

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

**ENHANCING TRANSPARENCY OF  
AIRLINE ANCILLARY SERVICE FEES**

**Docket DOT-OST-2022-0109**

**PETITION FOR HEARING  
OF  
THE TRAVEL TECHNOLOGY ASSOCIATION**

Laura Chadwick  
President & CEO  
The Travel Technology Association  
3033 Wilson Blvd., Suite 700  
Arlington, VA 22201  
202-550-8939

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## PETITION FOR A HEARING

Pursuant to the Department's rules at 14 C.F.R. § 399.75, The Travel Technology Association ("Travel Tech"), on behalf of its members,<sup>1</sup> hereby petitions the General Counsel of the U.S. Department of Transportation ("DOT") for a hearing regarding DOT's Notice of Proposed Rulemaking on "Enhancing Transparency of Airline Ancillary Service Fees" that was issued in this proceeding and published at 87 Fed. Reg. 63718 (Oct. 20, 2022) (hereinafter, "NPRM"). Specifically, Travel Tech requests a hearing to address multiple disputed technical, economic, and other factual issues raised by DOT's proposed requirement to display the "critical" ancillary fee information described in the NPRM on the first page of online search results.<sup>2</sup>

Travel Tech fully supports DOT's goal in the NPRM to provide consumers with useable, accurate, and complete information about critical ancillary fees that will allow consumers to better understand the cost of travel before purchasing a ticket and compare flight options. The ticket agent community, which includes Travel Tech's online agency members and GDS members, does not today universally receive from airlines information on these critical fees and thus are not always able to display them at any point in the booking process. Travel Tech's metasearch members likewise do not always receive critical fee information from airlines. This problem has existed for many years and Travel Tech agrees with DOT that it is time to require airlines to provide this data.

However, while not challenging the enhanced transparency goal of the proposed rules, Travel Tech is very concerned with those portions of the NPRM that would prescribe the point at

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<sup>1</sup> The members of Travel Tech consist of online travel agencies ("OTAs"), metasearch sites, travel management companies, and global distribution systems ("GDSs"). They are identified on its website at [www.traveltech.org](http://www.traveltech.org).

<sup>2</sup> As defined in the NPRM, critical ancillary fees are those for first and second checked bags and carry-on bags; change and cancellation fees; and family seating fees, i.e., seat fees for families traveling with a child who is 13 or under. *See* 87 Fed. Reg. at 63725.

which the critical fee information needs to be presented to consumers, i.e., on the first search results page, and the manner in which the information must be displayed, i.e., without any links or other shortcuts that are standard in the industry. *See, e.g., id.* at 63727. The proposed removal of display flexibility in favor of government-prescribed display rules creates a host of technical and other challenges that simply cannot be met without a major overhaul in the way information is presented. That overhaul is not only technologically challenging and costly, but in important respects it would *harm* rather than help advance the very consumer interests that DOT and Travel Tech seek to promote.

Below, Travel Tech explains why a hearing on these display issues would be in the public interest. Specifically, Travel Tech will demonstrate that there are issues central to the proposed display rules that are disputed and that a hearing is essential to assist DOT in considering how best to move forward with a rulemaking that will best serve the interests of consumers in greater transparency while avoiding display proposals — such as those set forth in the NPRM — that would impose undue and unrealistic burdens on the ticket agency sector and that would be technically impossible for channels, such as mobile websites, that consumers are increasingly using to search and book travel.

#### **I. TRAVEL TECH IS AN INTERESTED PARTY IN THIS RULEMAKING PROCEEDING WITH STANDING TO REQUEST A HEARING**

Under 14 C.F.R. § 399.75(b)(1), “*any interested party* may file in the rulemaking docket a petition, directed to the General Counsel, to hold a hearing on the proposed regulation” (emphasis added). Travel Tech is such an interested party in this rulemaking proceeding.

Travel Tech represents the world’s leaders in independent travel distribution. Our members include OTAs, metasearch sites, travel management companies, and GDSs that enable consumers to search, compare, and book travel easily—usually via online platforms. These

technology innovators have created the marketplace from which travelers, suppliers, and intermediaries benefit today. Many Travel Tech members provide suppliers with access to the vast and diverse travel marketplace while offering consumers transparency, a wide range of options, and a superb customer experience when purchasing and managing their travel. And our GDS members provide the essential infrastructure that allows for the aggregation of data from GDS airline participants and its orderly dissemination to GDS travel agency subscribers. The GDSs thereby facilitate the ability of those subscribers to display flight, schedule, availability, and fee information in a manner that is understandable and transactable.

Since many of our members' business models center on the online display of air travel options, any requirement to display critical ancillary services on the first search results page *directly* impacts Travel Tech's members. Indeed, as explained below, DOT's proposed display requirements would require fundamental changes to our members' technology and design of their web pages that will likely harm both their businesses and their customers. Further, Travel Tech's members would bear the greatest burden of compliance since, unlike airlines, our members display *more* air travel options, namely, from multiple airlines, as in the case of OTAs, or from multiple airlines and OTAs, as in the case of metasearch sites. Thus, DOT's proposed display requirements affect ticket agents more substantially than airlines — and in turn impact consumers who rely upon agents as an independent and comprehensive source of information.

## **II. A HEARING ON THE PROPOSED DISPLAY REQUIREMENTS CERTAINLY WOULD BE IN THE PUBLIC INTEREST AND, THUS, MUST BE GRANTED**

Under 14 C.F.R. § 399.75(b)(2), “[a] petition [for a hearing] *shall* be granted if the petitioner makes a clear and convincing showing that granting the petition is in the public interest” (emphasis added). In determining whether a petition is in the public interest, DOT's General Counsel shall consider, at a minimum:

- (i) Whether the proposed rule depends on conclusions concerning one or more specific scientific, technical, economic, or other factual issues that are genuinely in dispute or that may not satisfy the requirements of the Information Quality Act;
- (ii) Whether the ordinary public comment process is unlikely to provide an adequate examination of the issues to permit a fully informed judgment;
- (iii) Whether the resolution of the disputed factual issues would likely have a material effect on the costs and benefits of the proposed rule;
- (iv) Whether the requested hearing would advance the consideration of the proposed rule and the General Counsel's ability to make the rulemaking determinations required by this section; and
- (v) Whether the hearing would unreasonably delay completion of the rulemaking.

*Id.* As explained below, *all* these factors are satisfied by Travel Tech’s petition. A hearing would allow Travel Tech and other interested parties the opportunity to express their views and put forth expert testimony to be explored and challenged by other interested parties in a robust give-and-take setting regarding the disputed technical, economic, and other factual issues raised by the proposed display requirements. This would in turn result in a stronger record on which to modify the proposals. Such a result is clearly and certainly in the public interest. DOT’s General Counsel would be well-positioned as a result of a hearing to modify the proposed rules in a manner that is technologically and economically feasible for the air travel industry and that also meets DOT’s objective of allowing consumers to more effectively consider travel options. As proposed, the rules would upend, clutter, and confuse the online air travel shopping experience that Travel Tech’s members have worked hard for years to make easy, intuitive, and informative.

**A. The proposed display requirements depend on technical, economic, or other factual bases that are genuinely in dispute**

In the NPRM, DOT proposes requiring ticket agents to display on the first search results page ancillary fees for (1) first and second checked bag and one carry-on bag, (2) changing or canceling a reservation, and (3) adjacent seating when traveling with a young child (“family

seating”). *See, e.g.*, 87 Fed. Reg. at 63724. Additionally, all these “critical ancillary fees” must be *personalized* if a passenger enters certain information affecting the fees (e.g., military status or frequent flyer number), and absent such specific passenger information, the critical ancillary fees must be itinerary-specific (i.e., tailored to travel dates, cabin class, etc.). *See, e.g., id.*

These proposed requirements give rise to disputed facts. For example, some such critical ancillary fee information cannot possibly be displayed on the first search results page as a specific fee, since the level of the fee, if any, is contingent on choices made later in the booking process. As another example, the display of family seating information and passenger-specific fee information is currently *technically* infeasible, given existing website technology and data-sharing capabilities among industry stakeholders. Further, there is a core factual issue as to whether consumers’ shopping experience would benefit or degrade due to the clutter and confusion that would result from DOT’s rule. Below, Travel Tech addresses some of these disputed technical, economic, and other factual issues and demonstrates that a hearing would further rational rulemaking and, thus, be in the public interest.

**1. There is a fundamental disputed factual issue as to whether the proposed display requirements would benefit or harm consumers**

DOT’s goal is to promote consumers’ interests with the proposed display requirements. *See id.* at 63721. However, DOT’s belief that the proposed requirements will benefit consumers is very much in dispute. Displaying all of the critical ancillary fees on the first search results page, even if possible, would make the page highly cluttered, confuse consumers, and severely reduce the number of flight options displayed on a single screen without excessive scrolling. That problem would be particularly acute on mobile displays. Thus, the proposed display requirements would frustrate, rather than further, DOT’s goal to provide consumers with useable, accurate, and

complete information about critical ancillary fees that will allow like-for-like comparison before they purchase an airline ticket — a goal that Travel Tech supports.

The end result of the proposed rules is that the display requirements would make it more difficult to compare options, particularly since the large volume of data could be confusing or overwhelming and cause the webpages to react more slowly. Expert testimony on these issues would be particularly useful for DOT in understanding why the distribution community is urging an abandonment of the proposed prescriptive display rules in favor of more flexible and workable rules that would require display of critical ancillary fee information during the search and booking process. Such testimony could explore the best ways to address the consumer information overload and technological issues implicated by DOT's proposal. It could also address DOT's proposal to prohibit the use of links and other commonly used shortcuts in the display of the critical fees.

In addition, a hearing could explore the implications of the rules for mobile websites. Whereas DOT's proposed display requirements are not feasible for desktop websites, they are even more problematic for mobile websites where the available space to convey information to consumers is even more limited. For example, the display of seat maps to the extent needed to transact the requirements as listed in the rule would be impossible to display on the first search results page on mobile websites. Further, banning the use of generally accepted — and necessary, given the limited space — shortcuts for mobile websites (e.g., clicks and hyperlinks) would jeopardize the rule's goal of increasing transparency for consumers. In issuing the rule, DOT must take into account consumer trends for searching and booking flights, notably the increasing use of smaller devices such as mobile phones and voice-enabled search results (for example, for visually

impaired consumers), which would be unable to comply with the prescriptive rules as currently proposed.

Overall, DOT’s proposed display requirements would harm rather than protect or advance consumers’ interests regarding comparative online air travel shopping. It is a well-known tenet of economics that information overload can result in sub-optimal purchasing decisions,<sup>3</sup> and this has traditionally been a concern of DOT.<sup>4</sup> But in this rulemaking, DOT — while it acknowledges the issue at page 23 of its Regulatory Impact Analysis (RIA) — has apparently overlooked this concern, since its proposed display requirements threaten such information overload.<sup>5</sup> A hearing will allow an opportunity to present testimony on the information overload issue as well as other potential disbenefits of the display proposals. For example, it will allow for the presentation of more facts that could shed light on the numerous uncertainties identified at pages 29–30 of the RIA concerning the impact of portions of the proposed rules, including impacts on search time, and needed changes to websites and programming.

These issues would benefit from a hearing at which Travel Tech members can address the substantial implications of the display requirements on the way in which they conduct business and on their websites. Travel Tech witnesses will be able to demonstrate how and why displays are currently designed to provide consumers with the best possible information and how, by

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<sup>3</sup> See, e.g., Lee, Byung-Kwan and Lee, Wei-Na, *The Effect of Information Overload on Consumer Choice Quality in an On-Line Environment*, PSYCHOLOGY AND MARKETING 21 (2004) (finding consumers faced with information overload are “less satisfied, less confident, and more confused”).

<sup>4</sup> See, e.g., Disclosure of Code-Sharing and Long-Term Wet Lease Arrangements, Final Rule, 70 Fed. Reg. 44848, 44850 (Aug. 4, 2005) (“requiring the provision of too much information in a necessarily complicated format can result in increased customer confusion”).

<sup>5</sup> See OFF. OF THE GEN. COUNS., OFF. OF REGULATION, U.S. DEP’T OF TRANSP., ENHANCING TRANSPARENCY OF AIRLINE ANCILLARY SERVICE FEES REGULATORY IMPACT ANALYSIS, RIN 2105-AF10, at 23 (Sept. 2022).



contrast, overly prescriptive display rules of the type proposed by DOT will disrupt the effective presentation of the data.

Certain additional disputed factual issues raised by the display proposals discussed next also warrant a hearing.

**2. There is a factual dispute as to whether cancellation and change fees can be displayed on the first search results page**

DOT apparently believes that it is possible to state a single specific change or cancellation fee on the first search results page. *See* 14 C.F.R. § 399.85(c). That is factually wrong. The fact is that this DOT proposal cannot feasibly be implemented by the industry. The reason is that the amount of these fees often vary based on when the cancellation or change is made (e.g., within 24 hours of booking, at some later time but before travel commences, or once travel has already commenced) and could also vary based on the reason for the cancellation or change (e.g., a travel date change versus an itinerary change). The fees are thus too variable to allow for a specific fee to be displayed on the first search results page. By contrast, it may be feasible to provide a link to a page where information about a range of cancellation and change fees for the specific airline is shown, but DOT's proposed display requirements would not allow ticket agents or airlines to display a link or range of possible fees.

While this is a point made in Travel Tech's comments, a hearing would allow for a visual and interactive demonstration of why change and cancellation fees cannot be displayed as proposed as well as a back-and forth discussion of the issues among stakeholders to come up with an acceptable modification of the proposal. It will also allow for an exchange of views with others who may have different ideas on the display of these fees.

**3. There is a factual dispute as to whether family seating fees can be displayed on the first search results page**

The proposed rule at section 399.85(e) requiring the display of a family seating fee also rests on assumptions that are not consistent with display realities. As is the case with change and cancel fees, it is not possible to state only a single specific fee for an adjacent seat. There are many variables that affect that fee, and such fees are in fact highly dynamic and thus changing frequently on many airlines.

Adults who wish to sit next to their children will need to decide *first* where in the aircraft they wish to sit and how much they wish to pay, after being informed of the available options during the booking process. Only after the parents' seats are selected can a choice on adjacent seats follow. Thus, as with cancellation and change fees, the proposed rules conflate a necessarily multi-step process into a single-step process on the first search results page.

Even apart from this issue, the proposed display requirement is infeasible. As DOT admits, "prices for seats are often dynamic and change based on availability and time of purchase." 87 Fed. Reg. at 63723. It is for these very reasons that a specific fee for two adjacent seats chosen from among the many different price, availability, and location options for seats offered by airlines, with prices and availability subject to change in real-time, cannot be feasibly shown on the first search results page. Indeed, seat fees are generally displayed via aircraft seating maps which show which fees apply to which seats.

These issues could be addressed at a hearing where visual and interactive demonstrations can be made showing why the family seat fee proposal is not workable as currently proposed. Technical experts could describe the challenges to displaying this information on the first search results page and others could address how it would adversely impact displays. The hearing would

provide an opportunity for the exchange of views on these issues toward the end of a more realistic proposal that provides needed display flexibility.

**4. There is a factual dispute regarding the display of passenger-specific critical ancillary fees by ticket agents**

DOT proposes requiring ticket agents to display critical ancillary fee information that is personalized for a consumer if the consumer enters certain passenger-specific information. *Id.* at 63727. However, systems to exchange passenger-specific information sufficient to allow ticket agents to identify the applicable fees for any given passenger do not currently exist.

To address this problem to the extent possible, airlines and ticket agents will have to redesign their web displays and, in order to display passenger-specific fee data, develop new technology to allow for the exchange of passenger-specific information between airlines and agencies. Such systems would need to be developed from scratch, which, of course, could take several years and require a commitment of resources that might be better devoted to more pressing matters.<sup>6</sup> While some ticket agents currently can provide consumers' frequent flyer data to airlines, it is a one-way system that does not necessarily allow the ticket agent to correlate the frequent flyer data with the appropriate baggage fees or other fees. Nor is there any existing system for this information exchange that is scalable to meet DOT's proposed demands. Thus, DOT's proposed display requirements are technically infeasible in this respect.

A hearing would allow a more fulsome examination of this issue, with the opportunity for experts to demonstrate these facts. DOT would benefit from reconsidering the proposed passenger-specific requirement in light of the facts that would be adduced at a hearing.

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<sup>6</sup> DOT's proposed exclusion of GDSs from the requirement that airlines provide fee data to ticket agents with which they do business will not only add to development time (GDSs are by far the travel sector entities most capable of managing the necessary technology development work) but also require the industry to develop new means of transferring data between airlines and agencies, which will also take considerable time and expense.

**5. A hearing would allow for needed exploration of implementation periods**

While the implementation period for any final rules will vary considerably based on DOT's decisions on issues raised in the comments (e.g., whether GDSs and other intermediaries are required recipients of the ancillary fee data, and whether the prescriptive display rules are adopted or greater flexibility is allowed). There is likely to be a significant divergence of views among commenters on the complexity of implementation and the timeline required. In any event, the proposed six-month implementation period, *id.* at 63731, rests on assumptions by DOT that warrant further examination. This is yet an additional matter on which DOT would benefit from an exchange of views and the ability to question witnesses and elucidate the matter fully.

**B. The public comment process is unlikely to provide an adequate examination of the proposed display requirements to permit a fully informed judgment**

This rulemaking concerns a matter that is fundamentally visual and interactive in nature, i.e., the displays on websites. The issues here are uniquely suited to a hearing context at which visual displays can be demonstrated and the factual issues illuminated with interactive presentations. The ordinary public comment process — which is limited to written comments — is insufficient for reasonable consideration of the effects DOT's proposed display requirements will have on consumers' online air travel shopping experience. DOT would benefit from real-life demonstrations of how a website that is as compliant as possible would appear, and DOT would also benefit from industry, technological, and economic expert advice regarding what websites can feasibly do and what consumers desire from their online air travel shopping experience.

As noted above, a hearing would allow for a fuller exchange of views among entities that likely disagree on what is in the best interest of consumers and what is technologically realistic in terms of displays. DOT would be the clear beneficiary of the back and forth that can take place at a hearing, but for which the written comment process does not allow. Further, and quite

importantly, a hearing will allow the presiding officer and DOT officials present at the hearing to question witnesses and further elucidate points on which there are likely to be disagreements. This can only help the General Counsel exercise his authority under the hearing rules at 14 C.F.R. § 399.75(6)(i) to consider whether elements of the rulemaking as currently proposed (i.e., the prescriptive display rules) should be terminated or significantly modified.

**C. The resolution of the disputed technical, economic, and other factual issues will likely have a material effect on the costs and benefits of the proposed display requirements**

A hearing will allow for an exploration of the benefits that would accrue from allowing ticket agents the freedom they have today to design websites that are user-friendly, but that also display the fee information consumers need to make intelligent choices. DOT's proposed rules would inhibit the ability of ticket agents to fashion displays in this manner and, as would be demonstrated at hearing, actually reduce the value of the displays to consumers. Presented with a cluttered first search results page rather than a curated suite of webpages designed to progressively narrow travel and ancillary service options, consumers will miss options that they otherwise might have found. Thus, consumers will be the losers from these ill-advised display proposals.

**D. The hearing would advance the consideration of the proposed rule and the General Counsel's ability to make the rulemaking determinations**

DOT's proposed display requirements are intended to increase the transparency of ancillary fees and, thus, improve comparison shopping to the economic benefit of consumers. *See* 87 Fed. Reg. 63721 ("In issuing this rulemaking, the Department intends to protect consumers from hidden and deceptive fees and enable them to determine the true cost of travel in an effective and efficient manner when they price shop for air transportation."). But, for the reasons given above, DOT's proposed display requirements actually undermine this goal. A hearing at which the technical, economic, and other factual assumptions underlying DOT's proposed display requirements can be

assessed and reasonable alternatives can be proposed will advance consideration of the proposed rules and the General Counsel's ability to make rulemaking determinations. This can be done by allowing interested parties like Travel Tech to present additional evidence, especially visual evidence, regarding the proposed display requirements and exchange views with other parties on solutions to achieve the goals of the NPRM. Testimony regarding the proposed display requirements' technological feasibility, effect on consumers, and likely cost will provide a stronger basis for DOT's rulemaking determinations. Further, the ability of the hearing officer to hear directly from DOT authors of the display rules will help further address many of the questions Travel Tech plans to raise.

**E. A hearing would not unreasonably delay completion of the rulemaking**

DOT can hold a hearing while it simultaneously assesses the public comments it receives in response to the NPRM. DOT will likely still be reviewing these comments well into the spring, allowing sufficient time to schedule a hearing. In fact, a final decision in this proceeding is not expected until March 2024 according to DOT's latest regulatory agenda.<sup>7</sup>

Even if there were a slight delay in completing this rulemaking, the delay would not be unreasonable. DOT has attempted to promulgate rules addressing ancillary fee information since 2014 without success.<sup>8</sup> Thus, it is important that DOT finally and soundly addresses this issue, even if it takes more time. A short delay to ensure that any final rules rest on strong, informed factual bases is undoubtedly reasonable.

Further, the implementation period for these rules will likely greatly exceed DOT's expectation of six months. Indeed, Travel Tech believes that implementation of the rules, as

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<sup>7</sup> See <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202210&RIN=2105-AF10>.

<sup>8</sup> See Docket No. DOT-OST-2014-0056, *Transparency of Airline Ancillary Fees and Other Consumer Protection Issues*, 79 Fed. Reg. 29970 (May 23, 2014); Docket No. DOT-OST-2017-0007, *Transparency of Airline Ancillary Service Fees*, 82 Fed. Reg. 7536 (Jan. 19, 2017).

proposed, would take at least two years. A hearing at which the industry can more effectively analyze and offer solutions concerning the proposed display requirements could actually *hasten* implementation since any resulting modified display requirements would likely be much more implementable.

In short, granting Travel Tech’s hearing request will not unreasonably delay completion of the rulemaking.

### CONCLUSION

As Travel Tech has demonstrated, DOT’s proposed display requirements are based on genuinely disputed technical, economic, and other factual bases. If DOT proceeds to adopt these proposed requirements without further input from the air travel industry — especially ticket agents like Travel Tech’s members, who will be directly affected by the proposed display requirements — the consumer-protective goals of the NPRM will not be realized. A hearing in which the NPRM’s factual assumptions can more directly be addressed than in ordinary public comments, which will not unreasonably delay the rulemaking, and which will aid DOT in making a reasonable decision, is indisputably in the public interest. Travel Tech thus urges that this petition be granted.

Respectfully submitted,



Laura Chadwick  
President & CEO  
The Travel Technology Association  
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