BEFORE THE

DEPARTMENT OF TRANSPORTATION

WASHINGTON, D.C.

In Re	)	
	)	
Advance Notice of Proposed Rulemaking	)	**Docket Nos. OST-97-2881**
Computer Reservation System Regulations	)	**OST-97-3014**
Notice No. 97-9	)	**OST-98-4775**
	)	

COMMENTS OF TRAVELOCITY.COM

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September 22, 2000

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Travelocity.com ("Travelocity") submits these comments in response to the July 24, 2000 Supplemental Advance Notice of Proposed Rulemaking ("the Supplemental Notice") in the above-captioned dockets. Travelocity is an independent, publicly traded company (NASDAQ: TVLY) and a leading provider of consumer - direct travel distribution over the Internet.[1] We assume for the purposes of these comments that CRS regulation will continue in the United States in some fashion (as it does in Canada and the European Union). Therefore, Travelocity's comments are focused exclusively on the Department's inquiry into whether it "should adopt any rules covering the distribution of airline services through the Internet," and, if so, what rules.

[1] Travelocity was formerly a business unit of Sabre Inc. By virtue of a merger with Preview Travel, Inc., effective March 7, 2000, Travelocity became a separate, publicly traded company with its own board of directors. Sabre indirectly owns an approximate 70% of the equity of the company. The relationship between Travelocity and Sabre is governed by a number of publicly filed inter-company agreements; under Travelocity's corporate charter, material changes in those agreements must be approved by directors not affiliated with Sabre.

To answer this question, the Department should determine whether practices akin to those that led to the adoption of the original CRS rules in 1984 and their amendment in 1992 might recur on the Internet. We believe that not only *might* those practices recur – but that the series of coordinated activities by major air carriers in recent months to assert joint control over Internet travel distribution poses an imminent threat to competition that will injure airline passengers if left unchecked.

The first section of this submission provides the Department background on developments in the Internet channel and, in particular, more detail on the collective effort by the major airlines in the U.S. to set up jointly owned and operated Internet travel agencies. The second section of these comments sets forth Travelocity's position and our proposal to revise the CRS rules so as to ensure consumers are protected from deceptive and anti-competitive practices in shopping for and purchasing air transportation, whether they book via the Internet or offline. The final portion of this paper responds to remaining questions raised by the Department in its Supplement Notice.

I. Background

In the late 1970's, the airline industry launched the first CRSs – which represented perhaps the first networked industry infrastructure for electronic commerce. This was a revolution in its time. This important technological innovation provided travel agents with virtually instantaneous access to the flight schedules, fares and availability of virtually all airlines and other travel suppliers. Any student of aviation history will know that the introduction of these systems

changed much more than travel distribution. The systems had an immediate, and beneficial impact, on airline competition itself and accelerated the effects of airline deregulation, by allowing travel agents quickly to compare all available fares, by enabling carriers to publish schedule changes electronically and by providing instant "shelf space" to new entrants and smaller carriers.

Ultimately, carrier ownership of the major automated channel of airline ticket distribution presented a serious issue for regulators concerned about airline competition. Not surprisingly, the airline owners had sought to maximize their profits and recover huge start-up investments in the new technology by reserving the *best* shelf-space on the computer screens for their flights and by otherwise using their ownership of the systems to their advantage and to their competitors' disadvantage. (Allegations about these practices centered on the use of display bias, the withholding of fare data and other selling tools by airline CRS vendors from competing systems, and the establishment of booking fees that discriminated among carrier participants.) After extensive investigation, Congressional hearings and public comments, the Department's predecessor, the Civil Aeronautics Board decided that consumers, small air carriers and competition generally in air transportation were being harmed by various practices of the airline "system owners." Thereafter, the original CRS regulations were promulgated. The Department reaffirmed many of these findings in 1992.

The question of whether the Department "should adopt any rules covering the distribution of airline services through the Internet" must be answered through the prism of this history. Then, as now, the Department was required to assess the

impact of new technologies on airline competition and to respond to arguments (by major air carriers who opposed rules) that regulating *airline business practices* was tantamount to "regulating" technology itself and would stifle further innovation. Then, as now, the Department needed to determine whether marketplace forces alone were sufficient to curtail potentially harmful conduct, given the institutional incentives of airlines owning the automated means of distributing tickets to favor their own services. Then, as now, the real issue was the role and necessity of automated travel distribution in preserving a competitive *airline* industry.

A. Rise of Internet Travel Sites

Since the Department's last review of the rules in 1992, the Internet has emerged as a vital and rapidly expanding channel for the distribution of air transportation information and services to consumers. Travelocity was launched in March 1996 as one of the first online travel sites. Today, there are hundreds of travel agents online, both traditional agents with web sites and Internet-only travel agencies. Forrester Research predicts that by the end of 2000 14.9 million U.S. households will spend $12.2 billion for leisure travel on the Internet. Still, however, a small percentage of all airline ticket sales occur via the Internet (estimates range from 4% to 8%.)

Despite the relatively small size of the online business today, the presence of large online travel agencies offering travel options directly to consumers, like the introduction of CRSs themselves 25 years ago, is already having a profound effect on airline competition. That is what makes this rulemaking so important. Because online travel agencies are typically unaffiliated with any air carrier and operate on

commissions that are capped at $10 a roundtrip in most instances and that do not increase with the price paid by consumers, these sites do not exist to maximize air carrier profits. Thus, competition among such sites has driven them to innovate in ways that allow consumers to effectively bypass airline yield management and the complex morass of airline, hub-based pricing.[2] These independent online travel sites help consumers find low fares and, through the use of e-mail, context-sensitive banner advertising and other technologies, create marketing opportunities for small, start-up carriers and large carriers alike.

B. Benefits of Independent Travel Sites

Independent travel sites are becoming more popular each day, and the pace of consumer innovations is increasing. Travelocity is proud of the award-winning innovations it has introduced to its customers. These include such things as: (1) "alternate airports," a feature that automatically advises the consumer of cost savings available by driving to alternative-city airports (often bypassing hub airports in favor of smaller airports where low-cost carriers operate) in response to a given fare request;[3] (2) "best fare finder," the pioneering online search mechanism that allows customers to check flight availability based on fares (rather than the reverse); and (3) "dream maps," which enable consumers to build their own bargain vacations (users specify a specific dollar amount and type of "theme" vacation, such as beach, ski or national park visit and immediately see a map of possible destinations and the

[2] As noted by one industry analyst, "the philosophy [of independent travel web sites] is to push the price lower -- a complete reversal of the aims of an airline's own yield management team." *Reuters Finance* (Feb. 23, 2000) at www.biz.yahoo.com.

[3] In this service, Travelocity will show cheaper fares for travel between alternative airports located near the consumer's selected departure and arrival airports. An example is attached as Exhibit 1.

distance they can travel at the price they are willing to pay.)[4] Travelocity and other independent online travel sites have invested hundreds of millions of dollars in improving the speed and functionality of their sites, and in attracting new users to shop for travel online.[5]

Independently owned Internet travel agencies also operate in ways that frustrate carrier attempts to monitor the pricing practices of their competitors, thus encouraging price discounting by major carriers and enhancing market penetration by start-up airlines. One case in point: major air carriers invest significant resources checking competitive pricing activity via CRS databases and other market intelligence. But independent travel sites using Internet technologies undermine these efforts. For example, Travelocity has offered limited-time fare specials that are available solely through targeted e-mail promotions offered only to the e-mail recipient or made available only if the user clicks on a banner ad. Such promotions have been particularly effective for smaller low-cost carriers and new entrants, especially in their efforts to compete in major carrier hub markets where "detection" of price discounting carries greater risk.

C. Airline Web Sites

Given the success of online sites such as Expedia and Travelocity, the major airlines began in the late 1990's to pay much closer attention to this emerging channel of distribution. They responded, initially, by competing with their own web sites. For the most part, the early web sites introduced by airlines were designed to

[4] An example of Dream Maps is attached as Exhibit 2.

primarily attract the already-loyal customer. Transportation Research Board Report at 128 ("travelers attracted [to airline sites are] loyal customers") [6] These sites, in some cases, later evolved such that they now offer the "comparison shopping" capabilities found on independent travel sites.

With some notable exceptions (such as Southwest.com), the proprietary web sites of the individual airlines did not succeed in convincing customers to abandon neutral, comprehensive web sites offered by independent travel agencies. As evidenced at an IATA meeting in February 2000, some within the industry became increasingly concerned that, absent decisive action by them, "non-airline entities can use [Internet] technology to interpose themselves in our business."[7] As one IATA official noted, airlines were "less aggressive" than other industry participants to adopt the Internet, thus increasing the airlines fear of losing control over distribution.[8]

D. The Major Carriers' Jointly Owned Online Travel Agency

It was in this context that, by mid-1999, four major airlines had commenced private discussions about forming a jointly owned and operated Internet travel agency. By November of 1999, these carriers—United, Delta, Continental and

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[5] As a result, in 1999, it was estimated by the Travel Industry Association, 85 million travelers booked flights on sites such as Travelocity, Expedia and Priceline. "A Major Website," *Time* (June 14, 2000).

[6] As a telling indication of the airlines' lack of commitment to their own travel web sites, one industry report found that "many airlines spend under $5 million marketing their web sites, most under $1 million," while leading on-line travel agencies spend on average over $20 million per year on sales and marketing. *PhoCusWright Yearbook 1999* at 32.

[7] *IATA Legal Symposium on eCommerce* at Slide 5 (February 2000), attached as Exhibit 3.

[8] *Id.* at Slide 8.

Northwest—finally announced the formation of their joint site, now named Orbitz.[9] (American joined the other major carriers as an owner of Orbitz in April 2000.) Orbitz eventually "negotiated" a contract with each of its owners and other participants that is undoubtedly unique in the history of travel agencies – a commitment that it will have every last seat and every fare the airlines ever make available to their own reservations agents and to their alliance partners. Orbitz is, in effect, a virtual extension of the internal reservations capabilities of each of its participants.

According to public information, industry discussions on forming a joint online travel agency with "special" access to key low fares and inventory began as the result of meetings at the airline trade association, the Air Transport Association ("ATA"). These discussions were, reportedly, a response to the growth of independent Internet travel agents and the perceived, continuing high costs of the agency channel generally, and had been "taking place for months" before a formal proposal was made." [10] (*See also* Answer of United Air Lines Inc. to Third-Party Complaint, *Association of Retail Travel Agents v. Continental Airlines, et al.*, Docket No. OST-99-6691 at 5 (January 28, 2000) (stating that "T2," as Orbitz was then known, was initiated as a result of on-going communications between major

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[9] As discussed below, some two dozen airlines have reportedly joined Orbitz as non-equity participants. The carriers include: Aeromexico, Air Canada, Air France, Air Jamaica, Air New Zealand, Alitalia, All Nippon Airways, Aloha, American Airlines, American Trans Air, Ansett Australia, Air Tran Holdings, Asiana, Austrian Airlines, British Midland, COPA Airlines, CSA Czech Airlines, Hawaiian Airlines, Iberia, KLM Royal Dutch Airlines, Korean Air, LTU Intl, Mexicana, Midwest Express, Midway Airlines, Sabena, Spirit, Swissair, Singapore Airlines, Vanguard Airlines, and Varig. "Two Dozen Airlines Join Web Site Led by Four U.S. Majors," *Aviation Daily* (Jan. 14, 2000).

[10] "Agents Crying Foul Over Airline Web Site," *Travel Agent* (Nov. 15, 1999).

carriers). Eventually, and evidently after intervention by antitrust counsel, Boston Consulting Group ("BCG") was brought in as a third party consultant to launch the site.

There can be little doubt that Orbitz was, and is, a collective and coordinated response by the five largest air carriers in the United States to the nascent threat that large online travel agencies may "commoditize" the airline business. As explained by one of the owners in Congressional testimony, Orbitz was created by the major carriers out of concern that "electronic travel agents, Travelocity and Microsoft's Expedia in particular, were in danger of completely dominating this space, *to the detriment of the travel providers themselves.*"[11] Thus, in response, these carriers agreed to form their own travel agency and to limit key fares and inventory to Orbitz alone.

The announcement of Orbitz by the major U.S. airlines has spurred still other industry "joint ventures" designed to change the landscape of travel distribution. Thus, this summer, a new web site known as Hotwire (www.hotwire.com) was launched. Hotwire is owned by a group of large airlines and also backed by private investors. According to those who have raised objections to this site, Hotwire will enjoy a competitive advantage over other travel agencies of the same type that Orbitz enjoys. These critics point out that, just as Orbitz by creature of contract will have unique access to special classes of *published* inventory of its airline owners, Hotwire will have special rights to certain *unpublished* inventory offered jointly by the

[11] Senate Subcommittee Hearing on Antitrust, "Airline Competition: Clear Skies or Turbulence Ahead"?, p.71-73, May 2, 2000.

major carriers known as "opaque" fares.[12] Where Orbitz is directed at constraining the growth of independent on-line travel agencies offering published fares, Hotwire is reportedly directed at constraining the growth of large consolidators (such as Cheap Tickets) who offer "net fares" or other marked-up inventory to the public.

E. The Orbitz "Participating Carrier Agreement"

One indication of how the carrier-owners intend to operate Orbitz can be found in the draft non-equity Airline Charter Associate Agreement.[13] By reason of this Agreement, participating carriers may no longer run exclusive promotions with online competitors of Orbitz; rather, they must give Orbitz continual access to *all* "published fares," a term that is very broadly defined under the Agreement to include virtually every fare in a given airline's inventory. This includes: (1) any fares published in a CRS; (2) any fares, and corresponding inventory, published in the carrier's internal reservation system;[14] (3) "Internet" fares, including those offered via e-mail to targeted consumers; (4) promotional fares offered to the general public; and (5) fares offered to travel consolidators. (*See* exhibit A to the Agreement.)

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[12] These are deeply discounted fares that are offered in a manner such that the purchaser cannot discern the name of the carrier operating the flight before making his purchase decision. The purchaser only knows the fare, the number of stops, and the approximate time of day of departure/arrival. Opaque fares thus enable the major airlines to offer a joint product that allows each to sell off discount seats with little risk of dilution of sales by each airline to its frequent customers. Perhaps as importantly, this product also allows the participants to combine their "cheap seats" in a manner that allows them to compete, as a group, more effectively against discount airlines such as Southwest than any of them could compete individually.

[13] A copy of the Agreement is attached as Exhibit 4. The agreement among the *equity* owners has not been made public.

[14] This is critical as this amounts to an agreement by all participating carriers to provide "last seat availability" and internal inventory access to Orbitz.

Moreover, participating carriers are required to abide by the terms of an onerous "most favored nations"/non-competition clause that obligates them to provide Orbitz with the same low, promotional fares they provide at their own individual web sites. Therefore, upon joining Orbitz, a participant such as Midwest Express may no longer run a sale offering "10% off all fares" purchased through that carrier's Web site, unless it also makes those fares available to Orbitz. As Orbitz has made it widely known that it plans a "major launch" with $50 to $100 million in advertising and marketing, it does not seem very likely that consumers would need to frequent the Web sites of the participating carriers any longer. This is particularly true for the web sites of the smaller carriers, who typically lack effective frequent flyer programs and other devices to command customer loyalty.

Orbitz thus acts as a device to dampen competition among the individual web sites of its participants. As such, this aspect of Orbitz represents an important shift in airline competition and is illustrative of the dangers of allowing unregulated airline ownership of major distribution channels. Southwest, America West, Alaska Airlines and other carriers have demonstrated in the marketplace that single carrier sites can be very effective marketing and sales tools and can benefit consumers by offering more choices. These choices in turn lead to price competition and lower fares. Upon the launch of Orbitz, such competition will be severely curtailed. As characterized by one airline participating in the venture, "[Orbitz] is an example of 'creativity speaking' within the airline industry, where airlines sometimes find it is to their advantage to co-operate rather than com[pete] head on."[15]

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[15] "Airlines Maneuver for Internet Advantage," *Business Courier* (Jan. 28, 2000).

As if the most favored nations protection were not sufficient, the Agreement goes further to ensure that Orbitz will have fares that are not made available to other travel agencies, thus diminishing their competitive viability. The Agreement provides strong incentives for participating carriers to provide their very lowest fares—the *sine qua non* of consumer Internet travel purchases—exclusively to Orbitz. Each participating carrier is obligated to provide Orbirtz with substantial "In-Kind Promotions" running into millions of dollars[16] for the first 12 months of the Agreement. Among other things, "In-Kind Promotion" obligations can be satisfied by offering "exclusive promotions or fares available only on" Orbitz or the participating airline's own Internet travel site.[17] Orbitz also has the right to mutually develop the exact terms of the In-Kind Promotional plan and to determine how such obligations will be satisfied by the smaller carriers, and can withhold certain rebates if the carrier and Orbitz fail to develop a mutually acceptable promotional plan and/or if the carrier fails to adhere to the terms of that plan. [18] Another troubling aspect of the Orbitz participating carrier agreement (and one that raises privacy concerns) is that the participating carriers can satisfy the In-Kind marketing obligations by providing Orbitz with "passenger database information" and "competitive purchaser names" – i.e., by

[16] The exact total is calculated by the carrier's "Market Share multiplied by ___ million U.S. dollars." Agreement at Paragraph 2.2.

[17] The value of these exclusive fares is calculated by the difference between the exclusive fare and the next-highest fare offered elsewhere, times the number of tickets. If the fare is made available on Orbitz and not on the offering carrier's own web site, a 100% credit is applied toward the in-kind requirements; if the carrier determines to offer the fare independently, the credit is lowered to 75%. (See exhibit B to the Agreement.)

[18] *See* Agreement at Paragraph 3.4.

providing e-mail addresses of passengers who booked travel through another on-line agency). (See exhibit B to the Agreement.)

The *modus operandi* of Orbitz and similar "joint ventures" among major air carriers is clear: to use control over airline inventory (the founding Orbitz airlines alone share nearly 90% of domestic air travel[19]) to ensure supplier dominance of the newly emerging Internet travel business. Industry analysts largely agree with Orbitz's founding carriers that, although the site has not yet launched, it should be a formidable force in the market when it doe. "Due to its size and backing, [Orbitz] will eventually take its place among the top three travel sites for both traffic and sales." "Top Airlines' New Travel Site Will Succeed," *The Forrester Brief* (Jan. 24, 2000). Orbitz itself is now making similar bold claims. While Orbitz representatives position the company before Congress and other regulators as "just another little Internet start-up," Orbitz is telling the travel industry otherwise, with its CEO reportedly stating that it anticipates beginning its *launch* with as many visitors as are enjoyed by Amazon.com, the largest Internet retailer in the world.

F. The Risk of Orbitz

The formation of joint airline travel agencies such as Orbitz and the collective use of access to specially priced inventory as a competitive weapon against independent travel agencies represent a serious threat to a competitive travel distribution industry. This is not because the maintenance of a viable independent

[19] "In addition to the nearly 90% share of domestic air travel commanded by [Orbitz's] founding partners, [its] participants now represent over 80% of all domestic revenues derived today. "An Air Battle Comes to the Web," *Fortune* (June 26, 2000).

alternative to airline-owned distribution is necessarily a priority in its own right. But such an alternative *is* important to ensuring competition in air transportation itself.

The debate over Orbitz is thus reminiscent of the original controversy over CRSs, which resulted in the current regulations. As the Department notes in the Supplemental Notice, "each system's owner airline had the ability and incentive to use the system to prejudice airline competition and give consumers misleading or incomplete information in order to obtain more airline bookings." Based on publicly available information about Orbitz, and its goal and intention of withholding and restricting access to critical information (namely low air fares and inventory), there is a substantial risk of history repeating itself in the sale of air transportation on the Internet.

Some parties are publicly opposed even to the *formation* of Orbitz and similar airline-owned travel agencies. These parties include Consumers Union, Consumer Federation of America and Southwest Airlines (a carrier frequently cited as aligned with the interests of consumer). [20] Travelocity is not opposed to the formation of airline-owned travel agencies. Travelocity welcomes new competition – which will ultimately lead to more innovation, better products and services for consumers. With appropriate safeguards, such ventures could fairly compete in the Internet channel. As detailed further below, the Department should update its CRS rules to ensure that consumers have access to full, fair and unbiased air transportation information via the Internet.

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[20] Ironically, Orbitz calls itself the "Southwest" of travel distribution. The real Southwest apparently believes otherwise.

II. The Department should extend the CRS rules to ensure consumers are protected from deceptive and anti-competitive practices in accessing air transportation information via the Internet.

As the distribution of air transportation information and services increasingly moves to the Internet, the Department's objective of protecting consumer access to complete, accurate, timely and unbiased information is no less relevant or important. There is nothing about the Internet that suggests that business practices that would be illegal offline or on the telephone should be exempt from regulation because they occur via a personal computer connected to the World Wide Web. For consumers, online travel sites have become an important source of information and means to shop for and purchase air transportation. If airlines are permitted to collectively restrict the flow of key information to a few favored agents the airlines own or control, competition will be harmed. In the short term, increasing numbers of independent online travel agents will be unable to compete.

Over time, as competition in the channel diminishes, so will innovation. Would an online travel agent owned by the major carriers have been the first to invest in developing technology such as Travelocity's "alternate airport" product – which may divert customers to other airlines away from the major carriers' hubs? Would a joint industry travel agent develop technologies that work against airline yield management?

Perhaps even more compelling, if Orbitz were to simply follow the well publicized blue print of its consultants (BCG), it will: (i) attempt to position itself with consumers as not affiliated with or controlled by its owner-airlines, (ii) deny

access to information to its rivals, the so-called "neutral navigators" aligned with the interests of consumers, so as to keep such sites from achieving "critical mass", and (iii) as competition lessens, inject subtle bias into its displays of information to drive additional business to its owners.[21]

A. The Department's rules in part 255.4 prohibiting display bias should be revised so that they apply to any travel site that offers consumers the schedules, fares, or availability of more than one carrier.

To eliminate the potential for such unfair and deceptive conduct in the sale of air transportation via the Internet, the Department should expressly apply its anti-bias rules to *any* Internet travel site that offers flight information, such as schedules, fares, rules or availability, concerning more than one carrier. This rule should apply to online agents, traditional travel agents offering a Web site, airline sites that allow interline bookings, or airline joint venture sites like Orbitz. Such an extension would preserve for consumers the protection that is already provided today for professional travel agents. In the consumer-direct channel, such protections are arguably even more important because infrequent users of Internet travel sites are obviously less familiar and less skilled than professional agents in reviewing and understanding displays of flight information. Extension of the current anti-bias provisions of the CRS rules to consumers is certainly justified.

In extending the anti-bias rules of part 255.4, as noted above, the Department should clearly differentiate between "bias" (the undisclosed reordering of flight displays) and *advertising*. Under the current CRS rules, bias

[21] *See Blown to Bits*, Philip Evans and Thomas S. Wurster, The Boston Consulting Group, Harvard School Press (2000).

is regarded as the use of "any factors directly or indirectly relating to carrier identity" in ordering the information contained in the display of carrier schedules, fares, rules or availability. *See* 255.4(b). Although Orbitz and certain of its owner carriers have funded a multi-million dollar public relations effort aimed at portraying Travelocity as "biased," they have not offered (and cannot offer) any support for a claim that Travelocity has used carrier identity as a criteria in ordering its flight displays.

As a travel agency, Travelocity has a system access agreement with Sabre, its CRS provider. Despite Orbitz's claims, Travelocity does *not* inject carrier identify into the displays it receives from Sabre. Travelocity takes the data from its CRS and republishes the information with a graphical user interface (GUI) that is easily understood by and accessible to its base of 22 million consumer members. Carrier identity is never a factor. Travelocity's flight displays comply with the current CRS rules because the Sabre system is compliant with those rules. By extending the rules, the Department can make it clear that it is best suited to determine whether flight displays are "biased" and can then exercise its authority to correct displays that do not comply.

Orbitz has also tried to characterize Travelocity's use of advertising at its site as some type of illegal bias. Here again, the claims are misleading at best. Most e-commerce sites accept advertising from suppliers. Travelocity is no different in this respect than other successful Internet sites, such as aol.com, etrade.com and yahoo.com. It is ludicrous to regard such advertising as improper or unfair. One popular advertising opportunity that Travelocity offers its

airline suppliers is the "Featured Airline" banner. For carriers purchasing such advertising, Travelocity places various "banner" advertisements throughout its virtual store, promoting the service of the carrier. Travelocity featured airlines have included Air Tran, ATA, British Airways, Legend, Midwest Express, among others. For example, if Travelocity had a "Featured Airline" advertising agreement with British Airways, the agreement might provide that when a consumer requests information on a city served by that carrier, that Travelocity will serve a banner ad informing the consumer that "Travelocity.com is featuring the following airline(s) for the cities you have requested." The consumer is also clearly advised that "[i]f you select a featured airline, only schedules and fares for that airline will be displayed." On the same screen, the consumer is further advised of the option to "click **Book a Flight** to search for available low fares on all airlines." An example of such advertising is attached as Exhibit 5. *At no time does Travelocity re-order the carrier information in the CRS data it receives from Sabre*. Travelocity simply serves the consumer with an advertisement, the Internet analog to the placement of an "end cap" for a soft-drink on a supermarket aisle.

Orbitz appears to be breaking at least some new ground for an Internet company – as one of the few, if not the only, site opposed to advertising (advertising generally serves as an important source of revenue for many online companies.) From time to time, Orbitz representatives have said they do not intend to accept airline advertising on pages within the site where users will shop for air transportation. Why? The position of Orbitz appears to be that because

advertising on Internet travel sites can "move market share" among airlines, such activity is pernicious and should be condemned. These claims are telling for a number of reasons.

First, these claims belie the true nature of Orbitz and similar ventures. Notwithstanding Orbitz's attempts to position itself as "just a small, independent Internet start-up," Orbitz is an online extension of the distribution activities of the five major carriers in the United States. When the façade of independence is peeled away, Orbitz is an airline owned Internet travel agency. Thus, it is understandable that the Board of Directors controlling Orbitz (and reportedly comprised of ten airline representatives – two for each of the five major owner carriers) is opposed to advertising and other efforts to "move market share." Among major competitors, moving market share is at best a "zero sum game." But for consumers and smaller carriers, it can be a boon.

Second, Orbitz' anti-advertising stance also calls into question the overall purpose and business plan of the venture. If Orbitz avoids supplier advertising, accepts the current commission caps, and commits to refund any share of the booking fee it receives from its CRS provider (Worldspan), one might legitimately ask how (*or if*) Orbitz ever intends to *make money* for its owners. If the real answer is that Orbitz *saves* its owners money by usurping control of Internet distribution (through the withdrawal and restriction of key fares and inventory) from profit-maximizing sites, the Department should have serious reservations about allowing Orbitz to launch without safeguards.

Finally, for all of Orbitz' claims of bias by online travel sites, it has been surprisingly quiet when asked it would agree to abide by the Department's well established anti-bias rules. As the Department is aware, Travelocity has publicly stated that it would agree to comply with these rules (and indeed has complied with these rules since the product was first launched in March 1996.) The explicit extension of the Department's anti-bias rules, as advocated above, will eliminate any confusion in this very important area. Consumers are entitled to the same protection as professional travel agents and they should be protected from any existing or future attempts by Internet travel sites offering flight information on more than one carrier, to re-order flight information displays based on non-objective, undisclosed factors.

B. Airlines that own on-line travel agencies should be required to deal with other agencies in a non-discriminatory fashion.

Assuming that the CRS rules are updated to apply to consumer-direct web sites, the Department should also confirm that airlines that own such sites have the same basic obligations in dealing with competing sites that "system owners" today have under the current rules. Specifically, Travelocity proposes that any airline owning (or having warrants equivalent to) five percent or more of the equity an online travel agency (that is, an agency offering ticketing capability on multiple carriers) be required (i) to treat other online travel agencies in a non-discriminatory manner and (ii) provide all fares, schedules, availability, inventory and other selling tools to such agencies to the same extent that such items are provided to the airline-owned agency.

This proposed rule essentially preserves the requirements of part 255.7 by preventing carriers from circumventing the objective of this section – which was designed to ensure that airlines owning CRSs provide complete, timely and accurate information to competing systems. Consistent with this rule, the Department should also clarify that the owner carrier obligations of part 255.7 include all necessary functionality, (such as frequent flyer access and redemption) and all fare information, including unpublished, "opaque" and off-tariff fares made available to any carrier-owned online travel agency.

Such a revision of part 255.7 would underscore the Department's goal and commitment to protect consumer access to comprehensive air transportation information by ensuring that competition among online agencies occurs on the *merits* of technology and customer service – not airline ownership. Such a provision will also help to thwart the current trend by which airlines can collectively demand *ownership stakes* in travel agencies as a pre-condition to making inventory available for sale by such agencies.

The Department might appropriately ask why it should bother to take such a step – or, alternatively, why not simply allow major carriers to leverage their control over fares and inventory into ownership and controlling stakes in online travel agencies? The answer lies in the role that independent agencies play in ensuring a competitive airline industry. If consumers are rewarded with cost savings by using such features as Travelocity's "best fare finder," they will continue to use the site and drive more business to Travelocity. This will spur further innovation. Conversely, if independent sites are denied access to the

lowest fares, it does not matter how innovative their technology may be; it will be impossible to meet the consumers' demand for low fares. Inevitably, the sites with access to the bargain fares (particularly when coupled with unique access to other necessary functionality, such as the ability to redeem frequent flyer miles) will prevail. And once control over distribution is returned to the major carriers, the same practices that occurred many years ago and resulted in the CRS rules will, almost inevitably, creep back into the systems as the institutional incentives of air carriers have not changed materially in the last 25 years.

Another important aspect of this proposed rule is that it will harmonize the U.S. rules with the Canadian and European Union CRS rules. Under both of those rules, carriers that own an interest in a "system" (which can include an online travel agency marketed directly to consumers) are obligated to provide the same information to any independent "systems" as it provides to any system in which it owns *any* equity.

Lastly, the proposed rule would also address the claims (of Delta and others) that airline carriers are being unfairly required to distribute their services through system services provided by CRS companies to online agencies.[22] Under this rule carriers would be required to participate in online agencies only to

[22] This argument may now be partially irrelevant in any case. The concern as first expressed was ostensibly based on evidence that distribution via Internet travel sites (then a new channel, subject to some abuse) was imposing much greater costs (including the risk of fraud) on carriers than distribution via traditional travel agencies. Delta argued that carriers should have the ability to "opt-out" of such costly distribution – notwithstanding the fact that their various participation agreements with CRSs generally obligate the carriers to distribute their product to all subscribers of the system in a non-discriminatory manner. Since this argument first surfaced, the complaining carriers have fully embraced Internet distribution, and have taken various ownership stakes in online sites, such as Priceline, Orbitz and Hotwire. (Delta is not believed to be an owner of Hotwire). Thus, it seems a bit disingenuous to argue that distribution of their products via the Internet is somehow more at risk than distribution via traditional agencies.

the extent that they owned competing agencies. The Department could then extend its current rule concerning parity clauses to any agreements between on-line agencies and individual carriers, *i.e.*, allowing enforcement of such clauses only as to airlines that own or market competing agencies.

Delta and other carriers' desired right to "opt-out" of distribution by various travel agencies should be let to the contract between those carriers and the respective CRSs. Given major carriers' investment in Orbitz and other multi-carrier sites, if those carriers were permitted to ignore their obligations under their CRS agreement with a system and were granted some right to "opt-out' of distribution by other sites, this would obviously have serious implications for the viability of independent sites. If such conduct were permitted, the carriers would have the ability to essentially deny any independent travel site any information and drive all consumers to a single jointly owned and operated site, such as Orbitz. As a result, consumers, small carriers and competition would be severely harmed as access to unbiased and complete travel information could disappear, along with product innovations, such as "alternative airports."

C. In addition to the rules set out above, the Department should consider rules that will prohibit airlines from using jointly owned online travel agencies in ways that discourage price competition or competition by smaller, low-cost carriers with airline sites.

As noted in the background section above, a number of single airline Web sites, including Southwest Airlines, have enjoyed a great deal of initial success distributing their products and services via the Internet. The threat of Orbitz to such single carrier sites, as expressed by Southwest Airlines is: "This collective

venture has the dangerous potential to strengthen major airlines' dominance and control over the information that is provided to consumers, reduce independent decision making by participating airlines, and to facilitate coordinated actions against non-participating low-fare carriers such as Southwest."[23] As further noted by Southwest: "the many independent non-airline owned sites have enhanced competition among airlines by providing a new arena for competing carriers to display their fares and service, to make special offers, and otherwise to attract passengers from their rivals. All of this independent and unilateral activity generates significant benefits to consumers – in greater personal convenience, lower travel costs, and increased airline competition."[24]

Southwest, and possibly other single carrier sites, are justifiably concerned that Orbitz will stifle price competition among carriers. As reflected in the Orbitz participating carrier agreement, as a result of the broad "most favored nations" provision, carriers will have less incentive to continue to invest in and build up their unique single carrier Web sites. Under the terms of the agreement, any and all of the low fares offered by those carriers at their own site are required to be offered to Orbitz as well. This concentration of information, particularly with respect to low fares, may enable the major carriers that control Orbitz to "more easily deal with their few remaining airline competitors" as Orbitz could serve as a type of "control valve" over key low fare information.[25]

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[23] Statement of Southwest Airlines Co. Before the Senate Commerce, Science and Transportation Committee Concerning Internet Sales of Airline Tickets, July 20, 2000; p. 3.

[24] Id. at p. 5.

[25] Id. at p. 8.

In determining what to do about Orbitz and other "joint ventures," the Department should pay careful heed to the commonality of arguments being made by smaller airlines and independent travel sites.

D. The Department should follow the mandate of the Transportation Appropriations Act from the 105th Congress to require pre-clearance of air carrier joint ventures involving the ownership of travel agencies.

In the 105th Congress, in response to the effort of airlines to form domestic alliances that did not constitute outright mergers (which could be subject to Department of Justice scrutiny under the Hart-Scott-Rodino Act), Congress required that airline joint ventures, code-sharing, and other "cooperative working arrangements" *be made* subject to DOT review before such agreements could take place. Congress noted that it was the obligation of DOT to define by regulation the meaning of "cooperative working arrangements."

The specific language of the statute is as follows:

(a) Definitions--In this section, the following definitions apply:

(1) Joint venture agreement --The term `joint venture agreement' means an agreement entered into by a major air carrier on or after January 1, 1998, with regard to (A) code-sharing, blocked-space arrangements, long-term wet leases (as defined in section 207.1 of title 14, Code of Federal Regulations) of a substantial number (as defined by the Secretary by regulation) of aircraft, or frequent flyer programs, or (B) any other cooperative working arrangement (as defined by the Secretary by regulation) between 2 or more major air carriers that affects more than 15 percent of the total number of available seat miles offered by the major air carriers.[26]

[26] 49 U.S.C. 41716, Joint Venture Agreements

Congress was obviously concerned that cooperative working arrangements – in particular, marketing joint ventures -- be subject to careful review before being implemented. On its face Orbitz is a cooperative working arrangement between two or more major air carriers that affects more than 15% of the total available seat miles offered by the major carrier. As the Internet travel channel expands, Orbitz is just one example of major carriers working together to develop joint strategies to sell and market air transportation.

Given the purpose of the Department's CRS rules, as set out in part 255.1 ("to prevent unfair, deceptive, predatory and anti-competitive practices in air transportation") and the clear mandate from Congress in the legislation set out above, the Department should move promptly to define "cooperative working arrangement. " Travelocity proposes that the term be defined explicitly to include "any joint venture for the common marketing or sale of airline tickets via the Internet, including but not limited to the formation of any travel agency." This would give the Department helpful structure in which to promulgate guidelines on such joint ventures going forward.

III. <u>The Department has jurisdiction to issue the rules set out above</u>.

The Department has the power to "investigate and decide whether an air carrier, foreign air carrier, or ticket agent has been or is engaged in an unfair or deceptive practice or an unfair method of competition in air transportation of the sale of air transportation." 49 U.S.C. Section 41,712 (which codified Section 411 of the Federal Aviation Act of 1958.) A "ticket agent" is defined as a "principal or agent [that] sells, offers for sale, negotiates for, or holds itself out as selling,

providing, or arranging for, air transportation." 49 U.S.C. 40,102(a)(40). Thus, the Department has equal authority to investigate and issue rules governing both air carriers and ticket agents in the sale of air transportation, regardless of whether the sale of air transportation is via the Internet or any other medium.

IV. Conclusion

Travelocity submits that the Department should update its CRS rules, as set forth herein, to ensure that consumers have access to full, fair and unbiased air transportation information via the Internet.

Respectfully submitted,

Andrew B. Steinberg
Executive Vice-President &
General Counsel

Keenan M. Conder
Associate General Counsel

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Exhibit 1

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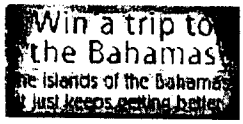

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USD 274.00 (Plus applicable charges) **Round-Trip**

Legend Airlines
offers non-stop service

Advance Purchase: 14 days
Latest Travel: 30Apr00
Earliest Return: See Rules
Latest Return: 30 days

Rules

Other low fares

USD 288.00 (Plus applicable charges*) Round-Trip

American Airlines offers non-stop and connecting service	Advance Purchase: 14 days Latest Travel: 17Apr00 Earliest Return: Sunday Latest Return: 30 days	Rules
Legend Airlines offers non-stop service	Advance Purchase: 14 days Latest Travel: 17Apr00 Earliest Return: See Rules Latest Return: 30 days	Rules
Delta Air Lines offers non-stop and connecting service	Advance Purchase: 14 days Latest Travel: 17Apr00 Earliest Return: Sunday Latest Return: 30 days	Rules
United Airlines offers non-stop and connecting service	Advance Purchase: 14 days Latest Travel: 17Apr00 Earliest Return: See Rules Latest Return: 30 days	Rules
National Airlines offers direct service	Advance Purchase: 14 days Latest Travel: 17Apr00 Earliest Return: 01 days	Rules
America West offers direct and connecting service	Advance Purchase: 14 days Latest Travel: 17Apr00 Earliest Return: Sunday Latest Return: 30 days	Rules
Frontier Airlines offers direct and connecting service	Advance Purchase: See Rules Latest Travel: 17Apr00	Rules
Continental Airlines offers connecting service	Advance Purchase: 14 days Latest Travel: 17Apr00 Earliest Return: Sunday Latest Return: 30 days	Rules
TWA Trans World Air offers connecting service	Advance Purchase: 14 days Latest Travel: 17Apr00 Earliest Return: Sunday Latest Return: 30 days	Rules

USD 312.00 (Plus applicable charges*) Round-Trip

Legend Airlines offers non-stop service	Advance Purchase: 21 days Latest Travel: 30Apr00 Earliest Return: See Rules Latest Return: 30 days	Rules

USD 328.00 (Plus applicable charges*) Round-Trip

American Airlines offers non-stop and connecting service	Advance Purchase: 21 days Earliest Return: Sunday Latest Return: 30 days	Rules
Legend Airlines offers non-stop service	Advance Purchase: 21 days Earliest Return: See Rules Latest Return: 30 days	Rules
Delta Air Lines offers non-stop and connecting service	Advance Purchase: 21 days Earliest Travel: 28Feb00 Earliest Return: Sunday Latest Return: 30 days	Rules
United Airlines offers non-stop and connecting service	Advance Purchase: 21 days Earliest Return: Sunday Latest Return: 30 days	Rules
National Airlines offers direct service	Advance Purchase: 14 days Earliest Return: 01 days	Rules
America West offers direct and connecting service	Advance Purchase: 21 days Earliest Return: Sunday	Rules
Frontier Airlines offers direct and connecting service	Advance Purchase: See Rules	Rules
Continental Airlines offers connecting service	Advance Purchase: 21 days Earliest Return: Sunday Latest Return: 30 days	Rules
TWA Trans World Air offers connecting service	Advance Purchase: 21 days Earliest Return: Sunday	Rules

USD 350.00 (Plus applicable charges*) Round-Trip

Legend Airlines offers non-stop service	Advance Purchase: 21 days Latest Travel: 30Apr00 Earliest Return: See Rules Latest Return: 30 days	Rules

USD 368.00 (Plus applicable charges*) Round-Trip

[redacted]	**American Airlines** offers non-stop and connecting service	Advance Purchase: 14 days Earliest Return: Sunday Latest Return: 30 days	Rules
[redacted]	**Legend Airlines** offers non-stop service	Advance Purchase: 21 days Earliest Return: See Rules Latest Return: 30 days	Rules
[redacted]	**Delta Air Lines** offers non-stop and connecting service	Advance Purchase: 14 days Earliest Travel: 28Feb00 Earliest Return: Sunday Latest Return: 30 days	Rules
[redacted]	**United Airlines** offers non-stop and connecting service	Advance Purchase: 14 days Earliest Return: Sunday Latest Return: 30 days	Rules
[redacted]	**National Airlines** offers direct service	Advance Purchase: 07 days Earliest Return: 01 days	Rules
[redacted]	**America West** offers direct and connecting service	Advance Purchase: 14 days Earliest Return: Sunday	Rules
[redacted]	**Frontier Airlines** offers direct and connecting service	Advance Purchase: 07 days	Rules
[redacted]	**Continental Airlines** offers connecting service	Advance Purchase: 14 days Earliest Return: Sunday Latest Return: 30 days	Rules
[redacted]	**TWA Trans World Air** offers connecting service	Advance Purchase: 14 days Earliest Return: Sunday Latest Return: 30 days	Rules

USD 398.00 (Plus applicable charges*) Round-Trip

[redacted]	**Legend Airlines** offers non-stop service	Advance Purchase: 07 days Latest Travel: 30Apr00 Earliest Return: See Rules Latest Return: 30 days	Rules

USD 418.00 (Plus applicable charges*) Round-Trip

American Airlines offers non-stop and connecting service	Advance Purchase: 07 days Earliest Return: Sunday Latest Return: 30 days	Rules
Legend Airlines offers non-stop service	Advance Purchase: 07 days Earliest Return: See Rules Latest Return: 30 days	Rules
Delta Air Lines offers non-stop and connecting service	Advance Purchase: 07 days Earliest Travel: 28Feb00 Earliest Return: Sunday Latest Return: 30 days	Rules
United Airlines offers non-stop and connecting service	Advance Purchase: 07 days Earliest Return: Sunday Latest Return: 30 days	Rules
National Airlines offers direct service	Advance Purchase: 07 days Earliest Return: 01 days	Rules
America West offers direct and connecting service	Advance Purchase: 07 days Earliest Return: Sunday	Rules
Frontier Airlines offers direct and connecting service	Advance Purchase: 14 days	Rules
Frontier Airlines offers direct and connecting service	Advance Purchase: 07 days	Rules
This airline offers different travel rules for this fare. Why?		
Continental Airlines offers connecting service	Advance Purchase: 07 days Earliest Return: Sunday	Rules
TWA Trans World Air offers connecting service	Advance Purchase: 07 days Earliest Return: Sunday	Rules

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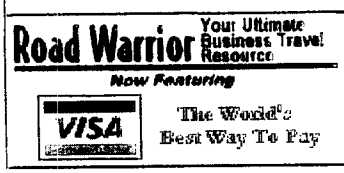

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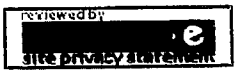

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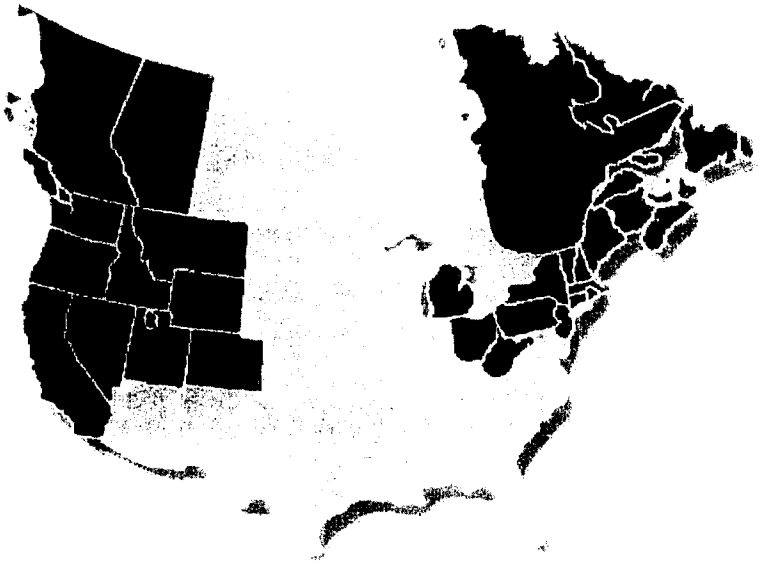

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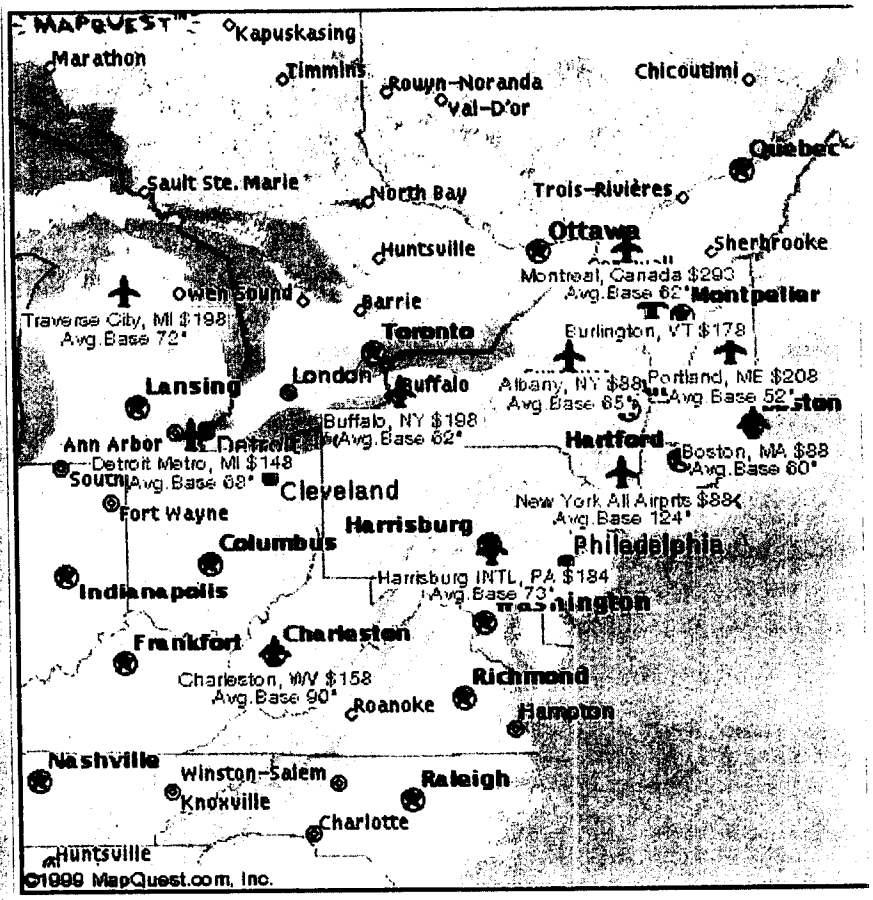

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Earliest Travel: 07May00
Earliest Return: 01 days

Rules

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Southwest Airlines
offers connecting service

Advance Purchase: 14 days
Earliest Travel: 07May00

Rules

USD 112.00 Round-Trip

Southwest Airlines
offers connecting service

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Earliest Travel: 07May00
Earliest Return: 01 days

Rules

Southwest Airlines
offers connecting service

Advance Purchase: 07 days
Earliest Travel: 07May00
Earliest Return: 01 days

Rules

This airline offers different travel rules for this fare. Why?

USD 128.00 Round-Trip

Select

US Airways
offers non-stop and connecting service

Advance Purchase: 21 days
Earliest Travel: 07May00
Earliest Return: Sunday

Rules

Select

United Airlines
offers non-stop and connecting service

Advance Purchase: 21 days
Earliest Travel: 07May00
Earliest Return: Sunday
Latest Return: 30 days

Rules

USD 130.00 Round-Trip

Select

Southwest Airlines
offers connecting service

Earliest Travel: 07May00

Rules

Exhibit 3

MICHAEL FELDMAN

Michael Feldman presently holds the position of Director Passenger Services, with the International Air Transport Association (IATA), based in Geneva.

Upon completion of his studies, Mr. Feldman was employed by several civil engineering and consulting firms. He participated in numerous strategic studies on land use planning and new town development.

In 1978 Mr. Feldman joined Wardair Canada where he held the position of Marketing Services Manager. He was responsible for the development of the procedures and systems in support of Wardair's sales and marketing activities.

Mr. Feldman joined IATA in 1983 as Manager, Industry Automation where he participated in the development of the IATA Industry Automation Policy. He also managed industry studies addressing schedules and availability exchange, interline revenue accounting baggage tracing and user charges.

In 1987 he assumed responsibility for IATA's Passenger and Airport Services activities. Under his direct responsibility were IATA's passenger reservations, ticketing, passenger and baggage processing as well as ground handling services. He played a key role in developing the IATA Registered Supplier and Travel Partner Programmes, and the IATA Ground Handling Council.

Mr. Feldman currently directs the Passenger Services Department, which is responsible for IATA's passenger policy, standards, procedures and services that support its customer and distribution service activities. These activities include passenger reservations, ticketing, passenger and baggage processing, airport and ramp services as well as IATA's Schedules Co-ordination activity and In-flight Services.

Mr. Feldman is a Canadian and is graduate of McGill University in Montreal, Canada, with a degree in Urban Systems.

IATA Legal Symposium on eCommerce

Michael Feldman, IATA

San Diego
8 February 2000

eCommerce Vision:

"In five years time all companies will be Internet companies, or they won't be companies at all."

Andy Grove, Chairman Intel

Intercompany trade of goods over the internet .. Will double every year over the next 5 years, surging from $43 billion last year to $1.3 trillion in 2003

Forrester Research

eCommerce is important to air transport because:

- It is borderless (despite efforts to control it)
- It is easy to do
- It is based on open standards
- It is rapidly gaining recognition for cost savings and efficiency
- It will be the business to business norm in the *(very near)* future!

Example:

In a survey of airlines conducted in June 1999, *41%* of airlines already sold on the Internet

36% have Frequent Flyer applications

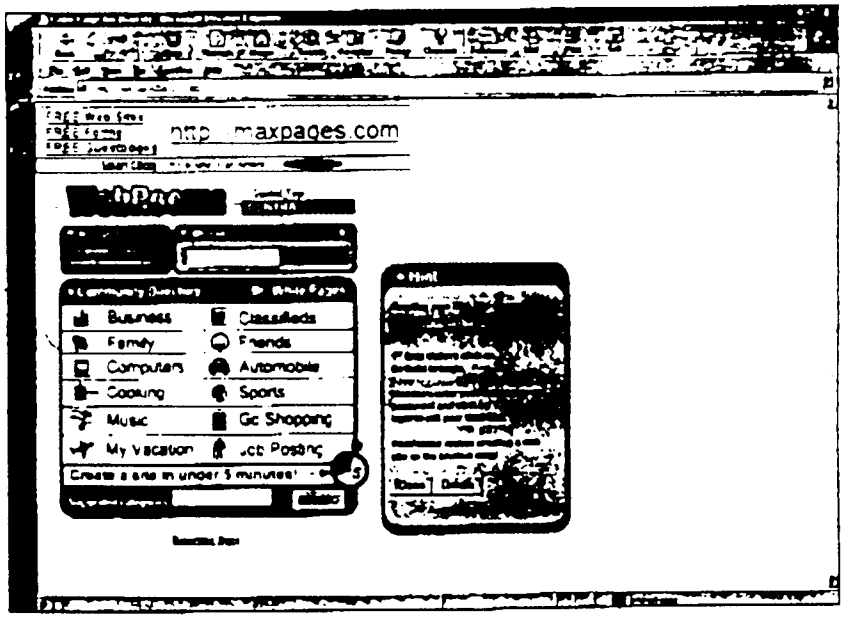
70% have an Intranet for internal or closed business transactions

40% are conducting some eCommerce

Is eCommerce New?

Certainly not!

But: The advances made in telecommunications through the Internet and the democratisation of Data Processing combined with a global trend towards deregulation and globalisation have accelerated eCommerce everywhere.



Airlines were eCommerce Pioneers!

- We interconnected Reservations systems
- We developed a global interline system for passenger and cargo based on the efficient and cost effective exchange of information, initially via SITA and ARINC.
- But are we still leaders..?

For example:

- We rely on "paper tickets" for interline billings,
- We exchange our schedules data using magnetic tapes and "bit by bit" teletype messages
- We send mountains of paper sales reports to travel agents every billing period
- .. Resulting in higher costs and lower efficiency for our industry

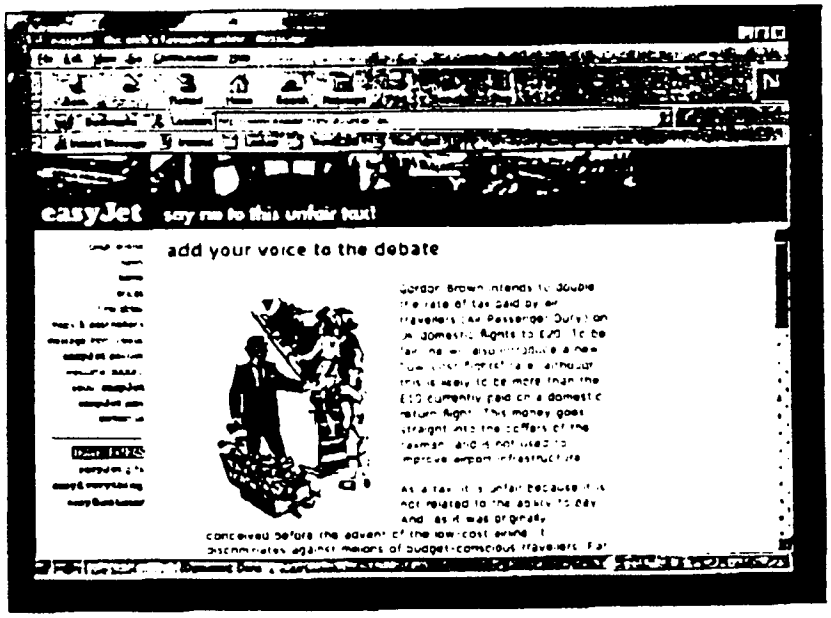
But Now We Face New Challenges:

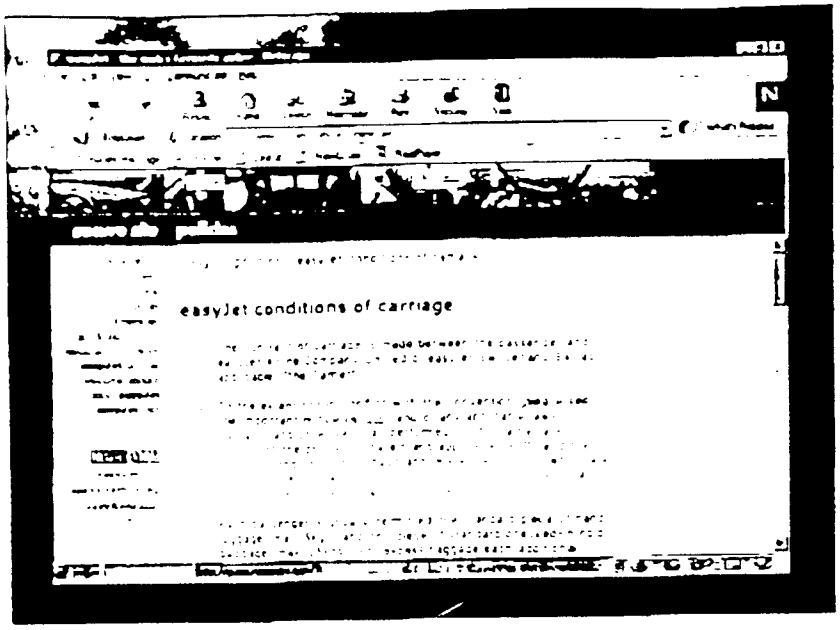
- Airlines are under pressure to reduce costs and enhance efficiency
- Non-airline entities can use technology to interpose themselves in our business
- The consumer is demanding new ways to conduct business with service suppliers
- Airline responses have had questionable impact.

Where are the eCommerce Opportunities?

- Web selling?
- Internal management?
- "Business to Business"?
- Information?
- "Professional Services"?

easyJet
buy online news & info
Promoción especial
Madrid Londres Madrid Liverpool
10.000 ptas ida y vuelta
Tell the Chancellor what you think of his new air tax!


easyJet say no to this unfair tax!
add your voice to the debate



Airline Sales:

- Slow start... gaining momentum
  - 3% travel booked online in 1999
  - 8% by end of 2001
  - 20% by the end of 2003
  - experience shows 75% cost reduction by selling over the internet... from an airline's site.

PhoCusWright

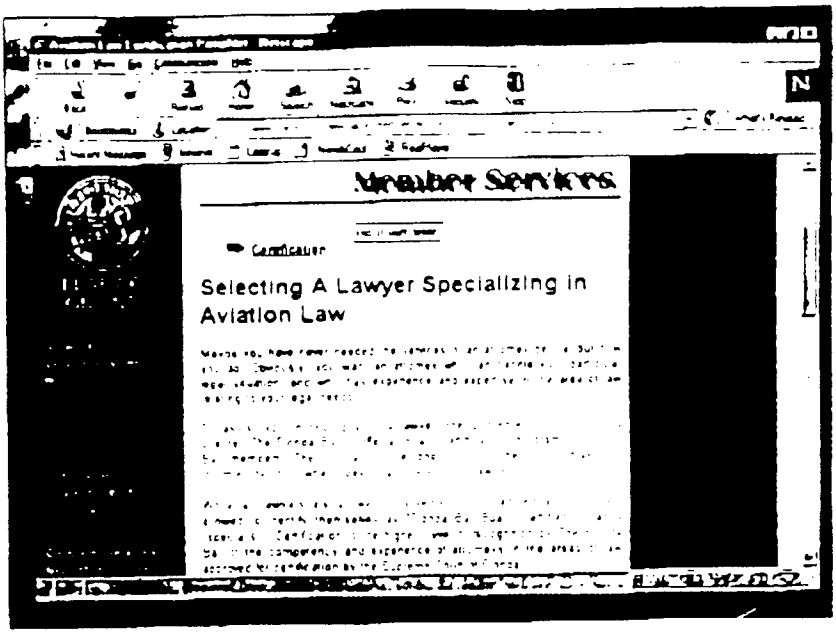
But:

- Little evidence that these cost savings are being passed to the airlines
- travel agents are more aggressively adopting the Internet for sales than airlines
- And as a result, airlines gain no benefit, continue to pay CRS/GDS fees and remuneration to their agents

---

There is little evidence that "WebSelling" is going to be a significant distribution method for IATA Members in the immediate future.

Airline Internet sites are important marketing tools, but have not resulted in mass shifts towards direct sales (as was predicted)



Intracompany Opportunities

Linking distributed internal company functions has proven to benefit from eCommerce applications and allows companies to establish virtual support units to serve global internal users, e.g. finance, HR, IT, purchasing, and corporate services such as Legal??.. At a minimum the impact of email is enormous.

Business to Business

As the key area of interest for companies seeking to reduce costs and become more efficient by:

elimination of paper for purchasing, invoicing, quality management, tendering, performance monitoring and general communications, etc.

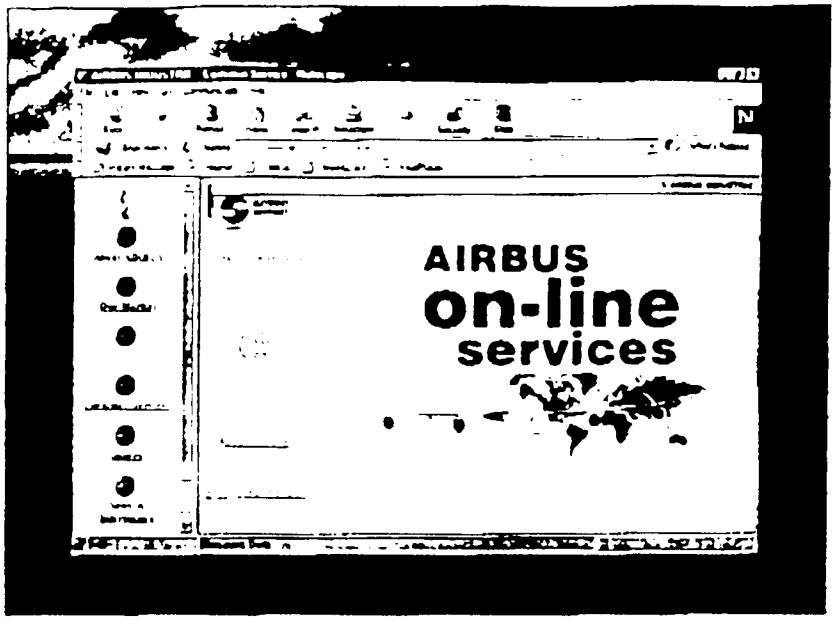
IBM Example:

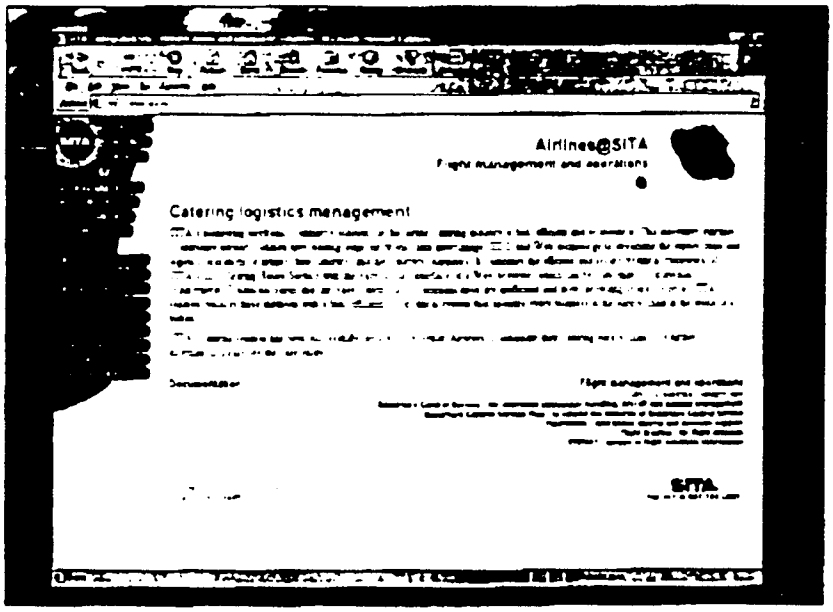
eBusiness will result in the elimination of 5 million paper invoices a year

eProcurement will support $12 billion in purchasing for IBM in 1999

30% of internal training will be done by "distance learning" saving $100 million a year

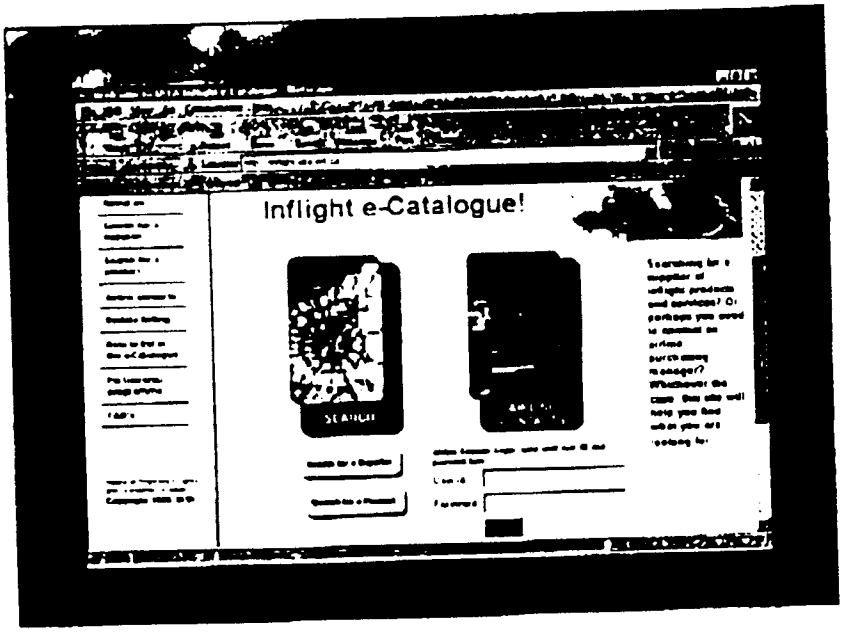
Self Service distribution (software) will result in; 28 million transactions resulting in $600 million savings


AIRBUS
on-line
services


Airlines@SITA
Catering logistics management
SITA

What is IATA doing?

- IATA is adapting itself to provide the standards and eCommerce compatible services to support your business objectives.
- IATA is establishing technical standards, developing industry services and identifying strategic opportunities for Members and others



IATA e-Commerce Programs

- Distribution System "re-engineering"
- eticket/eCommerce are fundamental
- Future Airport/Customer Service Opportunities
- Electronic Reservations Service Providers.. Accreditation and standards
- Certification Authority for electronic signatures.... authorisations

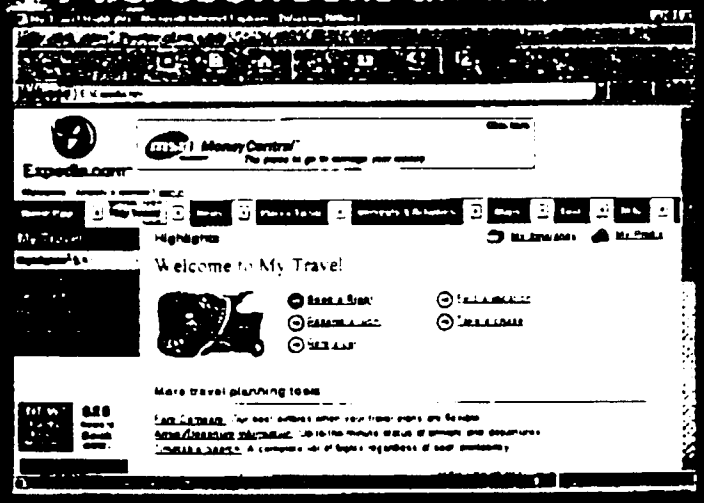
Cont...

- "Internet Slot Swap Service"
- Chat room meeting format... agenda, minutes and discussion fore
- Tender distribution services.. Ground handling, catering, etc.
- Passenger Processing.. WAP technology

Area of Challenge: Changing Distribution Channels

- Traditional Agencies
  - "disintermediation".. No real proof
- New Agents
  - New entrants
  - Not traditional travel related businesses
  - Online auctions
  - Automated agents

Microsoft sells air travel

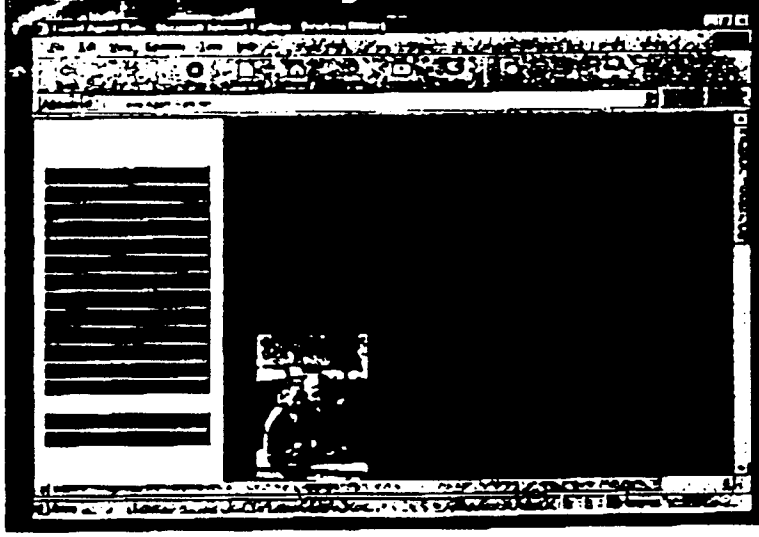


Changing Client Relationships

clients

- Bypass normal geographic restrictions
  - Point of Purchase pricing differentials
  - easy direct access to last minute tickets
  - airlines may not be the consumer's first choice
  - not neutral, limited options, not best fares.....etc.

agent



Fraud

The Internet is not regulated! And fraud is a problem.

There are no regulations like CRS rules to protect the consumer and airline.

Intentionally Misdirected links to competitor's sites exist

Estee Lauder v. Excite & Webcrawler

Playboy v. Excite & Netscape

Conclusion:

eCommerce is a reality and will impact your personal and professional lives

eCommerce will shape the future of your company and will be a critical factor in your company's success

eCommerce is breaking down traditional barriers to entry and challenging established methods of doing business

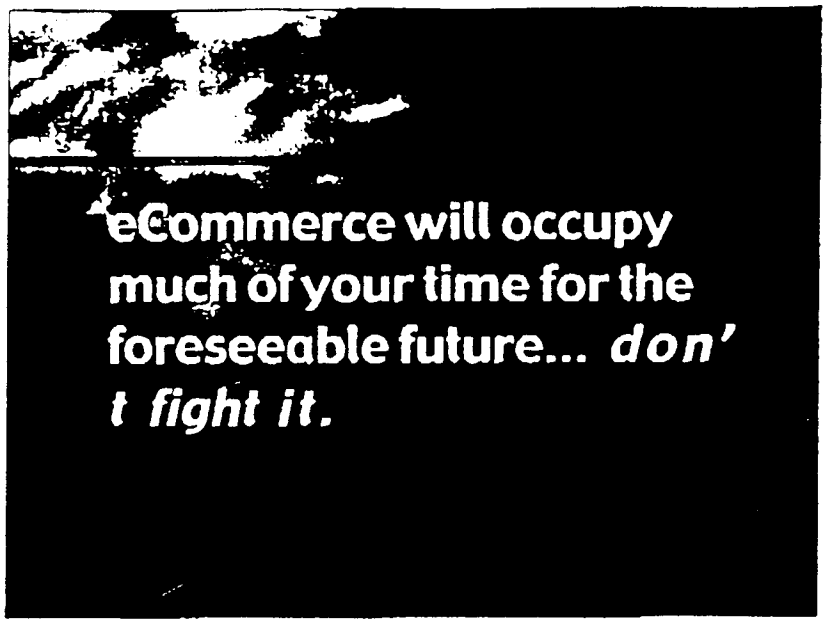

eCommerce will occupy
much of your time for the
foreseeable future... *don't fight it.*

Exhibit 4

Airline Charter Associate Agreement

This agreement ("**Agreement**"), effective on the date set forth on the signature page hereof (the "**Effective Date**"), is entered into by and between DUNC, LLC, a Delaware limited liability company ("**Company**"), and the undersigned airline ("**Airline**").

Introduction

Company wishes to provide a service that allows consumers to purchase airline tickets and other travel products and services via the Internet. Airline desires to participate in the Company Site as an Airline Charter Associate on the terms and conditions set forth in this Agreement. In consideration of the covenants and agreements set forth in this Agreement, the parties agree as follows:

1. **Definitions**. The terms defined in **Exhibit A** will have the meaning assigned to them for the purposes of this Agreement.

2. **Airline Participation in the Company Site**

2.1 Schedule, Fare and Seat Availability Information

(a) Airline shall use reasonable commercial efforts to provide complete, timely, and accurate information on its Schedules, Published Fares, and Seat Availability (together, "**Air Travel Information**") to Company at no charge and with the same frequency, and no later than, Airline provides Air Travel Information to its Airline Internet Site, Airline Internal Reservation System, or Alliance Partner Site. Airline shall provide Company with nondiscriminatory access to Seat Availability for Published Fares for passengers yielding comparable net revenue values in comparable fare classes in the Airline Internal Reservation System, Airline Internet Site, or Alliance Partner Site. Airline shall provide Air Travel Information in a manner so that all such data is available to Company for airline bookings on the Company Site without the need for a link to the Airline Internal Reservation System, Airline Internet Site, or Alliance Partner Site.

(b) To the extent that Airline offers any of the following in connection with the display or sale of Air Travel fulfilled through an Internet Travel Provider Site: (i) Published Fares, (ii) Schedules, (iii) Seat Availability, (iv) Service Enhancements, (v) frequent flyer program account information, (vi) frequent flyer promotions (including, but not limited to, mileage promotions), (vii) functionality or processing of frequent flyer transactions, or (viii) the purchase, sale or redemption of frequent flyer miles, Airline shall offer Company the same on a MFN Basis.

(c) Company acknowledges and agrees that, as between Company and Airline, Airline is the owner of (i) all information provided by Airline to Company pursuant to Sections 2.1(a) and (b), and (ii) all other Airline information relating to, derived from, or used to create Fares, Schedules, Seat Availability, Airline reservations, passenger name records (PNRs) relating to Airline passengers, Airline tickets sold, real time flight information, and all related data (collectively, the "**Airline Data**"). Airline hereby grants to Company, during the Term, a limited, non-exclusive, non-assignable, non-transferable license, without the right to sublicense, to use the Airline Data, solely for purposes of Company advertising and promotions (subject to the terms of Section 5 hereof) and for operating the Company Site; provided, that any such use may not involve Company disclosing the Airline Data to any third party. Airline retains all right, title and interest in and to the Airline Data and all copyright and other intellectual property rights relating thereto, subject to the license granted herein to Company. Company shall not sell, transfer, license, market or otherwise distribute the Airline Data to third parties without Airline's prior written consent.

(d) Notwithstanding Section 2.1(c), Company may (i) create customer profiles of Persons purchasing Airline services from the Company and offer targeted promotions to such Persons, and (ii) offer to Persons purchasing Airline services other non-Airline products and services such as hotel, rental car, cruise line, vacation package, insurance, credit card, and other products and services; provided, however, that in all cases Company shall not (x) offer the Airline Data directly or indirectly to any other air carrier, (y) use the Airline Data for the direct benefit of any other air carrier or (z) use the Airline Data for promotions or customer offers unless the Airline Data is included as part of a larger generic database of airline customers which includes all airline customers on the Company Site in a city, city pair, country pair, region or other demographic market or geographic area, such that the database could not be used to identify Airline's passengers, Airline's frequent flyer members or purchasers of Airline's services through the Company Site.

(e). The inadvertent and infrequent failure by Airline to comply with its obligations set forth in Section 2.1(a) or (b) shall not be considered a breach hereof so long as, once discovered by Airline or brought to its attention, Airline prospectively cures such failure to comply as soon as reasonably practicable but in any event within twenty-four (24) hours in the case of obligations set forth in Section 2.1(a) and seven (7) days in the case of obligations set forth in Section 2.1(b).

2.2 **Marketing Support**.

(a) Airline shall provide Company with In-Kind Promotions (a) during the initial twelve (12) month period of this Agreement, with a dollar value equal to Airline's Market Share multiplied by _ million U.S. dollars (US$___); and (b) in each subsequent twelve (12) month period in an amount equal to ___ percent (__%) of Airline's Travel Revenue during the immediately preceding twelve (12) month period not to exceed _ _ million U.S. dollars (US$__ _)

ring any twelve (12) month period following the initial twelve (12) month period of this agreement. Airline's In-Kind Promotions shall be implemented in accordance with the valuation methodology set forth in **Exhibit B**. Company and Airline shall mutually determine the timing and value of each In-Kind Promotion by mutual agreement of the parties. If either party proposes In-Kind Promotions that are not listed in **Exhibit B**, the parties shall work together in good faith to value such In-Kind Promotions. Airline's In-Kind Promotions shall be used solely to promote Company's primary Internet site unless otherwise agreed by the parties.

(b) The parties shall mutually determine a promotional plan to implement In-Kind Promotions to satisfy the Airline's obligations and the schedule for such promotions. Promotional plans shall be prepared on a calendar quarter basis at least thirty (30) days in advance of each calendar quarter. Airline shall provide such In-Kind Promotions in accordance with such plans and schedules.

(c) Company shall provide Airline with a quarterly report of Airline's In-Kind Promotions completed and the balance of Airline's obligation to provide In-Kind Promotions as described above.

2.3 Company and Airline shall each assign individuals to serve as account managers who shall be responsible for the implementation of this Agreement. Each party may change its account manager upon written notice to the other party. The account managers will coordinate Airline's initial submission of Airline Data to Company in connection with the launch date of the Company Site, and each party will take steps the other reasonably requests in connection with testing and implementation of the Airline ticket sales on the Company Site.

2.4 For Services provided by Company to Airline, Airline agrees to pay Company the greater of (i) the amount determined by Airline from time to time or (ii) the amount per transaction set forth in **Exhibit C**. Company agrees that during the Term it will not charge any other airline for similar services any amounts that are lower than the amounts set forth on Exhibit C.

3. Obligations of Company

3.1 Company agrees to display Airline's Air Travel Information on the Company Site in accordance with this Section 3.1. Except in response to a customer request, Company shall display all airline information in an integrated display, and Company shall ensure that any integrated display of multiple airline schedules, fares, rules, seat availability or other flight information on the Company Site is displayed in an unbiased manner, and that the order of information in such integrated display is made on the basis of service criteria that do not reflect carrier identity and that are consistently applied to all carriers, including each carrier that has an ownership in the Company, and to all markets.

3.2 On a quarterly basis, Company shall pay Airline _ __ percent (_ %) of the rebate earned directly or indirectly by Company from its CRS supplier(s) for transactions relating to

Airline tickets sold through the Company Site (the "**Quarterly Rebate**"). In no event shall the Quarterly Rebate, when divided by the number of Airline tickets issued by the Company Site during a calendar quarter period, be (a) less than _ _ U.S. dollar (US$__) per ticket or (b) more than ___ dollars (US$_ _) per ticket. Company shall pay the Quarterly Rebate within sixty (60) days following the close of each calendar quarter period. Airline has the right to audit the rebate calculation at its expense and in a commercially reasonable manner at a mutually agreed upon time and location.

3.3 During the Term, Company shall provide Airline and other Airline Charter Associates with (i) the same terms and conditions for the commercial arrangements set forth in Section 2 (Airline Participation in the Company Site) and Section 3 (Obligations of the Company), and (ii) the opportunity to participate in Company in-kind promotions, opportunities to sell Airline's tickets on the Company Site through tour or travel packages that bundle air transportation, car rental and hotel services, Company air travel promotions and other Company marketing programs and opportunities on substantially equal commercial terms that are equal to or better than the most favorable terms offered by Company to any other airline, regardless of sales volume.

3.4 Company shall be entitled to suspend the payment of the Quarterly Rebate to Airline, and withhold from Airline the benefits described in Sections 3.2 and 3.3 above, (i) if Airline has failed to provide Company with the In-Kind Promotions in accordance with Section 2.2, or (ii) if Airline and Company have been unable to reach agreement on the promotional plan described in Section 2.2(b); provided, that the exercise of Company's right to suspend payment shall be without prejudice to any other remedies Company may have for breach of this Agreement.

3.5 At the request of Airline, Company shall, subject to technical and financial constraints, use its reasonable business efforts to connect directly to the Airline Internal Reservation System for Published Fares, Schedules and Seat Availability information so as to eliminate the need for a CRS link for such data; *provided*, the presence or absence of any financial incentives to Company from one or more CRS shall not be considered a technical or financial constraint or used for purposes of determining reasonable business efforts.

3.6 The parties agree to undertake reasonable commercial efforts to develop and implement distribution technologies that lower the cost of distributing Airline's products and services through the Company Site, including but not limited to electronic ticketing and interline e-ticketing.

4. Confidentiality

Each party shall take reasonable measures to protect the secrecy of and avoid disclosure and unauthorized use of the Confidential Information of the other party, including, without limitation, taking at least those measures that it takes to protect its own highly confidential information. Upon the expiration or termination of this Agreement, each party shall deliver to the other party all of such other party's Confidential Information that such party may have in its possession or control. Neither party shall disclose any terms of this Agreement to any third

rty if such disclosure is without the consent of the other party, except to such party's accountants, attorneys and other professional advisors, provided such advisors are bound by a duty of confidentiality. Upon the execution of this Agreement, each party may issue one or more press releases disclosing the execution of this Agreement and each party shall use its reasonable business efforts to coordinate all such press releases with the other party hereto.

5. **Proprietary Marks.**

During the Term, subject to the terms of this Section 5, Company may refer to the trade name of Airline ("**Airline Marks**"), solely for the purpose of fairly and accurately describing and referring to the Company Site. Without limiting the foregoing, Company may identify Airline as an Airline Charter Associate by adding a suitable descriptive explanation on the Company Site, on promotional material for the Company Site, and in non-advertising textual materials, including for example press releases, product announcements, and general corporate communications. Company shall inform Airline of the details of any use of the Airline Marks. Company agrees not to use the Airline Marks in any manner that could reasonably be expected to have an adverse impact on the goodwill attached to such Airline Marks or on the corporate image of Airline. In such circumstances, Airline shall have the right to reasonably request Company to cease or to modify any particular use.

6. Term of Agreement

6.1 **Term.** This Agreement will commence on the Effective Date, and will continue for an initial term of one (1) year. After the initial term, this Agreement will continue in effect; provided, either party may terminate this Agreement for any reason or no reason upon thirty (30) days prior written notice to the other party. This Agreement shall automatically terminate in the event that reservations for air transportation have not been made or air transportation services have not been sold on the Company Site within twelve (12) months following the execution of this Agreement, in which case neither party shall have any claim or obligation hereunder except as described in Section 6.3.

6.2 **Termination For Breach.** Either party may terminate this Agreement at any time if the other party is in breach of its obligations hereunder and has failed to fully cure such breach within thirty (30) days following the breaching party's receipt of notice of such breach; provided, that with respect to a breach of this Agreement by Airline under Section 2.1(a) or (b), the Company may terminate this Agreement if Airline's breach of Section 2.1(a) or (b) is not remedied as provided in Section 2.1(e); and provided further that Company's breach of the Airline Reporting Corporation Agent Reporting Agreement with the Airline Reporting Corporation or the addendum of Airline to that agreement shall be automatically deemed a breach of this Agreement permitting Airline to terminate this Agreement unless such breach is cured by Company within thirty (30) days following Company's receipt of notice of such breach.

6.3 **Survival**. The obligations of the parties under Sections 4 and 8 will survive the expiration or any termination of this Agreement for a period of five (5) years. In the event that this Agreement is terminated at a time when Airline has not satisfied its obligation to provide In-Kind Promotions under Section 2, such obligation will survive the termination of this Agreement as to the balance of In-Kind Promotions owed to Company as of the effective date of termination; provided, that Airline may satisfy such obligation through In-Kind Promotions or through an equivalent cash payment to Company.

7. **No Exclusivity**.

The relationship between Airline and Company as set forth in this Agreement will be non-exclusive. Therefore, subject to Section 2, Airline may participate in other Internet travel sites similar to the Company Site, and this Agreement will not confer any rights on one party to restrict the other party's ability to offer Published Fares or to do business, or choose not to do business, with any other airline, Internet Travel Provider Site or any other entities.

8. **Indemnity and Warranties**

8.1 **Warranty Disclaimer**. During the Term, Company shall use reasonable efforts to maintain the availability of the Company Site but is not responsible or liable for any interruptions or delays in the operation of the Company Site. NEITHER PARTY MAKES ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND, WHETHER ORAL OR WRITTEN, WHETHER EXPRESS, IMPLIED, OR ARISING BY STATUTE, CUSTOM, COURSE OF DEALING OR TRADE USAGE, WITH RESPECT TO THE SUBJECT MATTER HEREOF, IN CONNECTION WITH THIS AGREEMENT. EACH PARTY SPECIFICALLY DISCLAIMS ANY AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

8.2 **Indemnity**.

(a) Company will indemnify, defend, and hold harmless Airline, its directors, officers, employees, and agents (each, an "**Indemnified Party**"), from and against all Losses connected with the furnishing of any services or data by Company pursuant to this Agreement (including but not limited to actual or alleged infringement or misappropriation of any trade name, patent, copyright, trade secret or other property right based on any software, program, service and/or other materials furnished by Company hereunder, including the Company Site); provided, the foregoing shall not apply to the extent of claims or liabilities resulting from the negligence or willful misconduct of Airline, its directors, officers, employees or agents

(b) If any action, claim or other proceeding shall be brought against any Indemnified Party, and it shall notify Company of the commencement thereof, Company shall be entitled to assume the defense thereof at its own expense, with counsel satisfactory to such Indemnified Party in its reasonable judgment; provided, however, that any Indemnified Party may, at its own expense, retain separate counsel to participate in such defense at its own expense.

Notwithstanding the foregoing, in any action, claim or proceeding in which both Company, on the one hand, and an Indemnified Party, on the other hand, are, or are reasonably likely to become, a party, such Indemnified Party shall have the right to employ separate counsel at the reasonable expense of Company and to control its own defense of such action, claim or proceeding if, in the reasonable opinion of counsel to such Indemnified Party, a conflict or potential conflict exists between Company, on the one hand, and such Indemnified Party, on the other hand, that would make such separate representation advisable; provided, however, that Company shall not be liable for the fees and expenses of more than one counsel to all Indemnified Parties. Company agrees that it will not, without the prior written consent of the Indemnified Party, settle, compromise or consent to the entry of any judgment in any pending or threatened claim, action or proceeding relating to the matters contemplated hereby (if any Indemnified Party is a party thereto or has been actually threatened to be made a party thereto) unless such settlement, compromise or consent includes an unconditional release of the Indemnified Party from all liability arising or that may arise out of such claim, action or proceeding. Company shall not be liable for any settlement of any claim, action or proceeding effected against an Indemnified Party without Company's written consent, which consent shall not be unreasonably withheld.

9. General Provisions

9.1 **Nonassignment/Binding Agreement**. Neither this Agreement nor any rights under this Agreement may be assigned or otherwise transferred, in whole or in part; however, either party may assign all of its rights and obligations hereunder in connection with a sale of all or substantially all of its assets, or a merger or consolidation, without the prior written consent of the other party. Subject to the foregoing, this Agreement will be binding upon and will inure to the benefit of the parties and their respective successors and assigns. Any assignment in violation of the foregoing will be null and void.

9.2 **Independent Contractors**. The relationship of the parties under this Agreement is that of independent contractors. Neither party will be deemed to be an employee, agent, partner or legal representative of the other for any purpose and neither will have any right, power or authority to create any obligation or responsibility on behalf of the other.

9.3 **Notices**. Any notice required or permitted under the terms of this Agreement or required by law must be in writing and must be (a) delivered in person, (b) sent by first class registered mail, or air mail, as appropriate, or (c) sent by overnight air courier, in each case properly posted and fully prepaid to the appropriate address set forth on the signature page of this Agreement. Either party may change its address for notice by notice to the other party given in accordance with this Section 9.3. Notices will be considered to have been given as of the date received by the intended recipient. Address for notices shall be as listed for Company and Airline on the signature page of this Agreement.

9.4 **Waiver**. Any waiver of the provisions of this Agreement or of a party's rights or remedies under this Agreement must be in writing to be effective. Failure, neglect, or delay by a party to enforce the provisions of this Agreement or its rights or remedies at any time will not be

onstrued as a waiver of such party's rights under this Agreement and will not in any way affect the validity of the whole or any part of this Agreement or prejudice such party's right to take subsequent action. No exercise or enforcement by either party of any right or remedy under this Agreement will preclude the enforcement by such party of any other right or remedy under this Agreement or that such party is entitled by law to enforce.

9.5 **Severability**. If any term, condition, or provision in this Agreement is found to be invalid, unlawful or unenforceable to any extent, the parties shall endeavor in good faith to agree to such amendments that will preserve, as far as possible, the intentions expressed in this Agreement. If the parties fail to agree on such an amendment, such invalid term, condition or provision will be severed from the remaining terms, conditions and provisions, which will continue to be valid and enforceable to the fullest extent permitted by law.

9.6 **Integration**. This Agreement (including the Exhibits hereto) and the Mutual Nondisclosure Agreement between Airline and Company contain the entire agreement of the parties with respect to the subject matter addressed therein and supersede all previous communications, representations, understandings and agreements, either oral or written, between the parties with respect to said subject matter. No terms, provisions or conditions of any purchase order, acknowledgement or other business form that either party may use in connection with the transactions contemplated by this Agreement will have any effect on the rights, duties or obligations of the parties under, or otherwise modify, this Agreement, regardless of any failure of a receiving party to object to such terms, provisions or conditions. This Agreement may not be nended, except by a writing signed by both parties.

9.7 **Governing Law**. This Agreement will be interpreted and construed in accordance with the laws of the State of Delaware and the United States of America, without regard to conflict of law principles. All disputes arising out of this Agreement will be subject to the exclusive jurisdiction of the state and federal courts located in Delaware and each party hereby consents to the personal jurisdiction thereof.

9.8 **Compliance with Laws**. The Company agrees to operate the Company Site in accordance with all applicable laws and regulations.

9.9 **LIMITATION OF LIABILITY**. EXCEPT FOR INDEMNIFICATION OBLIGATIONS PURSUANT TO SECTION 8.2 RELATING TO LIABILITIES TO THIRD PARTIES WITH RESPECT TO ACTUAL OR ALLEGED INFRINGEMENT OR MISAPPROPRIATION OF ANY INTELLECTUAL PROPERTY RIGHTS, AND EXCEPT FOR A BREACH OF ANY CONFIDENTIALITY OBLIGATIONS HEREUNDER, NO PARTY WILL BE LIABLE FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING LOST REVENUES, LOST PROFITS, OR LOST PROSPECTIVE ECONOMIC ADVANTAGE, ARISING FROM THIS AGREEMENT OR ANY BREACH HEREOF.

9.10 **Anti-Fraud Measures**. Company agrees to use reasonable commercial efforts to prevent ticket and payment (including credit card) fraud with respect to tickets issued by Company for travel on Airline.

9.11 **Counterparts**. This Agreement may be executed in counterparts, each of which so executed will be deemed to be an original and such counterparts together will constitute one and the same agreement.

IN WITNESS WHEREOF, the parties have executed and delivered this Agreement on the date indicated below:

DUNC, LLC:	AIRLINE:
By:	By:
Title:	Title:

Effective Date: _____, 2000

Address for Notices pursuant to Section 9.3:

If to Company:	If to Airline:
The Boston Consulting Group 200 South Wacker Drive Chicago, Illinois 60606	
Attention: Carl D. Rutstein Phone: 312-993-3300 Fax: 312-876-0771	Attention: Phone: Fax:

EXHIBIT A

For purposes of this Agreement, the defined terms set forth below will have the meanings assigned to them.

"**Affiliate**" means, with respect to any Person, any other Person that has a relationship with such Person whereby either of such Persons directly or indirectly Controls or is Controlled by or is Under Common Control with the other of such Persons; provided, however, that notwithstanding the foregoing and regardless of any relationship between them, Airline shall not be deemed to be an Affiliate of the Company.

"**Air Travel**" means scheduled passenger air transportation services (i) within, between or among the United States, Canada and Mexico, or (ii) from the United States, Canada or Mexico to a different third country; provided, that the exit point (origin of travel) is in the United States, Canada, or Mexico.

"**Air Travel Information**" has the meaning set forth in Section 2.1(a).

"**Airline Charter Associate**" means Airline, and any other carrier that enters into an agreement with the Company substantially similar to this Agreement.

"**Airline Data**" has the meaning set forth in Section 2.1(c).

"**Airline Internal Reservation System**" means the computerized system used by Airline employees that contains information about the Schedules, Published Fares and Seat Availability of Airline, and provides Airline employees with the ability to make reservations or sell air transportation services offered by Airline to Airline customers.

"**Airline Internal Reservation System Fares**" means Fares that are offered for purchase by the general public through the Airline Internal Reservation System, but excluding Unpublished Fares.

"**Airline Internet Site**" means an Internet site branded exclusively under Airline's trademark, service mark or trade name to Airline customers which contains information about the Schedules, Published Fares and Seat Availability of Airline, and provides Airline customers with the ability to review, make reservations or purchase air transportation services offered by Airline.

"**Airline Marks**" has the meaning set forth in Section 5.

"**Alliance Partner**" means a Person with whom Airline has entered into either (i) a codesharing arrangement whereby Airline markets and sells tickets using its two letter designator code in the carrier code box of a flight coupon for a flight where the other Person has operational control of the aircraft or vice versa or (ii) a reciprocal frequent flyer program relationship.

"**Alliance Partner Site**" means an Internet site branded exclusively by Airline and any of its Alliance Partners under their airline alliance trademark, service mark or brand name and which contains information about the Schedules, Published Fares and Seat Availability of Airline and such Alliance Partners and provides customers of Airline and such Alliance Partners with the

ity to review, make reservations or purchase air transportation services offered by Airline and such Alliance Partners.

"**Company Site**" means an Internet site branded under Company's trademark, service mark or brand name to Company customers that contains information about the Schedules, Published Fares, or Seat Availability of Airline and other travel suppliers and provides Persons with the ability to make reservations or to purchase air transportation services offered by Airline and other travel suppliers.

"**Confidential Information**" means any proprietary information disclosed by either party to the other party pursuant to this Agreement, either directly or indirectly, in writing, orally or by inspection of tangible objects, including any information which derives economic value, actual or potential, from not being generally known to, and not generally ascertainable by proper means by, other persons. Confidential Information will not, however, include any information which (i) was publicly known and made generally available in the public domain prior to the time of disclosure by the disclosing party; (ii) becomes publicly known and made generally available after disclosure by the disclosing party to the receiving party through no action or inaction of the receiving party; (iii) is already in the possession of the receiving party without obligation of confidentiality at the time of disclosure by the disclosing party as shown by the receiving party's files and records immediately prior to the time of disclosure, (iv) is obtained by the receiving party from a third party without a breach of such third party's obligations of confidentiality; (v) is independently developed by the receiving party without use of or reference to the disclosing party's Confidential Information, as shown by documents and other competent evidence in the receiving ty's possession; or (vi) is required by law to be disclosed by the receiving party, provided that the receiving party gives the disclosing party prompt written notice of such requirement prior to such disclosure so that the disclosing party may seek an order protecting the information from public disclosure.

"**Controls**", "**Controlled**" and the phrase "**Under Common Control**" each means the possession, directly or indirectly, of the power, whether or not exercised, to direct or cause the direction of the management or policies of any Person, whether through ownership of voting securities, partnership interest, equity, by contract or otherwise.

"**CRS**" means a "system" within the meaning of 14 C.F.R. § 255.3.

"**CRS Fares**" means all Fares published by Airline in any CRS, but excluding Unpublished Fares.

"**Fares**" means prices charged by Airline for Air Travel where a Person's purchase of such Fares may be fulfilled through an electronic sales transaction via a CRS, Airline Internal Reservation System, Airline Internet Site, Alliance Partner Site or Internet Travel Provider Site.

"**In-Kind Promotions**" means advertising, marketing and promotions mutually agreed by the parties, including those described in **Exhibit B**.

"**International Carrier**" means an airline that is not a U.S. Carrier.

"**Internet**" means the world wide web or other similar data transmission or communications system.

"**Internet Fares**" means Fares that are offered for purchase by the general public through the Airline Internet Site, or Internet Travel Provider Site, including without limitation, Fares offered to a targeted group of users of its Airline Internet Site, such as special Fares offered to such users by email, the Internet or via other electronic transmission where there is no good faith effort by Airline (or a Person acting on behalf of Airline) to limit such Fares to a targeted group, but excluding Unpublished Fares.

"**Internet Travel Provider Site**" means an Internet site that offers access to information concerning Airline's Schedules, Published Fares, and Seat Availability, and which is used by Persons to make reservations or purchase air transportation services offered by Airline in a Non-Opaque Manner. The Internet Travel Provider Site excludes the Company Site, the Airline Internet Site, the Alliance Partner Site and the Airline Internal Reservation System.

"**Losses**" shall mean any and all costs, demands, losses, claims (including any claim by a third party), liabilities, fines, penalties, assessments, damages, including, without limitation, interest, penalties, reasonable attorneys' fees and expenses and all amounts paid in proceedings, claims, complaints, disputes, arbitrations, investigations, defense or settlement of any of the foregoing.

"**Market Share**" means an amount calculated as a fraction, the numerator of which shall be the Airline's available seat miles with a point of origin in North America for the most recent calendar year, as reported by OAG, and the denominator of which shall be 1.2 trillion available seat miles (1,200,000,000,000 ASMs). In the event that Airline does not publicly report the data to OAG needed to compute its Market Share amount as set forth above, then Company may obtain the necessary data from Airline or substitute another measurement that results in a comparable measurement of Airline's Market Share.

"**MFN Basis**" means that Airline shall offer Company commercial terms and conditions equal to or better than the most favorable terms and conditions offered by Airline to any other Internet Travel Provider Site: provided, that MFN Basis shall not obligate Airline to delay or forego a commercial opportunity due to Company's inability to proceed with a similar commercial transaction with Airline for technical, financial or other reasons.

"**Non-Opaque Manner**" means the provision to a Person of information concerning Airline products or services where the Person is able to see the identity, schedules, availability, fares and price offerings of Airline prior to the purchase of such products or services.

"**Opaque Pricing System**" means the provision to a Person via the Internet of information, reservations, booking and ticketing services concerning airlines where the Person is unable to identify the specific airline offering the travel product or service prior to the purchase of such products or services.

"**Person**" means any individual, entity, firm, corporation, partnership, association, limited-liability company, joint-stock company, trust, or unincorporated organization.

"**Private Fares**" means Fares filed in a private area of a CRS, Airline Internal Reservation System, Airline Internet Site, Alliance Partner Site, Company Site or Internet Travel Provider Site where access to such Fares is limited to a select group of travelers and there is a good faith effort by

Airline (or a Person acting on behalf of Airline) to limit the sales of such Fares to the targeted group.

"**Promotional Fares**" means discounts offered by the Airline to the general public on Published Fares, including but not limited to dollar (or other currency) reductions, percentage discounts, fare discounts based on passenger miles ticketed (excluding frequent flyer or other affinity based promotions), companion Fares, buy-one-get-one free Fare offers and similar programs. Promotional Fares include net Fares and consolidator Fares offered by an Internet Travel Provider Site in a Non-Opaque Manner.

"**Published Fares**" means all Fares, including without limitation, (i) CRS Fares, (ii) Airline Internal Reservation System Fares, (iii) Internet Fares, and (iv) Promotional Fares, but excluding Unpublished Fares.

"**Quarterly Rebate**" has the meaning set forth in Section 3.1.

"**Schedules**" means Airline's flight schedules for Air Travel as published in the Airline Internal Reservation System, the Airline Internet Site, a CRS or an Internet Travel Provider Site.

"**Seat Availability**" means information provided with respect to the seats Airline holds out as available for sale to the general public on a particular flight in screen displays of the Airline Internal Reservation System or Airline Internet Site.

"**Services**" means activities conducted by Company to Airline's benefit, including marketing, ticket distribution, and customer service and support.

"**Service Enhancements**" means any product or service offered by Airline to assist Persons in obtaining information about the Schedules, Published Fares, Seat Availability or other information of Airline, or to assist Persons in making or changing reservations or purchasing air transportation services offered by Airline, other than the basic display of information on Schedules, CRS Fares, and Seat Availability available from a CRS.

"**Term**" means the term of this Agreement, as described in Section 6.

"**Travel Revenue**" means the gross revenue value, exclusive of taxes and other government charges (including but not limited to, passenger facility charges, excise taxes, arrival and departure fees and similar government imposed charges), of ticket sales on the Company Site.

"**Unpublished Fares**" means (i) Private Fares, (ii) Fares offered through an Opaque Pricing System and (iii) Fares not generally available for purchase by the general public, including but not limited to corporate discounted Fares, tour operator Fares, off-tariff Fares, group Fares, meeting and incentive Fares, Fares that require the purchase of another product or service, or any other Fares targeted to a select group of travelers such as Fares offered to members of a club, frequent flyer program or other membership organization where there is a good faith effort by Airline (or a Person acting on behalf of Airline) to limit the sale of such Fares to the targeted group. Unpublished Fares include net Fares and consolidator Fares offered through an Opaque Pricing System. It shall be presumed that such a good faith effort has been made where the purchase of such Fares requires that a purchaser enter a non-public password or code number provided to the targeted group in order to access the Fares.

United States" means the fifty (50) states of the United States of America plus the District of Columbia.

"U.S. Carrier" means a person, corporation or other entity that holds air transportation certificate authority issued by the United States Department of Transportation (or its predecessor, the Civil Aeronautics Board) pursuant to 49 U.S.C. §41102 or §41103 to operate flights within the United States.

EXHIBIT B

IN-KIND PROMOTIONS AND THEIR VALUATION METHOD

In-Kind Promotions may include any of the following, in which event they will be valued as described in the table below:

In-Kind Promotion	Method of Valuation (In the event that there is no independent or third party cost valuation available, then the mutual agreement method of valuation will apply)
COMPANY name/logo included in advertisements • Print (e.g. newspaper, magazine, billboard) • Television and cable • Radio • Internet (e.g. banner ads, button ads, links)	**Print:** [(ad space allocated to COMPANY) ÷ (total ad space)] X cost of ad space **Television:** [(ad space allocated to COMPANY per frame) ÷ (total ad space per frame)] X (total cost per frame) X (number of frames) Note: If voice-over is provided, rate will be increased 50% from the schedule above. **Radio:** (duration of COMPANY mention) X (cost of ad time) **Internet:** [(ad space allocated to COMPANY) ÷ (total ad space)] X cost of ad space; or Value of ad space or link provided, as determined by cost to other third parties; or Mutually agreed on value; subject to independent verification
COMPANY name/logo included on in-flight collateral • Ticket jackets • In-flight magazine • Destination guides • In-flight video • Timetables • Insert card with meal • Boarding passes • Napkins • Menus	Value of ad space provided, as determined by cost to other third parties (e.g., through standard rate cards or pricing); or Mutually agreed on value; subject to independent verification

COMPANY name/logo included in direct mail • Affinity program newsletter or statement • Direct marketing campaigns • Tickets sent by mail • Co-marketing promotions	Value of ad space provided, as determined by cost to other third parties (e.g., through standard rate cards or pricing); or Mutually agreed on value, subject to independent verification
Affinity program supplements • Free discounted points/miles • Free/discounted inventory (e.g. tickets) • Free discounted upgrades or other services	If discounted, value of discount to total cost of equivalent product to other third parties; or If free value of product provided, as determined by cost to other third parties; or Mutually agreed on value, subject to independent verification
Passenger database information • Affinity program names • Competitive purchaser names (e.g. passengers who booked travel through another on-line agency) • Other names, data, or contact information	Value of data provided, as determined by cost to other third parties (e.g. cost per name X number of names provided); or Mutually agreed on value; subject to independent verification
Special promotions • Exclusive promotions or fares available only on Company Site	(Value of discount to next lowest published fare) X (number of discounted transactions booked through Company Site); or Mutually agreed on value; subject to independent verification
• Promotions or fares available only on Company Site or Airline Site	(Value of discount to next lowest published fare) X (number of discounted transactions booked through Company Site) X (75%); or Mutually agreed on value; subject to independent verification
• Other	The value of special promotions credited by Company towards in-kind promotions will not exceed $1M in any 12 months period

EXHIBIT C

Year	Ticket Price $0 - $150	Ticket Price $150 +
2000	$_____	$_____
2001	$_____	$_____
2002	$_____	$_____
2003	$_____	$_____
2004	$_____	$_____
2005	$_____	$_____
2006	$_____	$_____
2007	$_____	$_____
2008	$_____	$_____
2009	$_____	$_____

Exhibit 5

Travelocity.com
A Sabre Company

Featured Airlines

Travelocity.com is featuring the following airline(s) for the cities you have requested. If you select a featured airline, only schedules and fares for that airline will be displayed. Click below to continue.

Or, click **Book a Flight** to search for available low fares on all airlines.

| Help | Home |

| Travel Tools | Destination Guide | Special Deals | Shopping |

Featured airline within flight reservation path