

**BEFORE THE
DEPARTMENT OF TRANSPORTATION
WASHINGTON, D.C.**

Comments of

DELTA AIR LINES, INC.

**Notice of Proposed Rulemaking
Transparency of Airline Ancillary Fees and Other
Consumer Protection Issues**

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) **Docket OST-2014-0056**
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**COMMENTS OF
DELTA AIR LINES, INC.**

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I. INTRODUCTION

While the Department’s NPRM regarding “Transparency of Airline Ancillary Fees and Other Consumer Protection Issues” is intended to increase transparency and consumer benefits, some aspects of the proposal are likely to have the opposite effect – decreasing the speed and ease with which information is delivered to consumers, complicating the booking process, providing misleading information, and blocking the development of new and innovative fare products that provide value to consumers.

Delta strives to provide excellent customer service, to distinguish itself among industry peers in operational performance, and to provide bargained-for value to consumers. As much or more than any other industry, airlines depend upon repeat customers to sustain the business model. Delta has every incentive NOT to treat our customers unfairly or deceptively, and we strive to clearly and accurately inform our customers about Delta’s fees for ancillary services, specifically including baggage and preferred seating. In large part due to the clearly understood value proposition we provide to our customers, Delta has been named the World’s Most Admired Airline by

Fortune three times in the last four years, consistently ranks among the top airlines for customer service satisfaction by J.D. Power and Associates, and was named 2014 Airline of the Year by Air Transport World.

During the years the Department has been considering further regulation of ancillary fees and services, the marketplace has already moved to deliver clear and accurate information on these products and bring them to market in efficient ways that add value to consumers. Delta has concluded agreements with Travelport, Amadeus, and Farelogix for distribution of its Economy Comfort product (designated seats that provide additional space and service amenities). And, as detailed in IATA's comments, the New Distribution Capability (NDC) will provide a technology solution to support the distribution of ancillary fees through the agent channel. The Department should be very cautious about adopting additional regulations that could permanently preserve unwarranted, illegal GDS market power that increases consumer costs. Nor should the Department attempt to regulate with particularity air carrier web design by imposing rigid and unnecessary disclosure requirements that stifle innovation, interrupt the booking path and prevent carriers from delivering the most relevant information to their customers in the most timely and efficient manner.

In addition to the above key concerns, Delta helped develop and joins in the comments of Airlines for America, which explain further how the Department's proposal will result in new costs that far exceed its benefits, and how it will thwart the development of innovative new products and distribution methods to the detriment of consumers.

II. Any New Rule on Ancillary Fees Should be Limited to Their Publication and Should Avoid Unwarranted Interference with Carrier Distribution Technologies.

Delta disagrees with the unsupported premise that the "basic ancillary services" for baggage and advance seat assignments are "intrinsic to air transportation." Nor do

we agree that “the cost of those services is a factor that weighs heavily into the decision-making process for many consumers.” NPRM at 29,9977. Advance seat assignments, and checking a first or second bag, are *optional* services that customers may or may not wish to purchase. The Department has not made a prima facie showing that these optional services are “unfair and deceptive” practices justifying new regulation.

Nonetheless, even if some further regulation in this area were warranted, it should be limited to the publication of fees for “basic ancillary services” and should not purport to regulate airline distribution channels.¹ The Department claims that further rulemaking is necessary because “fees for ancillary services are not available through all sales channels” such that consumers booking through travel agents using GDSs do not have access to this information “without looking directly at the carriers’ web sites.” NPRM at 29974. But the current proposal goes far beyond making ancillary fee information available “through all sales channels.” The NPRM would mandate an unnecessary and unjustified redesign of carrier distribution systems to provide basic ancillary fees for each particular itinerary in the booking path at the first point in the search results where fares are displayed. Carriers and ticket agents would also be required to provide “customer specific” fees taking into account loyalty status, method of payment, cabin class, etc. for passengers that elect to provide this information.

Delta’s customers are already fully aware of fees for baggage and premium “Economy Comfort” seating. Those fees are readily accessible on Delta’s website and

¹ Delta appreciates that the Department has refrained from any requirements regarding “transactability” of ancillary fees, which would have an extremely detrimental effect on carrier/GDS negotiations and further enshrine the market power GDSs have over carriers. While it is not clear that any new regulation is justified, of the two options proposed in the NPRM regarding publication of ancillary fee data, Proposal 2 is preferred by since it would have less impact of increasing GDS market power and leverage to carrier content outside of commercially negotiated commitments. The Department should allow significant time for implementation – three or more years – to see how the distribution marketplace continues to evolve and whether new technologies such as NDC will ultimately obviate the need to implement such a rule.

would, under the Department's NPRM, be available "through all sales channels" if simply published to GDSs. Moreover, members of Delta's loyalty programs – whether through active participation or use of their Delta SkyMiles American Express card – are already keenly aware of the exceptions they enjoy under those programs, one of the primary benefits of which is the ability to check a free bag.

A rulemaking that goes beyond publishing ancillary fees in all distribution channels would likely hurt, not help, consumers. Adding mandatory disclosures to the booking path would have a material, negative impact on speed and performance of the shopping experience through Delta's digital channels. This is particularly problematic for mobile applications where computing power and screen display space is limited. If approved as written, the NPRM would drive significant detrimental changes to the consumer experience across Delta's digital channels, which include the following:

- delta.com revenue and award flight shopping
- delta.com flight reissues
- Mobile web flight shopping
- Mobile app flight shopping
- Same Day Travel changes in online check-in and on the kiosk
- Delta Vacations flight results

As further explained in Part IV below, consumers highly value speed and efficiency in the reservations process, and their satisfaction drops off significantly after 430 seconds such that they tend to abandon the application. By degrading system speed and performance, the Department's proposal would cause a decrease of revenue for bookings on Delta's digital channels. Moreover, Delta estimates that the technology, design and experience changes that would be required to comply with the NPRM would take at least 12 months with a cost exceeding \$1 million.

The proposed rule would also impede the development of innovative new product offerings. For example, while Delta does not charge for advance seat assignments for its standard economy product, we are developing a “Basic Economy” product which does not offer the option of an advance seat assignment at any price. For customers who choose to save money by using our Basic Economy product, seats are assigned at the gate or available for self-selection on the day of departure. Delta currently offers “Basic Economy” in 23 markets and has plans to expand to additional markets next year. This is an important competitive offering, especially considering that Southwest Airlines, the largest carrier of domestic passengers, does not offer advance seat assignments. In the future, Delta may want to make special offers to consumers to upgrade their seating if Preferred, Economy Comfort or First Class seats are available shortly before departure. The proposed disclosure rules would complicate carrier efforts to segment and present their product in the way most attractive to consumers.

Delta agrees that ancillary fees for baggage should not be subject to post-purchase price increases, which is in line with current practice. However, the final rule should make clear that if a customer was eligible for a bag fee waiver at the time of booking based on “status”, i.e. frequent flyer Medallion, and allows that status to lapse prior to the date of travel, standard baggage fees for non-Medallion customers will apply. This is not unfair or deceptive. For example, no golf club member would be allowed to book a round months in advance, allow his membership to expire, and then expect to be allowed to play for free. Again, Medallion-level fliers are frequent and sophisticated customers and are keenly aware of their status and its benefits.

III. DOT Should Change the Proposed Performance Reporting Requirements for Codeshare Carriers

The current Air Travel Consumer Report provides a valid and accurate means for customers to gauge relative performance among major U.S. carriers. However, Delta

understands the Department's interest in providing additional information on regional codeshare partners in the areas of on-time performance, baggage handling statistics, and denied boarding.

The NPRM states that the Department's "primary regulatory interest is collecting and publishing data on code-share service operated by the regional-carrier partners of the larger U.S. airlines." NPRM at 29983. While Delta does not object to providing consumers data about regional carrier code share operations, there are less burdensome ways of achieving the Department's objective than proposed in the NPRM. The proposal as issued raises a host of problems including: (i) submission of duplicate data by different carriers; (ii) difficulty for mainline carriers to certify data provided by codeshare partners; (iii) difficulty for mainline carriers to timely submit data provided by codeshare partners; and (iv) difficulty for carriers and BTS in accurately and timely processing the proposed new dual reports.

As detailed in the comments of A4A, the codeshare operating carrier, rather than the codeshare marketing carrier, is in the best position to report the requested new information to BTS. BTS has the capacity to verify and aggregate this information, and the Department should not require mainline carriers to file separate reports for their code share partners as well as for their own operations. Mainline carriers are in a poor position to verify the accuracy and quality of data received from codeshare partners because they lack access to each other's reporting systems. If BTS has concerns regarding information on flights operated by a regional codeshare partner, the mainline carrier would not be able to respond directly, but instead would need to act as an intermediary between the codeshare partner and BTS, adding complication and delay.

In addition, because the Department's "primary regulatory interest" is collecting and publishing information on codeshare flights operated by regional carrier partners of mainline airlines, mainline-to-mainline codeshare reporting should be excluded from the

requirements of any final rule. Such codeshares comprise very little total reportable traffic (roughly 2%) and consumers are well informed that the mainline operating carrier, with its unique and identifiable livery, is different and separate from the marketing carrier. Market circumstances have changed; due to significant mergers major carrier marketing alliances (such as the former Delta/Northwest/Continental and United/US Airways arrangements) have become much less relevant in recent years. To the extent consumers are concerned about the performance of a mainline codeshare partner, they can refer directly to that carrier's DOT results. This avoids double-counting and the unwarranted blending of system results among competing mainline carriers.

IV. Redundant Verbal Disclosures of Codeshare Partners Are Unnecessary and Unhelpful to the Consumer Shopping Experience.

The NPRM erroneously asserts that "section 257.5(b) requires that carriers and ticket agents must identify the actual operator of a codeshare flight the *first time* that a codeshare flight is cited to a consumer in person, over the telephone, or through other means of oral communication." NPRM at 29987. In fact the regulation only requires that such notice be given "before booking transportation", i.e. at the end of the reservations process.

The Department's stated policy, dating at least as early as 1994, when it proposed the existing version of § 257.5(b) in an NPRM, has been that notice is "timely" if it is given before a customer makes a reservation or buys transportation. That underlying policy was then expressed in the rule promulgated in 1999, which directed that any codeshare disclosure must be made by the carrier "before booking transportation." Moving the trigger point for disclosure earlier in the process -- to the "first time" a codeshare flight is mentioned -- thus represents a radical departure from the Department's stated policy of the past two decades.

Delta opposes this change which will slow the reservations process, increase reservations costs, and is a contrary to the interests to consumers. Delta's internal market research shows that consumers highly value speed and efficiency in the reservations process. Notably customer satisfaction drops off significantly after 430 seconds. Adding a new disclosure requirement the first and every time a new flight itinerary is mentioned will complicate and slow the delivery of service to consumers. Each codeshare disclosure statement adds approximately 5 seconds to a call. However, Delta operates eight domestic hubs, each with multiple daily frequencies. A passenger searching for flights involving a complicated itinerary may have dozens of options and be subject to scores of codeshare notifications. With each notice adding 5 seconds to the call, it is easy to see how consumer frustration would increase. In addition, Delta estimates that this would add \$1 million in annual recurring costs to its reservations department. The Department has shown no need for this change. Delta strives to provide a uniform product across its system, including flights operated by the Delta Connection carriers. The current rule provides the appropriate notice at the appropriate time, i.e. prior to booking, and should not be changed.

V. Changes to the Current Mishandled Baggage Reporting Rules Are Unjustified and Misleading.

Delta also objects to the proposal to change the bag reporting method from mishandled bags per enplaned passenger to mishandled bags per checked bag, both because a change is unwarranted and far too expensive to be justifiable. In addition to the comments of A4A on this key issue, Delta is also filing joint comments with American and United, which we incorporate herein by reference. The proposed methodology change is biased against the business models of network carriers, which carry the majority of domestic passengers. The current metric (which is based on mishandled

bags per passengers enplaned) has worked and been relied upon for decades and provides an accurate and reliable measure of baggage performance for the majority of airline passengers who choose among competing networks. The proposed methodology change would unfairly, and inappropriately, benefit Southwest Airlines Co. ("Southwest"), whose interest in pushing this proposal is to mask its poor baggage handling record and improve its ranking by manipulating the statistics. Short of mandating a multi-segmented reporting metric detailing performance on non-stop vs. one-stop vs. two-stop, etc. itineraries – a change which would be too complex and costly and which has never been proposed - the current, time-honored system provides a more useful comparative tool for consumers than any other.

The NPRM incorrectly assumes that it would be simple and inexpensive (\$10,000 per carrier) to change the metric for carriers to report origin and destination ("O&D") checked bag counts. This is not true. The current metric is comprised of two easily obtainable, objective data inputs, *i.e.* enplaned passenger and mishandled bags. In order to change to an O&D method of reporting mishandled bags per checked bags, major new investments in infrastructure and reporting systems would be necessary. Notably, in order to capture gate-checked bags for reporting purposes, each and every gate would need to be equipped with bag ticketing equipment. Delta has previously estimated the cost to Delta alone to be approximately \$11 million dollars. *See*, Comments of Delta, RITA docket. The rule is also undesirable because consumers would be subject to additional flight delays, since carriers could no longer rely on the simple and efficient method of issuing paper tags at the gate to accommodate excess bags that are unable to fit on the aircraft in the later stages of the boarding process. The current metric is working and should not be changed.

VI. The Department Should Tailor its New Ticket Agent Requirements to Avoid Unintended Consequences.

Delta does not object in principle to extending passenger protection and customer service requirements to ticket agents, including meta-search engines. However, the Department should be careful not to adversely affect air carriers and competition in the process.

The NPRM proposes that large ticket agents (over \$100 million in revenue) – like carriers - would be required to “hold a reservation at the quoted fare or permit the reservation to be canceled without penalty for at least 24 hours...” (p. 29984). The requirement to allow customers to hold reservations without payment is problematic in the ticket agent context. Given the size of the internet marketplace, passengers could hold multiple reservations through multiple OTAs and engage in repetitive speculative bookings making inventory management by carriers much more difficult. Such a policy would have the effect of increasing oversales and increasing prices paid by consumers as lower-fare inventory would be consumed by speculative bookings. Instead, travel agents should be required to follow the refund or hold procedures set by the carrier for which they are selling. To prevent speculative bookings carriers may want to require OTA’s to collect payment so that consumers have an actual interest in the seat they are claiming. Requiring a 24-hour refund window for OTAs satisfies the purpose of the rule without facilitating inefficient and counterproductive passenger behavior.

The Department should also make clear that the 24-hour hold or refund requirement does not apply to tour packages that include bundled air and ground products. MLT Vacations, a large travel agency owned by Delta, negotiates arrangements with hotels far in advance, and MLT is subject to penalties upon bookings much further out than the NPRM’s proposed cancelation window. Because land and air

are offered together as a bundled discount package, it is not practical to separate and apply different refund policies to the land and air portions.

Delta supports the DOT proposal to prohibit undisclosed bias in any presentation of carrier schedules, fares, rules or availability. To the extent there is any bias in an agency display to the general public, the bias should be fully disclosed to the consumer. Delta does not support any proposed regulations that would change existing business practices in the display algorithms used by agents (inclusive of GDS) that do not bias based on carrier identity. In addition, the Department should make clear that biasing restrictions do not apply to individual carrier websites. A customer shopping for tickets on delta.com knows and expects that Delta is marketing Delta flights in a manner advantageous to Delta over other carriers, but that otherwise best meets the customer's needs and search parameters.

VI. Conclusion

Delta's business depends on providing excellent service and ensuring that its customers are fully satisfied with the products and services they receive. If customers perceive that they are treated "unfairly or deceptively" they are unlikely to return. The commercial marketplace – regulated by the Department's existing consumer rules – already ensures that customers are receiving accurate, timely and transparent information on airline fees and services. Some of the Department's new proposals, as detailed above and in the A4A and United/American/Delta filing, are not cost-justified and would actually be contrary to the interests of consumers. We urge the Department to amend the NPRM in line with industry recommended alternatives and to provide enough time to implement those proposals finally adopted.

Respectfully submitted,



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CERTIFICATE OF SERVICE

A copy of the foregoing Comments have been served this 29th day of September, 2014, upon the following persons via email:

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