BEFORE THE
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.

In the Matter of	)	
	)	
	) **Dockets**	**OST-97-2881**
COMPUTER RESERVATION SYSTEM	)	**OST-97-3014**
(CRS) REGULATIONS	)	**OST-98-4775**
	)	**OST-99-5888**
	)	

ANSWER OF NORTHWEST AIRLINES, INC.

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Dated: January 2, 2003

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ANSWER OF NORTHWEST AIRLINES, INC.

The Department should reject the sixth request of the Air Carrier Association of America ("ACAA") for immediate revision or suspension of the provision on sale of marketing and booking data in Section 255.10(a) of the Computer Reservations System ("CRS") rules. ACAA's renewed request reflects a basic misunderstanding about the way airlines use such data and underscores the need for the Department to give other parties the opportunity to comment on proposed revisions to Section 255.10(a), as required by the Administrative Procedure Act ("APA"), before deciding whether to modify the provision. With the initial comment date in the CRS rulemaking only two months away, there is no justification to preempt the notice-and-comment procedures mandated by the APA and followed by the Department in this and all other CRS rulemakings.

In support of its position, Northwest states as follows:

1. ACAA's Renewed Request Shows Why Additional Comments on This Issue Are Necessary

While ACAA asserts that no further comments or analysis are needed on the issue of marketing and booking data sales, its repeated misstatements about the nature of Marketing Information Data Tapes ("MIDT") and how MIDT are used by airlines prove otherwise. For example, ACAA suggests that MIDT contain fare data,[1] but the marketing data sold by the CRSs completely exclude fare information. MIDT include booking class, but not the fare amount or even the fare basis.[2] Further, ACAA wrongly accuses Northwest of using MIDT to "attack competition,"[3] when the truth is that Northwest uses MIDT for its own market research, distribution and route planning. MIDT also enable Northwest to establish "peer share-based" agreements with travel agencies, under which a travel agency receives incentives based on how well its percentage of Northwest sales compares to Northwest sales by similar travel agencies in the same market.[4] Contrary to ACAA's claims, restricting or eliminating MIDT sales would not expand competition, it would have the opposite effect. Adopting ACAA's proposal would decrease competition and result in higher airfares because it would deprive airlines of basic information about

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1 See ACAA Response at 3.

2 MIDT contain only booking data; ticketing data is not available on MIDT. Moreover, MIDT have always excluded passenger names, and the CRSs either suppress PNR locators or scramble them so it is impossible for one airline to access the customer records of any other airline through the tapes.

3 ACAA Response at 4.

4 Such agreements do not contain provisions related to an agency's sales on other airlines. Instead, they measure Northwest sales among peer, or comparable, travel agencies.

their competitors' market shares that are essential to formation of accurate competitive responses, particularly related to pricing.

Northwest will explain fully these and other points about the nature and use of MIDT in its initial comments to the proposed CRS rule. Any action on Section 255.10(a) before the end of the comment period would be premature and would disrupt the orderly process called for in the Department's November 15 Notice of Proposed Rulemaking ("NPRM") and required by the APA.

2. ACAA's Request Disregards the Department's Call for Further Comments on Section 255.10(a)

ACAA's renewed request for immediate action on Section 255.10(a) disregards the Department's specific request for further comment on various proposals related to Section 255.10(a) before adopting the final CRS rule. In its recent NPRM, the Department specifically "ask[ed] the parties to address" two different possible bans on the release of data and said it "will, of course, consider other possible restrictions proposed by commenters as supplements or alternatives to these two."[5] The Department also said:

> To decide whether restrictions on the availability of the marketing and booking data should be adopted, we request additional information on the costs and benefits of each of the possible alternatives. We ask the parties to provide more detailed information on, among other things, the ways in which the airlines that buy the systems' data tapes are now using the data and the availability of comparable information from other sources.[[6]]

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5 67 Fed. Reg. 69366 at 69404.

6 67 Fed. Reg. at 69404.

Although ACAA claims the question whether Section 255.10 should remain in place does not need any additional analysis, the Department has said it wants to consider more information before deciding whether to modify the provision.[7]

3. Piecemeal Action on CRS Issues Would be Counterproductive

Not only would immediate action on this issue deprive all parties of "a fair opportunity to present their evidence and policy and legal arguments," but it would be inconsistent with the Department's conclusion less than two months ago that it is "more efficient for us to consider all issues in [the comprehensive rulemaking] proceeding rather than decide issues piecemeal."[8] As Northwest explained in its December 13 response to ACAA's last request for immediate action on Section 255.10(a), granting the request would also be at odds with the Department's consistent refusal to take immediate action on individual issues while the Department's comprehensive CRS rulemaking proceeding is pending.[9]

Now that the Department is moving ahead with the CRS rulemaking and has established deadlines for comments and reply comments, there is even more reason than before to reject calls for piecemeal action on any CRS issue(s), including the MIDT sale issue.

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[7] See, e.g., 67 Fed. Reg. 14846, 14849 & 14851 (March 28, 2002); 66 Fed. Reg. 17352, 17354 (March 30, 2000).

[8] 67 Fed. Reg. at 69369.

[9] See, e.g., 67 Fed. Reg. 14846, 14849 & 14851 (March 28, 2002); 66 Fed. Reg. 17352, 17354 (March 30, 2000).

Conclusion

Despite ACAA's rhetoric, there is no urgent need for immediate action on Section 255.10(a). Consistent with the notice and comment procedures required by the APA and outlined in the November 15 NPRM, the Department should deny ACAA's request for such action and continue to consider ACAA's proposal in the CRS rulemaking.

Respectfully submitted,

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January 2, 2003

CERTIFICATE OF SERVICE

On this 2nd day of January, 2003, a copy of the foregoing Answer of Northwest Airlines, Inc. was served by first class mail, or a more expeditious means, on all parties of record in the relevant dockets as shown below:

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