

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

DEPT. OF TRANSPORTATION  
DOCKET SECTION  
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Petition of )  
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AMERICA WEST AIRLINES, INC. )  
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for Amendment of Part 255 of the )  
Department's Economic Regulations to )  
Limit CRS Vendor Charges to Booking Fees )  
for Actual Travel and Permit Termination )  
of Passive Bookings by Participating Carriers )  
\_\_\_\_\_)  
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Advanced Notice of Proposed Rulemaking )  
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COMPUTER RESERVATION SYSTEM )  
(CRS) REGULATIONS )  
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Docket No. OST-97-2881 -42

COMMENTS OF AMERICA WEST AIRLINES, INC.

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**COMMENTS OF AMERICA WEST AIRLINES, INC.**

America West Airlines, Inc. ("America West") submits these initial comments in response to the Department's Advance Notice of Proposed Rulemaking ("ANPRM") to determine whether it should continue or modify the existing rules governing airline computer reservation systems ("CRSs") published in 62 Fed. Reg. 47606, September 10, 1997. America West welcomes the opportunity to submit comments on the critically important competitive issues raised by the ANPRM regarding the relationship among the CRSs, participating airlines and subscribers.

The Department has tentatively found in the ANPRM that "each of the systems continues to have market power over airline participants and that the terms of airline participation are not affected by market forces." Id. at 47609. In the five years since the last review of the rules the CRSs have exploited this market power to inordinately raise the distribution costs of participating carriers, many of which are low-fare new entrant airlines seeking to stimulate new competition in the airline industry. Accordingly, in conducting its review of the CRS regulations the Department should be guided both by the specific language of 49 U.S.C. § 41712 to prevent deceptive practices and unfair methods of competition, and the broad public interest objectives set forth in the Airline Deregulation Act's Statement of Policy. Specifically, the Department must consider modifications to the rules that will advance the public interest by providing:

- the availability of a variety of adequate, economic, efficient, and low priced services without unreasonable discrimination or unfair or deceptive practices;
- placing maximum reliance on competitive market forces and on actual and potential competition to provide the needed air transportation system;
- maintaining a sound regulatory system responsive to the needs of the public;
- preventing unfair, deceptive, predatory , or anticompetitive practices in air transportation; and
- avoiding unreasonable industry concentration, excessive market domination, monopoly powers which exclude competition in air transportation.

Of all the issues raised in the ANPRM, the most urgent in terms of impact on participating carriers stems from the CRS practice of charging booking fees for abusive booking practices which provide no value to participating carriers. These issues are detailed in America West's Petition for Rulemaking filed on October 14, 1997 in Docket OST-97-3014, a copy of which was filed in this docket. By notice dated November 7, 1997, the Department requested interested parties to submit comments on the petition in conjunction with comments on the ANPRM. America West's Petition describes how the CRSs use their market power to transfer millions of dollars from participating carriers to CRS owner-carriers for abusive booking practices which injure competition and consumers by causing inventory spoilage and overbooked flights. As discussed in the America West Petition and in Section I of these comments, America West has proposed two rules which would limit CRSs to charges for transactions which result in actual travel and would permit participating carriers to prohibit passive bookings on a CRS. These rules must be implemented immediately to end the ongoing serious competitive injury caused by these booking practices. America West strongly urges the Department at the close of the comment period on January 23, 1998 to issue a Notice of Proposed Rulemaking to adopt these rules. There is no justification for delay in putting an end to these unfair competitive practices.

Section II of these comments responds to other important questions raised by the Department and follows the format set forth in the ANPRM. As discussed in Section II, a number of refinements to the current rules are necessary to address problems resulting from the absence of CRS competition coupled with technological change. To summarize, America

West believes, in addition to the rules proposed in its Petition, that Part 255 should be amended to achieve the following:

- Internet booking engines which are gateways to CRSs should be subject to Sections 255.4, 5 and 6;
- No charge should be imposed for a CRS service previously provided at no charge without prior DOT approval;
- Subscribers should be guaranteed access to Internet air travel booking sites through CRS terminals for fair compensation;
- Mandatory participation by CRS owners in other systems should be expanded to include carriers which have an extensive marketing agreement with a CRS;
- Owner airlines should be prohibited from offering special off-tariff fares or overrides only through their own CRSs;
- Participating carriers should not be required to participate in CRS owned or affiliated Internet booking sites;
- CRSs should insure that any multi-carrier Internet booking engine has an ARC type contract with a participating carrier before permitting the Website to conduct bookings on the carrier;
- As is the current practice for inter-carrier bookings, no charges should be authorized when an airline makes a booking for a passenger on another carrier through the Internet;

- Change of gauge flights should be displayed as connecting on CRS availability display; and
- CRSs should be required to develop enhancements requested by participating carriers or provide technical explanation justifying why product cannot be supplied.

## **I. THE DEPARTMENT MUST TAKE IMMEDIATE ACTION TO PREVENT THE CRS VENDORS FROM CONTINUING TO COLLECT FEES FOR UNFAIR AND DECEPTIVE BOOKING PRACTICES**

The America West Petition details the regulatory history of the CRS rules and describes how as the Civil Aeronautics Board and Department closed various avenues of abuse intended to benefit the airline owners, the CRSs have used their market power to exploit unregulated areas of conduct. The rules proposed by America West are designed to mitigate the adverse effects of CRSs charging practices that have evolved since the Department's 1992 review of those rules. America West's Petition explains how the CRSs have developed pricing policies commonly referred to as either transactional or net segment pricing, which actually foster abusive bookings such as duplicate, fictitious, passive and churned (which may also be duplicate or fictitious) bookings which are paid for by participating carriers under participation agreements unilaterally imposed by the CRSs on the airlines. As a result of this exercise of market power, participating carriers are currently subsidizing the CRS-owning carriers through millions of dollars in excessive payments for

these improper and abusive bookings.<sup>1</sup> America West explained how productivity credits and incentives provided to agents by the CRSs actually encourage these practices as travel agents seek to minimize or eliminate their CRS equipment costs. America West pointed out that CRSs actually pay some subscribers to use their systems. Consequently, America West's proposed change in the booking fee structure to a charge based on actual travel will result in a critically needed shift in the economic risk of abusive bookings from the carriers to the CRSs and thereby create important market based incentives for the CRSs to assure that their systems are not used improperly.

In addition, the America West petition demonstrated how CRS vendors further exploit their market power by refusing requests from carriers to terminate the capacity for travel agents to make passive bookings, or to take action to prevent other improper uses of the CRSs. These practices result, among other things, in the spoilage of airline inventory and improper over-booking situations, which, in turn, raise participating carrier costs and cause consumer harm through higher fares and delayed or unavailable flights.

Significantly, when America West and other non-owner carriers try to challenge these improper bookings and withhold contested billings, the CRSs refuse to engage in good faith

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<sup>1</sup> As discussed in America West's petition, in 1992 the Department failed to address this problem directly but instead amended section 255.6 by adding subsection (d) to require the CRSs to make certain billing data available to the carriers. This remedy was inadequate because as America West has detailed, the CRSs have ignored carrier objections to charges based upon the information made available in the BIDD tapes. The information required by the Department is also inadequate to enable carriers to fully analyze abusive bookings. Thus, at a minimum, the Department should amend §255.6(d) to require the CRSs to include in the tapes whether a ticket was issued for a particular PNR and the ticket number. This information would make it substantially easier to determine whether a transaction resulted in actual travel.

settlement efforts. Instead, the CRSs threaten carriers with immediate termination of service. For example, while America West was seeking review of certain Apollo billings which constituted approximately 5% of the total amount owed to Apollo for the relevant period, Apollo sent America West an ultimatum requiring payment of the disputed amount within one hour to avoid deactivation. This draconian sanction would of course effectively close-off America West from a substantial segment of the market and impose devastating losses on the carrier. Thus, America West and other carriers are forced to pay and are essentially left without a remedy to challenge these unfair and deceptive charges.

The Department has a clear duty under Section 41712 to prevent anticompetitive practices and an obligation to act quickly where anticompetitive conduct works to seriously disadvantage small and new entrant airlines. Immediate action by the Department to proceed to a notice of proposed rulemaking on the rules proposed by America West and to expeditiously issue final rules will strengthen competition by halting practices which by diverting hundreds of millions of dollars from smaller carriers to the major CRS owners is eroding the ability of participating carriers to compete. Indeed, the Department in the just concluded parity clause rulemaking found that even small costs improperly imposed by CRSs affects air transportation competition. 62 Fed. Reg. 59784, 59789. If a small increase in costs improperly imposed justifies regulatory action, certainly the huge impact of charges for abusive bookings which directly affects the ability of smaller carriers' to offer the lowest possible fares compels immediate regulatory relief. As explained in the America West Petition, the financial impact of these practices is further magnified by the dynamic growth of Internet reservation services. These services, now being offered directly to the public, are

gateways to the CRSs and create substantial new opportunities for CRS vendors to obtain additional monopoly profits by charging participating carriers for myriad booking transactions created by individual Internet users. Indeed the airlines have already witnessed very high rates of churning by consumers which results in excessive fees for each ticket ultimately issued .

The competitive issues at stake and the extensive consumer harm spawned from the CRSs unilaterally imposed booking fee practices compels immediate action under § 41712. The Department should not delay this action which is clearly in the public interest while it considers other issues raised in response to the ANPRM.

## **II. THE CURRENT CRS RULES MUST BE RETAINED AND EXPANDED TO MEET THE CHANGING COMPETITIVE ENVIRONMENT SPARKED BY NEW TECHNOLOGY**

### **1. SHOULD THE RULES BE CONTINUED? IF SO, FOR HOW LONG? SHOULD ANOTHER REVIEW BE REQUIRED AND, IF SO, WHEN?**

America West firmly believes that CRS rules must be continued with the amendments proposed in its petition as well as the other changes described in these comments. The need for these regulations has been well documented in the 1984 and 1992 rulemaking proceedings. Since the last review of the rules there have been no significant changes in airline distribution that could justify termination of the regulations. Indeed, as the Department recently found in issuing the final parity clause rule, the CRSs continue to

exercise substantial market power over participating carriers. In issuing the parity clause rule, the Department observed that "market forces do not significantly discipline the systems' treatment of participating airlines, and the systems have used their market power to impose contract terms that reduce competition in the CRS and airline industries and make airline distribution less efficient." 62 Fed. Reg. 59784, 59788, November 5, 1997. Since as the Department has repeatedly found, virtually all airlines must participate in all CRSs because each CRS usually serves a large and discrete group of travel agents, carriers have no bargaining leverage in negotiations with CRSs. In addition, there is no evidence to suggest that if the regulations were abolished the CRSs would not immediately institute display bias that would favor their airline owners.

The experience of America West and other carriers as described in America West's petition demonstrate that the Department's analysis remains valid. It also provides substantial evidence of a continuing need for regulation of CRSs to prevent the extraction of monopoly rents from smaller carriers and new entrants to the major CRS-owning pre-deregulation incumbents and to protect consumers from deceptive practices which may affect their selection of a carrier or their ability to obtain the lowest available fare or most suitable service to meet their travel needs.

Specifically, America West has been unable to negotiate any of the terms of its participation agreement with the CRSs nor have the major CRSs cooperated with America West in seeking to resolve booking fee issues or assisted the airline generally in its efforts to increase the efficiency of its distribution system and lower its distribution costs. To the

contrary, booking fees continue to escalate and the CRSs continue to offer incentives to travel agents which drive abusive booking practices.

Given the substantial market power of the CRSs and their potential to significantly alter the competitive landscape if the rules were abolished, America West is convinced that the CRS regulations as amended should be continued without a specific termination date. As long as the CRSs are predominantly owned by airlines or until there is a significant level of competition by new CRSs which are not airline owned, the rules must be continued. However, regular review of the impact of changing technology will enable the Department to respond quickly to competitive problems as they arise. Therefore, America West urges the Department to review and take action every two years to redress specific competitive problems that arise as a result of rapidly changing technology in such areas as electronic ticketing and Internet bookings. Policing the rules during this transition period could prevent the CRSs from extending their domination of reservation services and prevent a further strengthening of their ability to extract monopoly rents from participating carriers and transferring those excess profits to the owner airlines.

2. HAVE THE RULES BEEN EFFECTIVE? ARE THE RULES ADEQUATE AND APPROPRIATE IN LIGHT OF TECHNOLOGICAL CHANGES, CHANGES IN BUSINESS CONDITIONS IN THE AIRLINE AND TRAVEL INDUSTRIES, AND THE RISE OF INTERNET AND ON-LINE COMPUTER SERVICES THAT ENABLE CONSUMERS TO MAKE BOOKINGS?
  
3. IN THOSE AREAS WHERE COMMENTERS BELIEVE THAT THE RULES HAVE NOT BEEN EFFECTIVE, SHOULD PROVISIONS BE DELETED OR MODIFIED AND, IF MODIFIED, HOW? HAVE THE RULES BEEN EFFECTIVE? ARE THE RULES ADEQUATE AND APPROPRIATE IN LIGHT OF TECHNOLOGICAL CHANGES, CHANGES IN BUSINESS CONDITIONS IN THE AIRLINE AND TRAVEL INDUSTRIES, AND THE RISE OF INTERNET

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America West believes that the current rules have generally been effective to limit display bias and thereby reduce the use of CRSs to directly divert traffic to their airline owners.<sup>2</sup> The historic record is clear that prior to the 1984 rules the CRSs blatantly discriminated in favor of their owners and participating carriers which had negotiated special deals. As explained in America West's petition in the 1991-1992 rulemaking the Department chose not to impose regulations with respect to important aspects of the relationship between the CRSs and participating carriers. Not surprisingly, it is in those areas that the CRSs have used their market power to reap excess profits and encourage subscribers to conduct CRS transactions that result in inventory spoilage or overbooking situations. Thus, the Department chose not to impose any restraints on the level of CRS booking fees which have escalated at an alarming rate over the last five years. In addition, the Department decided not to provide carriers with any remedy for contesting the growing problem of charges for abusive bookings leaving carriers at the mercy of the CRSs.

In the 1992 rulemaking the Department gave as one of the reasons for not regulating the level of booking fees and booking practices the inability to find a market based solution. In the ANPRM, the Department has also expressed a preference for proposals that will "increase competitive market forces in the CRS industry." 62 Fed. Reg. 47609. While the search for market base solutions is commendable in theory, it is critically important, given

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<sup>2</sup> America West is concerned about the display of "funnel" or change of gauge flights as direct flights which is discussed in response to question 8.

the market power of the CRSs, that the Department remain focused on the public policy obligation to promote competition for air transportation and prevent the exploitation of market power to the benefit of CRS owners. Accordingly, the Department must be willing to impose rules, whether or not market based, to cure practices that are causing substantial competitive harm.

Since 1992 there have been several technological developments which require new rules. First, the rules did not address issues raised by the Internet which was not a factor in the distribution system in 1992. America West describes in its petition that the multi-carrier Internet booking engines are simply gateways to CRSs. Indeed, almost all of the major web booking sites such as Travelocity and Microsoft's Expedia are owned by, or affiliated with, a CRS or a CRS owning airline. America West is very concerned that these Internet sites, which are the functional equivalent of a CRS, if unregulated will manipulate the information derived from the CRSs to present a biased display to the user. To assure these Internet sites which are used by travel agents and directly by consumers do not subvert the CRS regulations, America West recommends that these sites be made subject to rules 255.4 governing display of information, 255.5 on defaults and service enhancements, and 255.6 relating to contracts with participating carriers.<sup>3</sup> Airline brand sites not subject to CRS fees and consumer web booking engines that do not front end a CRS but are connected directly to an airline reservation systems should not be subject to CRS regulation.

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<sup>3</sup> America West notes that in the Fair Display rulemaking, (Docket OST-96-1639), even one of the CRSs - namely Amadeous Global Travel Distribution - recognized the need for on-line multi carrier booking sites to be subject to Part 255 if the rules were continued following the Department's overall review.

A second major area of concern to America West that was not an issue in 1992 involves the relationship of Electronic Ticketing to the CRSs. Today, approximately 20% of tickets issued by travel agents on America West are electronic and the CRSs have never imposed a separate charge for issuing an e-ticket. America West is concerned that as e-ticketing expands and the carriers become dependent on the CRSs for the processing of tickets for travel agent transactions that the CRSs will unilaterally impose a significant fee for issuing the tickets. America West believes that if a product can be provided at no extra cost when developed, bearing unusual circumstances, there should be no reason to impose a fee later. Given the lack of competition and CRS market power, America West recommends the Department impose a rule to prohibit CRSs from imposing charges on products previously provided for free unless the Department finds that such a charge is cost justified based on CRS submissions and an opportunity for carriers to comment. This procedure would not apply to "free trials" of products where from the outset carriers were aware that following an introductory period there would be a charge.

4. DO THE CHANGES IN OWNERSHIP OF THE SYSTEMS (ALL NOW HAVE MULTIPLE OWNERS AND AT LEAST ONE IS OWNED IN PART BY THE PUBLIC) REQUIRE CHANGES IN OUR APPROACH OF REGULATIONS OR IN INDIVIDUAL RULES? SHOULD WE REEXAMINE OUR JURISDICTIONAL AND ANALYTICAL BASED FOR REGULATING CRSs, WHICH RELY ON THE OWNERSHIP OF EACH SYSTEM BY ONE OR MORE AIRLINES AND AIRLINES AFFILIATES? DO THE DECISIONS BY SOME AIRLINE OWNERS TO REDUCE THEIR CRS OWNERSHIP INTERESTS INDICATES THAT THERE IS LESS NEED FOR CRS REGULATIONS?

The four CRSs that operate in the United States remain substantially owned by airlines. Although SABRE and Galileo have some public ownership, these systems remain

substantially owned and controlled by airlines. American Airlines owns over 80% of SABRE. United alone owns 38% of Galileo International Partnership. Worldspan and System One/Amadeus are exclusively owned by airlines. Given that these systems remain substantially owned and controlled by the largest airlines, the Department retains the jurisdiction under 49 U.S.C § 41712 to regulate CRS practices. These carriers continue to obtain substantial benefit through a substantial wealth transfer from participating carriers to the CRSs and their airline owners. As described in America West's petition, a considerable portion of their revenues are generated by abusive booking practices encouraged by the CRSs.

Significantly, there is no empirical evidence to suggest that any changes in ownership have reduced the ability of the airline owners to control the CRSs activities. In this regard the Department has always recognized that the power to control or influence a company is more important from a regulatory standpoint than the level of ownership. Moreover, just last week the Department in issuing its final rule on "Fair Displays of Airline Services in Computer Reservations Systems," 62 Fed. Reg. 63837, December 3, 1997, found that CRSs continue to find ways to benefit their airline owners at the expense of smaller carriers and that public ownership has not affected the ability of the carrier owners to control the operation of the CRSs.

America West's experience is that the actions of the major CRS owner carriers strongly suggest that they continue to obtain an advantage in competition for air transportation through ownership and control of these systems. America West notes that the

carrier owners have not taken steps to force their own CRSs to reduce CRS charges in any way that would generally benefit participating carriers.<sup>4</sup>

America West also has found that CRSs generally refuse to implement any enhancements which might benefit a competing airline until the owner carriers are ready to utilize the new procedures. Thus, for example for some time America West has been able to utilize electronic ticketing and requested SABRE to create an auto-default to an e-ticket to eliminate extra steps required of travel agents to generate an e-ticket. SABRE simply refused to offer this technology until American was ready to implement its own electronic ticketing program. Once American was ready, SABRE made this facility available to other carriers.

5. HAVE THE RULES ALLOWING TRAVEL AGENCIES TO USE THIRD-PARTY HARDWARE AND SOFTWARE AND TO USE TERMINALS NOT OWNED BY A SYSTEM TO ACCESS OTHER TRAVEL DATABASES HAD ANY IMPACT? SHOULD THE RULES BE CHANGED TO MAKE IT EASIER FOR TRAVEL AGENCIES TO USE THIRD-PARTY HARDWARE AND SOFTWARE AND TO ACCESS OTHER DATABASES? FOR EXAMPLE, SHOULD THE EXCEPTION ALLOWING VENDORS TO RESTRICT THE USE OF VENDOR-OWNED EQUIPMENT BE ELIMINATED? DO ONE OR MORE DOMINANT AIRLINES AFFILIATED WITH A CRS USE THEIR MARKET POWER IN ANY REGIONAL AIRLINE MARKET TO DETER OR BLOCK AGENCIES FROM EXERCISING THEIR RIGHTS UNDER THESE RULES? DO SYSTEMS OTHERWISE IMPOSE CONTRACT TERMS THAT UNREASONABLY DETER AGENCIES FROM ACQUIRING THEIR OWN EQUIPMENT OR OTHERWISE USING MULTIPLE DATABASES OR SYSTEMS?

America West's experience as stated in its petition is that the right of travel agents to use third party hardware and software has not created any meaningful competition among

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<sup>4</sup> The one limited exception is Worldspan which has taken some steps to deal with the churning problem which has generally benefited all airlines. Delta which is the largest owner of Wordspan has also been aggressive in reducing CRS expenses.

CRSs to the benefit of participating carriers. America West is not aware of any examples where travel agents have been able to use third party software on CRS owned hardware to access and book through another CRS. This may be a result of the fact that the current rule permits a CRS to prohibit such use. However, other factors may be involved including whether the use of third party software or hardware would result in a reduction or loss of productivity and other incentives now available to the agents.

America West believes that to date the use of third party software has produced negative results for the carriers. For example, one of the most popular types of third party software is a program that runs nightly to cancel and rebook passenger records to extend time limit ticketing rules on speculation the customer will at some point call for the low fare ticket. Such churning is one of the major forms of abusive booking practices and is on the rise. This activity not only increases booking fees but holds inventory that otherwise would be available for immediate sale to another customer. Ultimately the inventory may go unsold.

Another example of the problems with third party software is reflected in the current dispute over American Airlines/SABRE Preference MAAnager software which American distributed to travel agents to alter the SABRE display. If such activity is not prohibited under the current rules it should be clearly proscribed under the new rules. SABRE is the largest CRS in the country and accounts for 43% of America West's agent bookings. If the CRS owner can go directly to the agents and provide software that recreates the display bias the rules are intended to prevent, the whole rule would be undermined and business would be improperly diverted to the CRS owners. In this regard, America West notes that under §

255.9 it would be difficult if not impossible for a non-owner carrier to offer similar software without the cooperation and participation of the CRS something which is not required. For example, America West at the request of a customer wanted to develop a direct booking application based on a standard Windows 95 platform even for this limited purpose. The customer's workstation consisted of a 486 PC with a private label version of Windows for Workgroups and SABRE CRS. SABRE refused to authorize an upgrade to their equipment to enable the use of the Windows 95 platform even for this unlimited purpose.

America West supports any rule change or additional rules that would make it easier for travel agents to use third party software to access multiple data bases, including a carrier's internal reservation system. Clearly eliminating the right under §255.9(a)(2) for the CRS to prevent use of its terminal for access to other databases could increase possible access since America West believes most travel agents will continue to use CRS owned equipment.<sup>5</sup>

In any event, America West believes that in the near future, the Internet will be the primary tool for accessing multiple data bases and that third party hardware and software will be unnecessary. For this reason America West strongly recommends that the Department impose rules to prohibit CRSs from restricting Internet access and activity related to air travel by travel agents using CRS equipment. Specifically, DOT rules should provide that:

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<sup>5</sup>This is primarily because of productivity incentives which enable subscribers to lower or eliminate the cost of the equipment, but also is related to the ability to perform back office accounting functions with the CRS equipment and the costs involved in training staff to operate more than one system.

- CRSs will provide equipment with Internet capabilities at a travel agent's request subject to fair compensation;
- CRS cannot restrict the right of a travel agent to use CRS equipment to access air travel-related Internet data bases for the purpose of making bookings;
- CRSs cannot compel the subscriber to report which Internet sites are accessed and the type of activity on other air travel-related Internet data bases; and
- CRS cannot restrict the right of subscribers to upload and download data to other air travel-related Internet data bases, as long as the activity does not compromise the security of the CRS or passenger data.

6. DOES THE MANDATORY PARTICIPATION RULE (SECTION 255.7) STRENGTHEN OR WEAKEN COMPETITION IN THE AIRLINE AND CRS BUSINESSES? SHOULD THE RULE BE MODIFIED TO CREATE AREAS WHERE AIRLINES WITH CRS OWNERSHIP INTEREST WOULD HAVE SOME ABILITY TO CHOOSE WHICH SERVICES TO BUY FROM OTHER SYSTEMS? SHOULD THE RULE INSTEAD BE EXTENDED TO COVER AIRLINES THAT MARKET A SYSTEM? SHOULD THE RULE BE EXTENDED TO INCLUDE MATTERS LIKE ACCESS TO CORPORATE DISCOUNT FARES?

America West urges the Department to maintain the mandatory participation rule (§ 255.7). Although it is not clear that this rule necessarily strengthens competition in the CRS or airline industry, the rule does prevent any weakening of industry competition. As the Department reaffirmed in its final parity clause rule, airlines that own a CRS may decide to strategically limit participation in one or more CRSs to force travel agents where it is the major carrier to use its system. 62 Fed. Reg. 59784, 59797, November 5, 1997. In addition strategic participation could be used to try and expand in other areas where a smaller CRS might be dominant. Finally, America West believes that mandatory

participation is essential to create even the possibility that a new CRS could enter the industry. America West does not think there is any benefit to permitting any owner carrier from downgrading in another system.

America West also believes that the rule should be extended to airlines that market a CRS. It is clear that a marketing affiliation with a strong non-owner carrier in specific regions can substantially enhance the ability of a CRS to place its system in additional agencies, particularly if the marketing airline does not participate or participates at a lower level in other systems. To the extent the marketing carrier receives a special deal, the arrangement will likely lower that carrier's distribution costs and thereby also directly effect airline competition. America West believes carriers with marketing arrangements should be subject to a mandatory participation rule if the following conditions are met:

- The marketing agreement results in revenue from the CRS partners to the carrier that is equal to or greater than 10% of total booking fee expenses;
- The services provided by the carrier extend over a reasonable period of time, not less than one year;
- A purpose of the arrangement is to increase the market share for the CRS;
- The services provided by the carrier to the CRS are for the purpose of promoting CRS market share and are not limited to technical matters or software development;  
and
- The bookings on the CRS for the marketing carrier exceed the level of booking that existed on that system prior to the development of the marketing affiliation.

Finally America West notes that the purpose of the mandatory participation rule is to prevent an owner-carrier from using market power against another CRS to reduce its market share. In this regard, CRSs use other methods to achieve this same result such as by enhancing incentive packages. Two methods which CRS owners use to increase market share for their systems constitute unlawful tying arrangements and should be prohibited. Specifically, one sure method is American Airlines' requirement that SABRE be used for all off-tariff pricing and ticketing for Corporate rates, Wholesale rates and Consolidator rates. Similarly, United Air Lines' override agreements tie override agreements to the use of Apollo. Access to special discounts and overrides are of great importance to subscribers. Thus, an owner's ability to limit availability exclusively to users of its CRS creates a powerful incentive for travel agents to use that carrier's system. There are clearly no pro-competitive benefits that derive from such a policy.

7. IN THE PARITY CLAUSE RULEMAKING, DELTA AIR LINES HAS CONTENDED THAT WE SHOULD BAR SYSTEMS FROM REQUIRING PARTICIPATION IN THE BOOKING SERVICE OFFERED THROUGH INTERNET SITES AS A CONDITION TO PARTICIPATION IN THE SERVICES OFFERED TRAVEL AGENCY SUBSCRIBERS. WHAT IMPACT WOULD DELTA'S PROPOSAL HAVE ON AIRLINE AND CRS COMPETITION? DOES THE USE OF CRSS AS BOOKING ENGINES BY MANY INTERNET WEBSITES RAISE OTHER ISSUES THAT SHOULD BE ADDRESSED IN THE RULES?

America West agrees with Delta Air Lines comments in the parity clause rulemaking that carriers should not be required to participate in a CRS Internet web site as a condition to participation in the conventional CRS product. As Delta points out, CRSs can use their market power to compel participating carriers to accept contract terms that require participation in non-System products such as a CRS Internet booking engine.

There are good reasons why a carrier might not want to be on an internet site controlled by a competitor. For example since the inception of EASY SABRE, an Internet booking site for consumers, America West has consistently complained to SABRE about damage to inventory through EASY SABRE bookings. In one instance America West, despite adherence to its own ticketing rules, experienced a no show rate of 300 passengers in one week which were all booked through EASY SABRE. America West's request to discontinue its participation in this non-system product was denied.

America West believes that the CRSs in an effort to maximize profits are prepared to give access to their systems to anyone that wants to create an Internet booking site and that there is absolutely no protection for the participating carriers. Therefore, the Department must adopt a rule that would require a CRS to obtain a carrier's approval for any direct link from the CRS to any Internet booking site. Carriers currently have some protection for improper conduct by travel agents through the ARC contract. These contracts provide guidelines for agent conduct and procedures for dispute resolution. Participating carriers do not have any relationship with the virtual agencies operating on the Internet. Many of these agencies cannot even be identified from the BIDT tapes because they do not have an ARC number which is normally included in the CRS identification tag that travels with every conventional transaction to the PNR. Even when a conventional travel agency makes a booking on the Internet, the carrier will not be able to identify the agency because an Internet booking requires no identification. To cure this problem CRSs should be required to facilitate a process under which the participating carrier and the Internet agency enter into a

contract similar to an ARC agreement and provide a system which assures that the carrier will be able to identify the source of all Internet bookings.

Another problem raised by the Internet involves charges for bookings made by carriers for flights on other airlines. Historically, airlines are not billed for bookings by one airline for another regardless of the host system upon which the booking is made. However, airline initiated ticketing through airline web sites which interface with a CRS are now resulting in a booking charge on the CRS. For example, America West is being billed for Internet bookings from the Northwest Airlines/Microsoft Expedia web site hosted by Worldspan. America West recommends a rule that would preclude a booking charge for inter-airline bookings where the booking carrier chooses to make the booking through an Internet/CRS booking site.

A third significant problem which is rapidly spreading on the Internet, and which was discussed in America West's petition is the practice of churning. As discussed in the petition, travel agents have used churning (multiple cancellation and reissuing of a ticket) to hold low fare inventory for an indefinite period in violation of ticketing rules. Under current CRS charging mechanisms, the carrier pays a fee each time the ticket is issued and cancelled, which results in exorbitant booking fees. As noted in the petition, there have been instances where the booking fees exceeded the cost of the ticket. On the Internet, consumers as well as travel agents can churn a ticket although most consumers have no idea that the airline is being charged for such conduct.

Finally as discussed in response to question 2, America West requests a rule that would subject all multi-carrier Internet booking engines to the requirements of rules 255.4, 255.5 and 255.6

8. DO THE SYSTEMS' DISPLAY ALGORITHMS INJURE AIRLINE COMPETITION AND, IF SO, HOW? IF SO, HOW COULD WE PREVENT THOSE INJURIES WITHOUT ENGAGING IN A DETAILED REGULATION OF THE SYSTEMS' CRITERIA FOR EDITING AND RANKING THEIR DISPLAYS?

The issues of display bias and how best to deal with this issue were addressed in detail in the prior two CRS rulemakings and America West generally believes the systems' display algorithms do not injure competition. For this reason America West does not favor the proposal considered initially in the Fair Display of Airline Services in CRSs rulemaking that all displays be "rationally related to consumer preferences." As the Department stated in the just issued final rule, it has ample authority under 49 U.S.C. § 41712 to take action against displays that are unfair or deceptive or otherwise prejudicial to competition.

America West is concerned about one practice which it believes violates rule 255.4(b)(2) which requires the display to indicate that a flight involves a change of aircraft before the final destination. America West has found that change of gauge flights which operate under a single flight number but do involve a change of aircraft appear as "direct" flights in the availability display rather than "connecting" flights. This practice often misleads travel agents and consumers into believing that the flight is a non-stop or single-plane flight rather than a connecting service. This practice not only is confusing to consumers but unfairly channels traffic to the largest CRS owner airlines based on the

number of scheduled flights they are able to operate. This also reduces the number of segments thereby reducing the larger airlines' booking fee costs. To remedy this deceptive practice America West recommends that the Department issue a rule similar to the rule recently imposed by the EEC Code of Conduct which requires CRSs to display funnel and change of gauge flights as connecting, rather than direct flights in the availability display.

9. DOES OUR RULE REQUIRING EACH SYSTEM TO MAKE AVAILABLE TO PARTICIPATING AIRLINES ALL OF THE MARKETING AND BOOKING DATA GENERATED BY THE SYSTEM FROM BOOKINGS (SECTION 255.10) BENEFIT AIRLINE COMPETITION? ARE SYSTEM OWNERS OR OTHER AIRLINES USING THE DATA IN WAYS THAT MAY PREJUDICE AIRLINE COMPETITION? IF SO, HOW SHOULD THE RULE BE CHANGED?

America West strongly supports the continuation of rule 255.10 which requires CRSs to make available to participating carriers the same marketing, booking and sales data that it generates from the system in a form that is as complete and accurate as that provided to a system owner. Access to this information enhances competition. Marketing and booking information provided by the CRSs is the best and most timely source of competitive booking data. This data provides an important tool for measuring both demand for the individual carrier as well as for the whole market. The availability of this information expedites the carriers' ability to respond to market forces. However, America West notes that in 1997 SABRE increased the charges for the marketing tapes ("MIDT") by 15%. Since all carriers must purchase these MIDT tapes, this constitutes another example of how the vendors can impose excessive costs on participating airlines.

10. WE ADOPTED A RULE THAT GENERALLY REQUIRES EACH SYSTEM TO MAKE AVAILABLE TO PARTICIPATING AIRLINES THE SAME FUNCTIONALITY USED BY ITS OWNER AIRLINES (SECTION 255.5). HAS THIS RULE BEEN EFFECTIVE? ARE THERE ANY REMAINING SIGNIFICANT DIFFERENCES IN FUNCTIONALITY THAT AFFECT AIRLINE COMPETITION?

America West supports this rule, to the extent that it theoretically compels vendors to make the same products available to all participating carriers. America West believes that both SABRE and Apollo/Galileo are in substantial violation of this with respect to passive bookings. America West described in its petition that passive bookings (which are not transmitted to the airlines internal reservation system) result in substantial booking charges although they create no value for the airline.<sup>6</sup> As stated in its petition, a travel agent has no legitimate need to ever make a passive booking on America West which has unsuccessfully requested the CRSs to prohibit such bookings on the carrier.

America West believes that neither American nor United pay for passive segments on their own systems. America West described in its petition the special "YK" status code that SABRE agents can use only with American which allows agents to make the equivalent of a passive booking without charge to the carrier. Similarly, in the Apollo system the agent

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<sup>6</sup> The petition also discussed the fact that passive bookings contribute to overbooking situations caused by passengers arriving with tickets for seats on flights which were never transmitted to the airlines reservation system. Typically, this situation arises when an agent issues a ticket for a fare or class which is no longer available.

enters an "8X" code instead of "UA" in conjunction with passive segment status codes. The system's functionality converts the 8X to UA when the ticket or itinerary is created so the consumer is informed of the name of the carrier. However, United is not charged for the booking segment since charges are all based on the airlines two letter identifier code. No other carrier is offered the right to use the 8X code to prevent being billed for passive segments.

America West has requested that the Department adopt a rule that would permit a participating carrier to compel CRSs to not allow agents to make passive bookings on that carrier. The proposed rule is completely justified and supported by the findings made by the Department in its final rule prohibiting enforcement of the parity rule against non-owner carriers.

America West is also concerned by the fact that while the rule requires the CRSs to make available products that are provided to an owner, nothing in the rule requires CRSs to make available products which may assist carriers other than the owner. Thus, America West has already explained in response to question 4, how SABRE refused to implement an automatic default to Electronic Ticketing for eligible records until its owner American was ready to initiate this system. In a competitive market, CRSs would be anxious to work with and develop products that would be helpful to any carrier. Therefore, America West recommends that rule 255.5 be amended to require CRSs to work with participating carriers to develop enhancements or services requested by a carrier or provide a detailed technical explanation to explain why a desired product cannot be provided at a reasonable cost.

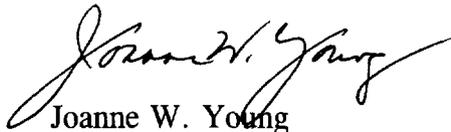
## CONCLUSION

The CRSs continue to exercise market power over participating carriers through the unilateral imposition of contract terms that would not exist in a competitive market and which are designed to subsidize their airline owners through the excess profits they are able to generate. These unfair and deceptive practices distort inventory and create overbookings which directly affect service to the public and customer goodwill. The Department must act immediately to reduce this wealth transfer, promote competition and stop deceptive practices that harm consumers by issuing an NPRM to amend the CRS regulations as proposed in America West's petition. As discussed in detail in the petition and in these comments, the CRSs have no incentive to reduce charges to participating carriers and will not act to eliminate abusive practices. Indeed the CRS incentives are to promote practices which maximize their profits and benefit their airline owners. America West's proposals will create a charging mechanism that will force the cost of these practices back to the CRSs or the agents through subscriber payments. These new market based incentives will make the industry more efficient and more competitive.

In addition, as described in these comments, there are a variety of practices by which the CRSs continue to circumvent the objectives of the CRS regulations which lead to competitive harm in both the CRS and air transport markets. The amendments proposed above will further limit the CRSs' current abuse of market power to benefit system owners. They will also function as prophylactic measures to maximize the competitive potential of the rapidly emerging Internet technology and ensure the CRSs are not permitted to extend their

current dominance in the distribution network to a position where they can exercise undue control over the shape and use of these products.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Joanne W. Young". The signature is fluid and cursive, with a long, sweeping underline that extends to the right.

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