BEFORE THE
DEPARTMENT OF TRANSPORTATION
WASHINGTON, D. C.

In the matter of	:	
	:	OST-1997-2881
COMPUTER RESERVATIONS SYSTEMS (CRS)	:	OST-1997-3014
REGULATIONS, NOTICE OF PROPOSED	:	OST-1998-4775
RULEMAKING	:	OST-1999-5888

ANSWER OF AMERICAN AIRLINES, INC. TO PETITION OF SABRE, INC. FOR A HEARING

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January 13, 2003

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American Airlines, Inc. hereby answers in opposition to the petition submitted on December 23, 2002 by Sabre, Inc. seeking a hearing with respect to the Department's Notice of Proposed Rulemaking in the captioned dockets, 67 Fed. Reg. 69366, November 13, 2002.

The Department's NPRM contains important, and long overdue, changes to a regulatory scheme that for many years has done more to protect CRS market power than to enhance airline competition. As one of the beneficiaries of that outdated regulatory scheme, Sabre has adopted a strategy that seeks unnecessarily to complicate and delay this rulemaking. Having first asked for, and received, a total of 120 days to develop its arguments and gather supporting evidence in a proceeding that has been pending for more than five years (see Advance Notice of Proposed Rulemaking, 62 Fed. Reg. 47606, September 10, 1997), Sabre is now asking the Department to conduct an ad hoc and unprecedented hearing on 73 alleged fact issues.

Much of Sabre's petition is devoted to arguing that CRSs lack market power and that CRS distribution is an improper market definition for purposes of the antitrust laws. In response to Sabre's procedural motion, American does not intend to set forth all of the evidence that clearly substantiates the Department's contrary conclusions in the NPRM. The pertinent point for purposes of Sabre's request for a hearing is that the Department's lengthy and thorough NPRM has put all parties on notice of the relevant issues and the Department's preliminary conclusions.

Pursuant to established rulemaking procedures, the Department must now consider evidence submitted by interested parties in their comments, and will no doubt modify its conclusions and regulations as justified by the most recent evidence. After 15 years of experience with the CRS rules and enforcement actions, the Department clearly has the expertise to evaluate the evidence without the burdens and inherent delay of an ad hoc hearing.

Sabre's arguments that a hearing is required by regulations, statute, or constitutional concerns are unconvincing. Sabre argues that the Department lacks substantial evidence for many of its statements. Although American disagrees with Sabre's arguments, the "substantial evidence" test applies only after the rule is finalized. Given the parties

involved and the prior rulemaking history, there is no question that the procedures already in place will develop a tremendous amount of relevant evidence. No reason for a hearing exists, other than Sabre's obvious interest in delay.

Indeed, Sabre's motion is merely another incarnation of arguments that the Seventh Circuit rejected in United Airlines, Inc. v. CAB, 766 F.2d 1107 (7th Cir. 1985), a unanimous opinion affirming the CAB's first iteration of the CRS rules. In disposing of arguments made then that a hearing was needed, the Seventh Circuit found "overwhelming [authority] against forcing an administrative agency to hold an evidentiary hearing to resolve disputed questions of antitrust fact" (id. at 1119). The Court said that "agencies, without having to conduct an evidentiary hearing, have been allowed to decide such antitrust questions as whether a particular firm or group of firms has or is abusing or is likely to abuse market power, which are the very questions involved in the present case" (id.).

The Seventh Circuit reached its decision despite the facts that the CRS regulations were entirely new, and the rules were being adopted after a notice and comment period that was only about a third as long as the Department has provided here. Indeed, although the CRS regulations have been updated several times, the Department has never held a hearing, and nothing in the present circumstances dictates otherwise.

In sum, the Department has already received and reviewed a great amount of relevant evidence. There is no question that the Department's NPRM and call for comments will add to and update that evidence. A hearing, particularly one as complex and intrusive as that proposed by Sabre, would only delay the needed regulatory reform reflected in the NPRM. The Department should deny Sabre's petition.

Respectfully submitted,

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January 13, 2003

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document by email on the following persons:

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