



Testimony of Charles Leocha, President, Travelers United, Inc.

**Before the U.S. House of Representatives
Committee on Transportation and Infrastructure,
Subcommittee on Aviation**

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**BUILDING A 21ST CENTURY INFRASTRUCTURE FOR AMERICA: AIR
TRANSPORTATION IN THE UNITED STATES IN THE 21ST CENTURY.**

Thank you, Chairman LoBiando, for giving passengers a seat at this hearing and an opportunity to testify about air transportation in the United States in the 21st Century.

My testimony today will focus on the changes that have developed over the past decade that have changed the aviation marketplace for consumers and for the airlines that serve us. From the increases in information technology outages to changes in international economies; from the unbundling of airfares to an ever-growing collection of fees to the strengthening of international airline alliances; and from the paucity of hard-to-find consumer protections to heavy-handed mergers-in-kind that are stifling competition, airline passengers are facing a far different flying landscape to that they faced only 10 years ago.

What follows is an outline of major consumer issues that have developed over the past decade and some suggestions about possible solutions.

My name is Charles Leocha. I am the president of Travelers United, a non-profit 501C3 group created to educate legislators, regulators and their staff about the needs of travel consumers. Travelers United is the main consumer advocate in Washington, DC, for all travelers. I sit on the DOT Advisory Committee on Aviation Consumer Protections and have served on the Consumer Advocacy Subcommittee of the Transportation Security Advisory Board.

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Common Carriers and the Full-Fare Advertising Rule

Airlines are common carriers. As such they must follow rules that have been established over centuries. Recently, airlines have been parsing the common carrier rules in terms of public pricing of travel costs. This refusal to release full airfares and all ancillary fees together with exceptions make it impossible for consumers to effectively comparison shop for airfares.

And, when airlines, cruise lines, buses, and trains compete, all should follow the same full-fare advertising rules that should require each mode of travel to advertise the full fare, including all mandatory taxes and fees.

Any consumer who has spent time on a bus, taxicab, commercial airplane, passenger train, or cruise ship, has been on a common carrier. In the United States, a common carrier (or simply "carrier") is an entity whose business transports people or goods from one place to another for a fee and that must comply with governmental requirements. Here are the basic three requirements for common carriers:

- 1. Public pricing:** When it comes to prices charged by common carriers, those tariffs must be public.
- 2. Duty of Care:** Carriers may be held liable for the injuries of passengers, but only if the plaintiff can prove negligence.
- 3. No discrimination:** Common carriers must serve the general public without discrimination.

Airlines, as common carriers, should not be permitted to restrict distribution of public airfares and ancillary fees. This practice makes it difficult to comparison shop for airfares.

Delta Air Lines is alone in this practice. They are forbidding some websites from publishing public airfares, even when they are legally obtained. This means that websites like Hipmunk, TripAdvisor, SkyScanner, Travelzoo, Cheapair and others cannot display Delta airfares.?

At Hipmunk.com, Delta flights can be seen, but the prices are not revealed. This makes comparison shopping impossible for consumers. Delta's decisions about which websites it will allow to display airfares is seemingly random. However, any restriction of airfares makes comparison shopping very difficult, limits competition, and is not transparent for its customers.

No airline should be allowed to restrict the distribution of its airfares or its ancillary fees. These should be public information.

While common carrier pricing of airfares and ancillary fees is public, airlines can pick and choose about which businesses they want to sell their tickets. Travelers United accepts that Delta can do business with whatever agent they choose, but they cannot restrict the publication of their public common-carrier airfares and fees.

Even Southwest Airlines, that famously advertises all tickets must be purchased from southwest.com, advertises on many online travel agency websites with ads that direct consumers to their website and airfares.

Information Technology outages are the fault of the airlines, not “Acts of God” — airlines should make travelers whole.

Virtually every major airline has had an IT meltdown over the past year. Once upon a time, these IT issues were relatively rare. However, with the dramatic consolidation in the industry that has required airlines to combine different Internet systems, these problems are accelerating. When problems arise, every airline (except Southwest) punishes their passengers for the airlines' own incompetence.

Little coverage has been focused on consumer issues related to these IT outages. Delta Air Lines, American Airlines, and United Airlines have all had problems. Their remedies have been woefully inadequate and have actually punished its passengers for the airline's own failures.

Passengers have been inconvenienced by cancellations and delays. They may have missed organized tours and cruises. Other passengers, especially families, may have missed irreplaceable vacation time and events such as weddings and funerals that cannot be rescheduled. And, we all know that vacations planned in the far future cannot be changed without additional expenses and often cannot be rescheduled at all.

Many airlines expect their affected passengers to pay *additional* airfares and fees in order to use airline tickets that they purchased and were not able to use because of the airline's failures to provide service. Plus, where these IT failures result in delay for international passengers, the airlines simply did not inform many passengers properly.

Airlines need to provide protections for their passengers and to explore how airlines can assist their passengers in such system-wide shutdowns.

Travelers United has suggested, at the very least, to make airline tickets and airfares paid and affected by IT failures usable for a year from the dates of the cancellation and delays. There should be no change in airfares if itineraries are unchanged and the full value of the ticket should be usable if passengers request changes and refundable to the passenger if they do not choose to use the tickets..

TSA Security Fees

Necessary increases on security fees are OK If the money goes to TSA and security. During past 9/11 Security Fee increases a portion of the increases was paid to the General Fund. This money is collected from passengers for security and should be spent on security. Last summer, passengers faced hours-long waits at TSA checkpoints even after paying an almost-50-percent increase in fees because the government did not spend the funds on improving the security system.

Antitrust Immunity/Airline Alliances/Codesharing/Open Skies/ Slot Controls and airline hypocrisy

Consumers believe that the most important actions in terms of antitrust protection come from the Department of Justice (DOJ) when it reviews major mergers such as the United/Continental merger or the corporate marriage of American Airlines and US Airways. However, with the airline world, DOJ isn't the only player in antitrust.

The Department of Transportation (DOT) and the Federal Aviation Administration (FAA) both have responsibilities. DOT is responsible for granting antitrust immunity to airline partners. This

is like a merger, but without any exchange of stock or hassles with international law. The FAA is focused on maintaining slot control at some US airports. These controls are extremely important for our system.

For example, in the New York City area, more than 75 percent of all take-off and landing slots at LaGuardia and JFK are controlled by three airlines — Delta, American and JetBlue. This is not a good situation for consumers when competition is stifled and controlled by three airlines. The two major network carriers serving 77 percent of the traffic in and out of LaGuardia use that control to keep out competitors and to divide the market.

DOT gets around other antitrust rules by granting immunity for collusive practices. While it would appear that a dozen airlines are flying across the Atlantic on a daily basis, the truth is that these airlines are part of three “alliances” that are allowed to coordinate their flights, schedules, and airfares. These airline alliances also split their profits. Many of the airlines within these alliances operate as though they are fully merged. They have their own profit sheets, their own boards of directors, and coordinate everything from schedules, fuel purchases, cargo rates, and airfares.

In other words, what appears to be a competitive market of many airlines is a tightly controlled group of three airline alliances that fly about 80 percent of transatlantic traffic. This legal cabal kept international airfares high because of the lack of competition, even with plunging jet fuel prices.

Travelers United urges Congress to re-examine current ATI grants and airline alliances based on the most recent actions by airline alliance members that are erasing many of the stated reasons for airline alliances and ATI. Chief among those kinds of benefits that are now threatened is the ability to Interline -- check in on several airlines at once and have baggage transferred between airlines in different alliances. Today, airline alliances are taking on the practices of monopolies by restricting both through check-in as well as transfers of baggage outside of alliances.

DOT should re-examine any claims of “public benefit” developed by ATI grants. The Department should clearly delineate the consumer benefits that were described in the original ATI applications.

Not a single carrier in an immunized joint venture, or DOT itself, has ever published data showing that the US consumer is better off because of any ATI grants. Carriers that apply for ATI protection for their joint ventures make many promises. However, DOT has never demonstrated that these promises are actually delivered to consumers.

No more ATI grants should be allowed until the Department conducts a complete review of the current ATI grants. These “periodic reviews” were included in the original ATI grants. Travelers United respectfully requests that these promised periodic reviews be completed and the continuing “public interest” be confirmed prior to any new ATI actions by DOT.

Open Skies Treaties

These treaties have long worked in favor of US airlines. The airlines enthusiastically embraced Open Skies and put together their airline alliance cabals.

Today, the major international carriers — American, Delta and United Airlines (Big3) — are fighting the very open skies system that they used so well to lock up the transatlantic market.

Two developments are raining on the Big3 airline alliance parade — the rise of long-haul low cost carriers like Wow and Norwegian Air international, which are flying modern low-fuel aircraft, and the development of a major African/South Asia hub in Dubai, Qatar and Abu Dhabi.

Another development has been the growth of international air freight that has mushroomed in the Middle East. FedEx, UPS and other major freight carriers now have massive hubs serving the fast-growing economies of the Middle East, Southern Asia, and Africa. The giant freight operations dwarf virtually every US passenger carrier.

Lower fuel costs and low-cost carriers

As oil prices and jet fuel costs dropped by almost 50 percent over the past half-decade, the US carriers and their alliance partners did not lower their transatlantic fares. They made record profits and their passengers did not see the benefits of the lower fuel costs.

A new economic world and Middle Eastern carriers

While the US airlines were worried about consolidation and building fortress hubs in London, Paris, Madrid, Frankfurt, Munich, and Amsterdam on transatlantic routes, the economies of South Asia and Africa exploded with the world’s largest and fastest-growing middle class. The rules of the game changed as the Middle Eastern Airlines — Emirates Airline, Etihad Airways and Qatar Airways — began to serve this area with large aircraft, good service, and convenient connections.

PFCs (expand the pool of those who pay — include not only passengers, but communities)

Every director of every airport across the country will proclaim that their airport is the economic engine of their region. However, the regions' businesses are not paying their fair share for airport construction and operations. Passengers are being stuck with the bill.

The current passenger facility charges (PFCs) are being used to guarantee financing of municipal bonds and have already been committed far into the future. The benefits to passengers today are almost non-existent.

Passengers are also the ones to pay parking fees, food court fees, retail fees, taxi fees, rental car fees, and more, to keep the airports running to serve their regions. It is time that the nearby industrial property owners and businesses pay for the airports that make their property worth more than random pasture lands.

Owners of massive parking lots that serve airports and car rental companies need to pay their share. Landlords of the office parks that have mushroomed around airports should be paying their fair share. Hotel owners should be shouldering their share of airport costs and improvements. Without an airport, all these businesses would go bust.

PFC user fees are already exorbitant and aviation consumers are paying enough. The metropolitan areas that are benefiting from the massive economic impact that airports deliver should pay their fair share. Congress should not give airports a blank check to tax passengers.

According to Airlines for America figures:

- Over \$100 billion of capital projects have been completed, are underway or approved at the nation's 30 largest airports alone since 2008. These include, for example, new runways at Fort Lauderdale, Washington (Dulles), Seattle, and Charlotte; multiple new runways at Chicago (ORD); new international facilities at Atlanta and Los Angeles; and new, expanded or modernized terminals at Miami, Las Vegas, Orlando, Hawaii, Houston, Denver, Seattle, Salt Lake City and San Francisco.
- Development is also robust at smaller airports, including, for example, runway projects at Erie, Columbus, Dayton, Des Moines, Nashville and Sioux Falls and terminal projects at New Orleans, Eugene, Grand Rapids, Greenville-Spartanburg, Norfolk, Portland (Maine), Reno-Tahoe and Wichita.

- In addition, U.S. airlines are investing in the overall customer experience — at the airport, in the cabin and in mobile technology — at the current rate of more than \$1.4 billion per month.
- Airport revenues are at record levels — U.S. airports collected nearly \$27 billion in 2015.

The bottom line is that airports may want more funding for infrastructure projects, but they certainly do not need it delivered with this FAA bill. Other systems should be developed to more fairly spread the costs of airports across passengers who use the facilities and the localities, with their office parks, hotels, and other support buildings that take advantage of the giant economic effects of the airport on the local economies.

Travelers United, in surveys across the US, has never met a passenger who asked us to help raise their airport taxes. Once we inform passengers that current taxation rates mean round-trip connecting-flight airline tickets cost more than \$50 in taxes before passengers even pay for airfare (which is then taxed another 7.5 percent), they all agree, “Enough is enough.”

Educating consumers. (Let’s get basic passenger rights up on posters at airports, on boarding passes and ticket itineraries.)

DOT rules and regulations are relatively simple, but often hard to find. Plus, airlines thrive on uninformed passengers when it comes to compensation for lost, damaged and delayed checked baggage, as well as overbooking. Plus, the rules for compensation when delayed on international travel are shrouded in mystery.

Airline consumers are asking for information about our rights as travelers to be posted at airports and on our computer-generated boarding passes and itineraries.

This action requires no new legislation — the requirements for airports to display public service announcements at the request of the Secretary of Transportation is part of current appropriations legislation. Plus, current regulations regarding denied boarding procedures require that passengers being bumped be given the rules in writing. Unfortunately, this doesn’t always happen. Posters at airports and a short statement of passenger rights would allow travelers a level playing field when faced with customer service breakdowns during airline travel.

There are only two sets of domestic aviation rules that provide compensation for domestic consumers — one European Union rule and the Montreal Convention — that provide compensation for aviation consumers.

Notice of these compensation rules should be part of every computer-generated boarding pass, every ticket itinerary, and posted at jetways and baggage carousels so that consumers know these limited rules of aviation travel.

- compensation for lost/damaged/delayed baggage (domestic and international rules).
- denied boarding compensation (Airlines are permitted to overbook flights — sell more seats than they have available. When that occurs, consumers are due specific compensation.)
- honesty about delay compensation. (Delay compensation is available for international flights. Montreal Convention rules apply to all flights and EU rules apply to all flights from Europe to the US and for European-carrier flights from the US to Europe.)

Are there consumer protection regulations that need elimination?

When it comes to consumer protection regulations, there are none that can be eliminated. The current federal regulations only provide compensation for passengers for lost/damaged/delayed baggage and involuntary denied boarding. Consumer protection regulations in the CFR in the aviation industry may be the shortest chapter in that tome.

Air traffic system as infrastructure

Our air traffic control system operates on technology from the 1960s. Passengers in cars with GPS have more awareness than pilots flying cross-country. This outdated system has not suffered because of a lack of appropriations, but because of a lack of leadership coupled with a financing structure tied to the vagaries of the budget process. That financial uncertainty has delayed implementation of new NextGen technology for almost a decade.

The delays have cost the American public billions of dollars in lost time, fuel, environmental damage, and airport improvements that can be eliminated through better technology.

Consumers ask that the government complete the modernization of our air traffic system and develop a funding system that will allow for continued improvements.

Why buying an airline ticket is different than buying a sofa?

1. When a consumer has a problem with an automobile dealership, a furniture store, or almost every consumer good or service, they have a series of adjudication systems. They can speak with the local BBB and with trade associations. They can take the

business to small claims court, and then on through the local state and local courts, and finally to the Supreme Court.

When consumers work with airlines, they have one option — DOT becomes the chief judge and jury with decisions based on federal rules. At that time, the only other option is to take grievances to the Federal Court System. This is expensive and virtually impossible for normal individual consumers.

2. When it comes to taxation, airlines are treated in an extraordinary manner. They do not have to pay state and local taxes, they only pay airport fees, federal fees and a federal excise tax.

The airline argument that they should be treated like furniture stores or car dealerships is wrong. They are not subjected to the checks and balances that local businesses face in the local judicial systems and their excise tax is treated just as every other excise tax is in the US.

3. If airlines want to be treated like automobile dealerships or furniture stores, they can give up federal preemption, fold their legal protections into the normal consumer protection legal systems, and deal with the 50 states and districts that impose taxes, as well as thousands of municipalities and localities. We know from the airlines that this simply will not happen.