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Office of the Secretary
U.S. Department of Transportation
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Office of the General Counsel
U.S. Department of Transportation
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Submitted electronically via https://www.regulations.gov and via email to the Office of General Counsel at Transportation.RegulatoryInfo@dot.gov

Re: Full Fare Rule, 14 CFR Part 399
Docket No. DOT-OST-2025-0831, RIN 2105-AF37

Truth in Advertising, Inc. ("TINA.org") and Professor Rebecca Tushnet welcome the opportunity to submit the following in conjunction with the Department of Transportation's ("Department" or "DOT") July 1, 2026 request for comments regarding its notice of proposed rulemaking ("NPRM") to amend the Enhancing Airline Passenger Protections Rule (the "Rule" or "Full Fare Rule"), 76 Fed. Reg. 23110, on airfare price advertising.[1]

At issue is the proper scope of the Department's consumer-protection authority and the principles that should govern price advertising for consumers in the airline ticket marketplace.[2] For more than a decade, the Full Fare Rule has reflected the Department's considered judgment that truthful price advertising requires more than the disclosure of technically accurate information; it requires that material pricing information be presented in a manner that enables consumers to understand, compare and act upon it. The Rule therefore recognizes a foundational principle of consumer-protection law: an advertisement's truthfulness depends not only on the accuracy of its individual statements, but also on the overall net impression those statements convey to reasonable consumers.[3]

The NPRM departs from these principles by evaluating the proposal primarily through the lens of industry flexibility and tax visibility, rather than whether the proposed amendments would preserve truthful, non-deceptive price presentation and comparison. The former considerations may be relevant policy objectives but they are not central to the Department's statutory authority.[4] Congress charged the Department with preventing unfair and deceptive practices in the sale of air transportation, not with maximizing advertiser discretion. The NPRM's proposed shift toward fragmented price presentation –

[1] Enhancing Flexibility of Air Fare Price Advertising, 91 Fed. Reg. 39932 (July 1, 2026) (notice of proposed rulemaking).
[2] This comment addresses substantive issues with the NPRM demonstrating that following through with this proposal would be arbitrary and capricious pursuant to 5 U.S.C. § 706. At this stage of the proceedings, potential procedural defects arising under the Administrative Procedure Act are not addressed, and TINA.org expressly reserves all rights to raise such issues as appropriate.
[3] FTC Policy Statement on Deception (Oct. 14, 1983), https://www.ftc.gov/system/files/documents/public_statements/410531/831014deceptionstmt.pdf.
[4] 49 U.S.C. § 41712.

without evidence that it will improve consumer understanding or marketing competition – is inconsistent with that mandate, the extensive empirical literature on price advertising, and the Department's own prior findings regarding airline ticket pricing practices.

I. Interests of Commenters

A. TINA.org

TINA.org is a nonpartisan, nonprofit consumer advocacy organization whose mission is to combat deceptive advertising and consumer fraud; promote understanding of the serious harms commercial dishonesty inflicts; and work with consumers, businesses, self-regulatory bodies and government agencies to advance countermeasures that effectively prevent and stop deception in the economy. Its website, www.tina.org, provides information about common deceptive advertising techniques; consumer protection laws, regulatory actions and other lawsuits; and alerts about specific deceptive marketing campaigns.

TINA.org has become a trusted authority on false and misleading advertising tactics, testifying before Congress on issues related to consumer protection, deceptive marketing and economic justice.[5] TINA.org regularly draws on its expertise to advocate for consumer interests before federal and state governmental bodies, and appears as amicus curiae in cases raising important questions of consumer protection law.[6]

Since its inception, TINA.org has received more than 10,000 tips and complaints from consumers, filed legal actions with regulatory agencies against hundreds of companies and entities, published more than 1,600 ad alerts and more than 1,100 news articles, and tracked more than 6,600 federal class actions alleging deceptive marketing. Notably,

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[5] *Safeguarding American Consumers: Fighting Fraud and Scams During the Pandemic Before the Subcomm. on Consumer Prot. and Com. of the Comm. on Energy and Com.,* 117th Cong. (Feb. 4, 2021) (testimony of Bonnie Patten, Exec. Dir., Truth In Advertising), https://truthinadvertising.org/action/house-testimony-2021-summary-action/; *Curbing COVID Cons: Warning Consumers about Pandemic Frauds, Scams, and Swindles Before the Subcomm. on Consumer Prot., Prod. Safety, and Data Sec. of the Comm. on Com., Sci., & Transp*., 117th Cong. (Apr. 27, 2021), (testimony of Bonnie Patten, Exec. Dir., Truth In Advertising), https://truthinadvertising.org/action/senate-testimony-2021-summary-action/.

[6] *See, e.g.,* Brief for Amicus Curiae Truth In Advertising, Inc. In Support of Respondent, *Custom Commc'ns v. Fed. Trade Comm'n*, 142 F.4th 1060 (8th Cir. 2025) (No. 24-3137), https://truthinadvertising.org/wp-content/uploads/2025/03/Custom_Comm_v_FTC_TINA_Amicus_Brief.pdf; Brief for Amici Curiae Truth In Advertising, Inc., et al. in Support of Plaintiff-Appellee, *Fed. Trade Comm'n v. Quincy Bioscience Holding Co., Inc.* (2d Cir. July 24, 2025) (No. 25-12), https://truthinadvertising.org/wp-content/uploads/2021/12/7_24_25-TINA-amici-motion-and-brief.pdf; Brief of Amici Curiae Truth In Advertising, Inc., et al. in Support of Respondent, *Intuit, Inc. v. Fed. Trade Comm'n* (5th Cir. June 21, 2024) (No. 24-60040), https://truthinadvertising.org/wp-content/uploads/2024/06/Intuit-v-FTC-TINA-Amici-Brief.pdf; Brief for Truth In Advertising, Inc. as Amicus Curiae Supporting Respondent, *AMG Capital Mgmt., LLC v. Fed. Trade Comm'n*, 593 U.S. 67 (2020) (No. 19-508), https://www.supremecourt.gov/DocketPDF/19/19-508/162934/20201207192719389_19- 508%20brief.pdf; Brief of Amici Curiae Truth In Advertising, Inc., et al. in Favor of Appellants and in Support of Reversal, *Fed. Trade Comm'n v. Quincy Bioscience Holding Co., Inc*. (2d Cir. Mar. 6, 2019) (No. 17-3745), https://truthinadvertising.org/wp-content/uploads/2018/03/Prevagen_Amici-Curiae-brief.pdf.

since 2015, state and federal agencies have obtained monetary judgments of more than $1 billion against wrongdoers based on TINA.org's legal actions and evidence, and returned tens of millions in ill-gotten gains to consumers.

With respect to price marketing specifically, TINA.org has closely tracked airlines' fare-advertising practices for more than a decade. The Full Fare Rule is itself among the federal advertising laws TINA.org catalogs for consumers,[7] and TINA.org has also reported on the Department's own enforcement of the Rule, including its 2011 action fining online ticket agent Orbitz $60,000 for violating the Rule's full-price disclosure requirement.[8] TINA.org has published ad alerts documenting airlines' use of fee-based bait-and-switch tactics, including Frontier Airlines' practice of breaking its fees into small increments to disguise what amounts to an average fare as a "low fare."[9] TINA.org has likewise tracked numerous class-action lawsuits alleging that airlines advertise attractive fares only to increase the price at checkout, including suits against American Airlines and Spirit Airlines,[10] and it has reported on a self-regulatory inquiry that led the online travel agency Fareportal to discontinue advertisements for CheapOair.com and OneTravel.com airfares that were not actually available at the initially quoted price.[11] In short, the Department's NPRM is of central interest to TINA.org.

B. Professor Rebecca Tushnet

Rebecca Tushnet is the Frank Stanton Professor of the First Amendment at Harvard Law School. She has written numerous articles on false advertising and the First Amendment, and is the co-author of a casebook on advertising law.[12]

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[7] *Federal Laws Governing Ads*, TINA.org, https://truthinadvertising.org/resource/federal-laws-governing-ads/ (identifying 14 C.F.R. § 399.84 as one of the federal advertising regulations TINA.org catalogs for consumers).

[8] *U.S. Department of Transportation*, TINA.org, https://truthinadvertising.org/department-of-transportation (discussing DOT's October 2011 enforcement action fining online ticket agent Orbitz $60,000 for violating the Full Fare Rule's requirement that airfare advertisements state the entire price to be paid by the consumer).

[9] *Frontier Airlines' Low Fares*, TINA.org (July 13, 2023), https://truthinadvertising.org/articles/frontier-airlines-low-fares/.

[10] TINA.org's Class-Action Tracker: The Pricing Tactics of American Airlines, https://truthinadvertising.org/class-action/the-pricing-tactics-of-american-airlines/; TINA.org's Class-Action Tracker: Spirit Airlines' Prices, https://truthinadvertising.org/class-action/spirit-airlines-prices/. *See also* TINA.org's Class-Action Tracker: Frontier Airlines, https://truthinadvertising.org/class-action/frontier-airlines/; TINA.org's Class-Action Tracker: U.S. Airways Airline Tickets, https://truthinadvertising.org/class-action/u-s-airways-airline-tickets/.

[11] *CheapOair.com Ad Called Into Question*, TINA.org (Dec. 22, 2014), https://truthinadvertising.org/articles/cheapoair-com-ad-called-question/ (discussing the National Advertising Division's recommendation that Fareportal, operator of CheapOair.com and OneTravel.com, discontinue airfare advertisements for prices not actually available for the searched itinerary).

[12] *See* Rebecca Tushnet & Eric Goldman, *Advertising & Marketing Law: Cases & Materials* (7th ed. 2024).

II. 49 U.S.C. § 41712 Supports Retaining the Full Fare Rule

The Department's proposal to amend the Full Fare Rule[13] must be evaluated against the statutory responsibilities Congress assigned to the Department.[14] Chief among those responsibilities is the duty to protect consumers from "unfair or deceptive practices" in the sale of air transportation pursuant to 49 U.S.C. § 41712.[15] That statutory mandate strongly supports retaining – not weakening – the existing Full Fare Rule.

The Rule was adopted because the Department concluded that advertising the purchase price of airline tickets in a fragmented manner was deceptive. The NPRM does not conclude that such advertising tactics have ceased to be deceptive. Nor does it identify evidence demonstrating that consumers are now more likely to understand partitioned prices. Instead, the NPRM emphasizes increased advertising flexibility for the airline industry and greater visibility of government taxes. Such policy considerations do not displace the Department's independent statutory obligation to prevent deceptive advertising.

Indeed, the NPRM risks upsetting the careful balance Congress established when it deregulated airline rates while preserving robust consumer-protection authority. Congress chose to rely on competitive markets to determine airline ticket prices, but it simultaneously preserved broad authority for the Department to ensure that the ticketing market operates through truthful and non-deceptive advertising.[16] The Full Fare Rule advances both objectives by promoting competition based on actual total prices rather than supporting advertising techniques emphasizing partitioned prices. Weakening this Rule would shift the marketplace toward competition based on varied price presentation, making it more difficult for consumers to compare competing offers and undermining the pricing transparency that Congress intended § 41712 to protect.

Accordingly, the relevant question with regard to this NPRM is not whether airlines would prefer greater flexibility in advertising mandatory government taxes and other

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[13] Enhancing Airline Passenger Protections, 76 Fed. Reg. 23110 (April 25, 2011) (final rule), https://www.federalregister.gov/documents/2011/04/25/2011-9736/enhancing-airline-passenger-protections.

[14] 49 U.S.C. 41712.

[15] "[I]n 1978, Congress passed the Airline Deregulation Act, Pub. L. No. 95-504, 92 Stat. 1705, which, among other things, eliminated the government's ability to set airfares on the theory that 'maximum reliance on competitive market forces would best further efficiency, innovation, and low prices as well as variety and quality of air transportation services,'…. Notwithstanding these changes, the government, through the Department of Transportation (DOT), retained authority to prohibit 'unfair and deceptive practices … in air transportation or the sale of air transportation.' 49 U.S.C. §41712(a)." *Spirit Airlines, Inc. v. U.S. Dep't of Transp.*, 687 F.3d 403, 408 (D.C. Cir. 2012) (quoting *Morales v. Trans World Airlines, Inc.,* 504 U.S. 374, 378 (1992)).

[16] Section 41712 authorizes the Department to prohibit "an unfair or deceptive practice or an unfair method of competition" in air transportation. Congress deliberately employed language modeled on Section 5 of the Federal Trade Commission Act, thereby granting the Department broad authority to prevent deceptive marketplace practices and to adapt its consumer-protection regulations as advertising practices evolve. Courts have consistently recognized that this authority extends beyond prohibiting affirmative falsehoods and encompasses advertising that creates a misleading overall impression despite containing technically accurate individual statements. *See infra* note 28.

fees. Nor is it whether consumers may find value in understanding the tax components of an airline ticket. The dispositive question is whether Americans will be better able to identify the actual price of air transportation, compare competing offers, and make informed purchasing decisions if the Department weakens the longstanding Full Fare Rule.

The evidence overwhelmingly demonstrates that they will not.

III. The Proposed Rule Will Harm Americans by Undermining Price Transparency, Impairing Comparison Shopping and Shifting the Burden of Price Disclosure From Airlines to Consumers

For more than a decade, the Full Fare Rule has provided consumers with a simple and consistent marketplace expectation: that the most prominently advertised price represents the total price of an airline ticket. Consumers need not determine whether mandatory taxes have been excluded, perform additional calculations to reconstruct the total price or compare differently presented fare components across competing airlines. Every carrier prominently advertises the total amount required to complete the transaction.

The NPRM is particularly problematic because it recreates the precise marketplace conditions that prompted the Department to adopt the Full Fare Rule in the first place. Prior to the Rule's adoption, consumers were routinely presented with segmented airfares that excluded mandatory taxes and fees, requiring them to reconstruct the total cost of travel from multiple disclosures. The Department concluded that this practice was misleading because it impeded comparison shopping and created inaccurate impressions regarding the true cost of transportation.[17] The NPRM offers no persuasive explanation why a practice the Department previously found deceptive should now be regarded as nondeceptive simply because the total fare continues to appear somewhere in the marketing.[18]

Although the NPRM characterizes the proposed rule, which would dismantle that uniform standard, as merely providing greater flexibility in price presentation while

[17] In support of the Rule, DOT relied on (1) comments from its original 1984 rulemaking, (2) approximately 500 comments "explaining how consumers were being confused by advertisements that itemized price components rather than display a single, total price," and (3) feedback from an online DOT forum used to solicit comments. *Spirit Airlines, Inc. v. U.S. Dep't of Transp.*, 687 F.3d 403, at 410-1 (D.C. Cir. 2012).

[18] Further, a regulatory approach that makes it more difficult for passengers to identify the true cost of air transportation is difficult to square with the Department's stated objective of creating a "Golden Age of Travel" centered on a better, more transparent and more consumer-oriented travel experience. *See* Press Release, U.S. Dep't of Transp., Trump's Transportation Secretary Sean P. Duffy Invests Nearly $1 Billion into Making Airports More Family Friendly (May 18, 2026), https://www.transportation.gov/briefing-room/trumps-transportation-secretary-sean-p-duffy-invests-nearly-1-billion-making-airports ("This administration is focused on making travel happier and more convenient for American families. The Golden Age of Travel includes a Family First agenda," said U.S. Transportation Secretary Sean P. Duffy.) Preserving the Full Fare Advertising Rule advances the DOT's objective by ensuring that Americans receive the most important piece of ticket pricing information—the total unavoidable cost of travel—in a clear, standardized and readily understandable manner.

continuing to require disclosure of the total fare, its practical effect would be far more significant and detrimental. By permitting mandatory fare components to compete visually with the total purchase price, the proposal would fundamentally alter the manner in which consumers perceive, evaluate and compare airline prices,[19] resulting in substantial consumer harms.[20]

A. The Proposed Rule Would Mislead Americans About the Actual Price of Air Transportation.

Prior to the adoption of the Full Fare Rule, airlines routinely highlighted fares that excluded mandatory taxes and fees, requiring consumers to calculate the total cost of travel from multiple disclosures.[21] The Department concluded that this marketing practice was deceptive: consumers naturally interpret prominently displayed airfares as the amount they will be required to pay, and advertisements emphasizing portions of the total price interfere with consumers' ability to understand the total cost of the ticket.[22] As a

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[19] Eric Greenleaf et al., *The Price Does Not Include Additional Taxes, Fees, and Surcharges: A Review of Research on Partitioned Pricing*, 26 J. Consumer Psych. 105, 116 (2016), https://marketing.wharton.upenn.edu/wp-content/uploads/2024/05/Morwitz-Vicki-Wroe-Alderson-PAPER-JCP-2016.pdf ("Consumers may use anchoring and adjustment, anchor on the base price, and then insufficiently adjust upward in response to the additional surcharge information, resulting in an underestimated total price. The temporal order of price presentation in [partition pricing], where base prices are typically presented first and surcharges later, may lead consumers to anchor on base prices…. Such anchoring biases where consumers favor the first piece of information encountered, have been identified in other areas of decision making.") (citations omitted); *Stung By Fees: How Consumers Are Harmed By Drip Pricing, And What To Do About It*, Which?, 7 (2023), https://media.product.which.co.uk/prod/files/file/gm-f39832e9-0e6f-4f39-a86f-924e47574701-drip-pricing-policy-report-october-23-v5.pdf ("Through drip pricing, businesses take advantage of common, well-established behavioural biases. Consumers presented with drip prices are usually anchored by the first, headline price they see and struggle to adjust their decision-making to account for these additional costs. … The [Competition and Markets Authority, the UK's primary competition and consumer protection regulator] has stated that "drip pricing causes real detriment to consumers" and that it is considered, among a range of other pricing framing practices, "clearly the most harmful frame for consumers in terms of purchasing and search errors.").

[20] Trade Regulation Rule on Unfair or Deceptive Fees, 90 Fed. Reg. 2066, 2129 (Jan. 10, 2025) (final rule), https://www.federalregister.gov/documents/2025/01/10/2024-30293/trade-regulation-rule-on-unfair-or-deceptive-fees ("A well-functioning market depends, in part, on consumers having accurate information regarding the price, and other attributes, of the goods or services being offered. Firms that engage in drip pricing or employ partitioned pricing create a friction in the operation of the market by imposing costs on consumers to acquire price information. Several economic harms may arise from this friction. First, holding consumer choices and prices fixed, the added search cost to acquire price information harms consumers with no countervailing benefit to firms. Second, because shrouded prices make comparison shopping more difficult, consumers might make suboptimal consumption decisions. In fact, consumers may find it too costly to search for full and accurate price information for some or all goods or services under consideration. The lack of full price information may lead consumer demand to become less sensitive, *i.e.,* less elastic, to changes in price, and consumers will accept higher (quality-adjusted) prices than they would if they were fully informed with clear and upfront pricing. This, in turn, leads to a third effect: since shrouded prices make it harder for consumers to compare prices, some firms may gain market power that allows them to raise prices or decrease quality."); *Stung By Fees*, *supra* note 19, at 28 ("[F]rustrations, confusion, and misunderstanding are causing consumers to pay more than necessary for products and services and experience inertia in seeking alternatives.").

[21] Enhancing Airline Passenger Protections, 76 Fed. Reg. 23110, at 23143.

[22] *Id.* at 23142 ("We believe that consumers are deceived when presented with fares that do not include numerous required charges and, in our view, air travelers will be better able to make price comparisons

result, the current Rule was specifically designed to eliminate these harms by requiring that the total unavoidable cost of airfare be the first and most prominent price consumers encounter.[23]

Importantly, the Rule accomplishes this objective without restricting airlines' ability to communicate truthful information about the composition of the ticket price. Airlines remain free to separately identify each component of the ticket price, explain how the fare is allocated, criticize government taxes or advocate for legislative reform. The Rule simply requires that these additional disclosures supplement rather than compete with the more prominent total purchase price[24] – accommodating both truth-in-advertising principles and industry concerns regarding tax transparency without misleading consumers about the true cost of booking an airline ticket.[25]

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when they can see the entire price of the air transportation, tour or tour component being advertised."). *See also* Greenleaf, *supra* note 19, at 115 ("There are several reasons why consumers might ignore surcharges, even when they are aware of them. First, consumers do not always fully process all information that is available to them. Consumers are often selective information processers, editing available information to a more limited set, and focusing on the information most salient in that context. Second, consumers often process information in the same manner in which it was framed or presented to them, and do not integrate or transform information. Thus, they may not combine price components mathematically, since they are presented separately, but instead ignore the surcharge.")(citations omitted); Vicki Morwitz et al., *Divide and Prosper: Consumers' Reactions to Partitioned Prices*, 35 J. Mktg. Rsch. 453, 453-5 (1998), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1423970 ("Consumers may regard the base price and surcharge as separate pieces of information or as separate attributes of the product. When consumers must integrate two or more pieces of product information to form an overall judgment, they sometimes use simplifying heuristics rather than engaging in more accurate, but more difficult, mental arithmetic."); Nicholas Rupp, *Drip Pricing and Costly Search: Evidence from the Airline Industry*, at 2 (2023) ("Airlines may choose to shroud attributes of their product by suppressing information about baggage fees at the initial point of search for the base good. This makes price comparisons difficult for the consumer who is comparing base fares for a trip across carriers.").

[23] These findings were subsequently upheld by the United States Court of Appeals for the District of Columbia Circuit, which recognized that requiring the total fare to remain the dominant advertised price directly advances the government's substantial interest in preventing consumer deception while preserving airlines' ability to communicate truthful information about government taxes and other mandatory charges. *Spirit Airlines, Inc. v. U.S. Dep't of Transp.*, 687 F.3d 403 (D.C. Cir. 2012).

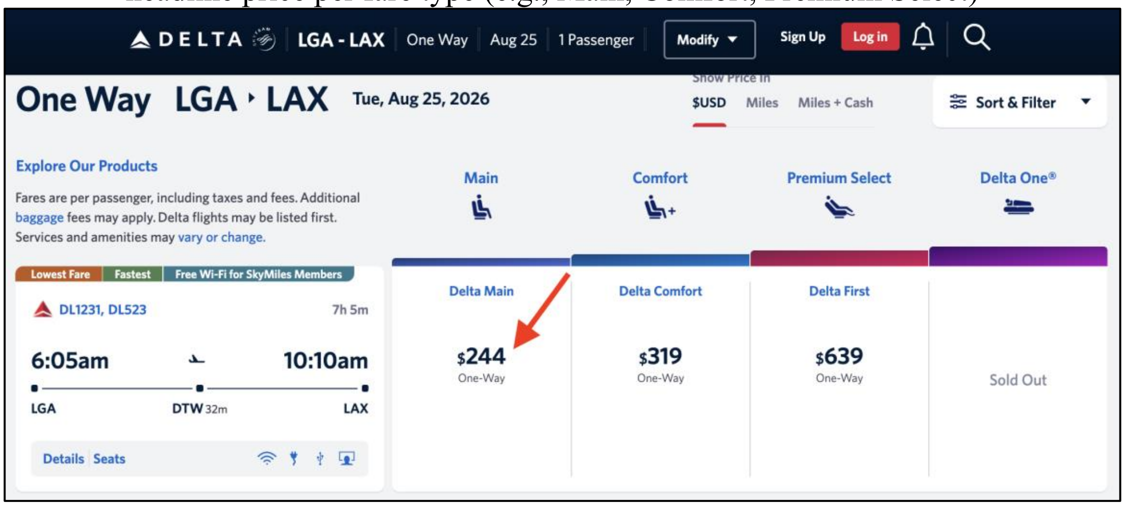
[24] Whether advertising is deceptive depends not simply on whether consumers are provided with all relevant information, but on whether that information is presented in a manner that enables reasonable consumers to understand the true nature and cost of the transaction. *ECM Biofilms, Inc. v. Fed. Trade Comm'n*, 851 F.3d 599, 610 (6th Cir. 2017) (the Commission "examines the overall net impression of an ad" to determine whether it is deceptive) (quoting *Kraft v. Fed. Trade Comm'n*, 970 F.2d 311, 314 (7th Cir. 1992)). This principle lies at the heart of the Department's Full Fare Advertising Rule and is well supported by academic literature finding that consumers underestimate the total price when mandatory fees are not included in one all-in price. *See, e.g.,* Greenleaf, *supra* note 19; Morwitz, *supra* note 22; Yih Hwai Lee & Cheng Yuen Han, *Partitioned Pricing in Advertising: Effects on Brand and Retailer Attitudes*, 13 Marketing Letters 27, 33 (2002) (finding that consumers exposed to partitioned prices underestimate the total price by a significantly greater margin than consumers exposed to an all-inclusive price).

[25] *"Protecting Consumers from Junk Fees": Hearing Before the U.S. Senate Subcomm. on Consumer Prot., Prod. Safety, and Data Sec.*, 118th Cong. 1 (June 8, 2023) (testimony of Professor Vicki G. Morwitz), https://www.commerce.senate.gov/wp-content/uploads/media/doc/6.8.23%20Junk%20Fees%20Hearing%20Morwitz%20Testimony.pdf ("The academic research on both partitioned and drip pricing makes clear that consumers make better informed decisions when firms use all-inclusive pricing.").

The followings screenshots taken from one U.S. airline's website exemplify how airlines can advertise the total cost of a ticket, while also identifying separate components of the ticket price.

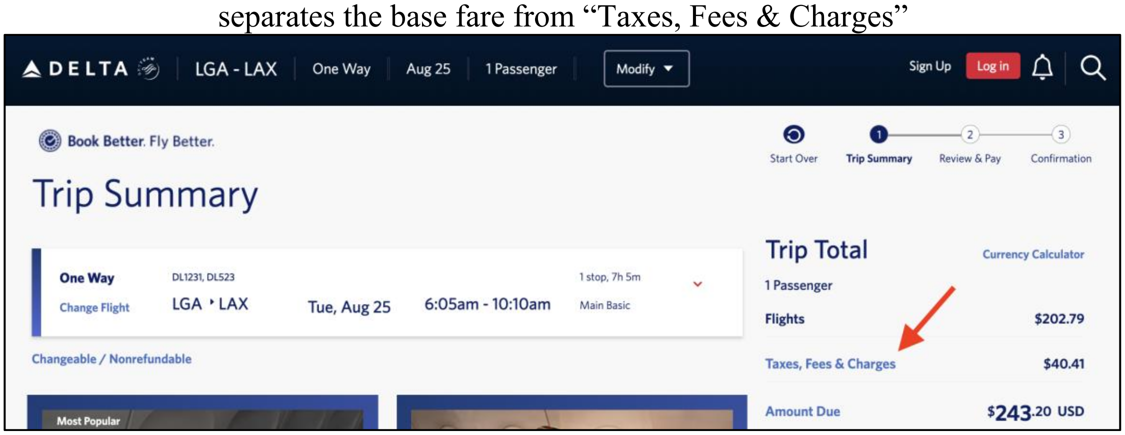
Initial Search Results

After entering trip details, consumers see flight options with a single headline price per fare type (e.g., Main, Comfort, Premium Select)[26]



Trip Summary

After selecting a flight and fare, the trip summary separates the base fare from "Taxes, Fees & Charges"



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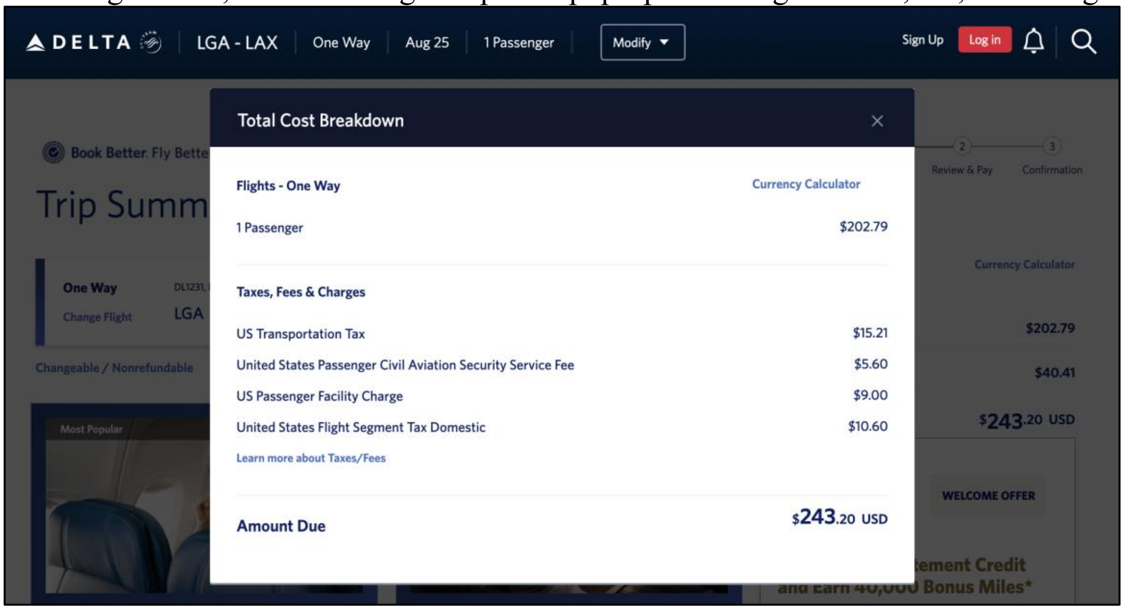
[26] When a consumer clicks on the fare they want, the airline then explains three different "experience" types: Basic, Classic or Extra.

Total Cost Breakdown

Clicking "Taxes, Fees & Charges" opens a pop-up itemizing each tax, fee, and charge



The Full Fare Rule is firmly grounded in longstanding federal deception law.[27] For more than a century, federal courts evaluating advertising claims have consistently recognized that advertisements must be assessed according to their overall, or "net," impression on a reasonable consumer, not by parsing individual disclosures in isolation or assuming that consumers carefully reconcile every piece of information presented.[28] An advertisement therefore may be deceptive even when every individual statement is technically true if the overall presentation is likely to mislead consumers about a material aspect of the transaction.[29]

The NPRM does not demonstrate that any of this has changed. Instead, it seeks to reintroduce the very marketplace conditions that prompted adoption of the Full Fare Rule in the first place by allowing consumers' attention to be diverted from the total purchase price to lower component prices that cannot effectively be used to purchase air

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[27] *See* FTC Policy Statement on Deception (Oct. 14, 1983), https://www.ftc.gov/system/files/documents/public_statements/410531/831014deceptionstmt.pdf.

[28] *See U.S. v. Ninety-Five Barrels*, 265 U.S. 438, 443 (1924) ("Deception may result from the use of statements not technically false or which may be literally true."); *Donaldson v. Read Magazine, Inc.*, 333 U.S. 178, 188 (1948) ("Advertisements as a whole may be completely misleading although every sentence separately considered is literally true. This may be because things are omitted that should be said, or because advertisements are composed or purposefully printed in such a way as to mislead."). This legal tenet has been embraced by every Circuit Court of Appeals in the country for more than six decades. *See, e.g.*, *Carter Prods., Inc. v. Fed. Trade Comm'n*, 323 F.2d 523, 528 (5th Cir. 1963) ("The Commission need not confine itself to the literal meaning of the words used but may look to the overall impact of the entire commercial."); *P. Lorillard Co. v. Fed. Trade Comm'n*, 186 F.2d 52, 58 (4th Cir. 1950) ("To tell less than the whole truth is a well known method of deception; and he who deceives by resorting to such method cannot excuse the deception by relying upon the truthfulness per se of the partial truth by which it has been accomplished."); *CFTC v. R.J. Fitzgerald & Co.*, 310 F.3d 1321, 1331 n.7 (11th Cir. 2002) ("Even literally true statements can be extremely and impermissibly deceptive when viewed in their overall context.").

[29] *Id.*

transportation.[30] The NPRM does not contend that consumers have changed the way they evaluate airfare advertisements or that they have become less susceptible to misleading price presentations. Instead, without empirical evidence, it simply asserts that consumers will process multiple, equally prominent price disclosures with equal effectiveness and will readily distinguish between component prices and the total purchase price when comparing airfares.[31]

For more than one hundred years courts have emphasized that effective disclosure requires more than making information technically available somewhere within the marketing.[32] Information must be presented in a manner that consumers are likely to notice, understand and use in making purchasing decisions. By allowing mandatory fare components to receive equal prominence with the total fare, the NPRM would encourage advertisers to emphasize lower numerical values while diminishing the prominence of the actual purchase price, making it substantially more likely that a misleading impression regarding the cost of air transportation would be created. In doing so, the NPRM would substitute advertiser discretion (and likely deception) for consumer understanding and the principles that have long governed deceptive price advertising.

B. The NPRM Will Shift the Burden of Obtaining Accurate Price Information from Airlines to Consumers, Increasing Search Costs and Impairing Comparison Shopping

One of the principal achievements of the Full Fare Rule has been to place the responsibility for accurate price disclosure on the party best positioned to bear it – the airline industry. Airlines know the total price of every ticket before it is advertised. The current rule simply requires them to communicate that information to consumers in a clear, standardized and readily understandable manner.

The NPRM would fundamentally alter that allocation of responsibility. Rather than requiring airlines to make the total purchase price the dominant pricing signal, it would permit other fare components to compete for consumers' attention. As a practical matter,

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[30] *See* Enhancing Airline Passenger Protections, 76 Fed. Reg. 23110, at 23142-3 ("comments from individual commenters and persons participating in Regulation Room show consumers feel deceived when the total price, including taxes and fees, is not quoted to them after an initial fare inquiry. Many consumers feel that advertising fares that exclude mandatory charges is a "bait and switch" tactic by travel sellers. The Department has also received complaints regarding fare advertising, some of which specifically mention feeling deceived when they are not quoted the full price to be paid after an initial inquiry.").

[31] According to the NPRM, without citing to any evidence the Department states that it "is ***of the view*** that the Full Fare Rule can be revised to provide greater flexibility for advertisers in how they display air fare, including calling attention to the components of a fare (e.g., government charges) if they wish to do so. Specifically, ***we believe*** that the prominence provision of the Full Fare Rule is unnecessarily prescriptive, particularly regarding font sizes. The current rule states that components of the full fare may not be displayed 'prominently.' However, ***we believe*** that there is nothing inherently unfair or deceptive in having components of a fare be displayed "prominently," so long as the total price is just as prominent." (emphasis added). Enhancing Flexibility of Air Fare Price Advertising, 91 Fed. Reg. 39932, at 39938.

[32] *Supra* note 28.

consumers – not airlines – would once again bear the burden of determining the actual cost of air transportation before they can make an informed purchasing decision.

That burden is far from insignificant. Consumers rarely evaluate a single itinerary in isolation. Modern air travel is characterized by rapid comparison shopping across airline websites, online travel agencies, metasearch platforms and mobile applications, where consumers routinely compare dozens of itineraries before making a purchase.[33] The efficiency of such comparison shopping depends upon a simple but critical premise: that every advertised fare represents the same economic measure – the total unavoidable price of transportation.[34]

The NPRM would undermine that uniformity. Instead of comparing standardized total prices, consumers would first have to determine whether a prominently displayed figure represents the total fare or only one component of the purchase price, identify separately disclosed mandatory taxes and fees, calculate or find the actual total cost of each itinerary and repeat that process across competing offers. These additional steps impose real costs on consumers solely to obtain information that airlines already possess and can prominently display with virtually no additional effort.

[33] OAG Travel Tech Report 2024: The Future of the Airline Passenger Experience, 9 (2024), https://www.oag.com/hubfs/2024/Passenger%20Experience%20Report/2024%20OAG%20Report%20Future%20Passenger%20Experience.pdf ("on average, travelers view 141 different pages of travel content — and as high as 277 pages for travelers in the U.S. before committing to a travel booking"); Enhancing Airline Passenger Protections, 76 Fed. Reg. 23110, at 23143 ("Sellers are now marketing air transportation through a variety of methods that they were not using [historically]. For example, some carriers have started to sell tickets through Facebook and some have Twitter feeds dedicated solely to advertising sale fares. Additionally, in recent years, carriers are increasingly unbundling the cost of air travel, which further obscures the total fare to be paid by the consumer. Carriers and online travel agencies have also started to offer more complicated routings with multiple connections in order to provide the "lowest" airfare to consumers. However, with these changes in routings, taxes and fees can increase and become a significant portion of the price to be paid by consumers. In those cases, consumers need a full picture of the total price to be paid in order to compare fares and routings. In order to understand the true cost of travel, consumers need to be able to see the entire price they need to pay to get to their destination the first time the airfare is presented to them."); Nicholas G. Rupp, *Drip Pricing and Costly Search: Evidence from the Airline* Industry, 175 Transp. Pol'y 1, 4 (2026), https://www.sciencedirect.com/science/article/pii/S0967070X2500438X ("[A]irline and online travel agency web sites generate heavy web page traffic as consumers spending considerable time researching and planning trips. A 2023 Expedia Group report suggests that travelers spend an average of 5h and conduct 141 page views to plan and book a trip. Almost half of the page views (67) are of online travel agencies and one-quarter of the views (33) are airline sites.").

[34] Enhancing Airline Passenger Protections, 76 Fed. Reg. 23110, at 23143 ("Airfares are different from products in other industries for a variety of reasons, including the multitude of methods of advertising that sellers of air transportation employ and the various taxes and government fees that apply. We believe that consumers are deceived when presented with fares that do not include numerous required charges and, in our view, air travelers will be better able to make price comparisons when they can see the entire price of the air transportation, tour or tour component being advertised."). *See also Stung By Fees, supra* note 19 at 3-4 ("[G]reater transparency at the beginning of the buying process … is essential to ensure that consumers know what to expect and are in a position to make comparisons with other options that are available to them.").

A substantial body of economic literature recognizes that search costs – the time, effort and cognitive resources consumers expend to obtain and compare price information – directly affect market efficiency and consumer welfare.[35] The more difficult it becomes for consumers to determine and compare actual prices, the less effectively markets discipline sellers through price competition.[36] Every additional unit of time or price calculation required to identify the true cost of a service increases the likelihood of consumer error, weakens meaningful comparison shopping and diminishes competitive pressure to reduce prices.[37]

The NPRM attempts to minimize these burdens by observing that consumers will continue to receive disclosure of the total fare somewhere within the marketing. But effective comparison shopping depends not on whether the information is eventually disclosed; it depends on whether consumers can readily identify and use that information when evaluating competing offers.[38] Consumers do not carefully scrutinize every

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[35] George J. Stigler, *The Economics of Information*, 69 J. Pol. Econ. 213, 223 (1961), https://home.uchicago.edu/~vlima/courses/econ200/spring01/stigler.pdf ("The cost of search is a cost of purchase, and consumption will therefore be smaller, the greater the dispersion of prices and the greater the optimum amount of search"); Alan Schwartz, *Regulating for Rationality*, 67 Stanford Law Review 1373, 1408 (2015), https://www.stanfordlawreview.org/wp-content/uploads/sites/3/2015/06/67_Stan_L_Rev_1373_Schwartz.pdf ("[A] regulator who is aware of the possibility of bias nevertheless should continue to pursue the traditional remedy of reducing information acquisition costs."); Rupp (2026), *supra* note 35, at 2 ("Shrouded fees are a form of price obfuscation since the seller is making it difficult for consumers to understand and compare prices. Price obfuscation prevents consumers from comparison-shopping, hence it raises search costs, and leads to higher prices for consumers. In the airline industry, price obfuscation occurs due to the unbundling of fares.") (citations omitted).

[36] *See* Rupp (2026), *supra* note 35, at 2 ("Research has shown that when consumers can easily conduct price searches demand becomes tremendously price sensitive."); Rupp (2023), *supra* note 22, at 3 ("Price obfuscation prevents consumers from comparison-shopping hence raising search costs and leading to higher prices for consumers. When consumers can easily conduct price searches demand becomes tremendously price sensitive. In response, retailers engage in obfuscation, like using add-ons, which frustrate consumer search and hence result in much less price sensitivity by consumers." (citations omitted)). *See also* J. Yannis Bakos, *Reducing Buyer Search Costs: Implication for Electronic Marketplaces*, 43 Mgmt. Sci. 1676 (1997), https://pages.stern.nyu.edu/~bakos/emkts.pdf.

[37] Even though the total actual costs of airline tickets may be included somewhere in the marketing, the reality is that many consumers will proceed with purchasing more costly tickets than they desire. This is so because there is a general tendency for people to continue an endeavor after they have invested time and resources, and given the rush that some consumers experience in purchasing airline tickets, some consumers will simply pay the higher airfare instead of abandoning the process. *See* Dr. Ross B. Steinman & Emily Jacobs, *Sunk Cost Effects on Consumer Choice*, 4 Bus. Mgmt. Dynamics 25-30 (2015), https://web.archive.org/web/20180420203654id_/http://bmdynamics.com/issue_pdf/bmd110539-%2025-30.pdf; Jamie Ducharme, *The Sunk Cost Fallacy Is Ruining Your Decisions. Here's How*, TIME (July 26, 2018), https://time.com/collections/live-well/5347133/sunk-cost-fallacy-decisions/.

[38] Amelia Fletcher, *Disclosure as a Tool for Enhancing Consumer Engagement and Competition*, 5 Behav. Pub Pol'y 252, 260 (2019) (""[C]onsumers can easily become highly focused on one particular dimension of a purchasing choice, such as the upfront price of the core product, and give less attention to other important elements, such as the quality or prices of add-on products. Such relative salience can in turn lead to excessive competition on the salient dimension and too little competition on the others."); Trade Regulation Rule on Unfair and Deceptive Fees, 90 Fed. Reg. 2066, at 2117 ("The Commission believes the final rule is needed to ensure that consumers receive truthful, timely, and transparent information about the total price of goods or services, including the nature, purpose, and amount of any fees or charges imposed

advertisement they encounter. They use the most prominent pricing information to screen alternatives quickly, deciding which itineraries warrant further consideration.[39] By requiring consumers to reconstruct or find total prices before meaningful comparisons can begin, the NPRM would increase the cost of obtaining accurate price information and correspondingly reduces the effectiveness of comparison shopping.[40]

These increased search costs also produce broader market consequences. As the effort required to compare prices grows, consumers become less likely to review multiple alternatives, more apt to rely on initial price impressions and more likely to select itineraries based on differences in price presentation rather than actual ticket cost.[41] The result is a marketplace in which firms compete not only by lowering prices, but by presenting prices in ways that attract consumer attention while obscuring the true cost of transportation. Such competition benefits neither consumers nor market efficiency.[42]

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on the transaction, so that they can effectively comparison shop and budget their spending dollars when deciding what live-event tickets to purchase or where to stay when traveling."). *See also* *Stung By Fees, supra* note 19, at 7.

[39] Oren Bar-Gill & Omri Ben- Shahar, *Misprioritized Information: A Theory of Manipulation*, 52 J. Legal Stud. 305 (2023), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3855013 ("Since consumers review only a subset of all available information, firms can harm consumers by prioritizing information that maximizes firms' profits but has a smaller impact on the utility that consumers stand to gain from the purchase.")

[40] *"Protecting Consumers from Junk Fees": Hearing Before U.S. Senate Subcomm. on Consumer Prot., Prod. Safety, and Data Sec.*, (testimony of Professor Vicki G. Morwitz), *supra* note 25, at 4 ("It is not because consumers are stupid or even careless that they are affected by the separation and dripping of mandatory surcharges. In general, consumers try their best to make good decisions for themselves and their families. But pricing practices like drip and partitioned pricing take advantage of the fact that we consumers have a lot going on in our lives – we are busy and can be distracted, and because of that we may not notice or appropriately consider all information important to that purchase decision, especially when that information is hidden in the small print, is presented in obscure language, or dripped late in the shopping process, and when we are put under time pressure with countdown clocks or receive scarcity cues such as that there are only a few items left at that price.").

[41] *See e.g.,* Shelle Santana et al., *Consumer Reactions to Drip Pricing*, 39 Mktg. Sci. 188, 207 (2020), https://marketing.wharton.upenn.edu/wp-content/uploads/2024/05/Morwitz-Vicki-Wroe-Alderson-PAPER-2020.pdf ("[A]s shown across our studies, simply providing the total price to consumers prior to when they complete their purchases does not eliminate the harm that drip pricing can cause consumers. … [I]n every study, we presented participants with the total price of their selection prior to them completing their transaction (and, in some cases, also presented running totals throughout the process), participants exposed to drip pricing were still significantly more likely to ultimately choose the lower base price option, make a financial mistake, and be relatively dissatisfied with their selection than were those in the nondrip condition.").

[42] *"Protecting Consumers from Junk Fees": Hearing Before U.S. Senate Subcomm. on Consumer Prot., Prod. Safety, and Data Sec.*, (testimony of Professor Vicki G. Morwitz), *supra* note 25, at 4-5 ("When firms use drip and partitioned pricing, it leads consumers to make decisions that differ from what they intended and that are against their own interest. Academic research has shown that partitioned and drip pricing leads consumers to spend more money than they intended to or needed to, and to make choices that do not reflect their true desires or preferences. These practices also put well-intentioned competitors who use all-in pricing at a competitive disadvantage as it makes their prices look more expensive than their competitors who use these pricing techniques, even when their prices are actually cheaper in total. What the research on these pricing practices also makes clear is that consumers and well-intentioned firms benefit when all-inclusive upfront pricing is used, rather than when fees are dripped later in the shopping process or disclosed in multiple parts.") (internal citations in original); Gregory Crawford et al., *Consumer*

Ultimately, the NPRM would shift the costs of obtaining accurate price information from airlines, which possess complete pricing information before an advertisement is ever disseminated, to consumers, who must hunt for or reconstruct that information during the purchasing process. Such a shift is fundamentally inconsistent with the purpose of disclosure regulations, which seek to reduce informational asymmetries and facilitate informed consumer decision-making, not increase the effort consumers must expend simply to determine the price of a service.

C. The Proposed Rule Will Distort Competition to the Detriment of Americans by Rewarding Price Framing Rather Than Lower Prices

The consumer harms resulting from the NPRM would extend well beyond the risk that individual travelers will misunderstand the price of a particular ticket. By weakening the uniformity of the total mandatory cost of airfare transportation, the proposal would alter the incentives that govern competition throughout the airline ticket marketplace. Rather than encouraging airlines to compete by lowering the total price consumers ultimately pay, the NPRM would encourage competition over how prices are presented. That shift would harm consumers by making price comparisons less reliable, reducing market transparency and rewarding advertising practices that obscure rather than illuminate the true cost of air travel.[43]

One of the greatest strengths of the existing Full Fare Rule is that it requires every airline to highlight the same economic measure of price: the total unavoidable cost of transportation. That standardization is not merely a convenience. It is essential to meaningful competition.[44] Competitive markets function most efficiently when consumers can compare like with like. Standardized price disclosures reduce the informational costs of comparison shopping by enabling consumers to evaluate competing offers using a common measure of price. In turn, this encourages firms to

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Protection for Online Markets and Large Digital Platforms, 40 Yale J. on Regul. 875, 885 (2023), https://openyls.law.yale.edu/server/api/core/bitstreams/2c00e907-1101-4749-bbdf-da8bb5b01cf1/content ("[F]irms can benefit from [] consumer limitations and can have an incentive to exacerbate them – for example, through deliberate obfuscation and misleading sales practices. Consumer-protection law can help ameliorate such problems, and thus has a key role to play in limiting market power and ensuring that competition works to the benefit of consumers."); Michael Baye & John Morgan, *Search Costs, Hassel Costs, and Drip Pricing: Equilibria with Rational Consumers and Firms*, 17 Games 1, 13 (2026), https://www.mdpi.com/2073-4336/17/3/25 ("Even when consumers and firms are fully rational, industry wide drip pricing can raise average prices, increase industry profits, and harm consumers. The greater the hassle to consumers of discovering firms' all-in prices, the greater is the magnitude of the potential effect.").

[43] Xavier Gabaix & David Laibson, *Shrouded Attributes, Consumer Myopia, and Information Suppression in Competitive Markets*, 121 Q. J. Econ. 505, 507-510 (2006), https://pages.stern.nyu.edu/~xgabaix/papers/shrouded.pdf.

[44] Trade Regulation Rule on Unfair and Deceptive Fees, 90 Fed. Reg. 2066, at 2067 ("Behavioral and economic research explains that piecemeal numbers and explanations cannot cure the deception or mitigate the harms to consumers when businesses employ [drip] pricing tactics. Often consumers finish the transaction without an accurate understanding of the total price of goods or services.").

compete by lowering the total cost of their services and improving their value rather than by manipulating the presentation or salience of price components.[45]

If airlines are permitted to give equal prominence to different components of the ticket price, carriers will inevitably face competitive pressure to emphasize whichever numerical figure appears most attractive to consumers. Although each airline would continue to disclose the total fare, the market would no longer operate from a common point of comparison. Consumers would instead encounter multiple competing representations of price, each designed to capture attention by highlighting a smaller numerical amount. The predictable consequence is that airlines would increasingly compete through price framing rather than price reduction.[46]

When advertising strategies become an effective means of attracting consumer attention, companies have less reason to compete through genuine price reductions. Resources that might otherwise be devoted to reducing costs, improving service or passenger safety may instead be invested in increasingly sophisticated methods of presenting prices to create the appearance of lower fares with consumers ultimately paying the price for this shift because the marketplace becomes less transparent and less responsive to true price competition.[47] Moreover, carriers that voluntarily continue to emphasize the total purchase price may appear more expensive than competitors highlighting lower component prices, even when their total fares are identical or lower.[48] This creates a powerful incentive for all market participants to adopt increasingly aggressive price-presentation strategies simply to remain competitive.

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[45] *Id.* at 2132 ("Overall, the Commission expects the rule will increase economic efficiency through improved consumer price calculations, resulting in reduced deadweight loss and reduced consumer search time that exceeds the costs to firms of providing more transparent pricing. It may also facilitate price comparison by consumers, increase competition among sellers, and put downward pressure on prices.").

[46] *Id.* at 2102 ("The Attorneys General of nineteen States and the District of Columbia commented that fee misrepresentations 'mislead consumers and make it more difficult for truthful businesses to compete on price.'").

[47] Crawford, *supra* note 44, at 883-84 ("firms that do not offer the best deal in the marketplace have a heightened incentive to make product comparisons hard and generate consumer confusion. The inability of consumers to compare products can be a source of profits and oligopoly power, even when there are several suppliers. And when markets become more competitive, firms can have incentives (unilateral or shared) to make product comparisons difficult, or otherwise obfuscate, in order to avoid the resulting downward pressure on profit margins. Consumer protection that makes it harder to obfuscate can thus increase the competitiveness of the marketplace to the benefit of consumers.") (citations omitted).

[48] Trade Regulation Rule on Unfair or Deceptive Fees, 90 Fed. Reg. 2066, at 2080 ("honest businesses that disclose all-inclusive total prices lose market share to businesses that do not. Bait-and-switch pricing and misleading fees undermine the ability of honest businesses to compete on price and therefore diminish the competitive pressure in a market that pushes prices downward. As a result, these practices lead to higher prices than would be supported in a competitive marketplace. The Antitrust Division of the U.S. Department of Justice noted that 'companies that impose mandatory hidden fees' have 'an unfair advantage over honest brokers' and interfere with consumers' ability to 'choose between competitors based on the important considerations of price and what, exactly, the consumer is purchasing.'").

Such an outcome would represent precisely the type of "race to the bottom" that consumer-protection regulation is intended to prevent.[49] Rather than competing to offer consumers better prices, firms would compete to present those prices in ways that maximize consumer attention while minimizing the perceived total cost of the transaction resulting not merely in private harms affecting individual transactions but market-wide harms that reduce the efficiency of competition itself within the airline industry.

If the airline industry has its way, companies will have free rein to manipulate consumers with deceptive and misleading marketing tactics and then be able to blame the consumer for not uncovering the truth – effectively undoing truth in advertising requirements. This is why consumer protection laws, like 49 U.S.C. § 41712, are vital to ensure that our market-based economy works in the economic interest of both consumers and honest business, and thus benefits society as a whole.[50] This is the essence of consumer protection, and the industry's efforts to drive the DOT off this enforcement field will only disserve the interests in fair, rational and coherent consumer protection. As the Supreme Court warned nearly a century ago with language that is as applicable to the DOT as it is the FTC, "[t]he careless and the unscrupulous must rise to the standards of the scrupulous and diligent. The Commission was not organized to drag the standards down."[51]

D. The NPRM Would Disproportionately Harm Consumers Who Are Least Able to Protect Themselves

The burdens imposed by the proposed rulemaking would not fall equally across the traveling public. Although all consumers benefit from clear, standardized price disclosures, the NPRM would disproportionately harm those least able to navigate increasingly complex pricing information, including older Americans, infrequent travelers, consumers with limited financial literacy and individuals purchasing airline tickets under time constraints. Such disparate effects must be taken into consideration in the evaluation of this NPRM.[52]

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[49] *See Spiegel, Inc. v. Fed. Trade Comm'n*, 494 F.2d 59, 63 (7th Cir. 1974) ("If sellers in our society are free to compete for consumers' patronage with others by unfair advertising, not only is the consumers' right violated, but our commitment to fair competition becomes a pretense.").

[50] Crawford, *supra* note 44, at 877 ("Consumer-protection law is vital for ensuring that market-based economies work in the economic interest of consumers as well as businesses, and thus to the benefit of society as a whole.").

[51] *Fed. Trade Comm'n v. Algoma Lumber Co.*, 291 U.S. 67, 79 (1934) (citations omitted).

[52] *Financial Consumer Protection and Ageing Populations*, OECD (2020), https://www.oecd.org/content/dam/oecd/en/publications/reports/2020/07/financial-consumer-protection-and-ageing-populations_eb683a03/1de27f2a-en.pdf at 19 ("[G]iven the specific challenges faced by some older people, and the factors that make some of them vulnerable, it is essential that appropriate financial consumer protection arrangements are in place. Thus the ageing population presents issues and challenges for policy makers responsible for financial consumer protection."). *See also Indep. Living Aids, Inc. v. Maxi-Aids, Inc.*, 25 F. Supp. 2d 127, 132 (E.D.N.Y. 1998) (recognizing that misleading advertisements of products directed at the elderly, among other vulnerable groups, "constitutes 'public interest' of the highest order"); Thomas Blake et al., *Price Salience and Product Choice* 21 (Nat'l Bureau Econ. Rsch., Working Paper No. 25186), https://www.nber.org/system/files/working_papers/w25186/w25186.pdf ("[S]alience may be most important in markets where consumers purchase infrequently.");

Indeed, the proposed rule – which would effectively increase the complexity of commercial disclosures – would likely disproportionately burden older adults, particularly where multiple numerical values must be evaluated simultaneously.[53] By requiring consumers to search for or reconstruct the total purchase price from multiple disclosures, the proposal places precisely the type of cognitive burden that standardized disclosures are intended to eliminate for the elderly.

The same concerns also apply to other consumers who lack the experience, resources or time to navigate fragmented price marketing. Infrequent travelers reasonably expect the prominently advertised fare to represent the amount they must pay. Consumers with limited financial literacy face additional challenges interpreting multiple price components. Likewise, consumers booking travel under emergency or time-sensitive circumstances often cannot devote the additional time necessary to search for or reconstruct the total price of numerous competing itineraries. In each case, the NPRM

Tracey West et al., *Sludged! Can Financial Literacy Shield Against Price Manipulation at the Shops?*, 47 Int'l J. Consumer Stud. 1853, 1854 (2023), https://onlinelibrary.wiley.com/doi/full/10.1111/ijcs.12959 ("People who are low in financial literacy (FL) often struggle to interpret labels, price information and their rights as consumers. FL … includes decision-making skills such as the ability to compare prices, rank options, and synthesize information from a range of sources." (citations omitted)); Rajneesh Suri & Kent Monroe, *The Effects of Time Constraints on Consumers' Judgments of Prices and Products*, 30 J. Consumer Rsch. 92, 94 (2003), http://www.communicationcache.com/uploads/1/0/8/8/10887248/the_effects_of_time_constraints_on_consumers_judgments_of_prices_and_products.pdf ("[T]ime pressure results in three effects on an individual's ability to process information. By constraining available time, time pressure will (1) restrict individuals' ability to process information, (2) interfere with their ability to attend to the task, and (3) increase their motivation and effort to perform.").

[53] NC Ebner, et al, *Financial Fraud and Deception in Aging*, 5 Adv. Geriatr. Med. Res. (2023), https://pmc.ncbi.nlm.nih.gov/articles/PMC10662792/ ("Susceptibility to deception in older adults is heightened by age-related changes in cognition, such as declines in processing speed and working memory, as well as socioemotional factors, including positive affect and social isolation."); Annamaria Lusardi et al., *Financial Literacy and Financial Sophistication in the Older Population*, 13 J. Pension Econ. Fin. 347 (2014), https://pmc.ncbi.nlm.nih.gov/articles/PMC5445927/ ("We [] conclude that some subgroups of the population are significantly less sophisticated about financial matters, [including] the least educated [and] those age 75+ …"); Patricia Boyle et al., *Financial and Health Literacy Falls As Adults Age, While the Gender Gap Remains*, Pension Rsch. Council of The Wharton School of the U. of Penn. (Oct. 23, 2025), https://pensionresearchcouncil.wharton.upenn.edu/blog/financial-and-health-literacy-falls-as-adults-age-while-the-gender-gap-remains/ ("A large majority, around 87% of study participants, experienced a decline in their financial and health literacy scores with age. … Lower financial and health literacy can lead people to make numerous management mistakes, lose money to scams and fraud, and fail to navigate complex medical decisions."); *Consumer Vulnerability in the Digital Age*, OECD Publishing, 18 (June 2023), https://www.oecd.org/content/dam/oecd/en/publications/reports/2023/06/consumer-vulnerability-in-the-digital-age_85b498eb/4d013cc5-en.pdf ("research shows elderly consumers struggle more to process large amounts of information at a high pace, are less able to remain attentive and alert over long periods, and are less able to discriminate between relevant and irrelevant information"); *Financial Consumer Protection and Ageing Populations*, OECD, 19 (2020), https://www.oecd.org/content/dam/oecd/en/publications/reports/2020/07/financial-consumer-protection-and-ageing-populations_eb683a03/1de27f2a-en.pdf ("Challenges and risks arise, among other things, from factors such as increased likelihood of physical and cognitive decline, longer term and unplanned financial needs and decision-making as well as lower levels of digital and financial literacy.").

would increase the likelihood that purchasing decisions would be based on incomplete or misunderstood pricing information.

These disparate effects are neither incidental nor speculative. They are the predictable consequence of replacing a simple, standardized disclosure regime with one that requires consumers to perform additional calculations and/or exercise greater judgment simply to determine the all-in price of air transportation.

E. The Department Has Failed to Justify the Consumer Harms the NPRM Would Cause and Has Disregarded the Overwhelming Evidence Supporting All-In Price Transparency

The consumer harms discussed above were the well-established factual predicate for the Full Fare Rule, reflected in the Department's original deception findings and in decades of empirical research, behavioral economics and federal consumer-protection enforcement. The NPRM engages only superficially with this substantial body of evidence, neither confronting the extensive evidence that fragmented price advertising impairs consumer understanding and comparison shopping, nor explaining why these well-established findings no longer warrant the Rule's protections.

Economists, behavioral scientists, marketing researchers and consumer-protection agencies have consistently reached the conclusion that consumers make better purchasing decisions when mandatory charges are incorporated into a single, prominently displayed total price.[54] Although these studies employ different methodologies and examine different industries, they consistently demonstrate that fragmented pricing increases consumer confusion, raises search costs, impairs comparison shopping and encourages firms to compete through pricing strategies that obscure rather than reduce the actual cost of a transaction.[55]

The Department's own regulatory history reflects these same conclusions.[56] When adopting the Full Fare Rule, the Department found that consumers reasonably understand prominently advertised fares to represent the total amount they must pay and that requiring all-in pricing improves comparison shopping and reduces deception.[57] Those

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[54] *See e.g.,* Joseph Harvey & Noah Cohen-Harding, *The Effects of Drip Pricing, Differential Search Costs, and Attribute Distributions on Consumer Choice Quality and Search Behavior* 18 (Consumer Fin. Prot. Bureau Off. Rsch., Working Paper No. 25-06, 2025), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5222419; Alexander Rasch et al., *Drip Pricing and its Regulation: Experimental Evidence* 27-8 (Duesseldorf Inst. for Competition Econ., Working Paper No. 297, 2018), https://d-nb.info/1172358621/34; Santana, *supra* note 43, at 188; Morwitz, *supra* note 22; Trade Regulation Rule on Unfair or Deceptive Fees, 90 Fed. Reg. 2066 (Jan. 10, 2025) (final rule); Cal. Civ. Code § 1770(a)(29); Colo. Rev. Stat. § 6-1-737(2)(a); Minn. Stat. § 325D.44; Or. Rev. Stat. § 646.608(a)(s); Va Code. Ann. § 59.1-608.

[55] *Id.*

[56] *See* 14 C.F.R. § 399.84; Enhancing Airline Passenger Protections, 76 Fed. Reg. 23110, at 23142-3.

[57] Enhancing Airline Passenger Protections, 76 Fed. Reg. 23110, at 23143 ("We believe that consumers are deceived when presented with fares that do not include numerous required charges and, in our view, air travelers will be better able to make price comparisons when they can see the entire price of the air transportation, tour or tour component being advertised.").

findings were not temporary observations tied to a particular moment in time in the marketplace; they reflect enduring characteristics of consumer decision-making and the economics of price advertising. The NPRM identifies no reliable evidence demonstrating that these characteristics have materially changed.

Equally significant, the NPRM identifies no empirical evidence that consumers will benefit from the proposed changes – no studies showing that equal prominence for component prices and all-in pricing improves consumer understanding, no research showing that consumers compare partitioned prices more accurately than standardized total prices, and no evidence that the current Rule has confused consumers, reduced competition, or imposed significant compliance burdens. The NPRM instead rests on the unsupported assumption that additional advertising flexibility will itself produce better consumer outcomes, an assumption inconsistent with the evidence.

Importantly, while the NPRM discusses increased flexibility for airlines and the visibility of government taxes, it gives comparatively little attention to the corresponding costs that would result from the NPRM, including increased confusion regarding the actual price of air transportation, higher search costs, diminished comparability among competing offers, incentives for airlines to compete through price framing rather than lower prices, and disproportionate burdens on consumers who are least able to navigate fragmented pricing disclosures. These are not peripheral considerations. They are the central consumer-protection concerns that Congress directed the Department to address pursuant to 49 U.S.C. § 41712.

Ultimately, the substantial consumer harms that would result from the NPRM are simply not justified by any corresponding benefits. The extensive empirical, regulatory and marketplace evidence developed over the past decades overwhelmingly supports retaining the transparent, standardized, all-in price advertising that is essential to an efficient and competitive airline ticket marketplace.

IV. The First Amendment Does Not Require the Department to Weaken Longstanding Consumer Protections Against Fragmented Price Advertising

The NPRM proposes rescinding a longstanding consumer-protection rule that has operated successfully for more than a decade, been consistently complied with by the airline industry, and already survived direct First Amendment and statutory challenges in federal court.[58]

[58] The NPRM's reliance on *National Institute of Family and Life Advocates v. Becerra* ("*NIFLA*"), 585 U.S. 755 (2018), is misplaced. *NIFLA* did not narrow the constitutional standard established in *Zauderer*; to the contrary, it expressly reaffirmed that government may require commercial speakers to disclose "purely factual and uncontroversial information" about the terms under which their services are offered when such disclosures are reasonably related to a legitimate governmental interest and are neither unjustified nor unduly burdensome. The Court declined to apply *Zauderer* in *NIFLA* because the compelled notice at issue required licensed medical providers to communicate a government message concerning the availability of state-sponsored abortion services – a disclosure the Court concluded extended well beyond the factual commercial disclosures contemplated by *Zauderer*. The Full Fare Rule presents no such concern. It

In its place, the NPRM proposes creating a rule that provides airlines greater discretion to present prices in a manner that will increase the risk of deception and consumer confusion. The First Amendment does not compel such a result.[59] Nor does it justify abandoning a disclosure requirement that advances the Department's statutory mandate to prevent unfair and deceptive practices while preserving airlines' unfettered ability to communicate truthful information regarding government taxes and other fare components.[60]

Congress expressly authorized the Department to prohibit unfair and deceptive practices in air transportation through 49 U.S.C. § 41712. The Full Fare Rule represents a straightforward exercise of that authority. It reflects the Department's reasoned determination – supported by an extensive administrative record and affirmed by the D.C. Circuit Court – that consumers interpret prominently advertised fares as the actual price of transportation and that requiring total-price advertising prevents deception.[61]

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requires only the disclosure of an objective, non-ideological fact – the total price consumers must pay to purchase air transportation – and does so for the well-established purpose of preventing consumer deception. It is therefore unsurprising that the D.C. Circuit in *Spirit Airlines, Inc. v. U.S. Dep't of Transp.*, 687 F.3d 403, 413–16 (D.C. Cir. 2012), concluded that *Zauderer* supplied the appropriate constitutional framework and upheld the Rule as reasonably related to the Department's substantial interest in preventing consumer confusion and deception. Properly understood, *NIFLA* reinforces, rather than undermines, the analytical framework applied in *Spirit Airlines* and provides no basis for questioning the constitutionality of the Full Fare Advertising Rule.

[59] The NPRM does not propose to rescind the Full Fare Rule because it has been found unconstitutional or because subsequent developments have undermined the reasoning of the D.C. Circuit in *Spirit Airlines*. Rather, the NPRM reflects a discretionary policy decision to weaken a consumer-protection rule whose constitutionality has already been affirmed by the federal judiciary. Nor does the authority cited by the NPRM support a different conclusion. The NPRM cites Micah L. Berman's article, *Manipulative Marketing and the First Amendment*, 103 Geo. L.J. 497 (2015), for the proposition that, since *Spirit Airlines*, the Supreme Court has subjected commercial speech regulations to more searching constitutional scrutiny. Yet the very page of the article cited by the NPRM reaches a more nuanced – and ultimately contrary – conclusion. As Professor Berman explains, "a careful reading of the [Supreme] Court's decisions suggest that it has been, and remains, far more willing to uphold regulations on commercial speech where the governmental purpose is not to keep information from consumers, but rather to protect the fairness of the commercial transaction by preventing consumers from being misled or manipulated." Micah L. Berman, *Manipulative Marketing and the First Amendment*, 103 Geo. L.J. 497, 500 (2015). That observation describes the Full Fare Rule precisely. The Rule does not suppress truthful commercial information. Rather, it requires only that mandatory price information be presented in a manner that prevents consumers from being misled or deceived about the total cost of air transportation. Properly understood, Professor Berman's analysis reinforces – rather than undermines – the constitutional foundation of the Full Fare Rule.

[60] *See, e.g.*, *44 Liquormart v. R.I.*, 517 U.S. 484, 501 (1996) (plurality opinion) ("When a State regulates commercial messages to protect consumers from misleading, deceptive, or aggressive sales practices, or requires the disclosure of beneficial consumer information, the purpose of its regulation is consistent with the reasons for according constitutional protection to commercial speech and therefore justifies less than strict review."); Enhancing Flexibility of Air Fare Price Advertising, 91 Fed. Reg. 39932 (July 1, 2026) (notice of proposed rulemaking); 49 U.S.C. § 41712.

[61] Enhancing Airline Passenger Protections, 76 Fed. Reg. 23110, at 23142-3; *Spirit Airlines*, 687 F.3d at 414-5 ("[W]e have no doubt that DOT's final rule, which requires the total, final price to be the most prominently listed figure, is 'reasonably related to the [government's] interest in preventing deception.' …

The NPRM identifies no evidence demonstrating that consumers have materially changed how they evaluate advertised prices since those findings were made. Nor does it identify any constitutional development requiring the Department to retreat from its longstanding interpretation of its consumer-protection authority. In short, the First Amendment neither requires nor favors the proposed rollback of consumer protections. Rather, longstanding commercial speech doctrine, the Department's statutory mandate, and binding judicial precedent all support preserving a disclosure regime that ensures consumers receive truthful, accurate and readily understandable information regarding the price of air transportation.

The NPRM appears to assume that providing the airline industry greater discretion to emphasize partial pricing better protects commercial speech. That assumption reverses the constitutional inquiry. The First Amendment does not require government to maximize advertisers' flexibility when that flexibility increases the likelihood that consumers will be deceived. Commercial speech doctrine reflects the opposite principle: government possesses authority to adopt reasonable disclosure requirements that improve the accuracy of information available in the marketplace. The current Rule advances precisely that objective.

Moreover, it is important to recognize what the Full Fare Rule does and does not require. The Rule does not prohibit airlines from advertising low fares. It does not prohibit airlines from separately identifying federal transportation taxes or other mandatory charges.[62] It does not prohibit airlines from explaining the amount of those taxes, criticizing federal tax policy, or advocating for legislative reform. Nor does it compel airlines to express any governmental viewpoint or endorse any political message. Instead, the rule requires only that, when an airline advertises the price of air transportation, the most prominent advertised price accurately reflect the total unavoidable amount consumers must pay to purchase the ticket.[63]

The rule aims to prevent consumer confusion about the total price they have to pay, and it goes without saying that requiring the total price to be the most prominent number is reasonably related to that interest.").

[62] Enhancing Airline Passenger Protections, 76 Fed. Reg. 23110, at 23143 ("This final rule allows carriers to advise the public in their fare solicitations about government taxes and fees, or other mandatory carrier or ticket agent imposed charges applicable to their airfares. Sellers of air transportation may have pop-ups or links adjacent to an advertised price to take the consumer to a listing of such charges, or they may display these charges on the same page in fine print if they prefer.").

[63] In promulgating its Trade Regulation Rule on Unfair or Deceptive Fees last year, the Federal Trade Commission similarly determined that its all-in pricing rule passed constitutional scrutiny. Trade Regulation Rule on Unfair or Deceptive Fees, 90 Fed. Reg. 2066 (Jan. 10, 2025) (final rule), https://www.federalregister.gov/documents/2025/01/10/2024-30293/trade-regulation-rule-on-unfair-or-deceptive-fees. Applying the Supreme Court's decision in *Zauderer v. Office of Disciplinary Counsel*, the Commission concluded that requiring businesses to disclose the total price of a product or service constitutes a permissible commercial disclosure because it compels only factual and noncontroversial pricing information, directly advances the government's substantial interest in preventing consumer deception and imposes no undue burden on regulated entities. The FTC's recent constitutional analysis reinforces the conclusion that the Full Fare Rule falls squarely within the constitutional framework established by Supreme Court precedent.

The NPRM therefore presents a false constitutional choice.[64] This NPRM is not about whether airlines may market and discuss every cost of an airline ticket. They plainly may. It is about whether airlines may emphasize portions of the purchase price in ways that increase the likelihood consumers will be deceived regarding the total cost of transportation.[65] Nothing in the First Amendment requires the Department to authorize such a practice, and the free flow of truthful commercial information will only be disincentivized by it.[66]

V. The Full Fare Rule Takes Precedent over the Internal Revenue Code's Airfare Disclosure Requirements

The NPRM further suggests that the Department should reconsider the Full Fare Rule because the Internal Revenue Code permits taxes to be displayed "at least as prominently" as the total price. That reasoning conflates two distinct statutory schemes that, although complementary, address different concerns.

The Internal Revenue Code governs how federal transportation taxes may be displayed. Section 41712, by contrast, imposes a separate and independent obligation to prevent unfair and deceptive practices in the sale of air transportation. The question is whether the airline industry's marketing, viewed as a whole, is likely to mislead reasonable consumers. Compliance with the Code's tax-display requirements does not answer the distinct issue Congress assigned to the Department under § 41712. Nothing in the Code suggests that Congress intended its tax-disclosure provisions to displace, narrow or otherwise limit the Department's independent mandate. This omission is particularly significant because the Full Fare Rule directly advances one of the most firmly established governmental interests recognized in commercial speech jurisprudence: preventing consumer deception.

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[64] The NPRM's First Amendment analysis is also analytically incomplete. The Department suggests that the Full Fare Rule raises constitutional concerns because it prescribes how airlines present airfare information, yet it simultaneously relies on the Internal Revenue Code, which likewise prescribes how airlines present federal transportation taxes. Both are government-mandated commercial disclosure requirements. The NPRM offers no explanation as to why one disclosure requirement purportedly burdens commercial speech while the other does not.

[65] The Supreme Court has repeatedly upheld compelled disclosures deemed necessary to protect the fairness of the bargaining process. *See, e.g.*, *Zauderer v. Off. of Disciplinary Couns. of Sup. Ct.*, 471 U.S. 626, 651 (upholding requirement for a "factual and uncontroversial" disclosure about the cost of legal services and writing that "an advertiser's rights are adequately protected as long as disclosure requirements are reasonably related to the State's interest in preventing deception of consumers"); *Milavetz, Gallop & Milavetz, P.A. v. U.S.*, 559 U.S. 229, 252–53 (2010) (upholding disclosure requirements for "debt relief agenc[ies]" because they were "reasonably related to the [Government's] interest in preventing deception of consumers" (quoting *Zauderer*, 471 U.S. at 651) (alteration in original)).

[66] *See Sorrell v. IMS Health Inc*., 131 S. Ct. 2653, 2672 (2011) ("[T]he government's legitimate interest in protecting consumers from 'commercial harms' explains 'why commercial speech can be subject to greater governmental regulation than noncommercial speech.'" (quoting *Cincinnati v. Discovery Network, Inc*., 507 U.S. 410, 426 (1993))); *Va. State Bd. of Pharm v. Va. Citizen Consumer Council.*, 425 U.S. 748, 781 (Stewart, J., concurring) ("[T]he elimination of false and deceptive claims serves to promote the one facet of commercial price and product advertising that warrants First Amendment protection[:] its contribution to the flow of accurate and reliable information relevant to public and private decisionmaking.").

Elevating the visibility of taxes in the purchase price while diminishing the prominence of the only figure consumers actually use to compare offers would be inconsistent with the Department's statutory obligation to protect consumers from deceptive advertising. The Internal Revenue Code was never intended to require such a result, and nothing in its text, history or implementation suggests that Congress intended tax disclosure requirements to override the Department's independent responsibility under 49 U.S.C. § 41712 to ensure that consumers receive truthful and readily understandable price information.[67] As such, the NPRM's reliance on the Internal Revenue Code provides no basis for weakening the Full Fare Rule or abandoning a disclosure framework that has successfully advanced both tax transparency and truthful pricing for more than a decade – a conclusion reinforced by the Department's own longstanding implementation of the two statutory schemes.

VI. Petition for Hearing Pursuant to 14 CFR § 399.75(b)(1)

Pursuant to 14 CFR § 399.75(b)(1), the undersigned respectfully petitions the General Counsel of the U.S. Department of Transportation to hold a hearing on the NPRM. A hearing is warranted because the NPRM depends on disputed factual, economic, and empirical conclusions that the ordinary notice-and-comment process is unlikely to adequately resolve. Specifically, all of the issues and arguments articulated above, including but not limited to: (1) the NPRM claims its proposed changes will "ensur[e] information is presented clearly to consumers," even as it removes the requirement that the total price be displayed more prominently than any component – a conclusion that directly conflicts with the extensive body of economic and behavioral research on partitioned pricing discussed above, as well as the Department's own prior factual findings underlying the existing Full Fare Rule; (2) resolving this factual dispute will materially affect the costs and benefits of the proposed rule, since the NPRM's own regulatory impact analysis characterizes this change purely as a deregulatory cost-savings measure while asserting, without quantified support, that it will "maintain price transparency for consumers," and (3) a hearing would meaningfully advance the

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[67] The tax disclosure requirement establishes the minimum information consumers must receive regarding taxes. It does not prevent the DOT from requiring additional disclosures necessary to prevent deception. The Department therefore errs in treating the Internal Revenue Code as though it constrains its independent authority pursuant to Section 41712. *See* 26 U.S.C. § 7275(b) (providing only that, where a carrier chooses to separately disclose the amount paid for transportation and the amount of taxes, the total must be stated "at least as prominently" as whichever component is stated more prominently); Airport and Airway Revenue Act of 1970, Pub. L. No. 91-258, §201-3, 84 Stat. 219, 239 (1970), https://www.govinfo.gov/content/pkg/STATUTE-84/pdf/STATUTE-84-Pg219.pdf; Pub. L. 91-680, §3(a), (b), 84 Stat. 2064, 2064 (1971), https://www.congress.gov/91/statute/STATUTE-84/STATUTE-84-Pg2064.pdf; Pub. L. 97-248, §281A(b)(1), 96 Stat. 324, 567 (1982), https://www.govinfo.gov/content/pkg/STATUTE-96/pdf/STATUTE-96-Pg324.pdf; Pub. L. 98-369, §714(b), 98 Stat. 494, 961 (1984), https://www.congress.gov/bill/98th-congress/house-bill/4170/text; Pub. L. 112-95, §1104, 126 Stat. 11, 151 (2012), https://www.congress.gov/112/plaws/publ95/PLAW-112publ95.pdf; Pub. L. 115-141, §401(a)(323), 132 Stat. 348, 1199 (2018), https://www.congress.gov/115/plaws/publ141/PLAW-115publ141.pdf; World Airways Enforcement Decision, 84 C.A.B. 699 (Civ. Aeronautics Bd., Dec. 27, 1979) (concluding that "both the text and the legislative history of section 7275(b) of the Code reflect a deliberate Congressional purpose to establish public policy on the manner in which the cost of taxable air transportation is to be advertised," without displacing the agency's independent authority to prevent deception).

Department's consideration of the NPRM by permitting the development of a complete evidentiary record on these disputed issues – including through testimony and cross-examination of the economists, industry representatives, and other witnesses the Department may rely upon – before the Department finalizes a rule that would reverse more than a decade of settled consumer protection. As such, a hearing is in the public interest.

Should the Department grant this petition, the undersigned further request the opportunity to fully participate in the hearing through the submission of relevant evidence and testimony, and to cross-examine any individuals the Department identifies as appropriate for a full and true disclosure with respect to any disputed issues of material fact.

VII. Conclusion

For the foregoing reasons, the Department should neither amend the Full Fare Rule as proposed by the NPRM nor rescind its guidance documents pertaining to the Rule. However, should the Department decide to pursue this NPRM, the undersigned's petition for a hearing should be granted.

Sincerely,

Truth in Advertising, Inc. (TINA.org)
Professor Rebecca Tushnet