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**BEFORE THE
DEPARTMENT OF TRANSPORTATION
WASHINGTON, D.C.**

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Extension of Computer Reservations
Systems (CRS) Regulations

Notice of Proposed Rulemaking

Docket No. OST-02-11577 -17

COMMENTS OF WORLDSPAN, L.P.

Communications with respect to this document should be sent to:

Douglas L. Abramson
Senior Vice President, Human Resources,
General Counsel & Secretary
Worldspan, L.P.
300 Galleria Parkway
Atlanta, Georgia 30339
(770) 563-5202

Charles J. Simpson, Jr.
ZUCKERT, SCOUTT & RASENBERGER,
L.L.P.
888 17th Street, N.W.
Suite 600
Washington, D.C. 20006
(202) 298-8660

Counsel for Worldspan, L.P.

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Worldspan, L.P. (“Worldspan”) submits these comments on the Department’s proposal to extend the expiration date of the CRS regulations, 14 C.F.R. Part 255, to March 31, 2003.

The purpose of the proposed extension is to give the Department additional time to pursue its reexamination of the CRS regulations and, possibly, to propose substantive changes to the regulations. That reexamination was launched with the issuance of an advance notice of proposed rulemaking on September 10, 1997, 62 Fed. Reg. 47606, and has been the subject of a subsequent supplemental advance notice of proposed rulemaking, 65 Fed. Reg. 45551 (July 24, 2000). The proposed extension would be the fifth extension of Part 255 since the Department began its current reexamination in 1997.

It has now been four and a half years since the Department began to reexamine Part 255, and it is time for a new approach. As the Department has acknowledged, the electronic distribution of air transportation is dynamic and constantly changing. With each passing month (and year) the CRS regulations become increasingly ill-suited and irrelevant to the environment

they purport to regulate. **As** a result, the regulations now foster many more inequities, inconsistencies and anomalies than the problems they were originally designed to resolve.¹

The assumption inherent in the Department's approach is that any existing concerns can be corrected by amending the regulations. In theory, this makes sense: fix the rules to eliminate the competitive disadvantages and other problems existing under the current regime and put everyone back on an equal footing. Finding the right "fix," however, has proven to be an elusive goal, and the longer the review process takes, the less effective this approach becomes. The anomalies remain uncorrected and, as circumstances continue to change, they grow worse.

Rather than continuing the frustrating effort to find the right regulatory "fixes," therefore, Worldspan suggests that the Department go in a different direction. Worldspan proposes that the Department order a temporary, experimental suspension of the CRS regulations for a period of not less than two years.

A temporary suspension would have several effects. First, a suspension would eliminate the inequities fostered by the existing regulations and would do so more quickly and thoroughly than any amendment would. Second, a suspension would give the market the opportunity to answer the two overriding questions facing the Department: are the regulations still needed and, if so, in what form? Quite simply, the absence of regulation is the most scientific, time-tested and comprehensive method to determine whether and where regulation is needed. The CRS

¹ Changes in airline ownership and control of CRS's and the emergence and rapid growth of Internet sites, such as Travelocity and Orbitz, are arguably the two major causes of these inequities, which prompted the Department to emphasize these two developments when it issued its supplemental advance notice of proposed rulemaking in July 2000.

regulations originally were developed in response to clearly identifiable problems that developed in an unregulated environment, but one that is entirely different from the environment that exists today. Similarly, a temporary suspension would allow the parties and the Department to identify on the basis of clear evidence any current problems requiring regulation and craft remedies accordingly. This is surely a more direct and accurate approach than speculating before the fact about the possible effects of amending the regulations.²

The anomalies existing under the current regulatory regime are clear. For example, the applicability of Part 255 to a CRS depends, under Section 255.2, on whether the CRS is owned, controlled, operated or marketed by an airline or airlines. Thus, Part 255 applies to Worldspan, which is owned by three airlines. But Part 255 remains applicable to Worldspan's two main competitors – Sabre and Galileo – only by virtue of the Department's informal determination that those systems are “marketed” by or receive “marketing support” from airlines (American/Southwest and United, respectively). These “marketing” relationships could end at any time, freeing Sabre and Galileo from the obligations of Part 255, while Worldspan remains regulated. There is no public interest reason, however, to believe that Worldspan needs to be regulated while Sabre and Galileo do not.

The mandatory participation provision (Section 255.7), which is tied exclusively to CRS ownership, creates another inequitable result. Because they “own” a CRS, Worldspan's three airline owners – Delta, American and Northwest – must participate in every other system. Every

² If the Department does not adopt this proposal, Worldspan stands by the comments it filed on September 22, 2000 in response to the Department's supplemental advance notice of proposed rulemaking.

other U.S. carrier, however, is free to base its participation decisions on purely commercial considerations, even if there are strong business ties with one of the CRS's. Thus, carriers that actively "market" a CRS are not burdened by the mandatory participation rule, even though their marketing activity brings those CRS's within the scope of Part 255 and even though carriers that "own" a CRS are covered by the rule. By the same token, while every other CRS is granted three mandatory U.S. participants (Worldspan's three owners), Worldspan has none. There is no public interest basis for these distinctions or for the competitive imbalances they create.

Another anomaly arises from the fact that CRS's are regulated while other distribution channels, including Internet sites, are not. Without suggesting that Internet sites should be regulated, the fact of the matter is that there is no public interest rationale for a regulatory regime that treats CRSs differently from alternative and competing distribution channels. The Department is analyzing whether these other channels should be regulated, and it may well conclude, after observing unregulated marketplace behavior, that market forces will provide most or all of the regulation that is needed. The temporary suspension proposed by Worldspan would give the Department and the parties a similar opportunity to observe the market and to consider whether and to what extent regulation of CRS's is actually required.

There is no obvious public interest "downside" to Worldspan's proposal. Part 255 arose out of concerns that the two largest CRS's were improperly being used as weapons by their air carrier owners – which were the two largest U.S. carriers – and causing harm to airline competition and, thus, to consumers. The original objectives of the Civil Aeronautics Board in promulgating Part 255, therefore, were to protect competition among airlines and among CRS's – which were owned and marketed by airlines – through two principal vehicles: the regulation of

booking fees, which was limited to a non-discrimination requirement, and the regulation of screen displays, which was limited to a requirement that CRS's provide travel agents with a neutral, "integrated" primary display.

With these objectives in mind, it is difficult to see that any harm would flow from a temporary suspension of Part 255. There is no evidence that CRS's continue to be used as anti-competitive weapons in competition among air carriers. Indeed, with the exception of Worldspan, no U.S. CRS has any air carrier ownership. With respect to booking fees, there is no basis to believe that, in the absence of the non-discrimination provision of Section 255.6, Worldspan or any other CRS would begin to harm airline competition by unfairly "gouging" certain targeted airlines. The incentive to do so simply does not exist,³ and the market would not tolerate unfair pricing, as a temporary suspension would demonstrate.

There is also no reason to fear that competition or consumers would be harmed by a temporary suspension of the display bias rules of Section 255.4. In the first place, as suggested above, the reach of the rules is quite limited, simply requiring CRS's to provide a neutral integrated display. Furthermore, under Part 255 travel agencies are already free to use "third-party" software and other enhancements to bias the information that they convey to consumers.⁴ Thus, as a practical matter the suspension of Section 255.4 would not effect a dramatic change. Accordingly, the market is unlikely to accept incomplete or faulty information in the temporary

³ Worldspan's three owners compete fiercely with one another. Needless to say, they would have no unified strategy to use Worldspan as a weapon against other carriers.

⁴ In its supplemental advance notice of proposed rulemaking, the Department noted that the CRS rules "do not prohibit travel agencies from reshaping the information provided by a system into displays biased in favor of the agencies' preferred suppliers." 65 Fed. Reg. 45553.

absence of Section 255.4 to any greater extent than the market accepts incomplete or faulty information today. A temporary suspension of Part 255 would provide a clear and accurate test of this proposition.

The Department has noted that bilateral air services agreements support the continuation of the CRS regulations. In that regard, a CRS annex has been included in liberal and open skies bilateral agreements. The temporary suspension of Part 255 would not, however, run afoul of U.S. bilateral commitments. The CRS annexes do not expressly require governments to promulgate CRS rules; indeed, many (perhaps most) countries do not have specific CRS rules at all and could not be heard to complain about a suspension of the U.S. rules. Furthermore, the continued legality of the CRS annexes contained in bilateral agreements with EU Member States has been placed in doubt by the Opinion of the Advocate General in the “Open Skies Case” pending before the European Court of Justice. In short, an adverse international reaction to a temporary suspension of Part 255 is unlikely.

In conclusion, Worldspan is not necessarily suggesting that no element of Part 255 is required by the public interest or that Part 255 should be repealed in its entirety. Worldspan is proposing, however, that a temporary, experimental suspension of Part 255 would be an effective means of identifying those elements that are needed in their current form, those that are no longer needed and those that require amendment. Worldspan submits that this approach would

enable the Department to break the regulatory gridlock that – by virtue of constantly changing circumstances – has beset the Department's reexamination of Part 255.

Respectfully submitted,



Charles J. Simpson, Jr.
ZUCKERT, SCOUTT & RASENBERGER, L.L.P.
888 17th Street, N.W.
Suite 600
Washington, D.C. 20006
Counsel for Worldspan, L.P.

CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of March 2002 a copy of the foregoing Comments was served by mail on the parties named below:

Aer Lingus

c/o Harold E. Mesirow
Robins, Kaplan, Miller & Ciresi LLP
1801 K Street, N.W., Suite 1200
Washington, DC 20006

Aeromexico

c/o William C. Evans
Verner, Liipfert, Bernhard,
McPherson and Hand
901 15th Street, N.W.
Suite 700
Washington, DC 20005

Edward P. Faberman
Michelle M. Faust
**Air Carrier Association of
America**
1500 K Street, N.W.
Suite 250
Washington, DC 20005

Air France

c/o Michael F. Goldman
Silverberg, Goldman & Bikoff LLP
1101 30th Street, N.W.
Suite 120
Washington, DC 20007

Alaska Airlines

Aloha Airlines
American Trans Air
c/o Marshall S. Sinick
Squire, Sanders & Dempsey LLP
1201 Pennsylvania Ave., N.W.
Suite 500
Washington, DC 20004

Francesco Gallo
Comptroller, North America
Alitalia Airlines
666 Fifth Avenue
New York, NY 10103

**Amadeus Global Travel
Distribution**

c/o David H. Coburn
Steptoe & Johnson LLP
1330 Connecticut Avenue, N.W.
Washington, DC 20036

America West Airlines

Icelandair
Royal Jordanian Airlines
c/o Joanne W. Young
Baker & Hostetler LLP
1050 Connecticut Avenue, N.W.
Suite 1100
Washington, DC 20036

Carl B. Nelson, Jr.
Associate General Counsel
American Airlines, Inc.
1101 17th Street, N.W.
Suite 600
Washington, DC 20036

Sarah Wynn
Group Counsel
**American Express Travel Related
Services Company, Inc.**
World Financial Center
New York, NY 10285

Jack Mannix
Managing Director, Travel Related
Services
American Automobile Association
1440 New York Avenue, N.W.
Suite 200
Washington, DC 20005

Paul M. Ruden
Senior Vice President
**American Society of Travel
Agents, Inc.**
1101 King Street
Alexandria, VA 22314

**Association of Asian-Pacific
Airlines**
c/o Global Aviation Associates, Ltd.
1800 K Street, N.W.
Suite 1104
Washington, DC 20006

John I. Williams, Jr.
President and CEO
Biztravel.com, Inc.
2401 Walnut Street
Philadelphia PA 19103

Paul C. Jasinski
General Counsel, USA
British Airways
75-20 Astoria Blvd.
Jackson Heights, NY 11370

Bruce E. Cunningham
Bauer & Cunningham, Inc.
Two Moonvine
The Woodlands, TX 77380

Continental Airlines
c/o R. Bruce Keiner, Jr.
Crowell & Moring LLP
1001 Pennsylvania Avenue, N.W.
Washington, DC 20004-2595

Hershel Kamen
Staff V.P. – International and
Regulatory Affairs
Continental Airlines, Inc.
Government Affairs, 18th Floor
1600 Smith Street
Dept. HQSGV
Houston, TX 77002

Delta Air Lines
c/o Robert E. Cohn
SHAW, PITTMAN
2300 N Street, N.W.
Washington, DC 20037

**EgyptAir
Varig**
c/o Constance O'Keefe
1201 Connecticut Ave., N.W.
Suite 850
Washington, D.C. 20036

Galileo International
c/o Carolyn F. Corwin
Covington & Burling
1201 Pennsylvania Avenue, N.W.
Washington, DC 20044

Theodore Knappen
Government Affairs Representative
Greyhound Lines, Inc.
1001 G Street, N.W.
Suite 400 East
Washington, DC 20001

Thomas P. Cooper
Vice President, Legal Affairs
**Gulfstream International Airlines,
Inc.**
P.O. Box 660777
Miami Springs, FL 33266

Paul V. Mifsud
General Counsel, U.S.A.
KLM Royal Dutch Airlines
2501 M Street, N.W.
Suite 612
Washington, D.C. 20037

Korean Air
c/o William H. Callaway, Jr.
Zuckert, Scoutt & Rasenberger,
L.L.P.
888 17th Street, N.W.
Washington, DC 20006

Lufthansa German Airlines
c/o Sheila C. Cheston
Wilmer, Cutler & Pickering
2445 M Street, N.W.
Washington, DC 20037

Rosa Kim
Corporate Attorney
Microsoft Corporation
One Microsoft Way
Redmond, WA 98052

Midwest Express Airlines
c/o Robert P. Silverberg
Silverberg, Goldman & Bikoff,
L.L.P.
1101 30th Street, N.W.
Suite 120
Washington, DC 20007

Megan Rae Rosia
Managing Director, Government
Affairs & Associate General Counsel
Northwest Airlines, Inc.
901 15th Street, N.W.
Suite 310
Washington, D.C. 20005

Orbitz, L.L.C.
c/o Frank J. Costello
Zuckert, Scoutt & Rasenberger,
L.L.P.
888 Seventeenth Street, N.W.,
Suite 600
Washington, DC 20006-3939

Qantas Airways
c/o Moffett B. Roller
Roller & Bauer, PLLC
1020 19th Street, N.W.
Suite 400
Washington, DC 20036

The Sabre Group
David Schwarte
The Sabre Group
P.O. Box 615
Mail Drop 4204
Fort Worth, TX 75261-9615

Robert W. Kneisley
Associate General Counsel
Southwest Airlines Co.
1250 Eye Street, N.W.
Suite 1110
Washington, DC 20005

TACA International Airlines
c/o John R. Brimsek
Mullenholz, Brimsek & Belair
1150 Connecticut Avenue, N.W.
Suite 700
Washington, DC 20036

Terrell P. Jones
President and CEO
Travelocity.com
4200-B Buckingham Road
MD 1400
Fort Worth, TX 76155

United Airlines

c/o Bruce Rabinovitz
Jeffrey A. Manley
Wilmer, Cutler & Pickering
2445 M Street, N.W.
Washington, D.C. 20037

US Airways

c/o Donald T. Bliss
O'Melveny & Myers LLP
555 13th Street, N.W.
Suite 500 West
Washington, DC 20004



Kathy Luhrman