agencies according to the cost of the activities for which the agencies are responsible.

New Fees for Optional Services Are Based on Cost and Other Factors and Are Not Always Fully Disclosed to Passengers at the Time of Booking

Airlines Have Introduced Fees for Services That They Previously Provided at No Charge as Well as for New Services

Increasingly, airlines are charging fees for a number of optional services for which separate fees did not previously exist. For example, before 2008, airlines' baggage fees generally extended only to passengers who checked a third bag or for overweight or oversized bags. However, since 2008, most airlines have implemented fees for both a first and a second checked bag. Currently, 15 of the 17 airlines we contacted charge $15 to $35 for the first checked bag and 16 of the 17 impose a fee of between $20 and $35 for a second checked bag. One airline recently stated that it will begin to charge up to $45 for a carry-on bag that does not fit underneath the seat. Collection of fees for reservation changes and cancellations, which range from $50 to $150, has grown since 2007. In addition, fees for services that were previously included in the fare paid have also been introduced. These services include meals costing between $2 and $10, telephone booking fees ranging from $5 to $25; and sleep sets, which go for $5 to $12, that include a pillow, blanket, sleeping mask, and earplugs. Appendix II includes information on a sample of optional service fees imposed by 17 airlines as of July 1, 2010.

Airlines are also charging for new services not previously available. For example, some airlines now offer in-flight wireless Internet access, one-time lounge access, and multiplying frequent flyer miles earned for a flight, for a fee. Some airlines are also selling service packages for annual subscription, for example, the option for passengers to pay an annual fee for checking up to two bags per flight as often as they fly with that airline within a year or for priority check-in and security screening. These services can also be purchased in combination and on a per-flight basis with fee amounts varying. For example, one airline offers priority boarding and security screening, free checked baggage allowance, extra seat legroom, and free alcoholic beverages for one fee. Airlines also provide a selection of fares that include specific optional services and benefits

depending on the fare with higher fares including more services and benefits. Airlines are also offering third-party services such as hotel and car rental reservations and baggage pick-up and delivery, which can be purchased through the airline's Web Site.

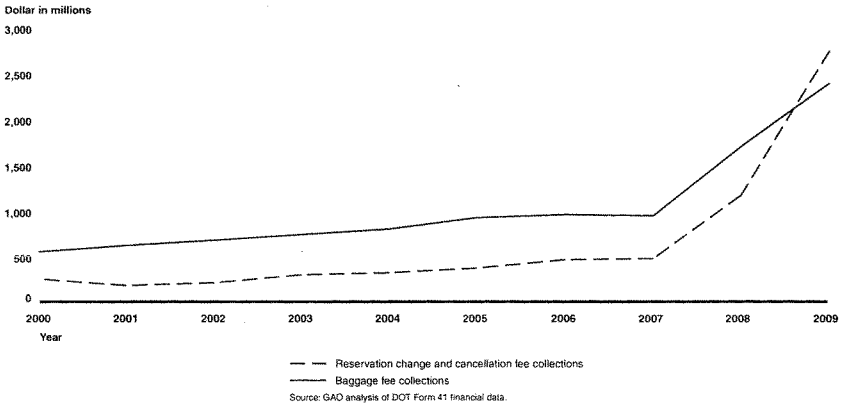
Not all passengers are assessed service fees equally. For example, airlines waive some of these fees for elite members of their frequent flyer programs.[17] In addition, 13 of the 17 airlines we contacted do not charge these fees for their highest-paying passengers, such as those who hold first or business class tickets or full-fare economy class tickets. Airlines may also provide exemptions to select customers such as U.S. military personnel. Airline officials explained that customers who attain status with their airline's frequent-flyer program are likely to remain repeat customers if they are rewarded with service benefits such as baggage fee waivers.

Fees Have Proven Popular with Airlines as a Method of Generating Revenue While Maintaining Fare-Based Competition

According to financial data submitted by airlines to DOT, total revenue from baggage fees and reservation change and cancellation fees—the largest known sources of revenue for optional services—has increased since 2008 following widespread implementation of baggage fees in the United States. In calendar years 2008 and 2009, U.S. airlines collected nearly $3.9 billion in baggage fees and over $4 billion in reservation change and cancellation fees. Collection of fees for reservation changes and cancellations, although implemented prior to 2008, has risen sharply since then following the implementation of additional and/or higher fees for changing or canceling reservations. Accordingly, revenues from baggage fees and reservation change and cancellation fees have grown from less than 1 percent of operating revenues in 2007 to over 4 percent in 2009. Although small compared with total airline operating revenues, fee revenues are growing. In the first quarter of calendar year 2010, airlines reported $1.3 billion in baggage fees and reservation change and cancellation fees—a 13 percent increase from the corresponding quarter in 2009. Figure 4 shows the reported increase in revenues from baggage fees and reservation change and cancellation fees.

[17]Elite members accumulate a specified minimum number of miles flown in a year or have surpassed a specified lifetime threshold.

Figure 4: Total Collections of Baggage Fees and Reservation Change and Cancellation Fees by U.S. Airlines, 2000-2009 (2010 dollars)



Source: GAO analysis of DOT Form 41 financial data.

U.S. airlines must separately identify and report to DOT in their quarterly Form 41 filings only those revenues from baggage fees and from reservation change and cancellation fees, while other fee revenues are reported in a variety of other accounts that may also contain non-fee revenue. In 2009, BTS issued an accounting and reporting directive for U.S. passenger airlines to report ancillary revenues in a like manner. The directive allows airlines to report revenues from fees in different accounts such as in Transport-Related Revenues and Miscellaneous Operating Revenues that include revenue from other sources such as the sale of frequent flyer award miles.[18] Further, the guidance does not include all sources of ancillary revenues. Given this, we are unable to determine total revenues from other airline-imposed fees, such as those for telephone

[18]DOT Research and Innovative Technology Administration Bureau of Transportation Statistics Accounting and Reporting Directive, No. 289, February 20, 2009. DOT includes the sale of frequent flyer award program miles as ancillary revenues whereas we are reporting on revenues only from airline-imposed fees paid by passengers.

booking, seat selection, and early boarding. DOT has reported airline ancillary revenues were $7.8 billion in 2009, up from $5.5 billion in 2008. However, these reported revenues include not only those from the discrete accounts of baggage fees and reservation change and cancellation fees, but also fees from the Miscellaneous Operating Revenues account for such items as pet transportation and revenue from the sale of frequent flyer award program miles. Absent guidance that requires airlines to report revenues from fees in specific accounts, we found that there were differences among airlines in how some fee revenues were reported. For example, we found that telephone booking fees were reported as part of Reservation Cancellation Fees by some airlines and as Transport-Related Revenues by others. In addition, some airlines accounted for revenues from unaccompanied minors as Transport-Related Revenue, Transport Passenger Revenue or Miscellaneous Operating Revenue, while others reported it as part of Reservation Cancellation Fees, and one airline reported fees for unaccompanied minors as revenue from Excess Baggage Fees. Although there is a lack of clarity regarding the revenue amounts from most optional fees, not including those for baggage fees and reservation change and cancellation fees, it is likely that these revenues would be comparatively smaller because, according to airline representatives, these fee amounts are less than those for checked baggage or reservation changes and cancellations.

Airlines Have Imposed Fees, Which Are Partly Based on Costs, for Multiple Reasons

Several factors motivate airlines to make greater use of a pricing strategy that relies on charging fees for optional services. One factor airline officials told us is the opportunity to generate additional revenue while keeping fares lower. Airline officials said that by charging fees for services, they are able to keep fares lower than if fares were inclusive of checked baggage and other services as they had been in the past. Another factor airline officials told us is the ability to differentiate their customers' willingness to pay. In this way, customers that value the service can pay for it while customers that do not want to pay for the service don't purchase it. If airlines charged higher fares rather than charging for optional services, those passengers placing little value on optional services might decide not to purchase a ticket because there is more passenger resistance to higher fares, particularly during difficult economic times, than there is to paying for optional services. Airlines largely compete on their base ticket fares and passengers generally compare these fares when deciding which flight to purchase, often picking the lowest fare displayed. Several economic studies have found evidence that increases in the less transparent part of the price of a product—in this case optional service fees—has less of an effect on sales than increases in the price of the

product itself—in this case, fares.[19] Officials from several airlines told us that another reason they impose fees is the ability to differentiate their airlines from their competition by providing some services for free and others at a fee.

Airlines that we interviewed indicated that costs were a consideration in setting fee levels, but other factors were also considered, such as competition and consumer demand. An official at one airline stated that the costs of providing services vary by airport and the routes served. For example, this official told us that the airline analyzes the costs of providing checked baggage service at each of the airports it serves and, while these costs differ, the airline sets a standard checked baggage fee to apply at all locations. Like prices for other products and services sold in a competitive market, fees for these services are also influenced by what competitors charge. Much like airfares, changes in fee amounts may be matched by competitors. In January 2010, Delta Air Lines increased its fee to check a first bag at the airport from $20 to $25, and within a month Continental Airlines, United Airlines, and American Airlines matched the increase. Furthermore, airlines evaluate consumer demand to determine what passengers are willing to pay for. One airline official told us that the airline conducts market research to determine whether a fee for a service would be acceptable to customers. This official said that the airline had eliminated a fee for the first checked bag on international flights and decreased the amount of a fee for its premium services based on customer feedback. Public discontent over a fee can also lead airlines to decide not to impose it. For example, Spirit Airlines announced that it will charge a fee for carry-on bags that cannot fit underneath a seat for travel beginning in August. In response to congressional and public outcry, 5 other airlines

[19]For example, according to economic literature, alcoholic beverages are usually subject to two state-level taxes: an excise tax that is included in the shelf price and a sales tax that is applied at the cash register. Thus, the impact of an increase in the excise tax is likely to be more visible to the consumer than an increase in the sales tax. One study analyzed whether price visibility affected consumer demand and found that it did. Consumer demand was found to be far more responsive to changes in the more visible excise taxes than to changes in the less visible sales taxes. A similar study of purchases of household products found that applying sales taxes at the cash register rather than including them in shelf prices had a smaller impact on consumer demand. In this study, for some products in some stores, the analysts posted tags on the shelf showing the products' prices inclusive of the sales taxes and found that making the full prices visible reduced purchases of the products compared to other products, and the same products in other stores, that did not have their prices similarly tagged. (These studies are discussed more fully in Raj Chetty, Adam Looney, and Kory Kroft, "Salience and Taxation: Theory and Evidence," *American Economic Review*, 99, (2009): 1145-1177).

stated that they will not impose such a fee and to date no other airline has imposed a fee for carry-on bags.[20] Also, in 2008, US Airways tested consumer response by charging $2 for non-alcoholic beverages including sodas, juices, bottled water, and coffee, but discontinued after no other major airline began charging a fee for these drinks.

While airlines have collected a substantial amount of fee revenues, there is no clear link between the implementation of optional service fees and the profitability and financial stability of an airline. For example, American Airlines, Continental Airlines, Delta Air Lines, and Virgin America impose charges for checked baggage and other services, but each reported an operating loss for 2009. Not all profitable or financially stable airlines impose optional service fees. Southwest Airlines has not adopted a fee for a first or second checked bag, but continues to report an operating profit. On the other hand, both Spirit Airlines and Allegiant Air impose many fees for services on passengers and both also reported an operating profit for calendar year 2009.

Airlines recognize that their approach to offering services for a fee gives passengers choices that allow them to travel without paying the fees, such as by carrying bags into the cabin or by bringing their own meals onboard. Some passengers may prefer this approach in which they pay for only the services they want. One airline allows customers either to pay one higher price that includes the fare as well as services or to pay a lower fare for the flight and pay for services if desired. According to an official of this airline, 85 percent of that airline's customers prefer to pay the lower fare and pay for services separately.

[20]In 2010, legislation was introduced that would require the Secretary of Transportation to complete a rulemaking prohibiting carriers from charging for carry-on baggage that falls within the restrictions imposed by the carrier with respect to size, weight, and number of bags. S. 3195, 111th Cong. (2010). Additionally, legislation was introduced to subject carry-on baggage fees to the 7.5 percent excise tax imposed on transportation of persons by air. S. 3205, 111th Cong. (2010).

Most Airline Fees for Services Are Not Incorporated in the Booking or Payment Process, Making It Difficult for Passengers to Compare Prices

Complete information on fees for optional services is not submitted by airlines filing their fare information with ATPCO or incorporated into the GDSs' fare offerings used by travel agencies. In contrast, all airline-imposed required charges, such as fuel surcharges and peak travel day charges, must be included in the advertised fare—the "full fare," or entire price to be paid by the consumer, regardless of distribution channel (airline or travel agent).[21] Unlike fare information, information on other service fees is not available through the GDSs with the exception of checked baggage, as discussed below, although it can be obtained from individual airlines by searching their Web Sites or contacting them directly. DOT does not specify in its advertising guidance that optional service fees be disclosed at ticketing with the exception of checked baggage fees and accompanying policies.[22] As a result, customers using online travel agencies and traditional or corporate travel agents, which together sell 60 percent of all airline tickets, cannot readily obtain and compare information on complete trip prices that include both the fare and selected service fees. This lack of information also makes it impossible for customers using online travel agencies or for travel agents using a GDS to select or make payment for optional services at the time of booking, which for many corporate customers is important for tracking payments. Travel agents and customers must then go directly to airline Web Sites to find out fee information.

Since checking a bag and the associated fees are deemed optional, they are not considered by DOT to be part of the "full fare" for purposes of its advertising rules, and therefore are not required to be disclosed prior to ticketing. However, DOT has required airlines and travel agents, including GDSs, to disclose checked baggage fees and accompanying policies at the

[21]See 14 C.F.R. § 399.84 and 49 U.S.C. § 41712. Fuel charges must be included in the advertised fare; they cannot be stated separately. Stating them separately would violate the full-fare advertising rule and 49 U.S.C. § 41712. DOT Guidance, *Prohibition of Deceptive Practices in the Marketing of Airfare to the Public Using the Internet*, January 18, 2001. See also Condor Flugdienst GmbH Consent Order, Order 2009-4-1 (April 1, 2009). Although DOT's enforcement policy has been to consider "ticket agents," as defined in title 49, subject to the full-fare advertising rule, which on its face applies to "direct and indirect air carriers as well as 'an agent of either,'" DOT's recently-proposed rule would specifically name "ticket agents" as being covered by the rule. DOT, *Enhancing Airline Passenger Protections*, Notice of Proposed Rulemaking (NPRM), 75 Fed. Reg. 32318 (proposed June 8, 2010). According to DOT, this is because the statutory definition of "ticket agent" encompasses entities, in addition to agents of carriers that hold out, sell, or arrange for air transportation. See 49 U.S.C. § 40102(40).

[22]See DOT, *Guidance on Disclosure of Policies and Charges Associated with Checked Baggage*, 73 Fed. Reg. 28854 (May 19, 2008).

time of purchase.[23] However, because this information is not filed with fare information by airlines, it is not readily available to GDSs and, therefore, to travel agents. DOT contends that travel agents utilizing a GDS can find this information by searching airline Web Sites, but GDS and travel agent officials we spoke with said that assuring that this information is accurate and up-to-date is time consuming and not practical if a customer is on the phone. Thus, even though travel agents are held to the same advertising and disclosure requirements as airlines, including those for checked baggage fees and policies, travel agents may not have information on checked baggage fees to accurately meet those requirements by relying on a GDS.

Recently proposed legislation would extend the disclosure requirements to include not only checked baggage fees, but also fees for seat assignments and other services that an airline may charge after the ticket is purchased.[24] In addition, legislation introduced in April 2010 would require the Secretary of Transportation to complete a rulemaking prohibiting airlines from charging fees for any carry-on baggage that falls within the restrictions imposed by the airline with respect to the weight, size, or number of bags, among other things.[25] Further, on June 8, 2010, DOT issued a Notice of Proposed Rulemaking (NPRM) that would, among a number of other things, if adopted, require U.S. and foreign airlines to disclose all fees for optional services, including those for checked baggage, advance seat assignments, and seat upgrades through a prominent link on their Web Site's homepage.[26] DOT also states in the

[23]See *Guidance on Disclosure of Policies and Charges Associated with Checked Baggage*, 73 Fed. Reg. 28854 (May 19, 2008), and 14 C.F.R. § 399.84.

[24]Clear Airfares Act of 2009, S. 2823, 111th Cong. § 2 (2009). See also S. 3195, 111th Cong. (2010).

[25]S. 3195, 111th Cong. (2010).

[26]DOT, *Enhancing Airline Passenger Protections*, NPRM, 75 Fed. Reg. 32318 (proposed June 8, 2010). The comment period closes August 9, 2010. In this context, DOT is seeking comment on whether this requirement should be limited to disclosure of "significant fees" for optional services, including the definition of "significant fee" and whether it should be defined as a particular dollar amount. Comment is also sought on alternatives to this option. DOT is also seeking comment as to whether this provision, proposed 14 C.F.R. § 399.85(c), should apply to ticket agents, as defined in 49 U.S.C. § 40102.

proposed new rule that it is considering requiring that U.S. and foreign airlines make this fee information available to applicable GDSs.[27]

Travel Industry Efforts to Improve Fee Disclosure and Access Are Underway but May Not Lead to Full Disclosure

To improve travel agencies' ability to provide information on and payment for airline-imposed fees, ATPCO, the tariff publishing house, is working to include these fees as part of the information available in GDSs. ATPCO, which provides fare information to GDSs, has developed the Optional Services product—an automated approach to distribute fee information for flight-related services such as checked baggage and seat selection and for non-flight-related services such as lounge access. Airlines could then provide fee information to ATPCO, and, in turn, ATPCO could provide the information to the GDSs. When fully integrated into a GDS, travel agents, including corporate travel agents, could access and purchase optional services at the time of booking. Customers that purchase tickets at online travel agencies could also purchase optional services when booking tickets. This product would allow consumers to search airfares based on the total price of their trip rather than just the base airfare. Currently, 12 U.S. airlines constituting 79 percent of the operating revenues reported by U.S. airlines in 2009 are test filing this information with ATPCO, which is allowing GDSs to access it on a test basis.

In an attempt to ensure industry standards for the display, distribution, and financial settlement of fee transactions, ATPCO is coordinating its efforts with the International Air Transport Association (IATA)—a worldwide trade organization representing approximately 230 airlines—and ARC, which settles ticketing financial transactions. IATA has begun an initiative that would develop a standard for electronic transactions of miscellaneous documents, including those that contain airline-imposed fees. Stemming from its e-ticket effort, which eliminated the majority of paper-based ticketing transactions in June 2008, IATA is developing the Electronic Miscellaneous Document (EMD) standard, which will allow airlines and GDSs to electronically record fees that have been paid for optional services. Once this standard is incorporated by GDSs, customers using a corporate, online, or traditional travel agency would have the ability to pay for optional services at the time of ticketing. Use of the EMD will also facilitate miscellaneous financial transactions between airlines involving tickets that include transportation on more than one airline.

[27]DOT, *Enhancing Airline Passenger Protections*, NPRM, 75 Fed. Reg. 32318 (proposed June 8, 2010).

IATA anticipates that by the end of 2010, GDSs will be capable of issuing EMDs and by the end of 2012 all airlines will have EMD capability.

GDS companies have also developed their own products that accommodate fee information. For example, Sabre has developed a merchandising product that enables the consumer to comparison shop fares, including selections of optional services by incorporating ATPCO's Optional Services product. Consumers could select optional services as part of a fare search to compare airlines' offerings that include the fare and services. Sabre officials told us that its product is currently used in other countries, but no U.S. airlines have committed to providing fee information to ATPCO. Amadeus and Travelport—the next largest GDSs—have developed similar products that, according to officials with these companies, U.S. airlines have not committed to supporting.

GDS and travel agent representatives say that there is little incentive for airlines to disclose their fee information through the GDSs as such disclosure will increase the fare displayed to many passengers if fees are included. Airlines largely compete on fares and passengers compare fares when deciding which flight to purchase, often picking the lowest fare displayed. If one airline provided fee information and another did not, the airline that disclosed the fees would be at a disadvantage. Consequently, according to GDS representatives, it is unlikely that airlines will provide fee information or offer these services for sale through GDSs unless required to do so. In addition, trade associations are advocating that the airline industry work to standardize policies on fee disclosure and access. For example, the Interactive Travel Services Association, Business Travel Coalition and American Society of Travel Agents are leading efforts to have all fees available for sale through GDSs and to establish uniform codes for fee transactions. Similarly, the National Business Travel Association has supported efforts to make fees for services available through GDSs so that corporate travel agents can access and monitor fees when they are instituted or changed, buy services, and track them through their expense management systems.

Overall, we found that airlines we contacted were generally supportive of efforts to improve the transparency of fees for their customers. Officials from one airline indicated that providing the customer an opportunity to pay for additional services at the time of booking would create both greater choice and transparency while still allowing the airline to offer unbundled services. However, officials at another airline were more cautious indicating that the time of booking was not always the best point to sell additional services as passengers may not know at that time what

additional services they will need. For example, they may not know how many, if any, bags they will check on the day of travel. Further, officials at another airline indicated that although they support transparency of optional service fees, the GDS environment may not be the best choice for distribution of this information, and there are alternatives to the GDS that can be cost effective to use to inform travel agents and passengers of fees for optional services. Officials from another airline stated that they are waiting until the testing of ATPCO Optional Services product has been completed before they decide whether to provide fee information to ATPCO. As noted earlier, DOT's June 2010 NPRM proposes greater fee disclosure and seeks comment on whether airlines should make this fee information available to applicable GDSs.[28] DOT officials told us that requiring fee disclosure provides additional information and resources to benefit consumers; however, imposing such a requirement must be weighed against the disadvantages of government interference with airline competition and the deregulated GDS environment.

Airlines' Increasing Reliance on Fees Reduces the Proportion of Total Revenue That Is Taxed to Fund FAA

Many Airline-Imposed Fees Are Not Subject to the 7.5 Percent Excise Tax

Unlike fares for domestic air transportation, a majority of the fee revenues collected by airlines on amounts paid by passengers for various airline services, including amounts paid for checked baggage, are not subject to the 7.5 percent excise tax,[29] in accordance with Treasury regulations and IRS guidance.[30] The Internal Revenue Code imposes a 7.5 percent excise

[28]DOT, *Enhancing Airline Passenger Protections*, NPRM, 75 Fed. Reg. 32318 (proposed June 8, 2010).

[29]IRS determinations of the applicability of the 7.5 percent excise tax depend on the facts and circumstances pertaining to the imposition of the fee and, accordingly, may vary from airline to airline for similar services.

[30]IRS guidance includes Revenue Rulings, Private Letter Rulings, and other guidance documents.

tax on amounts paid for the taxable transportation of a person by air, the revenue from which is deposited into the Airport and Airway Trust Fund.[31] Treasury regulations, the last iteration of which were promulgated in the 1960s, set general parameters for which airline-imposed fees are subject to the 7.5 percent excise tax and which are not subject to the tax.[32] As a general rule, all amounts paid to the airline to procure domestic air transportation are part of the tax base unless exempted by regulation or IRS guidance. Generally, all mandatory charges necessary to transport passengers are included in the tax base,[33] but fees for optional services are not.[34] IRS has further clarified which airline-imposed fees are subject to the excise tax in guidance documents, including Revenue Rulings and Private Letter Rulings.[35] Treasury regulations and IRS guidance provide that revenue from many airline-imposed fees for airline services are generally not subject to the 7.5 percent excise tax, including fees for checked baggage, early boarding, phone reservations, and on-board meals.[36] On the other hand, amounts paid for other airline-imposed fees that are required as a condition of receiving domestic air transportation, such as some reservation change and cancellation fees, fuel surcharges, and peak travel day charges, are subject to the 7.5 percent excise tax in accordance with IRS guidance and applicable regulations,[37] and tax revenues from these fees are being deposited into the Trust Fund. See table 1 for a list of airline fees and surcharges on domestic air transportation that, pursuant to IRS guidance and Treasury regulations, are subject to the 7.5 percent excise tax.

[31]26 U.S.C. § 4261(a). 26 U.S.C. § 9502.

[32]26 C.F.R. §§ 49.4261-7, 49.4261-8.

[33]See Rev. Rul. 73-508, 1973-2, C.B. 366.

[34]See Rev. Rul. 80-31, 1980-1, C.B. 251.

[35]A Revenue Ruling is an official interpretation by the IRS of the internal revenue laws and related statutes, treaties, and regulations as applied to a specific set of facts. They are issued for the information and guidance of taxpayers; published revenue rulings may be cited as precedent by the IRS. Private Letter Rulings are taxpayer-specific rulings furnished by the IRS in response to requests made by taxpayers. Since it is taxpayer specific, it cannot be used or cited as precedent.

[36]See 26 C.F.R. § 49.4261-8; Rev. Rul. 80-31; Priv. Ltr. Rul. 118216-09 (Sept. 28, 2009).

[37]See 26 C.F.R. § 49.4261-7; Rev. Rul. 89-109, 1989-2 C.B. 232; Rev. Rul. 73-508, 1973; Priv. Ltr. Rul. 118216-09.

Table 1: Airline-Imposed Fees and Surcharges on Domestic Air Transportation Subject to the 7.5 Percent Excise Tax According to IRS

Subject to 7.5 percent excise tax	Not subject to 7.5 percent excise tax
Fee to upgrade to higher class of accommodation (first or business class) An additional charge, paid in cash, for changing the class of accommodation is a payment for transportation and is subject to tax by regulation.[a]	**Fee for checked baggage** The fee is excluded from the tax base by regulation.[b]
Fee for ticket cancellation when passenger requests refund If an airline keeps a portion of the amount paid for a ticket as a cancellation fee when refunding the ticket amount to the customer, the consumer does not get a refund of tax already paid on that portion of the ticket amount (cancellation fee).[c] There is no additional tax on the amount retained.	**Fee for seat selection/seat preference within class of accommodation** If the service is optional and not a change in the class of accommodation, it is not included in the tax base.[d]
Fee for ticket change of destination or time of travel Additional charges for changing the destination or route, extending the time limit of a ticket, or as "extra fare" are payments for transportation and subject to tax by regulation.[e]	**Fee for early boarding within class of ticket purchased** As long as the fee for early boarding is optional, it is not included in the tax base.[f]
Fee for frequent flyer award redemption Service charge for a passenger to redeem frequent flyer miles.[g]	**Fee to apply already-purchased unused fare to new ticket** If a fee were charged so that the customer could apply the fare (on which tax was already paid) for an unused nonrefundable ticket to a new ticket, then that fee is not included in the tax base because it is optional.[h]
Fee for unaccompanied minors If the fee charged to provide support and care to an unaccompanied traveling minor is mandatory, such fee is taxable because the amount is paid as a condition of receiving air transportation. If it is optional, however, (e.g., for children of a certain age), then it is not included in the tax base.[i]	**Fee for reservation by phone; reservation by Internet** If the airline provides a mechanism for the customer to book travel for free, the use of a mechanism to book that charges a fee is then optional and the reservation fee is not subject to a tax. If there is no mechanism for the customer to book travel for free, the reservation fee is included in the tax base, regardless of the mechanism used.[j]
Charge for peak travel/holiday travel The fee is subject to tax because it must be paid as a condition of receiving air transportation.[k]	**Fee for pet/animal transportation** The fee is treated as a baggage fee and not included in the tax base, per regulation.[l]
Fuel surcharge The charge is subject to tax because it must be paid as a condition of receiving air transportation.[m]	**Fee for standby** Assuming the fee is optional, the fee is not included in the tax base.[n]
	Fees for pillows and blankets The fees are not included in the tax base because they are non-transportation service.[o]
	Charges for food and alcoholic beverages The charges are not included in the tax base because they are non-transportation services, as described in regulation.[p]

Source: GAO analysis of applicable statutes, regulations, and guidance.

Note: IRS determinations of the applicability of the 7.5 percent excise tax depend on the facts and circumstances of the imposition of the fee and, accordingly, may vary from airline to airline for similar services.

[a]26 C.F.R. § 49.4261-7(c). See also Priv. Ltr. Rul. 118216-09.

[b]26 C.F.R. § 49.4261-8(f)(1).

[c]Rev. Rul. 89-109; but see *United Airlines, Inc. v. U.S.*, 929 F. Supp. 1122 (N.D. Ill., 1996).

[d]Rev. Rul. 80-31.

[e]26 C.F.R. § 49.4261-7(c).

[f]Rev. Rul. 80-31.

[g]Rev. Rul. 73-508. See also Priv. Ltr. Rul. 118216-09.

[h]Rev. Rul. 80-31. See also Priv. Ltr. Rul. 118216-09.

[i]Rev. Rul. 73-508. See also Priv. Ltr. Rul. 118216-09.

[j]Rev. Rul. 80-31. See also Priv. Ltr. Rul. 118216-09.

[k]Rev. Rul. 73-508.

[l]26 C.F.R. § 49.4261-8(f)(1).

[m]Priv. Ltr. Rul. 118216-09 (Sept. 28, 2009); Rev. Rul. 73-508.

[n]Priv. Ltr. Rul. 118216-09; Rev. Rul. 80-31.

[o]26 C.F.R. § 49.4261-8(f)(4).

[p]26 C.F.R. § 49.4261-8(f)(4).

Potential Tax Revenues from Baggage Fees, If Taxed, Would Have Constituted Less Than 2 Percent of Total Trust Fund Revenues in Fiscal Year 2009

We estimate that if baggage fees, which generate the largest fee revenues reported to DOT, were subject to the 7.5 percent excise tax, the additional tax revenues collected in fiscal year 2009 would have contributed less than 2 percent of total Trust Fund revenues. In fiscal year 2009, airlines reported nearly $2.5 billion in fee revenue from checked baggage.[38] If baggage fees in that year had been subject to the 7.5 percent excise tax, an additional approximately $186 million[39] in excise taxes would have been credited to the Trust Fund. This amount is small—less than 2 percent—relative to the approximately $11 billion in revenue that the Trust Fund received during fiscal year 2009. However, this percentage is likely to grow

[38]Because U.S. airlines charge fees for overweight and oversize bags as well as for additional bags, these fees are included in the $2.5 billion. In fiscal year 2007, before U.S. airlines began charging for first and second checked bags, airlines reported $457 million in baggage fee revenues.

[39]For this analysis, we are making the simplifying assumption that the additional tax due would not have caused any passengers to choose not to purchase tickets. Any such reduction in purchases would presumably have been small and would have had the effect of making the increase in taxes collected a little smaller than our estimate. This figure is also based on total baggage fee revenues, including international baggage fees that would presumably not be subject to the 7.5 percent excise tax. If only the portion of baggage fees collected for domestic air transportation had been subject to the excise tax in fiscal year 2009, the estimate of additional amounts credited to the Trust Fund would be smaller. The reported data do not allow us to identify the portion of baggage fee revenues collected on international flights. However, since most travelers on international flights are permitted to check one or two bags at no additional charge as long as they do not exceed a specified weight requirement, we believe that this portion is small and the impact of including these fee revenues is correspondingly small.

because baggage fees have increased and some airlines have introduced additional service fees. For example, in the first quarter of calendar year 2010, airlines reported a 33 percent increase in revenues from baggage fees compared to the same quarter in 2009.

As noted earlier, aside from checked baggage, DOT guidance does not require airlines to separately report revenues received from fees for services that have not to date been considered part of the transportation of persons—such as early boarding, seat selection, and standby—and these revenues are also not subject to the 7.5 percent excise tax according to IRS. Thus, we cannot be certain how much additional revenue Treasury might have collected and credited to the Trust Fund if that tax had been applicable to all these fees.

Extending Scope of the 7.5 Percent Excise Tax Would Require Legislative or Regulatory Changes

The Internal Revenue Code defines taxable transportation in terms of the arrival/departure of the transportation, but does not define or discuss what is "amount paid for taxable transportation of any person."[40] Treasury regulations provide examples of what payments are and are not subject to the 7.5 percent excise tax.[41] Treasury regulations regarding the scope of payments for transportation subject to the 7.5 percent excise tax were established in the 1960s at a time of a regulated and very different airline industry. In light of changes in airline pricing, the Treasury regulations do not discuss many of the fees currently charged by airlines. The recent IRS private letter ruling, which provides some clarification of the applicability of the excise taxes to examples of current airline fees, is based on the facts and circumstances presented to IRS by the letter ruling requester and is not fully applicable to all fees airlines may charge. Without a statutory change with explicit directions on what fees are to be subject to the 7.5 percent excise tax, each new airline fee, or even the facts and circumstances of how each airline charges current fees, may require interpretation on a case-by-case basis as to whether or not to impose a tax. Therefore, eventual effects on the Trust Fund remain unknown.

[40]In April 2010, a bill was introduced that would subject revenues from bags carried on to the aircraft to the 7.5 percent excise tax, as an amount paid for taxable transportation. Block Airlines' Gratuitous Fees Act, or the "BAG Fees Act," S. 3205, 111th Cong. (2010).

[41]26 C.F.R. part 49, subpart D.

Imposition of Checked Baggage Fees Has Contributed to Decrease in the Rate of Mishandled Bags and More Carry-on Bags

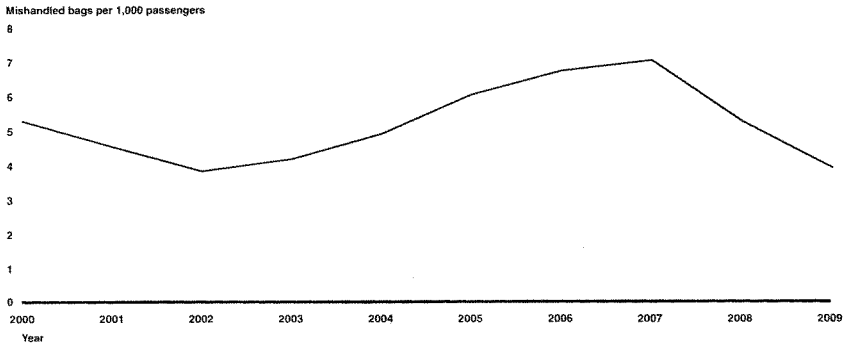
Since Checked Baggage Fees Were Implemented, the Reported Rate of Mishandled Baggage Has Declined

The introduction of checked baggage fees has, by several estimates, led to fewer checked bags, which, among other factors, has contributed to a decline in the number of mishandled bags per 1,000 passengers.[42] Some airline officials told us that the number of checked bags per passenger has decreased since the checked baggage fees were implemented. One airline official said checked baggage had decreased by half and officials at another airline reported the number of checked bags per passenger had decreased by 40 percent. As a result, the rate of mishandled bags per 1,000 passengers has declined since baggage fees were widely implemented. According to data submitted by airlines to DOT, the reported rate of mishandled bags per 1,000 passengers varied from 2000 through 2007 and declined 40 percent (from 7 per 1,000 to less than 4 per 1,000) from 2007 through 2009.[43] Figure 5 shows the decrease in the reported rate of mishandled bags per 1,000 passengers from 2000 through 2009 for U.S. airlines reporting to DOT.

[42]It is unknown whether baggage fees have had an effect on the rate of mishandled baggage per thousand bags as this information is not available.

[43]U.S. passenger airlines that have at least 1 percent of total domestic scheduled service passenger revenues are required to file monthly reports of mishandled baggage with DOT. 14 C.F.R. §§ 234.6, 234.2.

Figure 5: Reported Rate of Mishandled Bags per 1,000 Passengers for Reporting U.S. Airlines, 2000-2009



Source: GAO analysis of DOT data.

Airline Policies Differ in How Compensation to Passengers for Mishandled Bags Is Determined and Have Not Changed Due to the Introduction of Baggage Fees; TSA also Reviews Mishandled Bag Claims

Airline policies to compensate passengers in case of mishandled baggage, as outlined in their contracts of carriage, differ in the assistance to passengers and in the process for determining compensation.[44] For instance, 7 of the 17 airline contracts of carriage that we reviewed specify that baggage will be delivered if delayed, whereas the remaining 10 are silent on the issue.[45] In addition, 10 airline contracts state that efforts will be made to return delayed baggage within 24 hours, whereas the remaining 7 contracts do not specify a time frame. Airline policies on how passengers are compensated for mishandled bags are all subject to DOT's regulatory requirement that precludes airlines from limiting their liability for damages due to disappearance of, damage, or delay to checked baggage, to less than $3,300 per passenger.[46] However, other than this requirement, DOT does not currently specify baggage policies to include in contracts of carriage. DOT conducts random on-site investigations at airlines for compliance with domestic and international air travel rules and has completed 15 investigations in the past 2 years with 7 planned investigations for fiscal year 2010. DOT investigations result in either an enforcement order assessing civil penalties and specifying what the airline must do to be in compliance if problems are found or a notice letter to the airline when minor or no problems are found. DOT has no detailed requirements for how compensation should be determined, instead allowing baggage liability issues between passengers and airlines to be resolved through negotiations and in the courts.[47] Furthermore, most

[44]A contract of carriage is an agreement between a passenger and an airline that encompasses all contractual rights, liabilities, and duties of the two parties. Any term or condition of this contract is legally binding on the airline and the passenger and may be enforced in the courts. Checked baggage is also handled by TSA staff which conduct security screening. TSA has its own liability and claims review process that is different from airlines and which follows the Federal Tort Claims Act and related Department of Justice regulations. According to the Act and regulations, the government's liability and actual damages are generally determined by state tort law and a customer must make a claim within 2 years of the loss. 28 U.S.C. § 2401(b); 28 C.F.R. part 14. TSA and airlines attempted to reach an agreement on processing mishandled baggage claims, however, because of differences in claims processing, that attempt was unsuccessful.

[45]Although the 10 U.S. airlines' contracts of carriage did not say whether they provide bag delivery, the airlines may do so, but not make that service part of the contracts.

[46]14 C.F.R. § 254.4. Per regulation, this amount is reviewed by DOT every two years and adjusted in accordance with the Consumer Price Index. 14 C.F.R. § 254.6. DOT regulations also require notice of this limitation to be provided to passengers. 14 C.F.R. § 254.5.

[47]DOT prescribes what a contract of carriage should generally include, for example, incorporation by reference terminology, which is permissive but not prescriptive. 14 C.F.R. part 253.

airline officials reported that they have not adjusted their compensation policies for mishandled baggage since baggage fees were implemented because, according to some officials, the service provided has not changed. When asked whether DOT should specify airline compensation policies in cases of mishandled baggage in contracts of carriage, the agency responded that it has the authority to act against particular practices on a case-by-case basis and has done so with individual enforcement actions and industry letters to airlines. For example, in October 2009 DOT sent an industry letter to airlines advising that it had become aware of certain policies, such as denied reimbursement for necessities when the baggage is expected to reach the passenger within 24 hours, limited reimbursement to actual expenses up to a fixed maximum amount per day after the first day, and passenger reimbursement for incidental expenses only on the outbound leg of a roundtrip flight—all of which are considered arbitrary limits on expense reimbursement in violation of DOT guidance.[48] DOT's recent proposed rulemaking seeks comment on requiring carriers to include minimum standards in their customer service plans that would reimburse passengers for baggage fees if the baggage is lost or not timely delivered as well as establishing a definition for when a bag is not "timely delivered."[49]

[48]DOT, *Guidance on Reimbursement of Passenger Expenses Incurred as a Result of Lost, Damaged, or Delayed Baggage*, October 9, 2009. The letter further explained that to meet the requirements of Part 254 and the requirements implicit in 49 U.S.C. § 41712, carriers should remain willing to cover all reasonable, actual and verifiable expenses related to baggage loss, damage or delay up to the amount stated in Part 254. DOT took enforcement action against Spirit Airlines in September 2004 in part for limiting its delayed bag expense reimbursement to roundtrip passengers and expenses after the first 24 hours. Order 2009-9-8 (Sept. 17, 2009).

[49]DOT, *Enhancing Airline Passenger Protections*, NPRM, 75 Fed. Reg. 32318 (proposed June 8, 2010). The NPRM also proposes to require carriers to include a provision in their Customer Service Plans to make every reasonable effort to return mishandled bags within 24 hours, to compensate passengers for reasonable expenses that result from delay in delivery, and to include customer service plans in their contract of carriage.

Checked Baggage Fees Have Led to an Increase in Carry-on Baggage and Flight Crew Concerns Regarding Crew and Passenger Safety

According to some airline officials, since checked baggage fees were imposed, there has been an increase in carry-on baggage because some passengers who have chosen not to check a bag for a fee have instead brought bags into the cabin. Airline policies generally state that a passenger can carry on board one bag and one personal item.[50] An employee union representing flight attendants noted that this increase in carry-on baggage can slow passenger boarding and adversely affect the safety of passengers and flight attendants. In a recent survey by the Association of Flight Attendants, more than half of the responding flight attendants cited excess and oversized or overweight carry-on bags. The survey respondents also reported concerns with full overhead bins, an increase in checked bags at the gate, pushback delays, and stressful boarding situations. Almost one-third of the responding flight attendants reported concerns about injuries to airline staff and passengers from lifting carry-on bags.[51] As noted earlier, Spirit Airlines has introduced a fee for carry-on baggage—a policy that the carrier asserts is at least in part aimed at reducing the amount of carry-on baggage.

[50]FAA's Carry-on Baggage Rule, 14 C.F.R. § 121.589, does not set forth specific limitations on the number of bags or items a passenger can bring on to an aircraft; rather, it requires air carriers to have an approved carry-on baggage program in place.

[51]Survey of Flight Attendants, Association of Flight Attendants, February 2010. The results we cite are only representative of the 800 responding flight attendants.

Refundability of Government-Imposed Taxes and Fees Is Not Always Clear and Communication of Refund Eligibility to the Airlines and Consumers Is Lacking

The refundability of government-imposed taxes and fees on unused nonrefundable tickets varies depending on the tax or fee. TSA's September 11th Security Fee, which funds passenger aviation security services, is the only government-imposed fee or tax that is clearly refundable on unused nonrefundable tickets that expire or lose their value, according to TSA.[52] However, according to airline officials, the security fee is rarely refunded because its refundability is not well known by consumers, and a refund is only provided if a passenger requests a refund from the airline.[53] The IRS states that the aviation excise taxes—the 7.5 percent ticket tax, passenger segment tax, and international arrival/departure tax that fund FAA activities—are not refundable on unused nonrefundable tickets; however, to the extent that a portion of the ticketed fare is refunded, the collected tax attributable to that portion of the fare may be refunded to the passenger.[54] Thus, if airline policy allows a passenger to apply part of the fare for an unused nonrefundable ticket as a credit for future travel on the airline, the passenger receives a credit for the proportionate share of the taxes applied to the next ticket (less a change fee) and thus does not have to pay the taxes a second time. If, however, a passenger does not use the credit, the passenger may not receive a refund of the taxes. For example, according to DOT, some airlines offer a credit for the price of the ticket, including taxes and fees, minus a reservation change or cancellation fee and the difference in fares. Normally, passengers have to notify the airline prior to flight departure to qualify for a credit which is valid for 1 year for travel on the airline. However, these airlines would not provide a refund in cash of the ticket price. Because the excise tax is imposed on amounts paid for air transportation and not connected to the transportation itself, taxes paid on unused purchased tickets remain in the Airport and Airway Trust Fund.

[52]49 C.F.R. § 1510.9(b). Letter from Randall Fiertz, Transportation Security Administration, Acting Director of Revenue, to James Hultquist, Air Transport Association, Managing Director, Taxes. November 21, 2002, Docket No. TSA-02-11120-59. TSA imposes $2.50 per enplanement not to exceed $5 one-way or $10 roundtrip for aviation security inspection services. 49 C.F.R. §§ 1510.9(b), 1510.5

[53]If a collecting airline refunds the TSA fee to a passenger, the airline, through Treasury, submits this "credit" along with the fees it has collected at the end of the month in which the fees were collected, as required by statute. 49 U.S.C. § 44940(e)(3). The airline cannot retain any part of the fee to cover its costs; however, pursuant to statute, the airline is allowed to retain the interest earned from the trust account where fees are held. 49 U.S.C. § 44940(e)(6).

[54]Rev. Rul. 89-109 (1989) 1989-2, CB 232, as applicable to the 7.5 percent excise tax. IRS officials stated that the reasoning in this revenue ruling is also applicable to the passenger segment tax, and the international arrival/departure tax.

In regards to other government-imposed fees, according to CBP, which administers the Customs Air Passenger Inspection Fee and the Immigration Air Passenger Inspection Fee, applicable statutes and regulations authorize the refund of these fees on unused nonrefundable tickets. In the past, as CBP officials noted, the agency has allowed for such refunds and CBP indicated that they would not consider the refund of its fees to be improper insofar as fees can be refunded if inspection services are not provided. However, CBP has not issued policy or guidance that clarifies this practice or whether airlines can or must refund fees if requested by consumers. Additionally, CBP told us that when airlines do refund fees to passengers, it accounts for those with CBP as a "credit" on a subsequent submission of collected fees. In contrast, with respect to the Animal and Plant Health Inspection User Fee, USDA officials said that airlines may have refunded consumers this fee on occasion but do not know the circumstances of this and acknowledge that their controlling statute is silent on this issue. In regards to all of these fees, airline officials told us that they have received few, if any, requests for fee refunds. An official of a trade association that represents travel agencies told us that there is confusion about whether government-imposed taxes and fees are refundable. As a result, this official said, many travel agents state that they do not try to recoup taxes and fees on unused nonrefundable tickets for their customers. Table 2 shows government-imposed taxes and fees, their amounts, and agencies' interpretations of their refundability.

Table 2: Government-Imposed Taxes and Fees and Amounts Paid by Passengers and Legal Basis for Their Refundability on Unused Nonrefundable Tickets

Government-imposed tax/fee	Refund of government-imposed tax/fee authorized?
Passenger Ticket Tax[a] The law imposes a tax of 7.5 percent on the ticketed fare for flights within the continental U.S. or Canada/Mexico 225-mile buffer zone, with certain exceptions;[b] this amount is deposited in the Airport and Airway Trust Fund that primarily funds FAA activities.	No.[c]
Passenger Segment Tax[d] The law imposes a tax of $3.70 per domestic flight segment; this amount is deposited in the Airport and Airway Trust Fund that primarily funds FAA activities.	No.[e]
International Arrival/Departure Tax[f] The law imposes a tax of $16.10 per passenger for all flights arriving in or departing from the United States, Puerto Rico, or the U.S. Virgin Islands; this amount is deposited in the Airport and Airway Trust Fund that primarily funds FAA activities.	No.[g]
September 11th Security Fee[h] TSA imposes $2.50 per enplanement not to exceed $5 one-way or $10 roundtrip for aviation security inspection services.[i]	Yes.[i]
Customs Air Passenger Inspection Fee[k] A $5.50 fee is imposed for the arrival of each passenger aboard a commercial aircraft from a place outside the United States, with certain exceptions, for customs inspection services.	Yes. According to CBP, relevant statutes authorize airlines to refund fees if services are not rendered and have allowed for refunds in the past. However, CBP has not issued policy or guidance that clarifies this practice or whether airlines can or must refund fees if requested by consumers.
Immigration Air Passenger Inspection Fee[l] A $7 fee is assessed for each passenger arriving at a port of entry in the United States, or for the pre-inspection of a passenger in a place outside of the United States prior to such arrival for immigration inspection services.	Yes. According to CBP, relevant statutes authorize airlines to refund fees if services are not rendered and have allowed for refunds in the past. However, CBP has not issued policy or guidance that clarifies this practice or whether airlines can or must refund fees if requested by consumers.
Animal and Plant Heath Inspection User Fee[m] USDA imposes $5 per passenger upon arrival from a place outside of the customs territory of the United States for its health inspection services.	Unclear. According to USDA, relevant statutes and regulations are silent as to whether the fee is refundable on unused nonrefundable tickets.

Source: GAO analysis.

[a]26 U.S.C. §§ 4261(a), 4262(a).

[b]26 U.S.C. §§ 4261(a), 4262.

[c]Rev. Rul. 89-109.

[d]26 U.S.C. § 4261(b). A domestic flight segment consists of one take-off and one landing.

[e]Officials with IRS stated that the reasoning of Rev. Rul. 89-109 is applicable here.

[f]26 U.S.C. § 4261(c). Section 4261(c)(3) provides a modified international arrival/departure tax rate of $8.10 for domestic flights beginning or ending in Alaska or Hawaii.

[g]Officials with IRS stated that the reasoning of Rev. Rul. 89-109 is applicable here.

[h]49 U.S.C. § 44940, 49 C.F.R. part 1510.

[i]49 C.F.R. § 1510.5.

[i]See Letter from Randall Fiertz, Transportation Security Administration, Acting Director of Revenue, to James Hultquist, Air Transport Association, Managing Director, Taxes, November 21, 2002, Docket No. TSA-02-11120-59. TSA is considering promulgating further details on refunds under the Final Rule for 49 C.F.R. part 1510, which has yet to be issued.

[h]19 U.S.C. § 58c(a)(5)(A), 19 C.F.R. § 24.22(g).

[l]8 U.S.C. § 1356(d), 8 C.F.R. § 286.2(a).

[m]21 U.S.C. § 136a, 7 C.F.R. § 354.3(f).

Airlines Are Not Required to Notify Consumers That They May Be Eligible for Refunds

Although applicable TSA guidance requires the refund of the September 11th Security Fee on unused nonrefundable tickets that expire or lose their value, at the passenger's request, consumers are generally unaware that they may be eligible for a refund. According to TSA, regulations require airlines to refund the fee to consumers when a change in their itinerary occurs, but this occurs automatically.[55] We asked airline officials to describe the process by which they refund TSA fees to consumers and asked if consumers have requested refunds. Some airlines replied that they have not been requested by consumers to refund the fee and others were not aware that consumers were entitled to a refund but if requested they would issue one. We asked TSA officials why no policy has been developed to notify consumers of their rights. TSA responded that current refund policy sufficiently ensures that refunds will be provided upon request by the airline and TSA has not received complaints regarding an airline failing to comply with TSA regulation and guidance regarding refunds. Similarly, while CBP allows airlines to refund the customs and immigration inspection fees on unused nonrefundable tickets, because the agency has not communicated this to airlines or the public, consumers are unaware that they fees can be requested. We believe that given that consumers are not notified of a potential refund, they may be unlikely to realize their entitlement to such and, thus, would be unlikely to request a refund. DOT has the authority under 49 U.S.C. § 41712 to prohibit unfair or deceptive practices or unfair methods of competition and DOT believes ensuring that consumers are not mislead regarding their rights to refunds is within the scope of this authority. However, DOT staff point out that it has received few, if any, complaints about refundable government fees.

Conclusions

Airlines are increasingly charging fees for optional services that were previously provided without a separate charge. These fees, which may be paid at the time of booking, at check-in, or onboard, are not uniformly disclosed to passengers through the various distribution systems available

[55]49 C.F.R. § 1510.9(b).

to purchase tickets. DOT's current guidance does not require disclosure of airline-imposed optional service fees apart from those for checked bags although the agency issued a Notice of Proposed Rulemaking in June 2010 requesting public comment on this issue. Because information on some of these fees for optional services may be available only through airline Web Sites and not through the global distribution systems used by passengers who purchase tickets through online travel agencies or by travel agents, passengers may have difficulty calculating the total price of a trip and comparing prices among airlines. Making complete, clear, and uniform information on airline fees available through travel agents and airline Web Sites would enable passengers to make fully informed choices about travel options.

While certain airline fares are subject to the 7.5 percent excise tax, this tax does not apply to many airline-imposed fees, and consequently the Airport and Airway Trust Fund receives less revenue than if that tax applied to all fee revenues. IRS has determined that fees for checked baggage and many other services not currently considered to be part of the transportation of a person are not subject to the 7.5 percent excise tax. If baggage fees alone had been subject to the 7.5 percent excise tax in fiscal year 2009, the Trust Fund would have received approximately an additional $186 million in revenues. This amount is expected to grow in future years if airlines continue to shift toward more fee revenue relative to fare revenue.

It is hard to determine the amount of total fee revenues that airlines collect. Currently revenues from fees other than baggage fees and reservation change and cancellation fees are reported in miscellaneous and other accounts that also include revenues from non-fee sources. The BTS accounting and reporting directive on ancillary fees allows airlines to report in their quarterly financial filings to DOT revenues from most fees in various accounts. Not having a clear accounting makes it difficult for policymakers and regulators to determine total revenues from airline-imposed fees and the impact on the airline industry.

Finally, TSA's security fee is refundable on unused, nonrefundable tickets that expire or lose their value; however, there is currently no requirement or process in place to alert passengers that they are eligible for such refunds. Additionally, relevant statutes and regulations authorize CBP, via the airlines, to refund its customs and immigration fees but has not issued any policy or guidance that clarifies this. Finally, it is unclear if USDA's agricultural inspection fee is refundable. Without this guidance and determination of the refund eligibility of USDA's fee, consumers are not

aware the fee is refundable and consequently may not be receiving refunds to which they may be entitled.

Matter for Congressional Consideration

If Congress determines that the benefit of added revenue to the Airport and Airway Trust Fund from taxation of optional airline service fees, such as baggage fees, is of importance, then it should consider amending the Internal Revenue Code to make mandatory the taxation of certain or all airline imposed fees and to require that the revenue be deposited in the Airport and Airway Trust Fund.

Recommendations for Executive Action

We are making six recommendations to the Departments of Transportation, Homeland Security and Agriculture.

To improve the transparency of information on airline-imposed fees and government-imposed taxes and fees for consumers and improve airlines' reporting of fee revenues to the Department of Transportation, we recommend the Secretary of Transportation take the following four actions:

- Improve the disclosure of baggage fees and policies to passengers, in accordance with DOT guidance, by requiring that U.S. airlines and foreign airlines that fly within or to or from the United States disclose baggage fees and policies along with fare information such that this information can be consistently disclosed across all distribution channels used by the airline.
- Require U.S. airlines and foreign airlines that fly within or to or from the United States to disclose all airline-imposed optional fees that it deems important to passengers to know and further require that this information be consistently disclosed across all distribution channels used by the airline.
- Require that U.S. passenger airlines and foreign airlines that fly within or to or from the United States consistently disclose to passengers, applicable government-imposed fees on unused nonrefundable tickets that may be eligible for refunds once these determinations are made by relevant agencies.
- Require U.S. passenger airlines to report to DOT all optional fees paid by passengers related to their trip in a separate account, exclusive of baggage fees and reservation change and cancellation fees.

To eliminate the ambiguity regarding the refund of government-imposed fees to purchasers of unused nonrefundable tickets, we recommend that the Secretary of Homeland Security issue guidance regarding the refundability of the customs and immigration inspection fees to U.S. and foreign airlines collecting these fees.

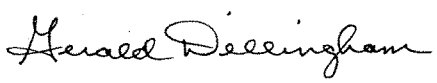
To eliminate the ambiguity regarding government-imposed fees that are eligible for refund to purchasers of unused nonrefundable tickets, we recommend that the Secretary of Agriculture determine whether a passenger is eligible for a refund of the animal and plant heath inspection fee and convey this determination to U.S. and foreign airlines collecting these fees.

Agency Comments and Our Evaluation

We provided a draft of this report to DOT, DHS, Treasury, and USDA for their review and comment. Within DHS, CBP noted in their oral comments that applicable statutes and regulations authorize the refund of customs and immigration inspection fees on unused nonrefundable tickets; however, officials stated that the practice had not been articulated in policy or guidance to airlines. As a result, we modified our recommendation to DHS from determining if consumers are entitled to refunds of customs and immigration inspection fees to issuing guidance to clarify refundability. DHS agreed with this recommendation. On July 9, 2010, DHS provided written comments from the Department and CBP, which are reprinted in appendix III. In comments, USDA also agreed with our recommendation to the Department. DOT neither agreed nor disagreed with our recommendations. All four departments provided technical comments which we incorporated into this report as appropriate.

Copies of this report will be sent to the Secretaries of Transportation, Homeland Security, Agriculture and Treasury. This report is also available at no charge on the GAO Web Site at http://www.gao.gov.

If you or your staff have any questions about this report, please contact me at (202) 512-2834 or dillinghamg@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made key contributions to this report are listed in appendix IV.



Gerald L. Dillingham, Ph.D.
Director, Physical Infrastructure

Appendix I: Scope and Methodology

We were asked to answer the following research questions: (1) What are the nature and scope of the fees airlines charge to passengers, are the fees commensurate with the costs of the services provided, and are the fees transparent to passengers? (2) What is the potential impact of such fees on revenues available to the Airport and Airway Trust Fund? (3) What changes have taken place in the numbers of checked and mishandled bags, amount of compensation paid to passengers for mishandled bags, and other consumer issues since airlines began charging more widely for checked baggage? and (4) What, if any, is the process for refunding government-imposed taxes and fees to passengers who do not use their nonrefundable tickets? To address these objectives, we analyzed airline financial and operating data; reviewed applicable laws, regulations, and past studies; and interviewed officials from the airline industry, the Department of Transportation (DOT), the Internal Revenue Service (IRS), the Department of Homeland Security (DHS), and the U.S. Department of Agriculture (USDA). Our financial analysis relied on airline financial information reported to DOT by airlines from calendar year 2000 through calendar year 2009—the most recently available. We used the Department of Commerce's chain-weighted price index for gross domestic product to adjust dollar figures to 2010 dollars to account for changes over time in the price level of the economy. To assess the reliability of the DOT Bureau of Transportation Statistics (BTS) data, we reviewed the quality control procedures applied by BTS and determined that the data were sufficiently reliable for our purposes.

To identify the nature and scope of airline-imposed fees, we developed a list of fees based on research of travel and 17 airline Web Sites and corroborated the data in interviews with officials from airlines.[1] In interviewing the airline officials, we used a semi-structured interview instrument, which asked questions pertaining to airline-imposed fees and how fee amounts were set. We correlated and assembled the results of the interviews so that airline proprietary information was not disclosed. To assess what is required in the disclosure of airline-imposed fees, we

[1]The 17 U.S. passenger airlines are: Air Tran, Alaska Airlines, Allegiant Air, American Airlines, Continental Airlines, Delta Air Lines, Frontier Airlines, Hawaiian Airlines, JetBlue Airways, Midwest Airlines, Southwest Airlines, Spirit Airlines, Sun Country Airlines, United Airlines, US Airways, USA3000, and Virgin America. We chose these 17 airlines based on several factors. All 17 airlines reported annual operating revenues of at least $20 million and together collected more than 99 percent of the checked baggage fees reported to BTS in 2008 and transported about 77 percent of domestic revenue passengers in 2008. Two airlines—Virgin America and Spirit Airlines—did not respond to our request for information.

analyzed applicable laws and regulations and interviewed officials from DOT's Office of Aviation Enforcement and Proceedings, which establishes laws and guidance related to full disclosure advertisement rules. To assess travel industry efforts to improve fee disclosure and policies, we interviewed officials from the Air Transport Association, International Air Transport Association, Airline Reporting Corporation, Airline Tariff Publishing Company, Sabre, Travelport, Amadeus, Interactive Travel Services Association, Business Travel Coalition, American Society of Travel Agents, and FlyersRights Organization.

To assess the potential impact of such fees on the Airport and Airway Trust Fund, we reviewed existing tax laws and regulations and spoke with IRS officials about the applicability of the excise taxes imposed on amounts paid for air transportation of persons to the airline-imposed fees we identified. We then calculated the potential impact in the most recent complete fiscal year (2009), on the Airport and Airway Trust Fund if revenues from baggage fees—revenues that airlines are required by DOT to report separately and that are not currently taxed—had been taxed at the 7.5 percent excise tax applied to fare revenues. We did not calculate the impact on the Trust Fund of taxing revenues from reservation change and cancellation fees, which are also reported separately, because these revenues are currently subject to the 7.5 percent excise tax. In addition, we were unable to calculate the impact on the Trust Fund if revenues from other currently untaxed fees had been taxed as these fee revenues are not required by DOT to be reported separately and some airlines in our sample did not provide this information to us when we requested it. We also spoke with IRS officials regarding what actions could be taken that would make currently untaxed fees subject to the 7.5 percent excise tax.

To examine issues with checked baggage, we reviewed data reported by airlines to DOT, and subsequently published in DOT's Air Travel Consumer Report. To assess the reliability of this data we interviewed DOT personnel regarding quality control procedures, and subsequently determined that the data were reliable for our purposes. We also interviewed DOT officials from BTS and the Office of Aviation Enforcement and Proceedings, DHS's Transportation Security Administration (TSA), airlines, trade associations, and other interest groups about compensation for mishandled baggage. We reviewed regulations and policies regarding checked baggage liability and disclosure requirements. We also conducted a content analysis of the results of an open-ended question on a survey conducted by the Association of Flight Attendants in February 2010 on the impacts of carry-on baggage. Our analysis enumerated the percentage of the 800 respondents that reported on excessive carry-on baggage and its

implications on boarding processes and in-cabin injuries. We reviewed the methodology and data collection instrument used by the Association of Flight Attendants in gathering this information, and determined that the data collected from the 800 open-ended responses was sufficiently reliable for our use. We also conducted an analysis of the contract of carriage of the 17 airlines in our sample. These contracts of carriage were accessed on each airline Web Site and information was corroborated in our interviews with airline officials.

To identify mechanisms for refunding government-imposed fees and taxes, we reviewed relevant agencies' statutes and guidance and interviewed officials from IRS, DHS Customs and Border Protection, Immigration and Customs Enforcement, TSA, and the USDA who are responsible for federal taxes and fees applied to airline tickets. We also interviewed airlines and trade associations on the process for refunding eligible government-imposed taxes and fees. We conducted this performance audit from October 2009 through July 2010 in accordance with Generally Accepted Government Auditing Standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Appendix II: Sample of Airline-Imposed Fees for Optional Services

Table 3: Domestic Checked Baggage Fees of 17 U.S. Airlines as of July 1, 2010

Airline	First bag (airport/online)	Second bag (airport/online)	Additional bags (each)	Overweight bags	Oversized bags
Air Tran	$15	$25	3+: $50	51-70 lbs: $49 71-100 lbs: $79	$49-$79
Alaska[a]	$20	$20	3: $20 4+: $50	51-100 lbs: $50	$50-$75
Allegiant	$35/$15-$30	$35/$25-$35	$35/$50	51-74 lbs: $50 75+ lbs: $100	$35
American	$25	$35	3-5: $100 6+: $200	51-70 lbs: $50 71-100 lbs: $100	$150
Continental	$25/$23	$35/$32	3+: $100	51-70 lbs: $50	$100
Delta	$25/$23	$35/$32	3: $125 4-10 $200	51-70 lbs: $90 71-100 lbs: $175	$175-$300
Frontier	$20	$30	3+: $50	51+ lbs: $75	$75
Hawaiian	$25/$23 inter-island: $10	$35/$32 $17 inter-island: $17	3-6: $125 7+: $200 inter-island: $25	51-70 lbs: $50 inter-island: $25	$100 inter-island: $25
Jet Blue	$0	$30	3: $75	51-70 lbs: $50 71-100 lbs: $100	$75
Midwest	$20	$30	3+: $50	51-100 lbs: $75	$75
Southwest	$0	$0	3-9: $50 10+: $110	51-100 lbs: $50	$50
Spirit[b]	$25/$19	$25	3-5: $100	51-70 lbs: $50 71-99 lbs: $100	$100-$150
Sun Country	$25/$20	$35/$30	$75	51-100 lbs: $75	$75
United[c]	$25	$35	3+: $100	51-100 lbs: $100	$100
USA3000	$25/$15	$25	$25	51-70 lbs: $25	$25-$50
US Airways	$25/$23	$35/$32	3-9: $100	51-70 lbs: $50 71-100 lbs: $100	$100
Virgin America	$25	$25	3-10: $25	1st <70 lbs: free 51-70 lbs: $50 71-100 lbs: $100	$50

Source: GAO review of airline Web Sites and interviews with airline officials.

[a]Alaska Airlines does not charge for the first 3 checked bags for trips wholly within the state of Alaska.

[b]Spirit revised its checked baggage fee for travel on or after August 1, 2010 to $25 for each of the first two bags, and $85 for each of the 3rd, 4th and 5th bags.

[c]United also offers a $249 annual fee to check one or two bags per flight without charge.

Table 4: Other Airline-Imposed Fees of 17 Airlines as of July 1, 2010

Airline	Ticket change or cancellation (domestic ticket)	Booking phone/ in person	Unaccompanied minor	Pet in cabin	Seat selection	Inflight food and beverage	Blanket and pillow
Air Tran	$75	$15/$0	$39 direct/non-stop $59 connecting	$69	$6 advance $20 exit row	F: NA B: $6	NA
Alaska	$100 ($75 online)	$15/$15	$25 direct/non-stop $50 connecting	$100	NA	F: $3.50-$7 B: $6	NA
Allegiant	$50 per segment	$15+$14.99 per segment /$0	NA	NA	$4.99-$24.99 varies by flight length and seat.	F: $2-$5 B: $2-$7[a]	NA
American	$150	$20/$20-$30	$100	$100	NA	F: $3-$10 B: $6-$7	$8
Continental	$150	$20/$20	$100	$125	NA	F: $0 B: $6	NA
Delta	$150	$20/$35	$100	$125	NA	F: $2-$8 B: $5-$7	NA
Frontier	$50 - $100	$0/$0	$50 direct/non-stop $100 connecting	$75	$15-$25	F: $3-$7 B: $2-$5[a]	NA
Hawaiian	$100-150 inter-island: $25-$30	$25/$35 inter-island: $15/$35	$100 inter-island: $35	$175	NA	F: $5.50-$10 B: $6.50-$14	NA
Jet Blue	$100	$15	$75	$100	$10 extra legroom	F: $0 B: $6	$7
Midwest	$100	$0/$0	$50 direct/non-stop $100 connecting	$75	NA	F: $3-$7 B: $2-$5[a]	NA
Southwest	$0	$0/$0	$50	$75	$10 priority boarding	F: $0 B: $3-$5	NA
Spirit	$110 ($100 online)	$5/$0 ($5 each way online)	$100	$100	Varies based on location.	F: $2-$5 B: $2-$6[a]	NA
Sun Country	$75	$15/$0	$75/segment	$100	$8	F: $3-$6 B: $5	$5
United	$150	$25/$30	$99	$125	$9/$109	F: $3-$9 B: $6	NA
USA3000	$75	$0/$0	$50	$75	$9-$25	n/a	NA
US Airways	$150	$25-$35	$100 (non-stop flights only)	$100	$5+ Varies by location.	F: $3-$7 B: $7-$8	$7
Virgin America	$100 ($75 online)	$15/$10	$75	$100	NA	F, B: $2-$10	$12

Source: GAO analysis

[a]Fee for some nonalcoholic beverages.

Appendix III: Comments from the U.S. Department of Homeland Security

U.S. Department of Homeland Security
Washington, DC 20528

Homeland Security

July 9, 2010

Mr. Gerald L. Dillingham, Ph.D.
Director, Physical Infrastructure
U.S. Government Accountability Office
441 G Street, N.W.
Washington, DC 20548

Dear Dr. Dillingham:

RE: Draft Report GAO-10-785 (Reference # 540204), Commercial Aviation: Consumers Could Benefit From Better Information about Airline-Imposed Fees and Refund of Government-Imposed Taxes and Fees

Thank you for the opportunity to review the draft report concerning the Department of Homeland Security's (DHS) aviation taxes, fees, and surcharges. DHS concurs with GAO's report findings and proposed recommendation. DHS had one recommendation for executive action. We would like to respectfully offer the following comments:

GAO Recommendation: That the Secretary of Homeland Security determines whether a passenger is eligible for a refund of the customs and immigration inspection fees and provide this information to DOT, to eliminate ambiguity of government imposed fees that are eligible for refund to purchasers of unused nonrefundable tickets.

DHS Response: DHS concurs with this recommendation. DHS appreciates the follow-up teleconference call with GAO to discuss the Draft Report and also acknowledges the changes made by GAO in its revised sections of the report.

DHS has reviewed the revised sections of the Draft Report. CBP would like to note that there is no separate ICE fee as referred to in the revised sections. CBP collects and administers the immigration fee and transfers part of the collections to ICE. CBP recommends changing this language throughout the report. CBP also recommends that GAO use the same language in Table 2 for the Immigration fee that they use for the Customs fee.

Thank you for the opportunity to comment on this draft report and we look forward to working with you on future homeland security issues.

Sincerely,

Jerald E. Levine
Director
Departmental Audit Liaison Office

2

Appendix IV: GAO Contact and Staff Acknowledgments

GAO Contact

Gerald L. Dillingham Ph.D. (202) 512-2834 or dillinghamg@gao.gov

Staff Acknowledgments

In addition to the contact named above, the following individuals made key contributions to this report: Paul Aussendorf (Assistant Director), Amy Bowser, Lauren Calhoun, Jay Cherlow, Brian Chung, Elizabeth Eisenstadt, Christopher Jones, Maureen Luna-Long and Josh Ormond.

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Testimony of Kevin P. Mitchell

Chairman, Business Travel Coalition

Concerning Airline Fees

Before the Subcommittee on Aviation

Committee on Transportation and Infrastructure

U.S. House of Representatives

July 14, 2010

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Mr. Chairman, Ranking Member Petri, and Members of the Subcommittee thank you for requesting that Business Travel Coalition (BTC) appear before you today to represent consumer and corporate managed travel interests on the subjects of airline product unbundling and extra fees for consumers.

My testimony today marks the 21st time BTC has been asked to provide testimony in Congress on competition, security and passenger rights issues. Today's hearing is by far the most important in terms of an issue's potential for harmful impacts to competition and consumers. BTC is not against unbundling as a matter of principle, but rather, it is opposed to the absence of disclosure of all fees and charges such that consumers cannot fully benefit from comparative shopping.

III. INDUSTRY CONTEXT

By way of industry context, airline product unbundling and ancillary fees took off like a rocket in the U.S. during the past 24 months such that the whole industry was caught off guard without systems and processes to properly identify, manage and control these expenses. In particular, corporate travel managers are on the receiving end of this industry surprise.

Thus far, multiple airlines dissecting the airline product in differing ways and then levying new and varying fees for services long included as part of the ticket price has caused significant new complexities and costs as well as obstacles for effectively managing corporate travel programs. Never has there been an opportunity for such serious bedlam in managed travel. Helter Skelter has become the rule of the day in airline pricing. Indeed, it's hard to find a corporate travel manager who supports this new industry direction, as currently implemented.

BTC yesterday published the survey results of 188 business travel industry professionals concerning airline fees and unbundling. The top-line results underscore deep concerns and the need for government oversight.

Consider:

- 100% of corporate travel managers indicated that unbundling and these extra fees have caused serious problems for their managed travel programs.
- 86% of travel managers believe that airlines, absent government regulation, will not make fair, adequate and readily accessible disclosure of their extra fees and charges so that travel managers and/or their TMCs can do comparison shopping of the all-in prices for air travel across carriers.
- 95% of travel managers support the proposal that the U.S. DOT require airlines to make ancillary fee data available and easily accessible to the travel agency channel through any GDS in which that airline has agreed to participate.

- 95% of travel managers do not support an airline distribution model wherein access to airfare and ancillary services content is available only on airlines' websites, or through direct connections to multiple airlines' inventory systems.

I should hasten to point out that survey participants are business people who, as a general proposition, do not favor government intervention in a marketplace. However, as with BTC, who testified four times since 1999 against passenger rights legislation, these industry experts lived through 10 years of airline stonewalling and broken promises and finally realized that the airlines were never going to take extended tarmac delays seriously until made to do so. Travel managers and travel agency executives do not want to wait 10 years, or even 1 more year to see if the airlines will properly disclose their ancillary fees in all channels in which they sell their products - and thus already make their published, but now incomplete, fares available.

In addition to managed travel issues, there are significant consumer issues.

In the leisure and unmanaged travel segments, the unbundling concept could succeed or fail based upon millions of individual purchasing decisions as well as competitive responses. Some consumers will value the different choices; others will feel they are being "nickel and dimed." Still others could become confused should all carriers eventually unbundle without uniform standards, adding great complexity at the industry level. As Procter & Gamble acknowledged in the 1990s, 27 varieties, of just its shampoo, on a supermarket shelf does not necessarily equate to consumer choice, but often consumer confusion.

What's more, with such across-the-board unbundling of the price to be paid for the travel services desired, consumers may not have any ability to evaluate the full price of the several air travel options available. Today, these unbundled elements of the price to be paid for air travel are missing entirely in the responses of travel agencies to fare shopping entries that seek to compare prices across carriers. Nearly all travel agencies, and thus nearly all corporate travel departments, depend on GDSs for all their fare information. Accordingly, this current opaque approach by airlines to pricing will inevitably impede a consumer's search for low fares. As one does not usually see these "extras" until well into the transaction, a large segment of consumers will not start over in the quest for low fares by looking at alternative airlines. Economists will say that anything that increases "consumer search costs" invariably raises prices paid.

Consumer and passenger advocates could argue persuasively that unbundling, which results in airline products looking less expensive in GDSs and website shopping inquiries than would likely be the case after the extras are piled on, results in higher prices paid because with search costs increased, more shoppers will just miss a de facto lower "all-in" fare that includes the extras. The game could be viewed as bait-and-switch: from an ostensibly lower fare to an actual higher fare.

The Consumer Travel Alliance just published an analysis that vividly shows how unsuspecting consumers can become entrapped by hidden fees upon arrival at the

airport. The analysis focused on four popular flight itineraries taken by millions of travelers each year - New York-Los Angeles, Boston-Washington, Chicago-Miami, and Washington-Orlando – and included just two of the common fees now charged by airlines: checked baggage and extra legroom.

Consider:

- A typical traveler requesting extra legroom and checking a single bag would pay an average of one-quarter (26%) more than the base price of the ticket shown on the website.
- A traveler checking two bags would pay more than half the price of the ticket in additional fees that were hidden at the time of the transaction (54%).
- The amount of hidden fees charged to a typical traveler with a single bag ranged from 10% to 82% of the price of the base fare.
- The amount of hidden fees charged to a typical traveler with two bags ranged from 21% to 153% of the price of the base fare.

II. WHY ARE SOME AIRLINES APPARENTLY STONEWALLING AGAIN?

a. To be painfully honest, major network airlines often have a strong incentive to mislead consumers. They remain at a 30% to 35% cost disadvantage against low-cost carriers (LCCs), and as such, cannot offer the kind of across-the-board low fares the LCCs do. There is a motivation present to obfuscate the true all-in price by hiding fees and especially resisting efforts to have fees and fares made available in a comparative display for travel agents via the global distribution systems (GDSs).

b. The Airline Tariff Publishing Company (ATPCO) has a data system tested by 27 airlines - including all the major U.S. airlines - and ready to go to facilitate the loading of ancillary fees in the GDSs and their comparative presentation on travel agents' screens. However, not a single major U.S. has signed on to use the new system because the first airline to do so will likely show higher all-in fares by 30% or more than competitors. In an industry where a few dollars can make the difference for a consumer in choosing one airline over another, this could be the equivalent of competitive suicide.

c. Some airlines would like to force GDSs and travel agencies to pay for access to their unbundled services; an audacious play to shift the costs of merchandising and distributing their products and services onto the backs of consumers who are already paying for these business activities in the prices of their tickets.

III. FALSE ARGUMENTS

a. Some airlines may argue that the cost of making ancillary fees widely available to consumers would be too high. However, participation in ATPCO's new system would cost just $3,000 per month, per airline. Surely, this is a false argument given the billions of dollars being collected for ancillary fees.

b. Other airlines may argue that there are technical impediments to providing such data to consumers, but 27 airlines have successfully tested ATPCO's new system. So one would naturally ask why as to the disclosure of fees airlines cannot do what the airline-owned ATPCO says 27 of them are doing and that ATPCO says six pricing systems, including the three GDSs, are receiving and testing?

c. Airlines can be expected to complain that the U.S. DOT's Notice of Proposed Rulemaking (NPRM) is "interference in the marketplace." However, the airlines have the data now; the technology solution has been developed by ATPCO; and the $36,000 per year cost is insignificant. How can airlines then oppose DOT's anticipated rule to require them to provide the fee data in an easily usable and accessible manner for travel agencies via the GDSs in which they participate? DOT is not endeavoring to regulate the marketplace, but to ensure adequate disclosure practices.

d. Airlines claim they have no obligation to provide fee data to travel agencies. However, agents are the legal agents of the airlines, and as such, how can airlines not provide all pricing information to them? If an airline has decided to agree with a GDS that agents using that system can sell the airline's fares, then partial disclosure of the entire price for the services the travelers need or want by not providing the data on extra charges in an electronic and easily accessible way via that GDS is just not a defensible option. It is deceptive per se. Airlines are in effect trying to make only a part of the airfare visible; they are not providing the entire fare.

IV. CONSUMER PROTECTION'S NO MAN'S LAND!

a. The federal government should be impelled to provide detailed and meaningful consumer protections in commercial air transportation because unlike the case in nearly all other industries consumers have no protections against unfair or deceptive practices by airlines from the FTC and no legal rights under state laws to seek redress for abysmal treatment because of federal preemption -- a doctrine the airlines have championed and fight hammer-and-tong to defend and expand. Moreover, under federal law (49 USC Section 41712) consumers do not have a right to sue for bad service. In the currently open NPRM, DOT recognizes the uniquely vulnerable position of air travelers in this virtual no man's land. In short, except to the extent Congress or DOT mandates specific consumer protections, consumers are

without legal rights and without legal remedies. Airline treatment of passengers when there were horrific tarmac delays, before DOT acted decisively, is an example of when government needs to responsibly protect consumer interests.

b. It is highly significant that the DOT economic analysis underpinning its NPRM found that while all four of the online travel agencies (OTAs) displayed the "entire price" of a ticket including government and airport charges for different travel options (data currently available in the GDSs), only one of eight airline websites did. This marked difference in approach to disclosure can perhaps be explained by the fact that OTAs and brick-and-mortar travel agencies have no inherent economic incentive to collect higher as opposed to lower prices for airline tickets. Most importantly, this finding by DOT underscores the needed, pro-consumer role that travel agencies and OTAs can play in spurring airlines themselves to make better disclosure of the entire price including ancillary fees on their websites. Of course, travel agencies and OTAs cannot carry out this salutary mission unless carriers are required to provide them via the GDSs on which they rely for fare information the airlines' data specifying their extra fees and charges.

I. CONGRESS CAN MAKE A DIFFERENCE

The single most important step this Committee can take is to urge the DOT, through its NPRM, that in addition to requiring airlines to make add-on fee data available and easily accessible on their websites that they should be required to make that same fee data available to the travel agency channel through any GDS in which that airline has agreed to participate. Congress could also provide this relief in the FAA Reauthorization Act through Senator Menendez's sensible disclosure proposal.

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BTC survey results can be downloaded at http://www.businesstravelcoalition.com/fee_survey_results.pdf

Statement of

Kyle Moore

Vice President, Marketing

Sabre Holdings

On behalf of

The **Interactive Travel Services Association**
American Society of Travel Agents and
Consumer Travel Alliance

Concerning Airline Fees

Before the

Subcommittee on Aviation

Committee on Transportation and Infrastructure

U.S. House of Representatives

July 14, 2010

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Statement of Kyle Moore on behalf of the
Interactive Travel Services Association
American Society of Travel Agents
Consumer Travel Alliance
Concerning Airline Fees
Subcommittee on Aviation
July 14, 2010

Good afternoon, Mr. Chairman, Ranking Member Petri, and Members of the Subcommittee. The Interactive Travel Services Association (ITSA), American Society of Travel Agents (ASTA) and the Consumer Travel Alliance (CTA) all appreciate the opportunity to present our views on airline add-on fees and charges, and making them as transparent to consumers as possible.

My name is Kyle Moore, and I am the Vice President for Marketing of Sabre Holdings, owner of both the Sabre Network Global Distribution System (GDS), and Travelocity, an online travel company (OTC). Both are leaders in their fields, with our GDS, the largest in the United States, serving as the intermediary between airlines and other travel providers and thousands of travel agencies, including both traditional "brick-and-mortar" agencies and OTCs. All of those travel agency users rely on the computer reservations system provided by the Sabre GDS for timely, accurate and comprehensive air travel pricing and availability information on our nearly 400 participating airlines. Sabre is a long-time and active member of both ITSA and ASTA.

ITSA is the trade association for OTCs and GDSs, and is their voice on matters of public policy. ITSA seeks to promote consumer choice, access, confidence, protection and information in the world of online travel, and to develop consensus among industry, consumer organizations and policy makers on issues related to consumer use of the Internet to meet their needs.

ASTA is the largest association of professional travel retailers in the world. Its mission is to facilitate the business of selling travel through effective representation, shared knowledge and the enhancement of professionalism. ASTA seeks a retail travel marketplace that is profitable and growing and a rewarding field in which to work, invest and do business. See www.asta.org.

CTA is a non-profit organization created to inform and educate legislators, regulators and their staffs about policy issues affecting the travel needs of consumers. The alliance is a member of the Consumer Federation of America. CTA is intimately involved with the current conference committee negotiation over the Federal Aviation Administration Reauthorization. The alliance is also working with state regulators, the Federal Trade Commission and the Department of Transportation on privacy issues, travel insurance, and other pressing consumer issues with online and traditional travel agents and in the area of travelers' rights.

ITSA, ASTA and CTA do not object to airlines' "unbundling" and charging separately for services that have traditionally been included in the prices paid for airline tickets. However, these organizations believe that, regrettably, the proliferation of add-on fees and charges has created such a broad array of potential fees for consumers that the risk of confusion and unpleasant surprises at the airport -- absent full and timely disclosure -- is unacceptably high.

At least 50% of consumers purchasing an airline ticket do so through intermediaries such as OTCs and traditional travel agents because they prefer shopping at comprehensive outlets that offer the flights and fares of numerous airlines. As a matter of first principles, ITSA, ASTA and CTA are convinced that this enormous segment of the traveling public is no less deserving of consumer protection than those travelers who prefer to buy tickets directly from the airlines.

Transparency is the Solution: All add-on Fees Should Be Fully Disclosed Prior to Purchase

We believe that the solution is transparency -- full disclosure of information about airline add-on services and fees to consumers when they need it: when those consumers are comparing prices for the full cost of travel prior to purchase.[1] Transparency will safeguard the overriding interest of air travelers in not being confused or, worse, misled, about the price to be paid for air travel and yet not inhibit airlines from unbundling services if they choose

All airlines should provide full information about all of their add-on fees and charges directly to those consumers who buy tickets from the airlines themselves and, just as importantly, to the GDSs in which they have agreed to participate so that the information can be made available to travel agencies and OTCs for adequate and timely disclosure and sale to consumers. Unfortunately, we are quite concerned that airlines have not, and will not, share information on their add-on services and fees to GDSs and agencies.

While we certainly understand the need for airlines to increase their revenues through add-on fees to shore up their financial condition, broad disclosure of such fees can and does have a positive effect on competition. This benefits consumers both through moderating prices and product innovation. Further, disclosure to agencies allows comparison shopping on a single OTC site or through an interface with a travel agency. This comparison shopping, a major advantage of agency distribution, benefits consumers and contributes to enhanced airline competition generally. This holds true not only for

[1] Concerning when that time would be defined to be, while airlines generally are likely to offer all ancillary services for sale at the time of initial booking, there could be situations where they do not. For example, an airline might decide to offer a fare for sale that expressly does not include various items which it then would later offer for purchase by travelers who bought the fare earlier. In situations such as this, travel agents and OTCs must also have access to the services and fees information at that time, not just at the time of initial booking.

airline fares, but would undoubtedly just as well for add-on fees should information on those fees be provided by the airlines.

ITSA, ASTA and CTA support legislation to reauthorize the Federal Aviation Administration. More specifically to the issues raised at this hearing, we support provisions in that legislation that would ensure transparency and full disclosure of information to consumers at the time of shopping and purchase. This notably includes the amendment added to the Senate bill by Senators Menendez and Schumer that would require it. We urge full support of that amendment in conference, including a key adjustment endorsed by both these Senators and other Members that would require the information be shared in a timely way through all intermediaries, such as GDSs, in which an airline participates.

Moreover, the Department of Transportation is currently conducting a rulemaking to generally enhance passenger protections under its legal authority to protect consumers from unfair or deceptive practices.[2] Current airfare regulations under this authority were written when fees for all air carriage services were included in the overall ticket price. As those services and fees are being unbundled, DoT is appropriately updating its regulations to ensure consumers will still be adequately protected. Among the changes DoT is considering is requiring the airlines to fully and timely furnish information about their add-on fees and charges to intermediaries through the GDSs in which the airlines make their basic fares available. ITSA, ASTA and CTA will be filing comments urging adoption of this requirement.

In my testimony today, in addition to discussing transparency, I will provide an overview of the relationships between airlines and their third-party intermediaries through the distributive services of the GDSs. That overview will include how content on airfares, schedules, code shares and more is provided, and updated some five times a day, to the GDSs through a clearinghouse created by the airlines: the Airline Tariff Publishing Company (ATPCO). It will also include a brief review of the multi-industry party effort to create the technical standards to similarly provide and update information on ancillary fares through a new protocol called ATPCO OC. That protocol has been tested by more than 20 airlines, including most of the US major carriers, and is ready for implementation.

Background on, and the Accelerating Momentum of, Unbundling

For decades, the "all-in price" of the basic elements of the air travel experience for nearly all travelers was reflected in the fares that airlines published and that the airlines and travel agents[3] – who are the legal agents of airlines for the sale of tickets – communicated to ultimate consumers before they committed to a travel purchase. As a consequence, the full and inclusive price of each of the travel options on numerous airlines being considered by a consumer was easy to determine. Consumers benefitted enormously from this pricing transparency.

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[2] 49 USC 41712

[3] The term "ticket agent" includes both traditional "brick and mortar" agencies and OTCs.

Over the last two to three years, the airline pricing regime has changed radically. Airlines have "unbundled" their product, and many are now levying significant add-on fees and charges for services once widely taken for granted as included in the ticket price. The most notable example of this trend is checked baggage fees. The common, long-standing practice in the airline industry was to allow each passenger to check two bags without extra charge as part of the basic service rendered for the fare paid, subject to certain size and weight restrictions.

Today, by contrast, a passenger traveling domestically on nearly all of the major U.S. airlines who checks two standard size suitcases would be charged somewhere between $55 and $60 each way. Assuming an average round-trip ticket price of $300 for U.S. domestic travel, that extra fee is significant for most consumers – representing a price increase of roughly 40% over the "published" fare. It is beyond debate that in most circumstances an airline charging such a premium on the fare itself would expect notable losses of market share to other airlines with competitive schedules. Moreover, some of the competitors of these large carriers charge lower fees for two items of checked baggage (such as AirTran and JetBlue), or no such fees at all, as is the case with Southwest.

Given the widely reported new policies by U.S. airlines on the size and number of bags that can be carried onboard, with many travelers being compelled to check their luggage, these sizable fees cannot be readily avoided by many consumers. For example, a family of four, consisting of two adults and two young children, booking a week-long vacation could hardly be expected to travel with carry-on baggage alone. Thus, there can be little doubt that the fees an airline imposes for checked baggage should be clearly and effectively communicated to consumers before they are locked into a purchasing decision in order to avoid widespread consumer deception about a matter of the utmost importance – i.e., the price paid for the services to be used.

Therefore, the disclosure provisions added to the FAA Reauthorization bill are quite welcome. Moreover, DoT has maintained a policy since 2008 requiring appropriate disclosure by airlines of their checked baggage charges in advertisements. However, the critical problem that remains in both the proposed legislation (as currently written) and DoT's checked baggage policy is the absence of a requirement that each airline provide the travel agents on whose behalf they sell tickets the needed baggage and other add-on fee information in a usable, reliable and efficient manner. In other words, the information may be available for passengers who deal directly with the airline, but it is not available for the large percentage of passengers that choose to work through online and traditional travel agencies.

To obtain add-on fee information is a time-consuming, manual process that is overwhelming and simply does not work for traditional travel agents or OTCs – all of whom operate in a very competitive business where efficiency is paramount. Today, they must resort to reviewing carriers' websites, and waiting for their news releases or reports in the trade or general media. In order to stay abreast of constantly changing ancillary

fees at potentially hundreds of airlines, they would have to substantially add to staff, which is unaffordable. This process is highly ineffective and unworkable, in contrast to the situation with airline fares, which airlines do share with their agencies in a timely, robust manner through the GDSs or otherwise.

The potential for consumer harm is great here. As I noted above, more than one half of all air travel is sold in the United States by travel agencies, as contrasted with the airlines directly.[4] In a nutshell, while airlines have been energetically engaged in various efforts to dissect the air transportation product and assess these new fees, the industry has been slow and apparently reluctant to develop vehicles for effectively and timely communicating to the agencies information on add-on services and fees.

The new and substantial charges for checked luggage were only the vanguard of added fees imposed on consumers for services once included in the published fare. For example, AirTran levies an added roundtrip fee of $40 to reserve an exit row seat, and Frontier assesses a roundtrip fee of $30-$50 for the right to reserve a seat with "extra legroom." Recognizing that both United and US Airways already impose additional charges for premium seat selection in economy, the recent announcement by Continental that it too will impose a new charge for extra legroom increases the chances that unbundled premium seat charges will become a new norm. Moreover, Spirit has added yet another unbundling innovation: charges for carry-on bags.

Further, some airlines impose a fee to purchase any seat on their aircraft in advance of check-in, with higher fees imposed for perceived preferred seats. On these airlines, a passenger therefore now purchases air transportation through the base fare, but must then separately purchase a seat on the plane unless the passenger waits until 24 hours before check-in, at which time a specific seat can either be purchased or one will be assigned without a fee (from, predictably, inferior seat positions remaining at that time). Consider the impracticality of this for that same family of four traveling together.

Among a litany of others, examples of additional services for which carriers have begun charging consumers fees are:

- Blankets/pillows in flight – American charges $8, JetBlue $7, USAir $7, and Virgin America $12, with the rest of the carriers apparently charging nothing at the moment.
- Meals – while most carriers assess some charge on coach passengers for an in-flight meal, at the moment Continental and JetBlue appear to offer meals on some flights with no added fee.

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[4] A whitepaper recently authored by PhoCusWright, the air travel industry analytical authority, which underscores the importance of the travel agency network in distributing air transportation, with a specific focus on the role of the GDSs in the distribution chain. A copy of that paper: "The Role and Value of the Global Distribution Systems in Travel Distribution," can be found on the ITSA website: www.interactivetravel.org.

- WIFI – charges vary widely by carrier, with our research suggesting American Airlines charges a fee of $10-$13 and Continental $4.95 but with a price that varies by usage in the case of Continental.

Undoubtedly, there is more unbundling of airline pricing to come. While we are neutral on the decisions of the airlines to unbundle their fares, we do object to unbundling of airline pricing in the absence of the airlines disclosing their add-on fees and charges to their agents in an effective, efficient, usable and timely manner. Without such disclosure by the airlines, travel agencies have no practical, workable way to acquire the information they must have in order to disclose to the traveling public the full, all-in price of each of the options the traveler is considering. As a result, consumers are unable to engage in meaningful comparative shopping among airlines because large elements of the full price for travel are missing from the agency websites and from the data available to travel agents. Competition is enhanced when consumers have more information, not less.

On that score, it is widely known that air travelers are highly price sensitive, with a fare differential of even a few dollars regarded by airlines as sufficient to drive consumers to choose one alternative over another. Since consumer behavior has demonstrated irrefutably that even a few dollars are critical in making an air travel buying decision, any airline pricing regime that fails to ensure travel agencies are equipped with this key information about charges for add-ons generates substantial risk of broad consumer confusion, if not functional deception. Failing to adequately, or at all, disclose a $60 fee each way could mislead consumers into picking a flight they would not otherwise choose when there was an alternative flight with zero baggage fees. The larger the amount assessed the more compelling the need for full and fair disclosure.

In the United States today, nearly all travel agencies continue to heavily rely on GDSs to obtain information on airline fares and to book the airline tickets they sell. They do so because of the enormous efficiency these systems offer, providing in a neutral, unbiased manner easy-to-use data on scores of airlines with just a few keystrokes. By enabling fare transparency, the GDSs have, indeed, been a major force over time for saving consumers hundreds of millions of dollars annually – permitting travel agencies to perform in a few seconds an apples-to-apples comparison of the full price of <u>all</u> travel options in a particular market. Nonetheless, GDSs can only provide their travel agency subscribers – brick-and-mortar and OTC – the pricing data that the airlines in turn supply to them.

<u>ATPCO OC: A New Industry Standard in Place to Communicate Add-on Fees</u>

Fortunately, essential industry standards for enabling efficient communication of add-on fees to GDSs have been developed recently. These standards are now provided through an information clearinghouse established by the airlines, the Airline Tariff Publishing Company ("ATPCO"), through a newly-launched product called "ATPCO OC" (also referred to as ATPCO Optional Services and Branded Fares). Importantly, ATPCO OC establishes over 100 unique fields that can be used by airlines to identify, and file their fees and services for, any particular ancillary fee they choose to assess. The

GDSs are now completing the system modifications required to display the data to their subscribers in ways that will effect the needed disclosures. More than 20 airlines have tested the system successfully, and the GDSs will begin adding that data to their "live" travel agency displays in coming weeks and months. Attached is an appendix that describes the ATPCO – GDS process in detail, including a roll-out of ATPCO-OC and its capabilities, beginning this month, by using the Sabre system as a proxy for the industry.

Of course, ATPCO OC is very welcome news. However, ATPCO OC can be a fix to the problem of inadequate disclosure by airlines of this vital pricing information to their lawful agents only if all the airlines that engage in unbundling actually utilize ATPCO OC to transmit this data to the GDSs. Unfortunately, to date, while approximately 86% of US point-of-sale bookings are covered by those airlines that have "test-filed" ancillary data via ATPCO, no airlines – to my knowledge – have definitively and publicly indicated that they will continue to provide the necessary information via ATPCO for long term use within the industry.

In fact, we are concerned that airlines have a disincentive to provide the data, as that data would make the prices of their products seem higher. Every airline would of course prefer to appear lower-priced than its competitors for the longest possible time. Thus, powerful economic motivation exists for airlines not to provide the add-on price information to the GDSs.

Therefore, airlines should not be permitted to assess, before or at check-in, add-on fees and charges unless that airline timely makes detailed fee information available to its ticket agents in the same way and at the same time that it makes available to the GDSs information on its fares. Absent a consumer-protection requirement in this area, consumers are destined to be left in the dark.

In other words, through ATPCO OC there is a process and technologies in place right now for full disclosure of add-on fees that will work across all channels which provide information on airfares to consumers. But it will not work at all unless content is supplied by the airlines in a comprehensive and timely way. Without the provision of that content, these advanced and consumer-friendly information solutions will be all dressed up, but have nowhere to go.

Again, Mr. Chairman, ITSA, ASTA and CTA are very pleased to have had this opportunity to communicate our views on the very important matter of fully, usefully and timely disclosing of airline ancillary fare information to the flying public no matter the channel -- directly from airlines or via any intermediary in which an airline participates -- they choose to use.

Thank you, and I will be happy to answer any questions you may have.

Appendix to Testimony of Kyle Moore on behalf of ITSA, ASTA and CTA: GDSs, ATPCO and the Process of Providing Airfare Information with Sabre as an Industry Proxy

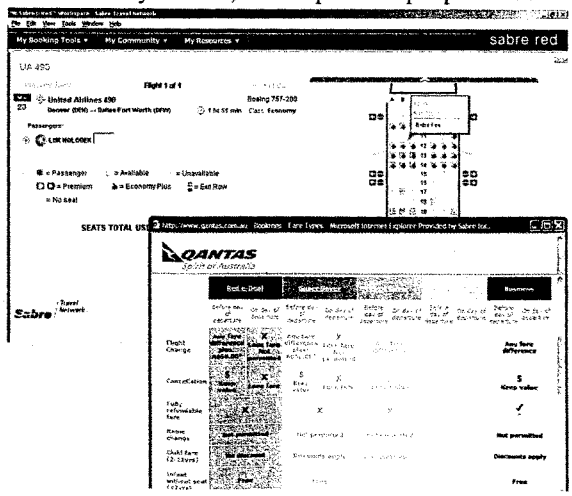
As an example of what the GDS industry as a whole is pursuing to support airlines in unbundling their fares while providing full and clear data to our online and traditional travel agent customers to benefit the flying public, following is some detail on Sabre's services and the "solutions" we have engineered. We have done this in concert with other air travel stakeholders, including airlines, agencies, as well as the key industry standards setting bodies, ATPCO (Airline Tariff Publishing Company), ARC (the Airline Reporting Corporation), and IATA (the International Air Transport Association) to address these important needs. However, none of these solutions will be effective absent full disclosure of add-on services provided by the airlines.

Sabre initiated efforts to support airline merchandising and ancillary product sales in 2005 as a response to changes by airlines in how they sold their products and services. In Sabre's case, developing this support was important for both our GDS distribution business and our airline SabreSonic reservations hosting business. Our efforts were similar to those of our competitors.

Both our GDS and our reservations hosting business did this to assist airlines in their attempts to improve revenue, differentiate their services, and create efficiencies. These changes to our systems enables travel agencies – both traditional and online, as well as full service corporate Travel Management Companies – to shop for and book these new products and services via the GDS. In turn, that ensures that their traveler customers can continue to rely on travel agents and other intermediaries to help them manage their travel plans and the costs of travel.

Air Merchandising comes in two basic philosophies:

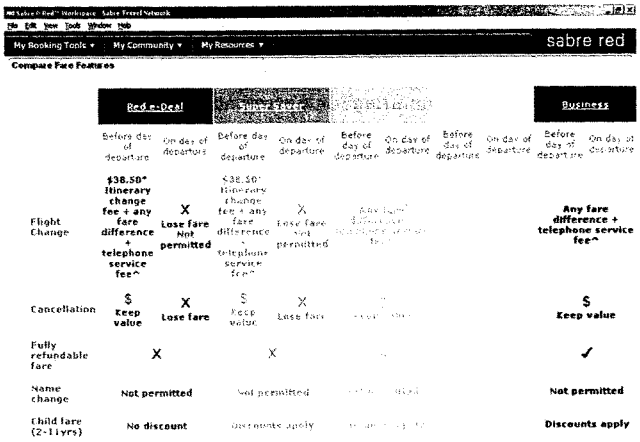
- Airline Unbundling: unbundling allows airlines to separately sell select products and services – often termed ancillaries – as add-ons to the fare. Today, Sabre allows agencies to sell some ancillary services, such as premium pre-paid airline seat selection and insurance, at the time of the original booking. Midwest, Westjet (both SabreSonic CSS hosted), and United Airlines all use Sabre's paid seat selection capabilities. Of the many other airlines pursuing



unbundling, Spirit, Ryanair, and easyjet are notable, while a multitude of airlines support the sale of one or two ancillaries, e.g., checked baggage, WIFI, or lounge access, among many other items.

- Airline Bundling: many airlines around the world have created *fare families* or *branded fares*, offering specific products and services bundled into an offering for the traveler. Sabre provides agencies the ability to book these fare families – representing the same content present on the airline's website within the travel agent point of sale. Qantas (in the attached graphic from their website), Porter Airlines, Malasian, and Aeromexico have already implemented the capability in Sabre.

The screen shot at right shows how Sabre has enabled these new airline approaches to be presented in the desktops of travel agents, within their standard workflow. This is consistent with the direction of other GDSs in the marketplace: more-or-less an industry standard. This ensures travel agents can easily ascertain and sell the new and important airline content in a manner that maximizes shopper efficiency in the process – whether that is insight into the features and benefits in the airline branded fares or access to the ancillary seat sale products available for those carriers that have implemented the solutions.



ATPCO OC and EMD Settlement: Dramatic Expansion of Add-on Fares Communications Capabilities

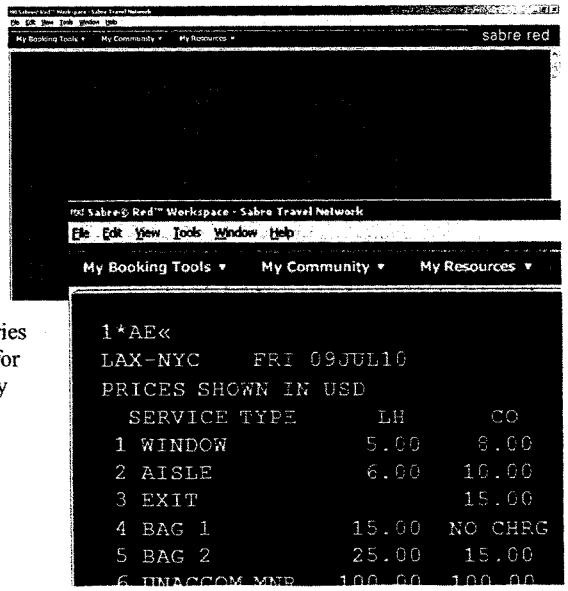
As mentioned above, a new protocol, ATPCO OC, has been developed that can greatly accelerate the solutions just outlined, enriching the information available through the GDS community's solution set and built around standards outlined through a partnership among airlines, agencies, the GDS companies and the key standards setting bodies: ATPCO, Airlines Reporting Corporation ("ARC"), and the International Air Transport Association ("IATA").

Fundamentally, to enable the broad shopping, selling, payment, settlement, and reporting of ancillary services, the industry has outlined an approach consistent with how it has traditionally managed product changes. It has created processes for the products and services to be easily communicated among the various players: the shopper (whether a traditional travel agent or a traveler shopping online), the airline, the GDS, the settlement bodies such as ARC and any other third parties involved in the sale and fulfillment of the products and services.

At Sabre, we are initially focusing on those ancillary groupings that are most important to our SabreSonic CSS reservations hosting customers, as well as those airlines that have expressed priorities for GDS distribution. These include items such as: baggage fees, seat assignments, ground transportation, in-flight entertainment, lounge access, medical needs, meals, pet-in-cabin, and unaccompanied minor travel. These are all in plan for release in 2010, with other product categories to be added during 2011.

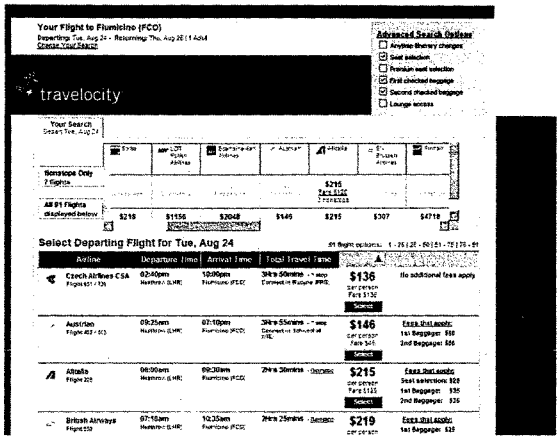
As they have historically done for traditional fare content, airlines use a broad range of highly flexible rules to manage the applicability of fares for particular trips and travelers. Now, travel industry stakeholders have collaborated on the creation of standards to support the provision of ancillary content – both the products that are made available and the rules that govern their applicability – to the broader travel community. ATPCO has long managed systems and processes for airlines to broadly disseminate their products, and these same tools are available for the airline community to introduce their ancillary products to the broader marketplace. They can price and file the ancillary content, varying them as necessary in a variety of ways: by specific flights, fares and inventory classes, by days and, times, and by specific customers or groups of travelers, among many others. This allows the airline to ensure that they can target the ancillaries with the same level of specificity that they use to target their traditional fare products.

As ancillary content is provided via ATPCO and, ultimately, settled via ARC and Bank Settlement Plans (BSPs) around th world, the Sabre GDS is prepared to show the products and services in the agent shopping displays (shown at right), just as they show the airline flights and inventory in those displays, assuming the airlines provide the content via ATPCO. The system will alert the shopper that ancillaries are available for purchase – for each flight item in the display (*AE or "Air Extras").



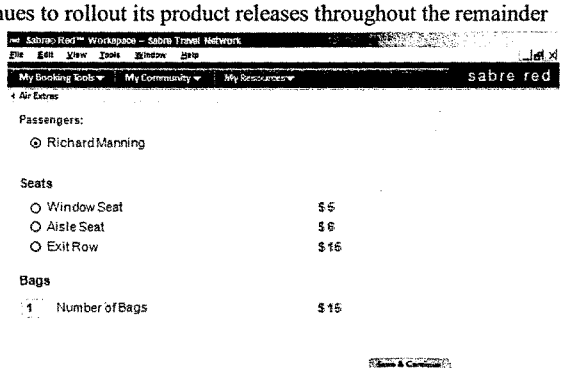
If the agent then requests additional information (1*AE), the system will be able to provide more information about the add-ons available, along with their relative prices, across each of the airlines in the display. If coming from ATPCO, it will be specific to the flights in the display and give the shopper clarity for comparing itinerary and fare combinations. This capability is scheduled to be introduced into the broader travel agency channel this month (July, 2010),

Following closely behind, next month Sabre will introduce the airline ancillary products and their respective prices into the shopping displays of travel agencies – again if filed via ATPCO. Sabre's "Air Total Pricing" supports true comparison shopping of airfares, including any add-on services and charges an airline offers. It also allows airlines to continue to differentiate their product: pricing and marketing their services as desired. This enables a highly consumer-friendly approach to shopping for air travel, eliminating the growing complexity and confusion associated with finding the right itinerary and fare combination, inclusive of the products and services that a traveler needs for their specific journey – something that can differ dramatically from trip to trip. Again, consider the difference in your own travel needs when flying a quick trip for business, as opposed to a complex family vacation to the mountains or the beach.



This is good news for everyone: eliminating the potential for surprise fees to consumers at the airport; enabling agencies and travelers to identify the right product, select and pay for the desired additional services, and do this right in their traditional, efficient shopping workflow. Critically, it also supports airlines in their quest to generate new revenues in these challenging economic times.

As the industry continues to rollout its product releases throughout the remainder of this year, new capabilities will emerge for the airlines to distribute their products via the travel agency channel – the ability to book the ATPCO-filed ancillaries across all channels, with travelers



selecting the products that they desire, and are willing to pay for separately, for their trip.

Travelers will also begin to pay for these services, using industry standard payment and fund settlement mechanisms, such as Airline Reporting Corporation (ARC) in the United States and the various BSP's elsewhere around the world. These are the same bodies used the world over to settle the payment of airline electronic tickets sold through third parties. With ancillaries, shopped, booked, and paid for separate from the ticket, the settlement tool is called Electronic Miscellaneous Documents, or EMD, which is – in effect – the "e-ticket" for the ancillary.

This approach will begin to address an increasingly important concern of travel agencies and corporations – their ability to effectively manage travel costs. By leveraging the industry standard settlement solutions, the data for purchased add-on services, and the payments for them, will be incorporated into the standard reporting agencies and corporations use to manage their travel expenditures – something that is incredibly difficult when they cannot place appropriate controls around how and when the travel products are selected and purchased, nor specifically identify the products when they are referenced very generically in the credit card statements of the travelers.

And, all of this will work across all channels – if the content is provided. All capabilities are being created to work for traditional agents shopping on behalf of traveler customers in the desktop tools provided by GDSs, through the online travel agencies, delivered in electronic format for their shopping interfaces, and into post-booking and pre-travel itinerary management tools that travelers may use to alter or refine their selections as their travel plans are solidified (e.g., do they really need to check a bag) prior to the actual travel date.

Testimony of Dave Ridley

Senior Vice President, Marketing and Revenue Management

Southwest Airlines Co.

Before the Subcommittee on Aviation

Committee on Transportation & Infrastructure

U.S. House of Representatives

July 14, 2010

Chairman Costello, Ranking Member Petri and Members of the Subcommittee:

Thank you for inviting Southwest Airlines to testify at today's hearing. My name is Dave Ridley. I'm Senior Vice President of Marketing and Revenue Management for Southwest Airlines and a Southwest Employee since 1988. In my role, I am accountable for the Company's topline revenue performance. My responsibilities include, among other things, pricing, advertising, and maintenance of our brand image as America's leading low fare, high Customer Service airline.

Southwest has been in the airline business for the past 39 years. We began operating in 1971 with three planes and one simple notion: If you deliver your Customers to their destinations when they want to get there, on-time, at a low fare – with friendly policies and even friendlier Employees – people will fly your airline.

And you know what?

It works.

Today, Southwest is the nation's largest airline in terms of domestic passengers,

carrying more Customers than any other U.S. airline. We now carry over 100 million passengers a year, serving 69 cities in 35 states. We are also the nation's most heavily unionized airline. And we are the ONLY airline that has not had an involuntary furlough of an Employee since our inception in 1971.

No "Nickel and Diming"

After 39 successful years, we continue to look for ways to differentiate ourselves from other airlines beyond our consistently low fares and great Customer Service. Most recently, we chose to make our affordable, transparent and easy-to-understand pricing structure a focal point in winning the hearts of the flying public by not following the industry trend toward "nickel and diming" our Customers. Our overriding philosophy is to ***not*** charge Customers for things they have historically received for free. That is why Southwest is committed to low fares with no hidden fees – what you see is what you pay.

When you book a ticket on Southwest, you will ***not*** pay a fee to check your first or second bag, or to carry on a bag for that matter. You will ***not*** pay a fee to check your bags curbside. You will ***not*** pay up to $150 to change your reservation. You will ***not*** pay a fee to sit in a window or aisle or exit row seat. You will ***not*** pay a fee to make your reservation over the phone. And you will ***not*** pay a fuel or "peak travel" surcharge fee either.

And, as always, snacks, sodas, smiles and the occasional bad joke are all complimentary at Southwest Airlines.

Refusing to Follow the Pack

The recent proliferation of airline fees can be traced to the Energy Crisis of 2008, when fuel prices spiked to levels never seen before. The fee epidemic worsened during last year's recession when passenger and cargo revenue declined significantly. To generate additional revenue, airlines began assessing new fees for various items and services, many of which had been provided to passengers for free prior to 2008.

Even when Wall Street analysts began calling out Southwest for "leaving money

on the table," we declined to join other airlines in charging for first and second checked bags, or for other traditionally customary products and services, because it ran counter to Southwest's principles, which I described above.

Instead, we decided to make our "no nickel and diming" philosophy the focus of our national advertising and leverage the issue which Customers viewed as the most egregious example of unwarranted fees – checked bag fees.

In the fall of 2009 – during football season – we launched a direct assault on bag fees, recruiting our own Employees to play themselves in the spots. We doubled-up our campaign this past winter and we continue to reinforce our commitment not to charge for checked bags, including new signage on the bellies of our aircraft: "Free Bags Fly Here."

In addition, our decision not to charge a fee for checking up to two bags has created an added benefit – more overhead space. At Southwest, we generally have more available overhead space than other airlines, which have "incentivized" their customers to carry their bags onboard rather than pay bag fees.

Due in large part to our "Bags Fly Free" campaign, Southwest has experienced a domestic market share shift worth close to a billion dollars since the introduction of this campaign. As a result, our Customers, Employees and Shareholders have been the beneficiaries of this decision.

Again, Southwest looks for ways to enhance the Customer experience without charging Customers for things they have historically received for free. However, Southwest does charge for optional, enhanced services that are not utilized by a majority of our Customers.

For instance, until last year, Southwest did not allow Customers to bring pets into the cabin (other than those Customers with disabilities who rely on assistance animals). Now, all of our Customers may choose to travel with a small pet for a relatively small fee – $75.

Our Customers now also may choose to have their boarding position reserved automatically - 24 hours prior to departure - rather than reserving it themselves.

Southwest provides this service for a fee of $10 one way. Like pet travel, this is an entirely new service for Southwest's Customers, one not historically offered, and the Customer feedback has been extremely positive.

To Fee or Not to Fee

Our position on fees creates a fortunate alignment of a corporate goal to generate positive financial results with the passion of our People to provide good Customer Service. We listen to our People. (They, in turn, do not shy away from telling us exactly what they think!) Our People told us that THEY don't want us to nickel and dime THEIR Customers. Allowing them to do what they do best, in a Customer friendly way, is just one reason why, since 1987, when the Department of Transportation began tracking Customer Satisfaction statistics, Southwest has consistently led the entire airline industry with the lowest ratio of complaints per passengers boarded. This is further evidence that our policy is not a gimmick – it's good business and it makes our People feel better about who they are and what they do.

While we're not fans of fees for services that historically have been part of the base fare, we believe strongly that the decision on whether or not to charge a fee for an airline product or service is a business decision best made by each individual airline.

Southwest made the conscious decision to limit our Customers' fee exposure to what we view as unreasonable and annoying fees. That was our choice. Other airlines have chosen a different business model and should have every right to do so.

Disclosing Fees is Good Customer Service

Instead, Southwest believes the federal government should focus on ensuring the full and proper disclosure of any and all fees to consumers; making sure that airfares are advertised fairly and honestly. In Southwest Airline's opinion, increasing consumer protections through robust disclosure requirements provides the best Customer Service.

For this reason, Southwest generally supports the Department of Transportation's recent Notice of Proposed Rulemaking with respect to fee disclosure, so that air travelers have accurate and adequate information to make informed decisions when selecting flights. Only an informed consumer can make apples-to-apples fare comparisons, which allows them to shop for a flight that best meets their needs and preferences.

As the number and complexity of ancillary fees increase, we believe additional disclosure is necessary to ensure air travelers have access to information on charges that may be added to their base fare. To protect the traveling public, fees should be prominently disclosed to consumers wherever tickets are sold. We believe the DOT's NPRM would achieve this goal.

On behalf of Southwest Airlines, thank you for this opportunity to testify. I will be happy to answer any questions.

STATEMENT OF
ROBERT S. RIVKIN
GENERAL COUNSEL
U.S. DEPARTMENT OF TRANSPORTATION

BEFORE THE SUBCOMMITTEE ON AVIATION

COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE

HOUSE OF REPRESENTATIVES

CONCERNING

AIRLINE FEES

JULY 14, 2010

Chairman Costello, Ranking Member Petri and Members of the Subcommittee:

I am pleased to appear before the Subcommittee today to discuss the U.S. Department of Transportation's commitment to vigorous compliance and enforcement efforts to protect the rights of airline passengers. I will emphasize steps taken by the Department to ensure that airline passengers have accurate and complete information about the full cost of the air transportation they are purchasing, including the ancillary airlines fees they must pay.

First, let me emphasize the importance Secretary LaHood and this Administration place on the rights of airline consumers. From the start, we have carefully examined our regulatory authority to determine how best to assist airline consumers with the most serious problems they face, including lengthy tarmac delays, chronically delayed flights, and lack of consumer information on the on-time performance of flights. We decided to add clear limits on tarmac delays, tough rules on chronically delayed flights and more disclosure to passengers than had been proposed in

the prior administration's rulemaking we inherited. In December 2009, we took the most forceful regulatory action then available to us by issuing a rule including those provisions.

Recognizing that much more had to be done, after issuing our first consumer protection rule, we have now proposed more comprehensive regulatory protections. In June we issued a Notice of Proposed Rulemaking (NPRM) to strengthen the reforms enacted by our first rule—for example, to cover foreign carriers and more U.S. airports under our tarmac delay rule—and to deal with a number of other problems, most notably inadequate denied boarding compensation, deceptive air fare advertising, and insufficient disclosure of airline ancillary fees.

Because the topic of today's hearing is "airline fees", I will expand on the NPRM proposals designed to make it easier for consumers to know how much they will have to pay for airline transportation and ensure that airlines' fee-related practices are fair. First and foremost, the NPRM would require true full price advertising. Under the proposal advertised prices would be required to include all mandatory taxes, fees and charges. If the consumer has to pay the charge to fly, like a fuel surcharge, an excise tax, a travel agent service charge, or an internet ticket convenience fee, the charge would have to be included in the price presentation to each consumer.

Also, as we explain in the NPRM, we are skeptical that airlines should be allowed to label as "fares" prices that do not include numerous mandatory charges, and thus serve only to confuse or deceive consumers regarding the true full price of the ticket and to make price comparisons difficult. We have proposed to prohibit this misleading listing of fares.

Second, we propose that airline optional fees be fully disclosed on airline websites. By optional or ancillary fees, we mean charges for things like checking baggage or seat assignments that passengers can avoid but still fly. Our optional-fee-disclosure proposal results from what the Department feels is often a lack of clear and adequate disclosure of these fees by airlines; consumers are not always able to determine the cost of their own travel (the ticket price plus the price of additional fees for optional services) prior to purchase.

Third, the NPRM would require more detailed and prominent disclosure for fees related to carry-on baggage and the first two pieces of checked baggage. For example, carriers would be required to issue e-ticket confirmations to passengers that include information regarding their free baggage allowance and/or the applicable fee for a carry-on bag or the first and second checked bag on the e-ticket confirmation. By providing this information to consumers on the e-ticket confirmation, passengers will be clearly informed well before the flight date and arrival at the airport of the applicable baggage rules and charges.

Fourth, we seek comment on the costs and benefits of requiring that two prices be provided in certain air fare advertising—the ticket price which is the full fare, including all mandatory charges, as well as that ticket price plus the cost of baggage charges that traditionally have been included in the price of the ticket, if these prices differ. We solicit comment on whether such a requirement for a second price, if adopted, should be limited to the full fare plus the cost of baggage charges or expanded to include other optional services that traditionally have been included in the price of the ticket, such as obtaining seat assignments in advance.

Fifth, the Department is considering requiring airlines to provide their agents and global distribution systems—that is, computerized, online airline reservations systems like Amedeus that display multiple carrier offerings—complete, accurate, and up-to-date information on ancillary fees so that internet and store-front travel agents can provide that information to consumers.

Sixth, the NPRM seeks comment on the possibility of requiring sellers of air transportation to display on their websites comparative full fare information based on the ancillary service desires of a passenger. So if a customer wants to select a seat and check two bags on a flight from A to B on a specific date, the customer would see what the total price would be for each carrier providing the desired air transportation.

In addition to prohibiting deceptive fee advertising and disclosure, the new proposed rule also addresses fee reimbursement. It solicits comments on requiring carriers to reimburse passengers the fee charged to transport a bag if that bag is not timely delivered and explains that, when a flight is cancelled, carriers must refund not only the ticket price but also any optional fees charged to a passenger for that flight (e.g., baggage fees, "service charges" for use of frequent flyer miles when the flight is canceled by the carrier).

The comment period on the NPRM is currently scheduled to close on August 9, 2010, although we have recently received a request to extend the comment period. We have set an aggressive timeline and hope to complete our rulemaking by the end of the year.

Our wide-ranging rulemaking activities have not detracted from an expansion of our aviation compliance and enforcement work. For example, over the past two years our Aviation Enforcement Office has conducted 16 on-site investigations at airline headquarters to measure their compliance with our existing passenger rights regulations. Five of those investigations have already resulted in cease and desist orders assessing large airlines almost $1.2 million in civil penalties, primarily related to violations of our denied boarding compensation requirements. The other investigations may result in similar enforcement actions. More important perhaps than the resulting enforcement actions, these on-site visits emphasize to carriers their responsibilities and foster future compliance.

Another significant enforcement activity focuses on deceptive airline and agent fare advertising. During the year ending June 30, 2010, the Department issued 11 cease and desist orders assessing $520,000 in civil penalties in cases involving deceptive advertising alone. Three other orders covered deceptive advertising as well as other issues.

In the past year we also issued our first enforcement orders related to lengthy tarmac delays. Specifically, the Department levied a total of $175,000 in civil penalties against three carriers for their roles in causing a lengthy tarmac delay after a flight was diverted to Rochester International Airport in Minnesota due to bad weather.

For the year ending June 30, 2010, the Department issued a total of 37 cease and desist orders against airlines and agents relating to non-safety related aviation matters. Those orders assessed

close to $3.2 million in civil penalties. Those numbers reflect a reversal from a downward trend in the prior few years.

Before closing, I would like to thank this Committee and Congress as a whole for helping invigorate our consumer protection program. In the past few years Congress has appropriated additional funds that have enabled us to increase our consumer protection staffing, conduct on-site investigations, and take a number of other proactive steps to support our consumer rulemakings and to strengthen our consumer protection program overall. We also appreciate the work of this Committee's staff, as well as Senate Commerce Committee staff ,who have approached us for technical assistance on the Passenger Rights Legislation currently being considered by Congress. We hope these contributions have been helpful to the Committees.

In conclusion Mr. Chairman, we believe we have a high level of appreciation for the many problems faced by airline passengers and we will continue to take aggressive and timely action to mitigate those problems in the future. I want to assure you on behalf of Secretary LaHood and the other employees of the Department of our continuing commitment to this important work. Thank you again for the opportunity to discuss these critical matters. I would be happy to answer any questions you may have.

COMMENTS OF

WILLIAM J. McGEE
CONSUMERS UNION

FOR THE

UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
SUBCOMMITTEE ON AVIATION

ON

"AIRLINE FEES"

14 JULY 2010

Thank you Chairman Costello and Members of the Committee:

My name is William J. McGee and I am submitting these comments as a consultant on travel and aviation issues for Consumers Union[1], the nonprofit publisher of *Consumer Reports*®. I thank you for the opportunity to express our concerns about the plethora of airline "ancillary" fees.

The U.S. Department of Transportation recently reported that domestic airlines generated $7.8 billion in revenues from passenger fees in 2009, an increase of 42% over 2008. During the first quarter of 2010, U.S. carriers collected $1.9 billion in ancillary revenue, while $769 million of that total was for baggage fees alone. It's clear these add-on charges for services that are necessary to millions of travelers represent de facto fare increases, even while airline executives cite falling airfares.

Much of this income is derived from services that were free to consumers for decades, such as checking baggage, carrying on baggage, booking through toll-free reservations lines, and ordering soft drinks, snacks, pillows, and audio headsets onboard. Other revenue is being collected for services that do not cost the airlines at all, such as selecting preferred seats. And carriers such as Spirit Airlines and Allegiant Airlines even charge for online bookings.

That passengers are angry about such nickel-and-diming is not in question. In fact, in the June 2010 issue of Consumer Reports, Consumers Union published a recent survey of 2,000 Americans about their satisfaction with airlines, hotels, and rental car companies. When consumer gripes were scored, annoyance over baggage fees (8.4 on a 10-point scale) and added airline fees (8.1 on a 10-point scale) outscored all other complaints in 24 categories.

Consumers Union is particularly concerned that customers are not fully aware of such add-on charges. For many years now Consumer Reports, Consumer Reports WebWatch, and Consumer Reports Travel Letter have been investigating and reporting on travel booking channels and this work has uncovered systemic problems with pricing transparency. Even before the sudden increase in ancillary airline fees, there was widespread confusion about airline "bottom-line" pricing due to mandated taxes, fees, and surcharges imposed by government agencies and airport authorities. The dramatic rise in add-on fees has exacerbated these concerns. Furthermore, we understand that

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[1] Consumers Union of United States, Inc., publisher of *Consumer Reports*®, is a nonprofit membership organization chartered in 1936 to provide consumers with information, education, and counsel about goods, services, health and personal finance. Consumers Union's publications and services have a combined paid circulation of approximately 8.3 million. These publications regularly carry articles on Consumers Union's own product testing; on health, product safety, and marketplace economics; and on legislative, judicial, and regulatory actions that affect consumer welfare. Consumers Union's income is solely derived from the sale of Consumer Reports®, its other publications and services, fees, noncommercial contributions and grants. Consumers Union's publications and services carry no outside advertising and receive no commercial support.

technological issues have prevented the implementation of total pricing mechanisms for airfares in all booking channels, both online and offline.

Consumers Union urges the Aviation Subcommittee to fully investigate this influx of airline add-on fees, and to protect the rights of American travelers, particularly by ensuring that the total price of an airline ticket is made available to all consumers at the point of purchase. Thank you for the opportunity to be heard on this matter, which is of critical importance to millions of American airline passengers.

— William J. McGee
Consumers Union
14 July 2010

INFO@FLYERSRIGHTS.ORG
1 (877) FLYERS6
1 (877) 359 3776

Testimony
Submitted for the Record by
Kate Hanni[1]
Executive Director and Spokesperson
FlyersRights.org
on

AIRLINE FEES

Before the
Subcommittee on Aviation
Committee on Transportation and Infrastructure
U.S. House of Representatives
Washington, D.C.

July 14, 2010

Mr. Chairman and Ranking Member Petri:

FlyersRights.org, representing the interests of some 29,000+ airline passenger activists, wishes to have its views on airline fees considered by the members of the Subcommittee when its public hearing on this highly important subject is held. Frustration and anger on this issue is very high according to the phone calls made to the FlyersRights Hotline (1-877-FLYER56).

There are two reasons for this high level of passenger frustration:

1. Extra fees make calculating the true cost of flying very difficult.

Our members believe that the complexity of the "optional and ancillary fees" now being imposed by most of the major U.S. domestic airlines[2] makes it very difficult

[1] Contact information: c/o FlyersRight.org. 159 Silverado Springs Drive, Napa, CA 94558. Phone: (707) 337-0328. Email: kate@flyersrights.com.
[2] The "Ultimate Guide to Airline Fees," compiled by SmarterTravel.com, is attached (with permission). This provides an easy-to-compare reference tool for airline fees as of June 21, 2010.

for airline passengers to calculate the true cost of a proposed flight. This degrades the passenger's ability to compare the total costs of flying on competing airlines. Passengers' having accurate and easily comparable information about flight costs on competing airlines has been one of the major benefits that modern – internet – technology has made possible. This advantage is being lost by the proliferation of these new and changing airline fees that are added to the listed airfare before purchase or are paid later at the airport of departure.

2. Congress should enact legislation this year to control airline fees.

The U.S. Department of Transportation has indicated in a pending rulemaking that it would be satisfied if passengers were just given accurate information about these "optional and ancillary fees." A Senate amendment to the FAA Reauthorization Bill now being negotiated with House aviation leaders would be similarly limited.

FlyersRights.org members strongly disagree with this "information only" approach and believe that this Congress must act promptly to set statutory limits on what kinds of fees and charges can be imposed by airlines and under what conditions.

Needed Components of New Federal Legislation to Control Ancillary Airline Fees [3]

1. Prohibit Airlines from Charging Any Fee for Carry-on Bags That Comply with Airline's Size, Weight, etc., Limitations and, Prospectively, for Use of Restrooms on Aircraft.

Congress should legislate that a passenger's right to carry on-board a properly-sized bag for storage in the overhead rack and for access to the aircraft's restrooms are basic elements of air travel that should be included in the passenger's base airfare for air transportation.

As you've heard, starting on August 1, Spirit Airlines is planning to impose a fee of up to $45 for each carry-on bag. Ryanair, a European carrier, has been

[3] Draft legislation to implement items 1., and 2., above, is included as a second attachment.

threatening for more than a year to impose a 1£ or 1 euro charge for use of its on-board lavatories. Congress should act soon to convince these and other airlines not to implement such planned fees. This would simultaneously convince the U.S. flying public that its Federal Government will protect passengers from other unreasonable forms of airline fees and charges.

2. "Even the Playing Field" by Imposing a Federal Aviation User Tax on Airline Fees for Checked Bags and Other Items That Previously Had Been Included in the Published Airfare.

Until they started to "unbundle" their costs, the domestic airlines had imbedded their costs for carrying checked bags within the base airfare on which a 7.5% Federal air transportation tax had been collected. These proceeds were deposited into the Airport and Airway Trust Fund for use for airport and airway system improvements. According to recent DOT Bureau of Transportation Statistics (BTS) data, the airlines this year will generate about $3 billion in checked bag revenue, completely free of Federal aviation taxation unless Congress acts.

FlyersRights.org believes that this checked bag revenue should be treated by the Internal Revenue Code as "taxable air transportation," thus adding about $225 million annually to the Airport and Airway Trust Fund. Will the airlines or their passengers pay this Federal aviation tax? Since the airlines are already charging passengers as high a base airfare as they can get the other airlines to support, it seems likely that any Federal aviation tax on the fees charged for checked bags would probably be a cost that the airlines can't pass along to their passengers. This situation would be no different than the current Federal aviation tax collected on the base airfare.

This solution would also "even the playing field" among competing carriers. Southwest Airlines and Jet Blue don't impose checked bag fees; thus they (or their passengers) are paying a 7.5% tax on that portion of their base airfare that reflects the costs for carrying checked baggage. Their competitors are currently paying no Federal aviation tax on their checked bag fee revenues and this doesn't seem fair.

3. Require Airlines to Refund Passengers Their Checked Bag Fees Whenever Those Bags Don't Arrive on the Same Flight as Passengers.

FlyersRights.org believes that basic "fairness" requires that carriers promptly refund any checked bag fees collected if those bags are misplaced, misdirected or otherwise don't arrive at the destination airport when the passengers do. Some of the revenue from checked bag fees should be used to provide a higher quality/more timely service for joining passengers to their checked baggage without delay.

4. Require Airlines to Honor Reservations Without Penalty or Higher Fare for 24 Hours So Passengers Can Compare Total Costs of Flying on Other Airlines or From Other Sources.

Calculating the total costs of flying when different airlines charge (or don't charge) different amounts for various "optional and ancillary fees" is very complicated and takes time. Passengers should by statute be granted a grace period of 24 hours after making a plane reservation to compare the total costs available for the same trip from other airlines or through designated agents of the airlines (Orbitz, Travelocity, etc.). To require a passenger to pay a higher fare during that interim period or to suffer a financial penalty for cancelling a just-made reservation would exert pressure resulting too often in making a hurried, financially disadvantageous decision.

5. Authorize the Secretary of Transportation to Review the Reasonableness of Airline Fees Imposed for Changing or Cancelling a Confirmed Reservation, and Requiring Better Advance Notice of Such Fees.

Many passengers complain that they must suffer an up-to-$250 charge to change or cancel their confirmed reservations. These airline fees generate some $2 billion in added revenue annually. FlyersRights.org believes that DOT should be statutorily authorized to review the reasonableness of such charges, comparing the costs to the airlines for implementing such changes against the need for a reasonable disincentive factor so passengers won't be continually changing their flight plans.

6. Prohibit Airlines From Imposing "Surcharges" if the Extra Costs to be Recovered Aren't Documented or if They Are Only Imposed in Selected Markets.

A "surcharge" connotes to the average passenger an extra fee that is imposed to cover identified higher costs, to be collected only during the period when those extra costs are being incurred, and that is imposed on all those who benefit from those higher costs being expended to provide a valuable service. Not so in U.S. civil aviation. Airlines impose fuel or other "surcharges" when they want to and can, with no required correlation to time or cost, and they impose them selectively and not across the board in all markets. FlyersRights.org believes that the Secretary of Transportation should be authorized to prohibit any airline "surcharges" that don't correlate to costs incurred and to markets/passengers charged.

In sum, FlyersRights.org urges the House Committee on Transportation and Infrastructure promptly to draft and pass implementing legislation this summer to carry out our above recommendations. I would be pleased to respond to any questions from members of the Subcommittee on Aviation or their staffs to that end.

Thank you for considering these views.

Attachments

ULTIMATE GUIDE TO AIRLINE FEES

Compiled by smarter TRAVEL

	Carry-on bag	1st checked bag	2nd checked bag	Additional bags	Overweight bags	Oversized bags (sum of length + width + height)
AIR CANADA (B/W U.S. AND CANADA)	$0	$0	$30	bags 3+: $100	50-70 lbs: $75	63-115 in: $75
AIRTRAN	$0	$15	$25	bags 3+: $50	51-70 lbs: $49 71-100 lbs: $79	62-70 in: $49; 71-80 in: $79
ALASKA	$0	$20	$20	bag 3: $20 bags 4+: $50	51-100 lbs: $50	63-80 in: $50 81-115 in: $75
ALLEGIANT	$0	$15-$25 online, $35 airport	$25-$30 online, $35 airport	$50 (5-bag maximum)	50-71 lbs: $50 71-100 lbs: $75	81-115 in: $75
AMERICAN	$0	$25	$35; $50 (int'l*)	bags 3-5: $100 bag 6+: $200	51-70 lbs: $50 71-100 lbs: $100	63-115 in: $150
CONTINENTAL	$0	$23 online/$25 airport	$32 online/$35 airport; $45 online/$50 airport (int'l)	bags 3+: $100	51-70 lbs: $50	63-115 in: $100
DELTA	$0	$23 online/$25 airport	$32 online/$35 airport $50 online/$55 airport int'l	bag 3: $125 bags 4-10: $200	51-70 lbs: $90 71-100 lbs: $175	63-80 in: $175; 81-115 in: $300
FRONTIER	$0	$20	$30	bags 3+: $50	51-100 lbs: $75	63-110 in: $75
HAWAIIAN	$0	$23 online/$25 airport; $10 interisland	$32 online/$35 airport; $17 interisland	bags 3-6: $125 bags 7+: $200; interisland: $25	51-70 lbs: $50 interisland: $25	63-80 in: $25 interisland, $100 otherwise
JETBLUE	$0	$0	$30	bags 3+: $75	51-70 lbs: $50 71-100 lbs: $100	63-80 in: $75
MIDWEST	$0	$20	$30	bags 3+: $50	51-100 lbs: $75	63-110 in: $75
SOUTHWEST	$0	$0	$0	bags 3-9: $50 bags 10+: $110	51-100 lbs: $50	62-80 in: $50
SPIRIT	Starting Aug. 1: $20 (fare club members), $30 (non-members), $45 (checked at the gate)	$15 (fare club members), $25 (non-members), $45 (checked at the gate)	$15 (fare club members), $25 (non-members)	bags 3-5: $85-$90	51-70 lbs: $50 71-99 lbs: $100	62-79 in: $100 80-160 in: $150
UNITED	$0	$23 online/$25 airport (or $249/yr. for up to 2 bags on all flights)	$32 online/$35 airport; $27-$45 online/ $30-$50 airport (int'l)	bags 3: $75 online /$85 airport, $80/$90 (int'l); bags 4+: $100	51-100 lbs: $100	63-115 in: $100
US AIRWAYS	$0	$23 online/$25 airport	$32 online/$35 airport $45 online/$50 airport (Europe)	bags 3+: $100	51-70 lbs: $50 71-100 lbs: $100	62-80 in: $100
VIRGIN AMERICA	$0	$25	$25	bags 3-10: $25	1st bag OK to 50 lbs, 51-70 lbs: $50, 71-99 lbs: $100	63-80 in: $50

*Does not apply, all int'l coach/first/business; see airline website for details.

For the most up-to-date copy of this chart, please visit www.smartertravel.com/blogs/today-in-travel/airline-fees-the-ultimate-guide.html?id=2623262

Revised: June 21, 2010

Data sponsored by Travelocity.com

ULTIMATE GUIDE TO AIRLINE FEES

Compiled by smarter TRAVEL

	Ticket change fee (domestic, international)	Reprint fee per passenger, per flight	Excess/oversized baggage fee (domestic, to/from Hawaii)	Pet fee (cabin/checked/cargo)	Seat selection (cabin/exit/premium)	Premium seat perks	In-flight food	Blankets/pillows
AIR CANADA (US-CANADA)	advance: $0-$75; same-day $75-$150 (fee varies by fare class)	$0	$100	$50-$100 (cabin), from $105 (cargo)	from $15 (lowest fare class)	n/a	$3-$7; alcoholic bev: $6	free
AIRTRAN	$75	$15/$0	$49/segment, $69 connecting flight	$69 (cabin)	$6 advance, $20 exit row	n/a	n/a, alcoholic bev: $5-$6	n/a
ALASKA	$75 online ($100 otherwise)	$15/$15	$25 nonstop, $50 conn.	$100 (cabin/cargo)	n/a	n/a	$6; alcoholic bev: $6	n/a
ALLEGIANT	$50 per segment	$14.99 per passenger (online)	n/a	$75 (cabin)	$11 per segment	priority boarding: $9.99	$2-$5; soft drinks, alcoholic bev: $2-$7	blanket: $15 (no pillows available)
AMERICAN	$150/varies by destination; $200-$250*	$20/$30	$100	$100 (cabin), $150 (cargo)	n/a	priority boarding, change fee disc., free standby: $9+	$3-$10; alcoholic bev: $6	sleep set: $8
CONTINENTAL	$150/$150-$250	$20/$20	$100	$125 (cabin)	prices vary	extra legroom: prices vary	$0; alcoholic bev: $6	free blanket (some flights)
DELTA	$150/$250	$20/$35	$100	$125 (cabin), $200 (cargo)	n/a	n/a	$2-$8; alcoholic bev: $5-$7	n/a
FRONTIER	up to $100	$25/$25	$50/direct, $100 connecting flight	$75 (cabin), $150 (cargo)	n/a	extra legroom: $15-$25	$3-$7; alcoholic bev: $5	n/a
HAWAIIAN	$50-$150; $30 interisland	$25/$35; $15 interisland	$100 pacific, $35 interisland	$0 interisland-$175 (cabin) $60 interisland-$225 (cargo)	n/a	n/a	$0-$10	free (n/a on interisland flights)
JETBLUE	$100	$15 phone	$75	$100 (cabin)	$0	extra legroom: $10	$0; alcoholic bev: $6	sleep set: $7
MIDWEST	$100	$25/$30	$50 direct, $100 connecting flight	$150 (cargo)	n/a	n/a	$0-$11; alcoholic bev: $6	free
SOUTHWEST	$0 (flight credit)	$0	$50	$75 (cabin)	n/a	priority boarding: $10	$0; alcoholic bev: $5	n/a
SPIRIT	$100 online ($110 otherwise)	$5/$0; $5 O/W online	$100	$100 (cabin)	$20 exit row; $15/$12/$8 front/middle/back of plane	Big Front Seat: $25	$2-$5; reg. bev:$2-$3; alcoholic bev: $6	n/a
UNITED	$150/$250	$25/$30	$99	$125 (cabin), $250 (cargo)	$0	Economy Plus: $9+/flight, $425+/year; Premier Line: $19+/segment	$5-$9; alcoholic bev: $6	free (int'l)
US AIRWAYS	$150/$250	$25-$35/$35-$45	$100	$100 (cabin)	$5+: aisle/window in front of economy	n/a	$3-$7; alcoholic bev: 7-$8	sleep set[1]: $7
VIRGIN AMERICA	$75 online ($100 otherwise)	$15/$10	$75	$100 (cabin)	$0	Main Cabin Select: $35 short-haul, $55 medium-haul, $110 long-haul routes	$2-$10; alcoholic bev: $8-$10	sleep set[1]: $12

* Does not apply all int'l countries/regions; see airline website for details. [1]Sleep set includes a pillow, blanket, sleeping mask, and earplugs

For the most up-to-date copy of this chart, please visit www.smarterfravel.com/blogs/today-in-travel/airline-fees-the-ultimate-guide.html?ds=2623282

Revised, June 21, 2010

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DRAFT
FlyersRights.org
July 2010

A BILL

To prohibit air carriers from charging fees for carry-on baggage, or for use by passengers of restrooms on aircraft, to require disclosure of passenger fees, to treat air carrier fees on checked baggage as taxable transportation, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. PROHIBITION ON FEES FOR CARRY-ON BAGGAGE OR FOR USE OF RESTROOMS ON AIRCRAFT; DISCLOSURE OF PASSENGER FEES.

(a) IN GENERAL.-Not later than 180 days after the date of the enactment of this Act, the Secretary of Transportation shall complete a rulemaking that-

(1) prohibits each air carrier operating in the United States under part 121 of title 49, Code of Federal Regulations, from charging any fees for carry-on baggage that falls within the restrictions imposed by the air carrier with respect to the weight, size, or number of bags and from charging any fee for use by passengers of restrooms on aircraft.

(2) requires each such air carrier to make detailed information about restrictions with respect to the weight, size and number of carry-on baggage available to passengers before they arrive at the airport for a scheduled departure on the air carrier; and

(3) requires each such air carrier to make available to the public and to the Secretary a list of all passenger fees and charges (other than airfare) that may be imposed by the air carrier, including fees for-

(A) checked baggage or oversized or heavy baggage, including specialty items such as bicycles, skis, and firearms;

(B) meals, beverages, or other refreshments;

1 (C) seats in exit rows, seats with additional space, or other preferred seats
2 in any given class of travel;
3 (D) purchasing tickets from an airline ticket agent or travel agency; or
4 (E) any other good, service, or amenity provided by the air carrier, as
5 required by the Secretary
6 (b) PUBLICATION; UPDATES.-In order to ensure that the fee information required by
7 subsection (a)(3) is both current and widely available to the traveling public, the Secretary-
8 (1) may require an air carrier to make such information available to travel
9 agencies, and to notify passengers of the availability of such information when
10 advertising airfares; and
11 (2) shall require air carriers to update the information as necessary, but no less
12 frequently than every 90 days unless there has been no increase in the amount or type of
13 fees shown in the most recent publication.
14 **SECTION 2. FEES FOR CHECKED BAGGAGE TREATED AS PAID FOR TAXABLE**
15 **TRANSPORTATION.**
16 (a) IN GENERAL.-Section 4261(e) of the Internal Revenue Code of 1986 is amended by
17 adding at the end the following-
18 "(5) AMOUNTS PAID FOR CHECKED BAGGAGE.-Any amount paid by an airline
19 passenger to check baggage for transit on the aircraft carrying such passenger shall be
20 treated for purposes of subsection (a) as an amount paid for taxable transportation.".
21 (b) EFFECTIVE DATE.-The amendment may by this section shall apply to transportation
22 beginning on or after the date of the enactment of this Act.

Prepared Remarks of

National Business Travel Association

Before the:

United States House of Representatives Committee on Transportation and Infrastructure, Subcommittee on Aviation

Hearing on:

Airline Fees

July 14, 2010

NATIONAL BUSINESS TRAVEL ASSOCIATION

Connecting the Business Travel World

National Business Travel Association (NBTA) appreciates this opportunity to provide testimony on airline fees to the House Transportation and Infrastructure Subcommittee on Aviation. In response to recent economic challenges, airlines have increased the practice of separating or "unbundling" services which were traditionally part of an airline ticket. Since then, NBTA's 5,000 members, who manage more than 13 million business travelers and $340 billion worth of travel, have wrestled with issues related to costs and fee transparency. Simply put – these fees equal fares, and a transparent system should be in place to identify them. In addition, the process to return government taxes and fees collected on unused or nonrefundable tickets remains an enigma. NBTA applauds this Subcommittee's efforts to examine both of these practices. NBTA looks forward to working with all stakeholders to address the proliferation of ancillary fees and provide full transparency to airline fares.

About NBTA

NBTA is the world's premier business travel and corporate meetings organization. NBTA and its regional affiliates – NBTA Australia / New Zealand, the Brazilian Business Travel Association (ABGEV), NBTA Canada, NBTA Europe, NBTA Mexico, and NBTA USA – serve a network of more than 17,000 business travel professionals around the globe with industry-leading events, networking, education & professional development, research, news & information, and advocacy. NBTA members - numbering more than 5,000 in 30 nations - are corporate and government travel and meetings managers and travel service providers. They collectively manage and direct more than $340 billion of global business travel and meetings expenditures annually on behalf of more than 13 million business travelers within their organizations.

Value of Managed Travel

In today's economy, companies are considering every possible option to stay competitive. Face-to-face client meetings and trade shows remain the primary tools for increasing sales. Unfortunately, the economy has forced some companies to view business travel as an expense to be cut rather than a smart investment. Research commissioned in 2009 by NBTA found that businesses can realize more than $15 in profits for every $1 invested in business travel. The research also shows that companies in 2009 likely missed out on nearly $200 billion in additional gross profits because they did not optimize their investments in strategic business travel.

Fees and Non-Transparency

Not surprisingly, the economic downturn has forced the airline industry to seek creative marketing methods to attract business. NBTA fully supports the right of private industry to create and follow chosen business models. However, ancillary fees are ultimately part of the total net fare. NBTA believes that consumers have the right to be presented with an accurate view of the full cost of a product. To that end,

it is imperative that airlines provide full transparency to the public, including corporate travel managers and travel agencies, with regard to all fares, fees and other charges related to transporting passengers and their luggage, as well as booking, ticketing, billing, and fulfilling those services.

NBTA is pleased the Department of Transportation issued a Notice of Proposed Rulemaking on this issue and looks forward to submitting comments. NBTA, like the Interactive Travel Services Association (ITSA), believes that many of DOT's proposed new rules on optional services will be useful to passengers in making better informed air travel decisions and further believes that DOT should issue guidance that requires transparency and full disclosure of ancillary fees.

NBTA recently conducted a survey of more than 160 U.S.-based corporate travel buyers in its membership. The results demonstrate the challenges posed to companies by the lack of transparency in airline pricing and the need for government to establish the framework for a solution. Our member's responses are clear – a majority of our members are unable to track the total amount spent on ancillary services. Without this information, they are unable to leverage the millions spent on fees in future travel negotiations:

- 58% of respondents are unable to track the total amount spent on ancillary fees
- 61% said it was very important to know the total cost of the trip
- 75% stated the most important reason to identify/track fees was to utilize this information for future negotiations
- 86% indicated the industry should develop an industry standard

DOT has the authority to address the issue of fees equaling fare. *See* 49 U.S.C. § 41712 and 14 C.F.R. § 399.84. As fares and fees become more complex, we believe DOT should use its existing and common sense authority to direct the airlines to provide full transparency.

While it is vital for our member companies to track and manage their air spending, this unbundled and non-transparent approach makes accounting exponentially more difficult. Ironically, this phenomenon can lead to a perverse incentive. That is, without an accurate picture of costs and benefits, businesses may travel less, not more. Worse, NBTA is concerned about the future of this trend. As reported by the Department of Transportation's Bureau of Transportation Statistics, the practice has grown dramatically. In 2005, ancillary fees totaled $2.5 billion. In 2009, the ancillary fees totaled $7.8 billion.

As the Subcommittee examines that growth, it should consider three questions at the top of our members' minds:

- Transparency of Fares and Fees – Is the travel supplier fully disclosing and identifying all charges essential for travel at every point of purchase?

- Tracking of Fees – Can corporate buyers track fees and charges when they are instituted or changed?

- Expense Management Compatibility – Can corporate buyers track all fees and charges through their expense management system?

Putting Forward Solutions - the Airline Ancillary Product Task Force

To better address those questions, NBTA has formed a global task force to help our members properly track ancillary fees. The NBTA Airline Ancillary Product Task Force represents a cross section of the business travel industry and includes credit card issuers, global distribution systems (GDS), airlines, intermediaries such as travel management companies (corporate travel agencies), and corporate travel buyers. Specifically, the following companies have executives participating in the NBTA task force:

Air Plus, Amadeus, American Airlines, American Express, Airline Reporting Corporation (ARC), Airilne Tariff Publishing Company (ATPCO), BCD, Concur, Continental Airlines, Delta Air Lines, MasterCard, Monsanto, Sabre, Thomson Reuters, 3sixtysourcing, TRX, , and US Airways.

This Task Force will seek common solutions for these industry-wide challenges, such as standards for processing and tracking ancillary fees. NBTA believes this will benefit both the buyers and suppliers. The objectives of the task force are to:

- Educate NBTA membership about airline ancillary fees and their impact on managed corporate travel;
- Provide best practice examples of how corporate travel managers are assessing these additional expenses and adapting travel policy to address these fees;
- Approach these issue with a "solutions oriented" focus;

Additionally, this task force will serve as a resource for any new project proposals. For example, one of the first projects underway is to develop best practices for the improvement of airline data submission to credit card companies. Improvement in this critical area would result in enhanced corporate reporting on ancillary fees, regardless of the purchase point. NBTA looks forward to sharing the Task Force's work with this Subcommittee.

Refund of Taxes on Unused Non-refundable Tickets

Finally, NBTA looks forward to the Government Accountability Office's analysis of the refundability of taxes paid on unused or non-refundable airline tickets. NBTA members have long been aware of the confusion in assessing what fees and taxes were eligible for refund on unused non-refundable tickets. The government should not be held to a lesser standard than the airlines - NBTA believes that DOT should disclose to passengers what fees and taxes are eligible for refund and set a process for administering the refunds.

Like airline fees, the refundability of taxes is a serious and complex issue. In the first quarter of 2008, NBTA conducted a survey of 225 U.S.-based travel managers on a range of issues pertaining to non-refundable tickets. In terms of ticket taxes, the survey found that 79 percent of respondents do not attempt to recoup taxes and fees on unused non-refundable tickets because of confusion. Specific comments included:

- "It is time consuming/not worth the effort;"
- "Didn't know it could be done" and;
- "The airlines don't have clear rules or procedures."

The survey also asked respondents to "guesstimate" the annual cost of taxes and fees paid on nonrefundable tickets that expire or are never reissued. Guesstimates ranged from a low of $50 to a high $350,000, with most between $1,000 to $150,000 per company.

A February 2009 *Wall Street Journal* article noted a lack of public information on the percentage of tickets that are unused and non-refundable, but cited informal estimates of two percent. *See* Why Fliers Can't Donate Unused Tickets, W.S.J., Beb. 10, 2009. If two percent of tickets annually are nonrefundable and unused, that would mean that approximately $151 million in IRS regulated taxes are tied to such flights annually. NBTA believes, but is not certain, that the only fee that is clearly refundable is the September 11th Security Fee. Refund processes for other charges are either unclear and or nonexistent.

Conclusion

NBTA is grateful for the Subcommittee's efforts in providing leadership on airline fee and tax refund issues. We appreciate the focus and attention that this hearing will bring to these issues. We trust that Congress will continue to work with the industry to find solutions that promote transparency and consistency as they relate to travel fees and taxes. NBTA believes that with stakeholder input and additional regulatory guidance, issues related to airline fees and refundability of taxes can be fully addressed.

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