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DEPARTMENT OF TRANSPORTATION
WASHINGTON, D.C.

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COMPUTER RESERVATION SYSTEM (CRS) REGULATIONS – Supplemental Advance Notice of Proposed Rulemaking	**Docket Nos. OST-97-2881, -169 OST-97-3014, OST-98-4775 -83 38**

REPLY COMMENTS OF WORLDSPAN, L.P.

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Dated: October 23, 2000

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Worldspan, L.P. ("Worldspan") submits these reply comments on the Supplemental Advance Notice of Proposed Rulemaking ("SANPRM") published on July 24, 2000 (65 Fed. Reg. 45551) regarding the Computerized Reservation System regulations set forth in 14 C.F.R. Part 255 ("Part 255").

I. INTRODUCTION

As Worldspan emphasized in its initial comments on the SANPRM, the Department's primary goals in this proceeding should be to protect consumers from deceptive practices and to guard against anticompetitive practices. No comment filed in response to the SANPRM makes a credible argument contradicting the notion that those goals are of overriding importance and that the Department still has a significant responsibility to ensure that those goals are addressed. Worldspan feels it necessary to respond to certain comments, however, that either distort the true nature of the computer reservations industry, or that advocate positions which could harm consumers and competition.

II. INTERNET v. CRS REGULATION

At the outset, Worldspan must note the rather glaring inconsistencies in the positions of some parties, who argue that the Department must take an absolute "hands-off" approach in dealing with the distribution of air transportation via the Internet, on the one hand, while arguing that the Department must increase its regulation of computer reservations systems, on the other. The vast array of information and sources of information available on the Internet creates the potential for significant consumer harm. There is at least as great a need for consumer protection in the Internet environment, where consumers are literally on their own in attempting to understand and compare information, as there is in the CRS environment, where consumers receive assistance from travel agents.

At least insofar as consumer protection is concerned, there is no rational basis for refusing to regulate Internet sites while continuing to regulate CRSs. No party can or does contradict the proposition that protecting consumers from deceptive and misleading information is a concern that transcends the specific technologies used to deliver information. For example, a limited regulation requiring Internet sites to disclose to consumers whether or not they are neutral and whether or not their information displays are ordered using a carrier identity factors, as suggested by several parties, would seem to be logical. Such a regulation would not represent an undue government intrusion that would stifle the development of e-commerce, as some other parties contend.

III. BOOKING FEES

A number of commentors suggest that the Department should become actively involved in setting the levels of booking fees, such as by tying fee increases to an economic indicator.

Those commentors argue that such a regulation is needed to curtail "excessive" booking fees charged by CRSs.

A. DOT Should Not Engage in Rate-making

Leaving aside the fact that the allegations of excessive booking fee increases are unsupported and without evidentiary merit, the suggestion that the Department should become involved in regulating CRS fee levels has been rejected by the Department and by the Civil Aeronautics Board before it. In both the original rulemaking establishing the CRS rules in 1984, and in the readoption and revision of those rules in 1992, the Department and the Board rejected all arguments that they should involve themselves in regulating CRS fee levels, beyond the non-discrimination provision set forth in 14 C.F.R. § 255.6(a). Nothing has changed that should alter those conclusions.

In the 1984 rulemaking, the CAB noted that several airlines urged adoption of a "reasonable fee requirement," while others opposed such a rule because it would cause "complex administrative problems." Carrier-Owned Computer Reservation Systems, Final Rule, Docket No. 41686, 49 Fed. Reg. 32,540, 32,552 (Aug. 15, 1984). The CAB concluded that any such reasonableness requirement would "require a rate-making proceeding before a violation could be established." Id. Any such attempt at rate-making would be difficult to administer and would actually lead to more problems than it was meant to solve.

In the 1992 rulemaking, the Department again confronted arguments that CRS fee levels should be regulated. While the Department retained the provision that fees should be nondiscriminatory, it rejected suggestions that it impose any sort of fee level requirement or otherwise become involved in the business of rate-making. The Department had noted that limiting booking fees would be the equivalent of rate regulation, which itself creates

inefficiencies, and concluded that "[r]easonable rate requirements typically do not encourage regulated companies to be efficient, and rate determinations are often time-consuming and burdensome for the regulated firm, the agency, and other parties." Computer Reservation System (CRS) Regulations, Final Rule, Docket No. 47762, 57 Fed. Reg. 43,780, 43,816-17 (Sept. 22, 1992).[1]

These points are at least as true today as they were in 1984 and 1992. The commentors who advocate government rate-making have not even begun to show that any sector of the travel industry would be better off if the government were to substitute its judgement regarding the appropriate level of booking fees for the judgment of the market.

B. The CRS Industry Is Subject to Price Discipline Now More Than Ever

Beyond the inherent inefficiencies and administrative problems associated with rate-making, there is even less reason to adopt a "reasonable fee" requirement in the current environment than there was in 1984 and 1992. With the rapidly expanding use of the Internet , CRS booking fees are subject to more downward competitive pressure than ever. The Department has correctly recognized that the development of alternative sources of airline bookings would have a disciplinary effect on CRS fees. For example, in promulgating the regulations regarding third-party hardware and software in 1992, the Department specifically noted that those regulations would begin to "discipline booking fees by giving airlines an alternative to CRS bookings." Id.

[1] Furthermore, the Department found that booking fees were below monopoly levels and fee increases from 1985 to 1992 were below the rate of inflation in the economy, which stands in direct conflict with the claims by some parties in this proceeding that fees have increased at enormous rates since the adoption of the CRS rules.

Thus, the Department recognized that rate regulation would be inappropriate and unnecessary where CRS fees may be disciplined by alternatives to CRS bookings. If the claims of the burgeoning Internet companies are correct, and this new distribution channel provides strong competition to the traditional CRSs, then the Internet will create a significant market-based disciplinary effect on CRS fees. There is simply no need or basis to limit CRS fees by regulation in this environment.

C. DOT Should Not Prohibit CRSs From Charging Fees When Travel Does Not Occur

In its comments to the SANPRM, America West urges the Department to adopt a rule prohibiting CRSs from charging airlines for bookings unless the passenger actually boards the plane. See Comments of America West Airlines, Inc., Docket Nos. OST-97-2881, OST-97-3041, OST-98-4775, filed Sept. 22, 2000, at 11. This recommendation fails to recognize that every time a booking or other transaction is made on a CRS, the CRS incurs costs. These costs are incurred whether or not the travel actually occurs. Moreover, America West's recommendation ignores the avoided-cost benefits that an airline enjoys whenever a booking is made via a CRS instead of directly with the airline's reservations personnel. Those costs are avoided, and the airline enjoys the benefit, whether or not travel actually occurs.

Cancellations, in particular, are the exclusive responsibility and risk of the airlines. To penalize a CRS whenever a passenger cancels a flight would be grossly unfair and would make no sense. Furthermore, such an irrational requirement would have the effect of increasing the booking fees for those bookings that do result in travel.

Moreover, the Department has in the past refused to establish regulations as to what transactions may or may not be subject to CRS fees. In the 1992 rulemaking, several carriers suggested that the Department establish rules limiting CRS fees only to those transactions that

produce new revenue for carriers. 57 Fed. Reg. at 43,818. In response to arguments by Worldspan and others, the Department found that involving itself in the issue of which transactions should be subject to CRS fees "would involve a complex and partly arbitrary synthesis of cost analysis, equity, and the ability of different parties to pay charges . . . which we are unwilling to do." Id.

IV. SUBSCRIBER CONTRACTS

A. DOT Should Not Further Restrict the Duration of Subscriber Contracts

Some parties suggest that subscriber agreements should be limited to a shorter term than the current five years allowed by 14 C.F.R. § 255.8. Such recommendations are without an evidentiary basis and run contrary to the Department's earlier determinations on the issue.

Allowing CRSs and travel agents to negotiate the length of their agreements up to a five-year maximum provides efficiencies and stability that benefit travel agents and, ultimately, the consumer. Spreading total costs over a five-year term lowers unit costs and improves cash flow on both sides. To limit such terms to one year by regulation (or a shorter period than five years) would, on the other hand, arbitrarily force parties into a contract that may be too short to provide material benefit to either party and may be seriously inefficient. Apart from pure cost considerations, inefficiencies and start-up issues arise when travel agents change systems. Travel agents, CRSs and airlines alike would suffer from the less efficient booking environment created by a one-year term limit regulation. Most importantly, however, a less efficient reservation and contractual environment would harm consumers in the form of higher costs. It is significant, in this regard, that the vast majority of Worldspan's current subscriber base has agreed to five-year contracts.

The Department has recognized that a contract term of five years, as opposed to three years, can provide efficiencies to the subscriber. In the 1992 revisions to the CRS rules, the Department amended Part 255.8 to require CRSs to offer contracts with three-year terms at the same time that they offer contracts with five-year terms. In doing so, however, the Department concluded that "a longer term contract [i.e., five years] can provide economic benefits for subscribers by potentially providing some assurance that they will continue to receive CRS services for a stated period and the possibility of lower CRS charges based on vendor cost savings from the longer contract." 57 Fed. Reg. at 43,825. The Department adopted the three-year term option to give travel agents more flexibility, while also ensuring that agents can take advantage of "the efficiencies created by the agency's acceptance of the longer contract." The commentors have provided no evidence to establish that this balanced approach should not be maintained or should be disturbed.

Additionally, as noted above, the advent and continuing development of Internet sites offering travel information and booking has engendered significantly increased competitive discipline on the traditional CRS vendors. The ability of consumers to access booking information and services directly via the Internet provides additional incentives to CRSs to offer and provide a competitive and cost-effective product to subscribers. Further regulation of the duration of CRS subscriber contracts is unnecessary.

B. DOT Should Refrain From Further Regulation of the CRS/Subscriber Relationship

Comments were also made advocating other revisions of the CRS rules that would further intrude on the relationship between CRSs and their travel agent customers. Parties, for example, urged the Department to adopt regulations restricting productivity pricing and eliminating liquidated damages clauses. Such recommendations are without merit.

The Department has considered the very same arguments in prior rulemakings and has rejected them consistently. With regard to productivity pricing in particular, the Department noted that "productivity pricing serves legitimate goals and does not make it impracticable for agencies to choose to switch many or most of their bookings to a second CRS. Since productivity pricing often promotes economic efficiency and received the overwhelming support from the commentors, we will not prohibit its use." 57 Fed. Reg. at 43,827.

Similarly, the Department found that a rule prohibiting liquidated damages clauses was neither "necessary [nor] wise." Id. Worldspan previously supported the limitation of liquidated damages clauses that would serve to punish subscribers for switching CRSs by imposing the collection of lost booking fees, promotional support, interest, and other items. See Comments of WORLDSPAN, L.P. in Response to Notice of Proposed Rulemaking, Docket No. 46494, filed June 24, 1991, at 31. The Department in 1992 refused to alter the rules, finding that the rules adequately compensated system owners in the event of a breach and that the recovery of lost booking fees would not be an issue in light of the prohibition on minimum use clauses and the use of third-party hardware. The Department's approach to this issue in 1992 remains valid today, and there is no need to regulate with regard to liquidated damages clauses.

V. CONCLUSION

Protecting consumers remains the Department's primary goal. Should the Department determine that CRS rules remain necessary, it should amend those rules to maximize consumer and competition protection by ensuring that the rules apply equally to all CRSs, amending the mandatory participation rule to encompass system marketers, and applying Part 255's consumer protection principles to Internet sites and other evolving technologies. The notion that CRSs should be subject to additional regulation, while Internet sites are not, is irrational and

unsupported. Likewise, arguments that CRS booking fees and subscriber relationships should be subject to additional regulation are baseless.

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