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CRS REGULATIONS AND SMALL BUSINESS IN THE TRAVEL INDUSTRY

HEARING

BEFORE THE

SUBCOMMITTEE ON REGULATORY REFORM AND OVERSIGHT

OF THE

COMMITTEE ON SMALL BUSINESS
HOUSE OF REPRESENTATIVES

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CRS REGULATIONS AND SMALL BUSINESS IN THE TRAVEL INDUSTRY

THURSDAY, JUNE 26, 2003

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON REGULATORY REFORM AND OVERSIGHT,
COMMITTEE ON SMALL BUSINESS
Washington, D.C.

The Subcommittee met, pursuant to call, at 10:01 a.m. in Room 2360, Rayburn House Office Building, Hon. Ed Schrock [Chairman of the Subcommittee] presiding.

Present: Representatives Schrock, Gonzalez and Majette.

Chairman SCHROCK. We will go ahead and bring the Committee to order. I am sure other Members will come in. As you just heard, we are going to have votes in about 15 minutes, unfortunately. That will be one 15 minute vote and two five minute votes. Then we will come back in here.

Good morning, ladies and gentlemen. Our hearing today addresses the Department of Transportation's notice of proposed rulemaking on computer reservation systems. Computer reservation systems, or CRSs, are the means by which our nation's travel agents have automated. They provide the real time access to airline schedules and seat availability that travel agents and most internet websites rely on to allow customers to book airline tickets.

The Department of Transportation regulates the relationship between the airlines and the IRS's because at one time most airlines owned CRSs. The circumstances of the industry have changed, and these rules are supposed to sunset every five years. The last time they were set to sunset was 1997, and the travel industry has been waiting since then for an updated set of rules.

Now as Chairman of the Subcommittee on Regulatory Reform and Oversight of the House Committee on Small Business, I pay very close attention to regulations that will have an impact on small businesses. My mandate, in fact, is to investigate any and all regulations that will impact small businesses.

The Department of Transportation, as required by law, made the determination that this rule would significantly impact small businesses. The problem is they pretty much stopped right there. They did not quantify how much it might cost small business or how many it would affect, which they are required to do.

In fact, the DOT asserts that some of the proposals would benefit small businesses, and a few of the proposals might increase cost to travel agencies, but would affect only the larger travel agencies.

The Department provided no information or analysis to back up their assumptions about the impact on small business.

Based on the comments from travel agents and other affected parties, DOT must never have consulted with a single affected business. Travel agents have consistently, insistently asserted the exact opposite of the Department's analysis. The Small Business Administration's independent Office of Advocacy also asserted that DOT's initial analysis was incomplete and will be joining us to testify on this matter today.

The travel agents and the CRSs are not the only parties interested in this rule. Even the Department of Justice has weighed in with their concerns and suggested that regulations concerning travel agents be dropped. The National Federation of Independent Business stated in their comments, and I quote: "We are concerned that DOT has not conducted a thorough impact analysis on this rule, and we strongly encourage the Agency to consider performing one."

The National Business Travel Association was disappointed with the initial notice of rulemaking and said: "The regulation is supposed to give consumers, not competing interests, more choice, lower costs and enhanced reliability." The NBTA believes it would be a disservice to the traveling public if the DOT did not direct the implied benefits of CRS deregulation towards the consumer rather than airlines and other travel suppliers.

I want to state clearly that this hearing was not scheduled to pick winners between competing interests and businesses in this industry. My goal in holding this hearing is to hold an agency accountable to the standard that Congress and the President has set for taking small businesses into proper account during rulemakings. It is also not the job of the Department of Transportation to pick winners in this regulation. I hope they realize that as they develop the final rule.

We have an excellent group of witnesses today who are going to help shed some light on the Department's analysis of the rule's impact on their businesses. I look forward to their testimony.

I was going to move at this point to any other Member comments, but since they are not here we will just go right on into the testimony. Before we begin receiving testimony, however, I want to remind everyone that we would like each of the witnesses to hold their testimony to five minutes if they can. In front of you on the table you will see a box that will let you know when your time is up. When the light turns yellow, you have one minute to go, and when the red light comes on a trap door opens.

[Laughter.]

Chairman SCHROCK. Once the red light is on, the Committee would like you to wrap up your testimony as soon as you feel it is comfortable.

Our first person we are going to hear from this morning is our friend, Tom Sullivan, who is the Chief Counsel in the Office of Advocacy at the Small Business Administration. We are happy to have you here, Tom, and look forward to your testimony.

[Mr. Schrock's statement may be found in the appendix.]

STATEMENT OF THE HONORABLE THOMAS M. SULLIVAN, CHIEF COUNSEL, OFFICE OF ADVOCACY, U.S. SMALL BUSINESS ADMINISTRATION

Mr. SULLIVAN. Thank you, Chairman Schrock. Good morning, and thank you for the opportunity to appear here to address whether the Department of Transportation is following the Reg Flex Act in its proposal to revise the rules regarding computer reservation systems, CRSs.

My name is Tom Sullivan. I am the Chief Counsel for Advocacy at the United States Small Business Administration. Pursuant to our statutory authority, Advocacy actively solicits input from small entities to assist our office in setting policy priorities and identifying rules that will affect them. Advocacy's involvement in the CRS rulemaking is a result of those outreach activities.

Please note that the statement expressed here this morning independently represents the views of Small Business and does not necessarily reflect the official position of the Administration or of the U.S. Small Business Administration.

Mr. Chairman, let me start by expressing my sincere appreciation for your statements on the House Floor two days ago in support of H.R. 1772, the Small Business Advocacy Improvement Act of 2003, which passed the House of Representatives unanimously. My entire staff was flattered by your praise, and I want to thank you and assure you that we will continue to serve as a small business watchdog. We will be ever more effective once H.R. 1772 is signed into law.

As Chief Counsel for Advocacy, I am charged with monitoring federal agencies' compliance with the Reg Flex Act, as amended by the Small Business Reg Enforcement Act of 1996. There is an acronym called SBREFA. My written testimony provides an overview of the Reg Flex Act and our office's responsibility. My written testimony also details President Bush's attention to the Reg Flex Act memorialized through Executive Order 13272 and gives the Committee an update on our progress in implementing President Bush's Executive Order.

With the Chairman's permission, I would like to submit the written statement for the record and skip right to matters related to Transportation CRS rulemaking.

In November 2002, Transportation published the proposed rule on CRS regulations. The proposal examines whether the existing CRS rules are necessary and, if so, whether they should be modified. Transportation's stated intent is to eliminate some of the existing rules to promote competition in the airline industry, to lower costs and to provide travel agencies with protection from costly contracts.

The analysis provided by Transportation in their proposal lacked some of the elements that we believe should be part of an initial regulatory flexibility analysis, which is a requirement under the Reg Flex Act. Although Transportation admits that the economic impact of the proposal will be significant, the Agency provides only general statements about increased cost and potential savings rather than specific information to provide the public with insight into the potential magnitude of these costs.

For example, Transportation states that the proposal to restrict or prohibit productivity pricing may increase CRS costs for some travel agencies, but the affected travel agencies would be larger agencies only. Transportation's analysis should provide insight into how this assumption was made and what those potential costs could be.

The Reg Flex Act requires an agency to provide a description of the estimated number and types of small entities to which the proposed rule will apply. Although Transportation states that the proposal will have an impact on segments of the small business community, there appears to be no specific information on the number of small entities that will be specifically affected by the rule.

It is my opinion, Mr. Chairman and Mr. Gonzalez, that a supplemental Reg Flex analysis by Transportation will provide the public with greater insight into this rulemaking process, as well as provide the necessary information to achieve compliance with the Reg Flex Act.

I urge the Department of Transportation to carefully consider the economic impact of this rule on Small Business and to examine and fully flush out any alternatives that may minimize that impact. I further urge Transportation to fully consider the comments submitted by small businesses, many represented by the panel this morning, to the rulemaking record and the testimony provided by small businesses at the hearing in May that Transportation held on this issue.

The Office of Advocacy is certainly available to work with Transportation to assure compliance with the Reg Flex Act while accomplishing their desire to improve the CRS system.

Thank you for the opportunity to appear this morning, and I am happy to answer any questions that the Subcommittee may have.

[Mr. Sullivan's statement may be found in the appendix.]

Chairman SCHROCK. Thank you very much, Tom.

Let me recognize the presence of our Ranking Member, my good friend from Texas, Mr. Gonzalez.

Mr. GONZALEZ. Mr. Chairman, thank you very much. First of all, I need to apologize to the Chair and to the Committee and staff, but especially to the witnesses who have taken the time and trouble to be here to educate us on what is going on with a very important aspect that we are trying to accomplish here.

I know Mr. Sullivan and I have discussed exactly his role and some of his frustration, which I think is demonstrated today. I really do appreciate that you are truly an advocate and a watchdog for small businesses.

Mr. Chairman, I have another Committee hearing going on with Homeland Security. They are marking up a bill, so if I get up it is just to go and vote. I will be back. I promise to catch up with as much as I can. Again, my apologies and also my appreciation.

Chairman SCHROCK. No problem. In fact, the buzzers are going to ring in a couple minutes. We have three votes on the Floor, and they understand that. Thank you, Charlie.

Our next witness is Paul Ruden, who is the Senior Vice President for Legal and Industry Affairs for the American Society of Travel Agents. Paul, we are happy to have you here. Thank you.

STATEMENT OF PAUL M. RUDEN, ESQUIRE, SENIOR VICE PRESIDENT, LEGAL AND INDUSTRY AFFAIRS, AMERICAN SOCIETY OF TRAVEL AGENTS

Mr. RUDEN. Thank you, Mr. Chairman, very much. We appreciate the chance to share our views on the serious problems that this pending DOT rulemaking on computer reservation systems is going to pose for our industry.

I also want to thank you at the beginning for the crucial role that the Small Business Committee played in the recent extension of the SBA Economic Injury Disaster Loan Program to qualified agencies throughout the country and the increase in the size standard that allowed more small businesses to qualify for those loans. Those actions by your Committee and the Congress saved the businesses of hundreds of small travel agencies in the wake of the September 11 attacks.

In a way, today's issue is related to those. You know the basic history. Mr. Sullivan quite well summarized the problem of years of delay and the issuance last November of a massive notice of proposed rulemaking to consider whether to continue the rules and, if so, what they should be.

This NPRM somewhat uniquely, in my all too long experience, posed a multitude of conflicting questions and mutually contradictory outcomes for consideration by the government and the parties. One of those outcomes was to eliminate the rules entirely, but DOT then went on to propose a specific set of regulations.

The adoption of those rules, even for a transition period, poses the gravest difficulties for our industry. Those rules are aimed directly at the economic viability of small business travel agencies, fully 98 percent of our industry.

The proposed rules would make it unlawful for any CRS to offer a travel agency a payment of any kind or a discount from its fees or any inducement that is designed or intended to encourage or reward the Agency's more frequent use of the system. These commercial inducements are in many cases the margin of survival for small travel agencies, arising in what everyone concedes is the most competitive part of the air transportation marketplace, yet DOT would ban those rewards.

While conceding that the proposed rules have a significant economic impact on a substantial number of small business entities, the NPRM, as Mr. Sullivan has testified, does not identify how many will be affected or how large the effect will be. Instead, it argues that the rules will increase travel agency efficiency by providing greater opportunities to use multiple CRS systems, a concept we labeled in our testimony as a pipedream.

To the same effect is DOT's treatment of the productivity pricing provisions whereby travel agencies are able to reduce the cost of their systems by booking more business. DOT says that when these payments are forbidden travel agencies will gain flexibility in switching from one CRS system to another.

While they eventually also recognize that agencies will lose revenue because of the proposed rules, they say, and again without providing any data whatsoever, that the losers will all be the larger agencies and, therefore, presumably of no concern. Those are the

two percent of our industry who are not small business under existing standards.

Mr. Chairman, this is simply not right. Congress did not intend the Regulatory Flexibility Act requirements for impact analysis to be empty formalities or broad recitations of statutory language followed by general reassurances that all will be well, but that is pretty much what we have in this rulemaking.

DOT has the means to obtain very specific information about the magnitude and the identity of the recipients of the inducement payments made by the CRSs, and from that data you could make rational inferences about the likely effects of the proposed rules. DOT did none of those things in its initial regulatory analysis. Why not?

That is a very important question because we believe that the proposed rules will be fatal to many small business travel agencies. Only DOT has the power to determine how many. It has the responsibility to collect that information, to do the analysis and present it on the public record for evaluation and comment before the final rules are adopted, not afterward, when the only remedy is going to be a trip to the Court of Appeals. If that trip were successful, the rulemaking would get reopened. We would start this whole process over again to the detriment of everyone.

We hope this Subcommittee will agree with us on this and call upon DOT to conduct the evaluation that we have suggested and that Mr. Sullivan has just suggested for each of the rules that may reduce the revenue stream or raise the cost that our struggling industry now receives or incurs.

I mentioned, Mr. Chairman, early on that the DOT had talked about the alternative of simply eliminating the rules. The evaluation they purported to do under the Reg Flex Act, of course, did nothing to help there either, and I have some other comments I will address during the question and answer period perhaps.

Thank you very much. I would ask that our full statement be included in the record, the written statement.

[Mr. Ruden's statement may be found in the appendix.]

Chairman SCHROCK. Without objection. Thank you very much.

Mr. RUDEN. Thank you.

Chairman SCHROCK. All the way from Lubbock, Texas, where it is probably as hot there as it is here today, is Richard Cooper, the president of National Travel Systems. We are delighted to have you here.

STATEMENT OF RICHARD A. COOPER, PRESIDENT, NATIONAL TRAVEL SYSTEMS.

Mr. COOPER. Thank you. Chairman Schrock, Representative Gonzalez, my name is Richard Cooper, president of National Travel Systems, a small business based in Lubbock, Texas, that operates travel agency branch locations primarily in west Texas. Thank you for the opportunity to appear today to share my views on the impact of the DOT CRS proposal on small businesses and consumers.

The rules that DOT is proposing will have an immediate negative impact on travel agents in the communities we serve. Due to the unprecedented challenges in the travel and tourism industry over the last decade, travel agencies have been forced to change

their business models continually to survive and serve the consumer interest.

I believe we have done a remarkable job of adapting despite many hardships in the economy and in the airline industry and in an increasingly uncertain world. Despite our progress and for no sound reason, the DOT is proposing to deliver a major regulatory blow to us and our future.

What would the DOT's proposed CRS rules do to small travel agencies like National Travel? Well, there are a number of things, the worst of which is a senseless outline of productivity pricing incentives for our travel bookings made through the CRS.

Since the airlines reduced our commissions to zero, these incentives, which the CRS pays us to reach booking volume targets, are an extremely important source of revenue for small agencies. My understanding is that the DOT is required to assess the impact of the proposed regulations on small business and consider whether there are less costly alternatives.

I would like to know which travel agencies the DOT talked to before publishing the NPRM. I suspect the answer is none. I do know that every travel agent I have talked to, and I have talked to plenty, is extremely unhappy about the rules. Without productivity incentives, our agency would have to shift the financial burden of each segment booked onto the back of the consumer.

Today, National Travel charges our clients a $35 service fee for booking an airline reservation. Without productivity incentives, National Travel Systems would have to raise the service fee to as much as $50 just to break even. Many consumers would find a service fee increase of this magnitude excessive. This would force consumers away from travel agents and into the arms of the airline owned distribution systems, the result that DOT apparently and incredibly wants to engineer.

Why should anybody care? I am going to tell you why. The viability of unbiased consumer advice and consumer choice is in jeopardy. Independent travel agents play an extremely important role in the travel distribution system. We add value to many purchasing decisions and often make a difference between a successful trip and a disaster.

For example, during the 9–11 tragedy a corporate customer was desperately trying to locate its employees that were scheduled out that week. At the request of the CEO, we promptly located all of the staff except for the individuals traveling using an on-line service. Needless to say, he changed the policy shortly thereafter.

In this rulemaking, the DOT has put the brand of personal and consumer oriented service at risk. There is no question that major airlines have a very tough road ahead to return to financial health. However, any actions taken by the DOT to help the airlines should not come at the expense of other travel industry participants, especially small travel agencies like mine, and certainly not at the expense of consumer choice and price.

The proposed CRS rules shift a disproportionate financial burden to travel agents and are, therefore, anti-competitive. The NPRM would create an unlevel playing field with a wealth transfer from traditional, non-airline owned entities to airline owned channels of distribution. This is not the proper role of government.

Other issues that the DOT should have considered, but did not have a negative impact on the NPRM, are small carriers and other sectors of the travel and tourism industry and on small American towns and rural areas. I would hope we have a chance to explore some of these impacts at the hearing.

DOT extols the internet in its rulemaking and, rather than let market forces work, seeks to engineer its greater use. The internet is an important source of information for some, but it is not for everyone. As a father of three and a husband, the absolute last thing I want to do when I get home is subject myself to navigational confusion, viruses, spamming, unsolicited e-mails and knowing Orbitz's pop-ups while surfing for an airline fare without an opinion about price fairness.

Many consumers, particularly rural consumers, do not have and cannot afford internet access, let alone high speed access, or they simply do not own credit cards. Many that do have credit cards do not want to risk identity theft. Furthermore, many seniors and baby boomers were raised in an era of doing business face-to-face with folks you know in your community. That is a preference worth preserving.

Again, the internet works for some people, but it does not work for all. The DOT should be trying to preserve consumer choice instead of undermining it through the NPRM.

In conclusion, the regulation, open markets and consumer freedom of choice are far better alternatives to defective rulemaking, which utterly fails to take into account the impact on small business and consumers and utterly fails to consider less intrusive alternatives. I hope the process of undoing this neglect has now begun.

Thank you for the opportunity to share my views.

[Mr. Cooper's statement may be found in the appendix.]

Chairman SCHROCK. Thank you very much, Mr. Cooper.

I think we are going to recess here for a short time, and Mr. Gonzalez and I will go do our duty and vote. We will be back as quickly as we can get back. Thanks.

[Recess.]

Chairman SCHROCK. Thank you for your indulgence. This is apparently going to happen every hour or so all day today, so please bear with us.

We are glad to have David Rojahn here, who is the president of DTR Travel, Inc. He is from Englewood, Colorado. We are delighted you are here. Thank you.

STATEMENT OF DAVID L. ROJAHN, PRESIDENT, DTR TRAVEL, INC.

Mr. ROJAHN. Thank you. Chairman Schrock, Members of the Subcommittee. I am honored to have this opportunity to testify before you today as a small business owner on the notice of proposed rulemaking on the computer reservation systems pending before the Department of Transportation.

My name is David Rojahn. I am the president of DTR Travel, Inc., in Englewood, Colorado, which is a suburb of Denver. My wife and I opened our agency back in 1993. DTR Travel employs three travel agents. Our business mix is primarily leisure and small cor-

porate accounts. DTR is a member of the American Society of Travel Agents where I have recently served as president of the Rocky Mountain Chapter.

I request that my written statement be part of the Subcommittee's hearing record.

Mr. Chairman, I believe my business is pretty typical of the small businesses that constitute the vast majority of travel agencies still serving millions of travelers from every corner of the United States. My business has grown up under CRS rules that have been in effect since 1984. We have never known another regime.

The existing CRS rules have worked well. Small travel agents have obtained more and more services through their CRSs, and options for subscriber contracts have increased over time. CRSs have shown flexibility, especially in helping small travel agents deal with the economic pressures since September 11.

This is not to say that we think continued regulation is the best approach. In fact, I can tell you that we strongly share ASTA's view that no regulation at all would be far preferable to the regulations now being proposed by DOT, which seem to be aimed squarely at making my business extinct.

The proposed rules seem to be heavily weighted in favor of the largest airlines and Orbitz. This seems unhealthy, and it will likely have a negative effect on CRS services and the economics of small travel agencies. As Paul Ruden testified on May 22 before the DOT, the large airlines are the problem, not the CRSs. The airlines are attempting to take as much business away from small agencies as they can. The proposed rules support the large airlines in this regard and should not be adopted.

Specifically, the proposal to prohibit productivity pricing and other CRS incentives is inappropriate. Productivity bonuses are a means by which the CRSs share rewards of good performance by the agency, something that the large network airlines seem to be determined to avoid. They want to keep the rewards a more efficient means of doing business for themselves and to shut out travel agencies from any meaningful source of supplier paid revenue.

A small travel agent may decide that another type of contract is preferable, but all agents have and should continue to have the option of choosing productivity pricing if it makes good business sense.

Also, small travel agents have subscriber contract options that allow them to choose the model that best fits their needs. Small agents on the Galileo system, for example, can choose the Select and Connect option and avoid production requirements altogether. Moreover, agents can choose different contract lengths that are available, and an agent should be able to choose the length that best fits their needs.

Some small agents still prefer a five year contract, which provides stability and better economics, while others want more flexibility. The CRSs have generally provided that flexibility, a business approach that once again seems lacking in the large network of airlines.

DOT says it needs to make some changes in order to allow travel agents to use alternatives to CRSs. Though I embrace having many

alternatives to include in my tool kit, it does not make sense for a small travel agent to use more than one CRS, for the training would be costly and unproductive, not to mention the additional technical cost to support multiple network connections.

Subscriber contracts provide room to use such alternatives if the travel agent wishes. As technology develops, maybe this will make more sense as a practical matter, but changes in the rules to prevent travel agents from making deals with the CRSs are absolutely inappropriate.

DOT and some parties suggest that travel agents should pay for more of the CRS cost and fees. Airlines are the ones that derive the primary benefit from CRS services, and they should pay the lion's share. Travel agents are just agents of the airlines. Small travel agents should not and could not pay more since they are financially stretched, particularly since airlines stopped paying base commissions and small agents have a limited opportunity for revenue from override commissions.

The idea that we or our customers can or should pay directly the airlines' booking fee expenses is uniquely a bad idea and one that I understand even the Justice Department is no longer pressing.

Travel agents need access to a broad inventory to service their customers well and retain their base of business. We do not want to be pawns in the power struggle between the airlines and the CRSs over listing and delisting.

Mr. Chairman, I am not a lawyer nor an expert on CRS rules. What I am is a small businessman who understands what he needs to do business in today's technology based world. It is beyond the understanding that the Department of Transportation, with no apparent study to the specific consequences for businesses like mine, would propose to ban CRSs, the area of the marketplace where the competition is strong.

In conclusion, I thank the Subcommittee for the opportunity to testify today on DOT's proposed CRS rules. I strongly urge the Small Business committee to convince DOT any new CRS rules should retain flexibility in the travel agent agreements with the CRSs, especially productivity and other incentives.

Thank you.

[Mr. Rojahn's statement may be found in the appendix.]

Chairman SCHROCK. Thank you very much. You do not have to apologize for not being a lawyer. I am not either.

Mr. ROJAHN. Okay.

Chairman SCHROCK. There is nothing to apologize for. Thank you.

Our next witness Norma Pratt, who is the president of Rodgers Travel in Philadelphia, Pennsylvania. We are glad to have you here. Thank you.

STATEMENT OF NORMA R. PRATT, PRESIDENT, RODGERS TRAVEL, INC.

Ms. PRATT. Yes, Mr. Chairman. My name is Norma Pratt, and I am president of Rodgers Travel in Philadelphia. Rodgers Travel is the oldest African-American travel———.

Chairman SCHROCK. Mr. Pratt, could you please pull the microphone closer?

Ms. PRATT. Sorry.

Chairman SCHROCK. It is not the greatest system in the world. We are doing it on the cheap, which should make the taxpayer feel happy.

Ms. PRATT. Rodgers Travel is the oldest African-American travel agency in the United States. Our agency is an 8(a) firm and holds several DOD and GSA contracts to perform services for federal agencies in California, Colorado, Delaware, New Jersey and some other states. We also are certified locally and regionally for other minority type things. We are also long-term members of ASTA and SGTP and ITAS.

Since our founding in 1949, Rodgers Travel has been dedicated to providing professional and cost efficient travel services to government, corporate and leisure travelers worldwide. I have been personally active in Rodgers Travel since 1974.

Today, we employ 40 persons. We have worked hard to build a business that is important to our community, to our customers and to our employees, but it has not been easy. We have stayed in business and continued to serve our customers by being innovative, flexible, patient and always focused on those things that cause people to want to do business with us, but the obstacles have been high and the hours long.

Most of our problems have been caused by the airlines' inability to conduct their business as efficiently and as innovative as I run mine. Perhaps they should pay more attention to those things that cause people to want to do business with them rather than paying attention to their stock options and undeserved bonuses.

My company, Rodgers Travel, has gone from handwriting tickets for walk-in customers to having our own website, yet we estimate that 50 percent of our traditional African-American clients and a very large percentage of the military enlisted personnel we serve do not have internet access, and for them our agency is the only place in their immediate neighborhood where they can learn about all their options and independently exercise the freedom to select travel methods of their own choosing.

We need to be able to continue to provide objective advice to our traditional walk-in clients and our government clients nationwide, yet under DOT's proposal airlines will be able to put their fares only on some CRSs and not in others. I believe that all airlines should be required to put all of their fares in all CRSs. This will help ensure that the lower income folks are not being discriminated against because they do not have personal internet access to all airlines and all fares. Travel agencies need all fares and all inventory content in one CRS to make this happen.

Our customers tell us that they appreciate the value we give them, even when we are forced to start charging them a fee that became necessary when the airlines told us they would not pay us for selling their seats.

If the Department of Transportation's proposed changes in the rules governing travel distribution are allowed to go forward as proposed, not only would lower income people without internet access be denied fare access equality, but also small businesses such as ours will be harmed in many ways, harm that is unnecessary and completely preventable.

Under our present CRS contracts, the more productively we use the CRS system the more money we either make or save depending on our volume. In effect, we are paid a commission by our CRS vendor for each booking. This is a vital source of revenue for our company and for most other travel agencies. Without this income, we will be forced again to raise the cost of an airline ticket to those who can least afford it, or the travel agency will be out of business.

Mr. Chairman, I cannot understand why the DOT believes that it should prohibit us from being paid based on our performance, which I always thought was a hallmark of the free enterprise system. In other words, I cannot understand why the government would pick winners and losers in the travel distribution area, and the losers would be us, the small businesses that are the backbone of our nation's economy.

As I see it, there can only be one possible explanation for these proposals. DOT does not have a clue about how the travel distribution system works and how it affects Americans in the real world. I understand that DOT is supposed to fully consider the impact of rulemaking on small business, but it seems obvious to me that DOT has not spent 10 minutes thinking about Rodgers Travel and other small businesses like mine.

Neither have they spent any time considering how it will affect the internet unconnected Americans. It seems to me that it will only help the airlines continue to operate their businesses poorly.

The end.

[Ms. Pratt's statement may be found in the appendix.]

Chairman SCHROCK. Thank you very much. Your next paragraph was going to be very interesting, but I will make sure it is in the record as well.

Ms. PRATT. Okay.

Chairman SCHROCK. Our last witness this morning is David Schwarte, who is the Executive Vice President and General Counsel for Sabre Holdings Corporation. We welcome you, David. Thanks for being here.

STATEMENT OF DAVID A. SCHWARTE, EXECUTIVE VICE PRESIDENT AND GENERAL COUNSEL, SABRE HOLDINGS CORPORATION

Mr. SCHWARTE. Thank you. Good morning, Mr. Chairman and Congressman Gonzalez. Thank you for the opportunity to appear here this morning.

Through the Sabre computer reservation system, we provide automated tools for selling all types of travel products for our travel agency customers. In the United States, about 5,600 of those are small businesses. The Sabre CRS is one of four systems that competes across the globe. We are not a small business ourselves, but we are intimately involved in helping small businesses, like the witnesses here this morning, succeed.

Sabre's bottom line is this. First, the Department of Transportation's NPRM is headed in exactly the wrong direction. It is designed to favor the large carriers over all others in the industry, including small businesses. If adopted, the NPRM would have an enormously detrimental effect on many in the travel industry, particularly our smaller travel agency customers, and you have heard

much about that already this morning. The NPRM is nothing more than pork barrel regulation at its worst.

Second, because of the tremendous changes that have occurred in the CRS industry since the rules were last readopted in 1992, rules are no longer needed in the United States in our view, period, full stop. Worse yet, the rules actually distort the market.

As the Department of Justice recently noted, nearly all of the provisions of the CRS have been ineffective, and they carry an unjustifiable cost burden for consumers. To be blunt, the CRS industry is the poster child for the law of unintended consequences of government regulation.

This industry is so dynamic that it is simply impossible for any regulator to accurately predict the consequences of new, more intrusive rules. It should be lost on no one that core provisions of the existing rules that DOT thought were essential in its first draft of the NPRM in April 2002 it now says actually hurt competition.

A simpler, better alternative to the NPRM is to deregulate this industry once and for all. A solution that relies on the free marketplace will produce a far better outcome than bureaucratic central planning.

Mr. Chairman, what is fatally wrong with the NPRM and why is it met with a tsunami of criticism? The answer is that DOT has constructed a proposed rule that is imbalanced and misguided. With respect to airlines, it seeks to eliminate the present obligations of fair dealing that large carriers have under the CRS rules. In addition, the NPRM would forbid CRSs from negotiating contract terms with airlines that provide safeguards for our travel agent users.

For example, DOT proposes to prohibit systems from negotiating deals with even the largest airlines that would insure access to all of those airlines' fares, including web fares, for our travel agency users. Travel agents cannot serve their customers if they are denied the ability to offer those customers the full range of travel options. How can such an attempt by DOT to hand greater leverage to some of the largest carriers in the world be in the best interest of consumers or travel agents or, for that matter, anybody but the large airlines?

In sharp contrast, DOT seeks to increase the regulatory burden on travel agents and CRSs. You have heard much about that this morning, but let me elaborate for a minute. Among other things, the Department of Transportation has suggested that it might shorten by decree the length of contracts we and travel agents are allowed to negotiate to perhaps three years and maybe one, irrespective of what the CRSs or the travel agents think is in their best interest as a business.

Even though the travel agents have been badly bloodied by the airline industry deciding to pay them zero for the valuable services that they render, DOT wants to inflict a further wound by restricting CRSs from compensating subscribers for making productive use of our systems. Take away this income stream, and many travel agents would be forced to close their doors.

In six years in which this rulemaking has dragged on, the marketplace for travel distribution has changed dramatically. Once nearly 90 percent of all tickets were sold through the CRSs. Today,

it is just over half. Even more importantly, airlines have shed their interest in the CRSs, and if the World Span sale closes as announced this summer the vertical integration between airlines and CRSs that was the reason the rules were adopted in the first place will have evaporated. With that link having evaporated, the need for regulation will have disappeared as well.

In conclusion, Mr. Chairman, the NPRM is fatally flawed. It should not be adopted in any form. DOT should simply let the rules lapse on January 31, 2004, when they are scheduled to expire. There is no market failure in this industry that would justify continued command and control regulation.

Like every other industry in America, vigorous enforcement of antitrust laws and unfair competition laws by the Department of Justice and by the FTC will be more than adequate to assure that any misconduct is dealt with if it arises in a deregulated environment.

I thank you very much for your attention and look forward to answering your questions.

[Mr. Schwarte's statement may be found in the appendix.]

Chairman SCHROCK. Thank you very much, and thank you all for your testimony. It was very good.

Tom, your office filed comments on this rule letting the Department of Transportation know that its analysis was inadequate. You offered your assistance.

I am curious. Has the Department of Transportation responded to your assistance, and do any other agencies require your assistance from time to time on certain issues?

Mr. SULLIVAN. Mr. Chairman, with regard to this specific rule, no, the Department of Transportation has not requested our assistance in moving forward on the CRS regulations. They have received our comments certainly offering our assistance, but, no, they have not taken us up on this.

With regards to other agencies taking advantage of the resources that we have in the Office of Advocacy, the answer is yes, other agencies do contact us frequently, and those requests range from help doing regulatory analysis, because we do have a team of regulatory economists on staff, all the way through to folks just in the regulatory community wondering what types of small businesses may be affected.

From time to time, agencies do call us and ask whether or not we can put together a round table of small business groups so that they can flush out how certain proposals will affect broad members of the small business community, which really benefits the ultimate decisionmaking that we see lacking in this particular rule.

Chairman SCHROCK. Why do some agencies do it and DOT, for instance, does not? Any ideas?

Mr. SULLIVAN. I do not know, Mr. Chairman.

Chairman SCHROCK. Okay. I do not either.

What would a really good reg flex analysis have looked like, and how would it have helped us notice a proposed rulemaking?

Mr. SULLIVAN. Mr. Chairman, with your permission I will answer and also turn it over to the panel to answer if you would like———
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Chairman SCHROCK. Sure.

Mr. SULLIVAN.—because they know how this rule will impact their own businesses.

We are starting to train government agencies on what constitutes a good reg flex analysis, and we actually have a training guide that uses as an example a Federal Trade Commission rule. In that training document, it lays out what constitutes good analysis. That is simply dollar amounts, burden amounts of what different regulatory approaches would mean to a small business.

For instance, if the Department of Transportation says that efficiencies will lead to lower airline prices, ticket prices, then that should be backed up with some economic analysis of what those lower prices would mean.

What we see are statements, Mr. Chairman, but not backed up with economic analysis that should be part of their submission under the Regulatory Flexibility Act.

Chairman SCHROCK. Mr. Sullivan suggested you all might want to have a crack at that. Any of you want to comment on that? Paul?

Mr. RUDEN. Mr. Chairman, I mentioned in my testimony that the amounts of money at stake in the productivity/ signing bonus/incentives area, of which there are many different approaches. The marketplace is very vibrant and dynamic in this respect. A lot of negotiating goes on and so these payments and cost reductions take many forms, but they are not particularly mysterious. We are not talking about secret formulas.

Had DOT reached out to the CRSs and to the airlines, they could quantify to a very substantial degree, if not 100 percent, exactly how much money is involved, which agencies are getting it, and we are not suggesting that they name the names obviously. They would aggregate the data in an appropriate manner to protect the confidentiality of business information.

They have the power to get that information, and it is there. It is there to be had. It is the essence really. Each one of these rules will have identified effects on streams of income or cost burdens that can have numbers put to them. They also, it seems to me, should be asking and looking into the extent to which travel agents, small businesses, already hang on the edge of failure because of all the consequences.

We hear this in the airlines all the time about how much money they are losing and they were hurt by 9–11 and hurt by the economy and hurt by the war and hurt by SARS. They are not alone. The entire industry has been impacted in exactly the same way by those things, and so they alone should not be the people who get taken care of.

All we are asking in this respect is that the government do their homework, and then if they can still justify these rules so be it. We will have a nice argument about that at that point, but it would not be an argument just about philosophy.

Chairman SCHROCK. Any other comments? Mr. Cooper?

Mr. COOPER. Mr. Chairman, I would like to bring it to a different framework, and that is the area where my travel agency and our branch locations operate.

Generally the rules are about economies of scale, and if you look at where my branch locations are west of Dallas to El Paso, north of San Antonio to the top of the panhandle, there are numerous

communities, very few of them over 200,000. My headquarters happens to be in Lubbock, Texas. Amarillo, Texas, is 200,000. You have Midland. I know Odessa, Texas, is about 200,000, but everything else in between that area is generally anywhere from 5,000 to 50,000 in population.

The financial burden that is being shifted in these rules proposed will cause basic business analysis to go forth, and consolidation will continue. I have full service, independent travel agents in these marketplaces, and right now the financial pressure that we are under if these rules are put in place, I am not so sure that I would be able to operate in any community under 100,000 at least. That would be a very troublesome thing.

You are taking, in my opinion, away choice. The people of this area make up anywhere around say 100 plus counties. It is two point some odd million in population, and I think these folks deserve to have human interaction and human choice and unbiased opinions.

If DOT shifts these rules back onto us and forces us to have that financial burden passed back down to the consumer, we are going to have to make changes, and we are going to have to deny some of these folks obviously travel opinion.

Chairman SCHROCK. Sure. Thank you. My time has expired.

Before I turn it over to Mr. Gonzalez, let me welcome Congresswoman Majette from Georgia. We are glad to have you here, Judge. Thanks.

Mr. Gonzalez?

Mr. GONZALEZ. Thank you very much, Mr. Chairman.

There really is just the threshold question that is before us today, even though I understand the testimony of the witnesses other than Mr. Sullivan. That obviously tells us that DOT did not inquire of the small business community the potential impact of the changes, which is a requirement.

I think Mr. Sullivan is putting us on notice that it has been inadequate. There needs to be a supplemental study, again an analysis, an evaluation. It does not appear that we really do have all the evidence before us.

The lawyers would know what I am talking about. My colleague to my left was a former Judge, and I know you had said there is no reason to apologize not being a lawyer. There is no reason to apologize for being a lawyer.

[Laughter.]

Mr. GONZALEZ. That really is a question before the Committee, and we take it very seriously. I do appreciate the way this was presented.

I do not want to take sides over what size travel agency a reg will help or what it does in the industry. I do not want anything to be unfair. I love a level playing field, and then your own talent and industry will decide whether you succeed in this wonderful capital system. That is what this is all about, that before the government promulgates this regulation that we understand the impact.

I think there was one statement made, and I think it was the ability to offer a full range of travel options. Are we going to have regulations that will actually impact that? That serves the con-

sumer. All the testimony from the individuals that have their own outfits, their own enterprise, seems to point out that none of this was taken into consideration. I am convinced that it was not, and I will base that not just on the testimony of what I refer to as the lay witnesses, but from counsel.

I do not really have a whole lot to add to this whole discussion other than I would join counsel, and I appreciate, Mr. Sullivan, the fine job that you continue doing. We were trying to figure out how we would give you more independence and such, but you are doing a great job, and I appreciate your analysis and would be joining you in your request and look forward to working with you.

Again to the witnesses, thank you very, very much.

Chairman SCHROCK. Thank you.

Judge Majette?

Ms. MAJETTE. Good morning, ladies and gentlemen. I apologize. I was not here for the oral testimony. I do have a question for Mr. Sullivan, though.

Other than the letter that you sent to Secretary Mineta that would urge the Agency to prepare the supplemental IRFA, what additional steps do you foresee you could take to ensure that the DOT complies with the Reg Flex Act in the context of this rulemaking process and otherwise?

Mr. SULLIVAN. Judge Majette and Judge Gonzalez and Mr. Chairman, this certainly is a distinguished panel with two Judges and a distinguished Chair.

You asked a very good question about what else can we do. I think I would like to start even before the March letter. My office does not send over comment letters prior to contacting the agencies in the first place. I think it is just professional courtesy that you give a heads to agencies to say look, we do not think you are proceeding the right way. That happens within the federal decision making before the public has an opportunity to see proposals.

We actually take great pride in that because the changes that occur that help small businesses usually can be accomplished before the ink is dry on a regulatory proposal. We are very proud of the fact that we do accomplish tremendous victories that no one really knows about, but I guess Small Business most of the time can sleep well at night knowing that that work is going on behind the scenes before a rulemaking is proposed.

Once the rule is proposed then we do comment, and you have seen our comments in March. We then follow up with the regulatory agencies to make sure, one, that they received the comment letter and, two, whether or not there is an opportunity to help the Department get it right.

In this particular instance, I think there is a tremendous amount of activity by the small businesses and the folks that the small businesses have to represent them in Washington, D.C. to actually fill in the gaps. I mean, we can talk about the need for regulatory analysis, but we do not necessarily have all the numbers and all the impact.

The folks here that are represented at this table, they know how this rule is going to impact them, and they rose to the occasion to tell the Department of Transportation exactly how this will impact

them and pleaded with them to take those comments into account before finalizing the rule.

Now, in addition to echoing those types of things and certainly working with this Subcommittee to impress upon the record and impress upon Department of Transportation, who undoubtedly is aware of this hearing, we then will let that decisionmaking take its course with the optimistic hope that these comments be incorporated into their final approach, whatever that final approach may be.

Ms. MAJETTE. Thank you. Maybe you just need to get another press secretary so you can get the word out about the wonderful work that you do that perhaps goes unappreciated.

With respect to the effect of these regulations on the day-to-day operations of travel agents, and I guess you all can in the time remaining jump in and address that for me, but it seems to me that it becomes increasingly burdensome to impose fees or to charge fees on individual clients who want to use the services that you offer.

Just speaking from a personal perspective, sometimes I go on the internet and will make travel arrangements, but I like it when there is somebody that I can talk to who will sort of do that work for me and work through the situation and give me lots of options that perhaps I was not aware of and really provide that important customer service.

I think it is important that we preserve that. What do you really think that we can do about this situation with increasing numbers, increasing amounts of fees? Is there a way that we can get rid of that?

Mr. RUDEN. Judge, I can offer a couple thoughts about that. I think there is a widespread belief now in the industry that fees have reached pretty much the limit of consumer tolerance.

The airlines' objective when they began, the very first announcement of the commission caps in 1995 in February put out by Delta Airlines said this will not be a problem capping your commissions because you can get the money back from the consumers. They put that in the very first announcement of the cuts that led to a series of five or six major reductions to the point where we have now reached zero.

Their objective was clear—to shift off of their financial books the cost of that particular part of distribution expense and make consumers pay it directly. Now we see this repeating itself, and it is reflected in this rulemaking, the notion to pursue a goal that, as I said in my testimony earlier, was a pipedream of having travel agencies have two and three different CRS systems. The average agency is, you know, four or five people.

Ms. MAJETTE. Right.

Mr. RUDEN. They are never going to do that no matter what the rules say. They are chasing a solution that simply has no commercial reality behind it on the theory that the public can have these additional costs like CRS booking fees shifted down to them as well.

This is why this analysis is really so important. It comes at the end of every rulemaking. It is interesting. You read 65 pages of Federal Register fine print about all the rules in the marketplace

and the market power and the abuses and the history, and then only at the very end do you come to the regulatory flexibility part.

I think it is a fair conclusion here that they simply did not take it seriously. Their constituency is airlines, not travel agencies, not small businesses. That is what they are focused on. I think this Committee could do an enormous public service by communicating to the Department its view that they simply have not done the homework.

It is not enough to do it at the very end. You have to do it in time for the agency, community and anyone else who is interested to comment upon the analysis as to whether it was adequate, whether the numbers they came up with are correct, and then and only then can they proceed to adopt regulations that impose these kinds of burdens.

Ms. MAJETTE. Thank you. I see that my time has expired. If any of you want to address it more fully, I would certainly appreciate receiving any written comments that you would like to submit, with the Chair's permission.

Chairman SCHROCK. We will have another round here in just a few minutes. Thank you, Judge.

Let me ask a question of Mr. Rojahn, Ms. Pratt and Mr. Schwarte. What exactly would these rules do to your business if they are implemented? Could you all survive, and could your fellow agents survive?

Mr. ROJAHN. Mr. Chairman, I will start. We could survive, but it would be extremely difficult. I think there is a misperception that some of the productivity incentives that a small agency receives is a windfall profit. That is completely wrong.

What a lot of these incentive fees, and productivity is the key word. We do not get paid unless we produce. It is used for capital investment. A lot of small agencies use that revenue, one, to get through poor months like December and/or invest in new PCs to be more efficient in order to serve our customers better.

I would like to just follow up on Mr. Ruden's statement that we have reached our threshold as far as fees. Our market would not bear us increasing fees any more. In fact, our revenue stream for small companies and leisure travelers, we are already above what the market would bear, so we would have to actually charge a fee lower than our cost in order to attract some of that business back.

We have already reached that threshold, and we could not bear the cost of additional fees being passed on to our business. Thank you.

Chairman SCHROCK. Mr. Pratt?

Ms. PRATT. Yes. Well, there is no way. We do specialize in government, mostly government, GSA and DOD. The government does not even pay as high a fee as the general public pays. There is no way that my company would be able to remain in business.

I do not think the government is willing to pay us any more money. They would have to if they still want our services and our management reports and all the things the government requires. Without a doubt, Rodgers Travel depends quite a bit on the monies that we receive from our CRS system, and we would not be able to survive at all.

We have been in business since 1949, and we managed through all these changes to do okay. This would probably be the nail in the coffin that would put us out.

Chairman SCHROCK. Thank you.

Mr. SCHWARTE. Mr. Chairman, thank you for the question. We, of course, are a larger company, and we have other lines of business as well. We would survive, but let me not understate the fact that the rules would hurt us pretty badly.

In fact, I think they are designed to do just that and transfer wealth from the independent computer reservation systems to the airlines that once owned them, sold them off, collected the money and then went on their merry way.

What I would be really worried about, however, is that what the rules seem to be designed to do is to lessen the role of the independent and neutral distributors of travel information in the field of distributing air travel and driving people to the biased airline websites and other airline controlled ventures.

As independent distributors of air travel, folks like Sabre are really aligned with the interests of consumers. We make our money selling airline tickets. We do not care on what airline. We actually like low fares because we sell more tickets. We design features and functions that help you find ways to find low fares quicker.

If the NPRM succeeds in making this business unattractive to independent channels, then we will end up pouring less money into developing features that are good for travel agents and good for consumers. I think at the end of the day the real loser, in addition to the small business, is the traveling public because they will have to depend on air carriers to buy their air tickets. Let me assure you, the air carriers are not looking to sell you cheap tickets.

Thank you.

Chairman SCHROCK. Anybody else want to comment on that?

Paul, let me ask you. Would it have been difficult for the Department of Transportation to collect information on your industry to approve their analysis?

Mr. RUDEN. It would not be difficult at all, Mr. Chairman. There are only four CRS companies operating in the United States, and DOT knows who they are and how to find them and how to communicate with them. They have information that would bear upon this subject.

The airlines own the Airline Reporting Corporation, which produces data that might help in that analysis, and the Department knows those folks pretty well, too, so I think really this is not mysterious stuff.

It is basic homework that you have to do under the law and under common sense before you put at risk any further a business enterprise, a collection of enterprises that is so important to so many tens and hundreds of millions of people. A simple letter would have sufficed to each of those entities asking for the relevant information. Then they would have to do, you know, a little work and analysis, but that is what they are there for.

Chairman SCHROCK. I am assuming you all agree.

Judge? No questions? That is fine. Everybody has a busy day today. There are a lot of markups, and there is a lot of stuff going on on the Floor.

Let me ask one final question. Tom, DOT has proposed to improve their analysis and the final rule. Is this typical, or is this something they should do now?

Mr. SULLIVAN. I am not sure if the Chairman is asking of the typical nature of agencies' responses to these types of requests where we have asked to do a supplemental or not or if the Chair is asking if this is typical of Department of Transportation.

Chairman SCHROCK. I guess all agencies really, yes.

Mr. SULLIVAN. Certain agencies do supplemental analyses. Actually, the one analysis that we are using as an example in our training guide from the FTC is in fact a supplemental request for information.

The answer to the Chairman's question is some agencies do actually put out additional requests for information. Sometimes the agencies do additional analyses. Other agencies produce, once they realize that they have not done the appropriate amount of analyses, actually do a supplemental reg flex analysis in the final rule.

We would prefer that the agencies produce a separate regulatory analysis and then receive comment on that rather than producing it in the final rule. What we have found is that many times if that supplemental analysis is done at the final action then it precludes significant change to help small business in conjunction with a final decision.

Chairman SCHROCK. Let me ask a second final question, and I would like you all to kind of answer this.

If all these regulations went away, what would protect the travel agents from being treated unfairly by you?

Mr. SCHWARTE. What would protect them?

Chairman SCHROCK. What would protect the travel agents from being treated unfairly by you all?

Mr. SCHWARTE. Thank you. The hearing is not what it used to be.

Chairman SCHROCK. Mine is not either.

Mr. SCHWARTE. There are two things, Mr. Chairman, and thank you for the question.

First of all, our business is———.

Chairman SCHROCK. David, if you could pull that closer? Thank you. My hearing is not good either, and you will have to turn it on.

Mr. SCHWARTE. Is it on now?

Chairman SCHROCK. I think it is, yes.

Mr. SCHWARTE. Thank you. Thank you for the question, Mr. Chairman.

There are two things. First of all, our business interests are not at odds with the travel agency interests at all. I think they are almost totally aligned. We only succeed if our travel agency customers succeed. Our future is dependent on our travel agencies staying in business and, better yet, being healthy.

I think that the history of the last six years in this industry has shown that CRSs have gotten very user friendly for travel agents. We offer a variety of lengths of contracts. We offer deals that have productivity bonuses in them or out, depending upon what the agency wants. I think that was pretty well documented in the Department of Transportation record.

The first thing is our natural alignment is with the travel agencies' interest. The second thing, of course, is in a deregulated environment you have the possibility for vigorous antitrust enforcement and unfair competition enforcement by the FTC.

This business has been treated, unlike most businesses in the United States, since 1984 at first for good reason. When the airlines owned the systems, they had both the means and the incentives to use those systems to distort competition in the airline field, they had market power over the travel agencies, and they had the incentive to use that as well.

In today's environment, with independent systems that are free of airline control, we should be treated, I think, just like every other business in America. The Department of Justice and FTC have ample laws that they can use if there are abuses that should, contrary to the fact that our interests are aligned with the travel agents.

If a CRS should engage in misconduct, then the FTC or the Department of Justice could step in immediately to stop that sort of behavior, Mr. Chairman.

Chairman SCHROCK. Ms. Pratt? Could you pull the microphone close to you? Thanks.

Ms. PRATT. Would you repeat the question really?

Chairman SCHROCK. Yes. If the regulations went away, what would prevent people like Sabre Corporation, for instance, from treating you all unfairly?

Ms. PRATT. That is a very interesting question, and I really have to put my mind to that actually. Generally, I agree with what Sabre is saying. There would be no reason for them, if we are producing the business for them. If we are producing the segments, the flights, then Sabre has to be on our side because we are giving them their business.

At this point, I do not see anything. I think that the statement that he made is correct. That is something I would have to think about more fully, but on first thought I really believe that all of the CRS systems, if they continue the way they have been doing now, and there is no reason why they should not other than this DOT business. I is the best thing for travel agents.

Chairman SCHROCK. What I hear you saying is if you win, they win. If they win, you win.

Ms. PRATT. Right.

Chairman SCHROCK. Any other comments you all might want to make?

Mr. RUDEN. Yes, I am afraid there is. I said when I gave my formal testimony earlier that the issue of deregulation had been put into this rulemaking and that we had a position on that, which was that deregulation was superior as an outcome to what they are proposing to do, but there are conditions to that superiority.

One is the notion that the airlines are in fact no longer able to influence the CRSs either through ownership or through market agreements. There are marketing agreements in place between the CRSs and many of the major network carriers that have never been vetted on any public record. No one knows what they say. No one has ever had a chance to comment on their implications, so we think that is an essential step the DOT is also failing to do.

To your point, the third thought we have about this matter of deregulation is it is not just the CRSs who get deregulated here. As has been said, the original rules were created because of airline conduct. The airlines owned the CRSs and controlled their behavior. They invented the very things that they now complain bitterly to the government should be reversed in their favor. It was their conduct that was the concern originally, and for us it is still a concern.

Now, the Department of Transportation has some very capable people, and I do not want to be misunderstood to suggest otherwise, but they have not historically had the resources and perhaps, therefore, not the zeal to engage in a lot of enforcement activity. Most of their time seems to be spent addressing advertising infractions.

Small business people cannot sit around for three years waiting for the Department to decide whether a complaint should be moved forward and then another year or two while it moves forward. By then the complaining party is dead.

One of the crucial things that has to happen here if we are going to move down deregulation road is that the government, DOT and any other agencies that are going to be involved must have a plan for getting those resources and a commitment to zealously use them in a very efficient and aggressive way. Ordinary antitrust enforcement is not going to solve these kinds of problems that may arise as a result of what the airlines may do.

Chairman SCHROCK. I gather you agree with that?

Mr. SCHWARTE. Yes, I do. The Department of Transportation has the enforcement power, if it chooses to use it, to police misconduct by airlines.

I have noted as an observer in this industry that mainly of the complaints that ASTA has filed have taken an inordinately long time to have processed, so I think Mr. Ruden's worry about having misbehavior not corrected quickly at the Department of Transportation with respect to the airlines is not unjustified.

Chairman SCHROCK. Paul, if all these rules went away tomorrow what impact would it have on what is clearly a beleaguered airline industry?

Mr. RUDEN. Well, the airlines themselves are quite divided on that issue. It is very interesting. Some of them are advocating immediate and total deregulation. Others are saying oh, no. You cannot do that because the CRSs have residual market power that they will use against us.

American Airlines, for example, is a primary advocate of that position, and they argue that booking fees—this was the old Justice Department proposal, which Justice has now backed away from. American wants travel agents and, therefore, consumers directly to pay the booking fees for booking their services, to me a remarkable economic idea, but they are very serious about it and advocating it in this proceeding.

I think the airlines' problems are so fundamental this rulemaking is not the make and break for their economic future. The network carriers have got difficulties that go so far beyond the question of distribution. The distribution system—even in DOT's

rulemaking they notice and say repeatedly—has been enormously efficient and effective in selling air carrier network services.

As long as they do not foul it all up, they are still going to have an enormously creative, small business focused, widely dispersed network of distributors to sell their services to the American public. Deregulation in the proper circumstances I described is not going to harm, in our view, the airlines. They have much bigger problems to deal with.

Chairman SCHROCK. Let me thank you all for being here today. This is a topic that gets increasingly more interesting for me every day that goes by and everything I hear.

We are led to believe that the rule will come out before the end of the year, and we are going to be watching that very clearly and am very anxious to see what the rule says and then maybe give you all a ring again to see what the impact will be.

I appreciate your testimony. I appreciate you coming here, some of you great distances. We hope to see you again.

This Committee is adjourned.

[Whereupon, at 11:52 a.m. the Subcommittee was adjourned.]

Statement of Ed Schrock
Chairman
Subcommittee on Regulatory Reform and Oversight
Committee on Small Business
United States House of Representatives
Washington, DC
June 26, 2003

Good afternoon, ladies and gentlemen. Our hearing today addresses the Department of Transportation's Notice of Proposed Rulemaking on Computer Reservation Systems. Computer Reservation Systems or CRSs are the means by which our nation's travel agents have automated. They provide the real time access to airline schedules and seat availability that travel agents and most internet websites rely on to allow customers to book airline tickets. The Department of Transportation regulates the relationship between the airlines and the CRSs because at one time most airlines owned CRSs. The circumstances of the industry have changed and these rules are supposed to sunset every 5 years. The last time they were set to sunset was 1997 and the travel industry has been waiting since then for an updated set of rules.

Now as Chairman of the Subcommittee on Regulatory Reform of the House Committee on Small Business, I pay very close attention to regulations that will have an impact on small businesses. My mandate, in fact, is to investigate any and all regulations that will impact small businesses. The Department of Transportation, as required by law,

made a determination that this rule would significantly impact small businesses. The problem is that they pretty much stopped right there. They didn't quantify how much it might cost small businesses or how many it would effect, which they are required to do. In fact, the DOT asserts that some of their proposals would "benefit small businesses" and a few of the proposals might increase costs to travel agencies but would affect only the larger travel agencies. The Department provided no information or analysis to back up their assumptions about the impacts on small business. Based on the comments from travel agents and other affected parties, DOT must never have consulted with a single affected business. Travel agents have consistently asserted the exact opposite of the Department's analysis. The Small Business Administration's independent Office of Advocacy also asserted that DOT's initial analysis was incomplete and will be joining us to testify on the matter today.

The travel agents and the CRSs are not the only parties interested in this rule. Even the Department of Justice has weighed in with their concerns and suggested that regulations concerning travel agents be dropped. The National Federation of Independent Business stated in their comments, "We are concerned that DOT has not conducted a thorough impact analysis on this rule, and we strongly encourage the agency to consider performing one." The National Business Travel Association was disappointed with the initial notice of the rulemaking and said, "deregulation is supposed to give consumers – not competing interests – more choice, lower costs and enhanced reliability. NBTA believes it would be a disservice to the traveling public if the DOT did not direct the implied benefits of CRS deregulation towards the consumer rather than airlines and other travel suppliers."

I want to state clearly that this hearing was not scheduled to pick winners between competing interests and businesses in this industry. My goal in holding this hearing was to hold an agency accountable to the standard that Congress and the President has set for taking small businesses into proper account during rulemakings. It is also not the job of the Department of Transportation to pick winners in this regulation. I hope they realize that as they develop the final rule. We have an excellent group of witnesses today who are going to help shed some light on the Department's analysis of the rule's impact on their businesses. I look forward to their testimony. Now we'll move to other Member's opening statements.

House Committee on Small Business

"CRS Regulations and Small Business in the Travel Industry"

June 26, 2003

Prepared Remarks of The Honorable Tom Sullivan, Chief Counsel, Office of Advocacy, US Small Business Administration

Chairman Schrock, Representative Gonzalez and Members of the Subcommittee:

Good morning and thank you for the opportunity to appear before you today to address whether the Department of Transportation (DOT) is following the Regulatory Flexibility Act (RFA) in its proposal to revise the rules regarding computer reservation systems (CRS).

My name is Thomas Sullivan and I am Chief Counsel for the Office of Advocacy at the U.S. Small Business Administration. Pursuant to our statutory authority, Advocacy actively solicits input from small entities to assist our office in setting policy priorities and identifying rules with significant impacts on small entities. Advocacy's involvement in the CRS rulemaking is a result of those outreach activities. Please note that my office's views expressed here independently represent the views of small business and do not necessarily reflect the views of the Administration or the U.S. Small Business Administration.

As Chief Counsel for Advocacy, I am charged with monitoring federal agencies' compliance with the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA). Before discussing DOT's treatment of the RFA in its proposal to revamp the rules regarding CRS, I would like to give you a brief overview of the Regulatory Flexibility Act and our office's responsibility. Congress enacted the RFA in 1980 after determining that uniform federal regulations produced a disproportionate adverse economic hardship on small entities. In an attempt to minimize the burden of regulations on small entities, the RFA mandated administrative agencies to consider the potential economic impact of federal regulations on small entities and to examine regulatory alternatives that achieve the agencies' public policy goals while minimizing small business impacts.

Agency compliance with the RFA, however, was not judicially reviewable. Therefore, agencies could not be held accountable for their noncompliance with the statute. Many agencies ignored the RFA and did not conduct full regulatory flexibility analyses in conjunction with their rulemakings. In response to the widespread agency indifference, Congress amended the RFA in 1996 by enacting the Small Business Regulatory Enforcement Fairness Act. The 1996 Amendments

reshaped the requirements of the RFA and provided for judicial review of agencies' final decisions under the RFA. To further agency compliance with the RFA, President Bush signed Executive Order (E.O.) 13272 on August 13, 2002. E.O. 13272 requires agencies to implement policies protecting small entities when writing new rules and regulations. In addition, E.O. 13272 instructs agencies and Advocacy to work closely together as early as possible in the regulation writing process to address disproportionate impacts on small entities and reduce their regulatory burden. Section 3(c) of the E.O. requires agencies to respond to Advocacy's written comments in an explanation or discussion of the final rule that is published in the Federal Register.

Executive Order 13272 also requires the Office of Advocacy to train agencies so that they can better comply with the RFA. To accomplish that task, we have hired an outside contractor to assist us in developing a training program. A pilot program is currently being developed that will involve the Centers for Medicare and Medicaid Services (CMS), the U.S. Environmental Protection Agency (EPA), and the National Oceanic and Atmospheric Administration (NOAA). These three agencies will provide feedback to assist in the development of the government-wide training. The pilot training is currently scheduled for July 23 and 24. Training will be provided for all employees who take part in the agency's regulatory process, including economists, attorneys, regulatory analysts, and other members of the policy implementation staff. Since our budget is limited, we cannot train all regulators at all of the agencies. The agencies will receive Advocacy's new RFA compliance guide, training materials, and a CD-Rom that can be used by the agencies themselves to train additional staff or new employees.

Advocacy has also engaged DOT in our federal agency outreach efforts. The Assistant General Counsel for DOT arranged for Advocacy to speak to a group of agency attorneys and policy staff about Executive Order 13272 last September. Another briefing occurred yesterday at a brown bag lunch. DOT's RFA compliance training will occur after the pilot project is completed and Advocacy has made the necessary adjustments to the training program.

The RFA requires agencies to prepare and publish an initial regulatory flexibility analysis (IRFA) when proposing a regulation and a final regulatory flexibility analysis (FRFA) when issuing a final rule, for each rule that will have a significant economic impact on a substantial number of small entities. The analysis is prepared in order to ensure that the agency has considered the economic impact of the regulation on small entities and all significant regulatory alternatives that would minimize the rule's economic impact on affected small entities. The RFA exempts an agency from these requirements if the agency "certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities." An agency must provide a factual basis for making such a certification.

On November 15, 2002, DOT published a proposed rule on the "Computer Reservations System (CRS) Regulations; Statements of General Policy" in the Federal Register. The proposal examines whether the existing CRS rules are necessary and, if so, whether they should be modified. DOT's stated intent is to eliminate some of the existing rules to promote competition in the airline industry, to lower travel costs, and to provide travel agencies with protection from costly contracts.

Advocacy commends DOT for proposing changes that may increase competition and protect travel agencies from costly contracts. Increasing competition may assist small businesses who rely on air travel for business. However, as part of our outreach efforts, Advocacy learned that small travel agencies and small businesses were concerned about the potential economic impact of the proposal. Advocacy therefore reviewed the proposal to ascertain whether DOT had fully analyzed its potential impacts as required by the RFA. Upon reviewing the proposal, Advocacy became concerned about the potential harm to the travel industry and small businesses and lack of analysis to justify DOT's findings. Advocacy submitted written comments on the proposed rule to DOT, requesting that DOT perform a supplemental IRFA that more fully considers the impact of the proposal on small entities as required by the RFA.

The analysis provided by DOT in their proposal lacked some of the elements that we believe should be part of an IRFA. Although DOT admits that the economic impact of the proposal will be significant, the agency provides only general statements about increased costs and potential savings rather than specific information to provide the public with insight into the potential magnitude of those costs. For example, DOT states that the proposal to restrict or prohibit productivity pricing may increase CRS costs for some travel agencies, but the affected travel agencies would be larger agencies. DOT's IRFA should provide insight into how this assumption was made and what those potential costs could be. Advocacy's data indicate that approximately 95 percent of all travel agencies would be considered small under SBA size standards. It would be beneficial for the public to know how DOT determined that only 5 percent of the industry, the large agencies, would be affected by the new restrictions.

Moreover, Section 603(b) (3) of the RFA requires an agency to provide a description of the estimated number and types of small entities to which the proposed rule will apply. Although DOT states that the proposal will have an impact small U.S. and foreign airlines; firms providing services and databases that compete with those offered by the systems; and small travel agencies, there appears to be no information regarding the estimated number of small entities that may be affected by this rule.

Based on information available through the SBA's Office of Size

Standards, a small travel agency is defined as a business with less than $6 million in receipts. A small airline reservation service is also defined as a business with less that $6 million in receipts. An airline is small if it has less than 1,500 employees. The SBA's Office of Size Standards is responsible for recommending size standards to the SBA Administrator. To support its work, that office obtains a special report from the U.S. Bureau of the Census that provides industry data on the number of businesses by various size categories. From that data, the Office of Size Standards can estimate the number of businesses that qualify as small using SBA's size standards and provide data on the economic breakdown of the particular industry.

The Office of Advocacy encourages DOT to contact SBA's Office of Size Standards for this information and integrate the information into a more thorough analysis. This information should enable DOT to provide an estimate of the number of businesses that may be impacted by the proposal.

It is my opinion that a supplemental IRFA by DOT will provide the public with greater insight into this rulemaking process as well as provide the necessary information to achieve compliance with the RFA. I urge DOT to carefully consider the economic impact of this rule on small business and to examine any alternatives that may minimize that impact. I further urge DOT to fully consider the comments submitted by small businesses to the rulemaking record and the testimony provided by small businesses at the hearing that DOT held on this issue. The Office of Advocacy is available to work with DOT to ensure compliance with the RFA while accomplishing DOT's desire to improve the CRS system.

Thank you for the opportunity to appear today. I am happy to answer any questions you may have about my testimony.

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House Committee on Small Business

"CRS Regulations and Small Business in the Travel Industry"

June 26, 2003

Prepared Remarks of Mr. Richard A. Cooper, National Travel Systems, Lubbock, TX

Chairman Schrock, Representative Gonzales, my name is Richard Cooper, President of National Travel Systems -- a small business based in Lubbock, Texas that operates several travel agency branch locations primarily in West Texas. Thank you for the opportunity to appear today to share my views on the impact of the DOT's CRS Rules proposal on small businesses and on consumers.

The rules DOT is proposing will have an immediate, negative impact on travel agents and on the communities we serve. I hope these Congressional hearings will shine a light on this misguided policy -- and help turn it around. Due to unprecedented challenges in the travel and tourism industry over the last decade, travel agencies have been forced to change their business models continually to survive and serve the consumer interest. I believe we have done a remarkable job of adapting, despite many hardships in the economy, in the airline industry and in an increasingly uncertain world. Despite our progress, and for no sound reason, DOT is proposing to deliver a major regulatory blow to us and to our future.

What would DOT's proposed CRS rules do to small travel agencies like NTS? First, they would dictate the length of my contract with my CRS vendor without regard to changing market conditions. If I decide that a five-year or longer contract makes financial sense for my agency, I would be out of luck, because the DOT rules would forbid it. Second, the "productivity pricing incentives" for our travel bookings through the CRS would be outlawed. Since the airlines reduced our commissions to zero, these incentives, which the CRS pays to us for reaching specified booking volume targets, are an extremely important source of revenue for small agencies. While DOT doesn't seem to have any problem with the legality of airlines' frequent flier programs, which reward travelers for loyalty to particular airlines, it sees fit to outlaw productivity programs which reward agencies like mine for loyalty to particular distributors. A more imbalanced approach to regulation would be hard to imagine.

My understanding is that the DOT is required to assess the impact of its proposed regulations on small businesses, and consider whether there are less costly alternatives. I would like to know which travel agencies DOT talked to before publishing the NPRM. I suspect the answer is none. I do know that every travel agent I've talked to, and I've talked to plenty, is extremely unhappy about these rules.

Without productivity incentives, our agency would have to shift the financial burden of each segment booked onto the back of the consumer. Today, National Travel Systems charges our clients a $35.00 service fee for booking an airline reservation. Without productivity incentives, National Travel Systems would have to raise the service fee to as much as $50.00 -- just to break even. Many customers would find a service fee increase of this magnitude excessive. This would force consumers away from travel agents and into the arms of airline-owned distribution systems – the result DOT apparently (and incredibly) wants to engineer.

Why should anyone care? I'll tell you why. The viability of unbiased customer advice and consumer choice is in jeopardy! Independent travel agents play an extremely important role in travel distribution. We add value to many travel purchasing decisions and often make the difference between a successful trip and a disaster. For example, during the 9-11 tragedy, a corporate customer was desperately trying to locate its employees that were scheduled out that week. At the request of the CEO, we promptly located all of his staff except the individuals that traveled using an on-line service. Needless to say, he changed the travel policy shortly thereafter. At NTS, we strive to offer travel solutions that work for our customers. And in this rulemaking, DOT has put consumer-oriented small businesses at risk.

Let's stand back and analyze the situation from "middle America's perspective"-- in the cities, towns, and communities under 200,000 in population where most Americans live. Although the DOT doesn't seem to get it, everyone in the United States doesn't live in a large metropolitan city and spend their discretionary income and precious time surfing the Internet! In the real world, there are many travel consumers who value human interaction, particularly the truth, verification and accountability provided by travel industry professionals. Some people actually believe that a travel purchase is more than a one-time transaction -- it is actually about "trust" and "forming relationships." People want to know: "Is this price fair?" "What are my other options?" A fair price today may be considered gouging tomorrow! Although the Internet is an important source of information, our travel agents provide insight and guidance into dissemination of information and content and provide the customer unbiased options, alternative routing suggestions, informed opinions and basic timely advice.

There is NO question that the major airlines have a very tough road ahead to return to health. However, any actions taken by DOT to help the airlines should not come at the expense of other travel industry participants -- especially small travel agencies like mine -- and certainly not at the expense of consumer choice and price. The proposed CRS rules shift a disproportionate financial burden to travel agents and are therefore anti-competitive. Travel agencies already are shouldering considerable burdens for the airlines. We are collecting the base fare at

zero commission and assuming the credit risk inherent in running airline tickets. In addition, we collect the following:

1. US Tax at 7.5%;

2. Passenger Facility Charges (range $1.00 to $4.50 fee assessed) by an airport for airport improvements;

3. US Flight Segment Tax ($3.00 per person-some exceptions apply);

4. On International Flights we may collect US Arrival Tax, US Customs Fee, Immigration Fee, an Animal and Plant Inspection Service Fee.

Now because of DOT's proposed rule changes, which would among other things cut off critical productivity payments from CRS's to travel agents, travel agencies in rural America and elsewhere would have to try to collect additional fees from consumers, thereby penalizing Americans living in rural America that desire to use the services of a travel agent. These fee increases, along with other fees and taxes, begin to dwarf the actual base fare. This part of the NPRM would immediately impact National Travel Systems -- creating an unlevel playing field and a "wealth transfer" from traditional non-airline owned entities to the airline owned channels of distribution.

Airlines who argue that they should have no responsibility for paying for any part of the distribution services of travel agents are showing a fundamental misunderstanding of their customers – many of whom are simply not going to shift to non-human channels. I've heard airline CEOs rail against airport delays caused by security screening and warn that passengers are going to respond to the hassles of air travel by not flying. Well, I respectfully suggest that the same is true here – if the airlines (assisted by DOT regulations) insist on forcing consumers away from human agents they will find that some of their most valuable customers, including full fare paying business customers who are already voting with their feet in droves, are going to forego the hassles of air travel and find other alternatives.

In addition, travel agencies like National Travel Systems support and facilitate the success of smaller air carriers that offer fewer daily departures. These carriers spur additional competition with the dominant carriers and keep prices low. The proposed CRS rules, which favor the major airlines, and disadvantage other participants in the industry, will harm smaller carriers throughout the country, and particularly those who seek to serve rural markets like Amarillo, Lubbock, Midland and Odessa. To the extent that we are forced to automate with major airline owned systems, agencies like NTS will undoubtedly be discouraged from helping their competitors. And to the extent that our revenue sources are diminished and not replaced, we will not be available to help small airlines succeed. The financial impact of this loss of revenue would cause additional agency closings in

markets under 200,000 in population. The federal government has no business actively aiding one preferred group of airline owned or controlled distribution channels at the expense of the other traditional agency owned channels. That's picking winners and losers and that should be the role of the marketplace, not DOT.

Let's look at it another way. The customer can buy an airline ticket through:

1. A telephone call to the airline;

2. Through an Internet site owned and controlled by that individual airline;

3. Through an Internet site owned by multiple airlines called Orbitz;

4. A walk-up purchase at the airline counter at the airport;

5. Telephone call to a travel agent;

6. A walk-in purchase at a local travel agency; or

7. Through an Internet site owned by non-airline entities.

Today, the airlines control 4 of the 7 purchase options. The resulting financial impact of the CRS rules changes would significantly impact the viability of two of the three remaining non-airline owned channels of distribution. It is important to remember that thousands of communities rely even more on the travel agency because a walk-up purchase at an airport is geographically unrealistic. It should not be DOT's role to interfere with market forces in this way – especially when the effect will be to injure small businesses.

In addition, the NPRM would add an additional barrier to growth in the tourism industry. CRSs also supply connectivity to and the robust content of other industry suppliers such as hotels, car rental companies, tour operators, cruise lines, and many others. All will suffer and lose business as the travel agency channel unnecessarily shrinks because of this NPRM.

In West Texas alone, geographically one-third of our State, we would witness additional agency closings as a result of these misguided rules, ultimately denying critical choice to an overall population exceeding 1.9 million consumers in dozens of counties. Travel agents are just as important in our communities as any other industry participants. We are taxpayers and employers, and for many consumers travel agents are an absolutely essential link not only to the air transportation system but to other travel industry suppliers.

I can navigate the Internet fairly well. The Internet is an important source of information for some, however, as a father of 3 children and husband, the absolute last thing I want to do when I get home is subject myself to additional navigational confusion, viruses, spamming and unsolicited e-mails and annoying Orbitz pop-ups while surfing for an airline fare without an opinion about price fairness. Second, many consumers, particularly rural consumers, do not have or cannot afford Internet access, let alone high speed access. Third, as we know, a cash purchase option is impossible through the Internet. Millions of Americans do not own credit cards. Fourth, millions of Americans, like me, refuse to put our credit cards over the Internet despite the assurances of security and fraud protection. Once your identity is stolen it is impossible to correct without significant pain and suffering – many folks (including me) just don't need anything that badly over the Internet. Furthermore, many "seniors" and "baby-boomers" were raised in an era of doing business "face to face" and with folks you know in your community. That's a preference worth preserving. Again, the Internet works for some people, but it doesn't work for all. DOT should be trying to preserve consumer choice instead of undermining it through this NPRM.

Deregulation, open markets and the consumer's "freedom of choice" are far better alternatives to this defective rulemaking, which utterly fails to take into account the impact on small business and consumers, and utterly fails to consider less intrusive alternatives. I hope the process of undoing this neglect has now begun.

Thank you again for the opportunity to share my views.

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House Committee on Small Business

"CRS Regulations and Small Business in the Travel Industry"

June 26, 2003

Prepared Remarks of Mr. Paul M. Ruden, Esq., CTC, Senior Vice President, Legal and Industry Affairs, American Society of Travel Agents

The American Society of Travel Agents ("ASTA") offers this testimony on the Subcommittee's deliberations on the treatment of travel agency small businesses by the Department of Transportation in its pending rulemaking proceedings on computer reservation systems (CRS), DOT Docket OST-97-2881.

To avoid unnecessary duplication, we have attached to this testimony the most pertinent sections of ASTA's first-round comments in the CRS rulemaking. To facilitate review, we have added underscoring to certain passages that are particularly relevant to the Subcommittee's evaluation.

This DOT proposals in this rulemaking are aimed squarely at the heart of a revenue stream on which many small business travel agencies rely for their profitability. If that revenue stream is denied to them – and there is no question that the rules would do that – many of these businesses will fail. Those that don't fail will be a minority who are able to pass the shortfall on to consumers in the form of higher agency service fees. This minority of agencies will be those that, for whatever reason, have not previously raised their service fees to the limit that consumers will tolerate.

These proposals are largely supported by the airlines seeking lower CRS booking fees. But denial of this revenue to travel agencies will not accomplish that goal. It will simply further weaken a struggling industry and promote the network airlines' quest to move consumers, one way or the other, to direct dealings with them.

The history is clear. When computerization of reservations became a possibility, with huge efficiency gains for all parties, the major network airlines made the decision that they would supply that service to the travel agencies that they used as a shared distribution system. They initiated the system of booking fees, under which a travel agency made a booking but the booked airline paid a fee for each booked segment to the CRS provider. The CRS-owning airlines took advantage of their position by overcharging competitors and using the systems they owned and controlled to damage competitors in numerous other ways. The consequences for the competitive process were so severe that the Civil Aeronautics Board, on the eve of going out of business, decided

that it had to regulate the airlines' use of CRS's. The Department of Transportation confirmed and extended the rules in 1992.

Two of the largest CRS-owning airlines then decided, in the late 1990's, for reasons not yet clear, to divest their ownership interests. More recently, Worldspan announced that its owners would also sell their interests to non-airline parties.

Now the loudest complainers about the booking fee system are the airlines that created it. They have asked the Department of Transportation to rearrange the industry to reduce their booking fee costs by legal force, as part of a so-called movement to deregulation of the CRS marketplace. In this request, which the Department has largely honored in the rules it proposed late last year, CRS's would be forbidden to induce travel agencies to use their systems and the cost of CRS bookings would be shifted entirely to travel agencies.

Yet the Department, in presenting proposals that clearly will impair the economics of many, many travel agencies, did not make the findings of economic impact required by the Regulatory Flexibility Act. We do not know why this omission occurred. ASTA believes those findings should be presented before the Department decides what the final regulatory regime will look like, so that we and other affected parties can comment on them before they are made final. ASTA's treatment of this specific issue in its comments to DOT can be found at pages 26-29 of the attached comments.

BEFORE THE

UNITED STATES DEPARTMENT OF TRANSPORTATION

WASHINGTON, D.C.

In the matter of :

:

COMPUTER RESERVATION SYSTEMS : Docket OST 97 2881, 3014;

(CRS) REGULATIONS; STATEMENTS : OST-98-4775; OST-99-5888

OF GENERAL POLICY :

_____:

COMMENTS OF THE

AMERICAN SOCIETY OF TRAVEL AGENTS, INC.

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March 17, 2003

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BEFORE THE

UNITED STATES DEPARTMENT OF TRANSPORTATION

WASHINGTON, D.C.

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In the matter of :

:

COMPUTER RESERVATION SYSTEMS : Docket OST 97 2881, 3014;

(CRS) REGULATIONS; STATEMENTS : OST-98-4775; OST-99-5888

OF GENERAL POLICY :

_____:

COMMENTS OF THE

AMERICAN SOCIETY OF TRAVEL AGENTS, INC.

The American Society of Travel Agents, Inc. ("ASTA") submits these initial comments on the referenced Notice of proposed rulemaking, 67 Fed. Reg. 69366 (November 15, 2002).

I. Introduction and Summary of Position

The welfare of the traveling public, with whose interests the destiny of travel agents is now firmly tied, will be served by a regulatory regime that (1) encourages competition among CRS's and among airlines, (2) allows travel agents maximum flexibility in contracting with CRS's, and (3) protects consumers and travel agencies from the abuse of market power by airlines and CRS's. Such a regime can be created, but the NPRM in this proceeding, were it to be adopted as is, would not accomplish any of those goals.

Consumers remain highly dependent upon travel agencies for information and guidance about the complex and erratically changing air transportation system. This rulemaking, if adopted as proposed, will devastate what remains of the travel agency distribution system and threatens to leave consumers with less information and choice at a time when they need it more than ever. The survival of the airline industry as we know it is in doubt, independent of whatever happens with the threatened hostilities in Iraq. While the Internet gives consumers a new source of information, the situation is so unstable that millions of consumers may be deterred from traveling at all if their access to professional travel advice is materially reduced.

The overall thrust of the NPRM's rule proposals is to shift income streams from travel agents and CRS's to the airlines. It is a form of bailout that is not based upon an analysis of actual marketplace behavior or even an assessment of the economics of the various industry segments and their interactions. This is, we suspect, a product of the long and repeated delays that have attended this process, combined with the effects of the intervention of the Office of Management and Budget in the content of the final proposals and their justification. In these initial comments, ASTA adds to the record new information concerning what has happened in the portion of the marketplace with which it is most familiar.

Certain features of the current marketplace as evolved under the 1992 CRS rules suggest great caution should be used in trying to fine tune industry behavior to preconceived ideas of what the best outcome is. For example, the NPRM acknowledges, correctly, the extraordinary efficiency of the CRS systems as information and booking technologies, the centrality of CRS services to airline access to new markets, the dominant distribution role of travel agents, the centrality of CRS's to travel agent market functions and the dependency of travel agents on CRS's for information, booking services and records management.

The NPRM notes that CRS booking fees vary with the quality of the access provided to the subscribing travel agents, as they should, and average only 2 percent of airline CRS-processed revenue. Overall the travel agency distribution system has been highly efficient for both airlines and consumers. Yet DOT says booking fees are "high." This it

attributes to the fact that airlines must participate in every CRS, not because of the rules as such but because of the market reality that most agents have only one CRS system.

This is one of the most fundamental myths about the retail travel marketplace. And it is the basis for many of the analyses and conclusions throughout the NPRM that new rules must be created to move income from travel agencies and CRS's to the airlines. It is simply wrong.

Use of a single CRS is a function of the market reality that multiple CRS's are highly inefficient for travel agencies, who therefore do not employ them. No amount of realistically foreseeable inducement from competing CRS's or regulatory pressure from DOT is going to overcome the inefficiencies for most agencies of operating multiple CRS's in today's environment.

The projected gains from such rule proposals are completely illusory, but by artificially rearranging revenue in the industry, with no regard for how the various entities, especially the small businesses, are to adapt, the NPRM will, if adopted, do drastic harm to travel agencies and to consumers' need for an independent body of travel counselors to advise and guide them. As handy as the Internet can be in some situations, it cannot replace human beings for millions of consumers.

That brings us to the second myth that underlies the rulemaking: the myth that the Internet is an economically viable, readily available alternative research and booking alternative to CRS services for most travel agencies. This subject is addressed at length in Section II below, showing how airlines have deliberately interfered with travel agency efforts to adapt to the Internet-driven marketplace and detailing the economic and other obstacles that make the Internet an inadequate substitute for CRS services. Moreover, the Internet is not always a cheaper and or otherwise superior means of distribution. While it is clearly an important supplement, it is in no sense a real alternative to the CRS-dependent distribution system. It is imperative that the Department look deeply into the way in which the business operates before arriving at sweeping conclusions about what factors cause which behavior. Facile assumptions about the ease of booking on the Internet are no substitute for the hard reality that in its present and near-term foreseeable state of development, the Internet is not enabling for the bulk of transactions executed through CRS's today.

....

II. Market Conditions and Industry Behavior Since 1992.

The governing statute (Section 411) requires, as a condition for its exercise, an "investigation" and then a "decision" whether the action criteria have been met. While many pages of the NPRM are devoted to

discussing what allegedly goes on in various segments of the industry, the NPRM does not reveal what systematic "investigation" of recent or current industry conditions and behavior has been conducted as the predicate for the proposals made. Many of the authorities cited are a decade old or consist of trade press articles.

....

A. The Network Airlines Have Market Power.

....

By year-end 2002 the number of agency locations had fallen to 24,679 (down 23% from 1992) and the number of firms had declined to 15,524 (down 34 %). By the end of 2001, air transportation sales had shifted away from smaller agencies so that firms with $2 million or less in annual air sales comprised 84% of the firms but accounted for only 14% of the sales. At the other extreme, firms with sales greater than $50 million comprised .6% of the industry but sold 57% of the business. With more than a touch of irony and monumental understatement, the title of the year-end 2002 ARC report referred to the travel agents as a "struggling industry."

One of the results of these developments was that total commission payments for the year 2001, including bonus or override payments, had fallen below the level of 1977. For most of the time that the airlines were imposing this massive income transfer on agents, agency sales for the overall industry continued to grow, though most if not all of that growth went to the online agencies. But in the aftermath of a collapsed economy and the terrorist attacks of September 11, 2001, total agency air sales for the year 2002 were below the level of 1996. This was, truly, the worst of times, at least so far.

The airlines thus succeeded in incrementally but completely terminating travel agency base compensation of many billions of dollars in the space of seven years. They did this despite the fact that those travel agencies still deliver about 70 percent of their passenger business.

One inescapable conclusion from the above facts is that the major network airlines, who led the massive income transfer between 1995 and 2002, have market power with respect to travel agencies, that is the power "to force a purchaser to do something that he would not do in a competitive market." There is no other plausible explanation for their ability to effect a multi-billion dollar income transfer from their primary distributors and have those distributors continue doing business with them on the same basis (other than compensation) as before. Whatever the airlines may have to say about the value to them of travel agency services in an emerging Internet-based market, that value is above zero. And it is above zero for every transaction, not just the marginal transactions on which some airlines have remained willing to pay some

agents for moving market share to them. Agency compensation is not disciplined by competition among carriers.

There are other grounds for this conclusion. Air transportation continues to be the dominant product line for most travel agencies. Almost all agencies now charge service fees to consumers in lieu of airline-paid commissions, but the amount of those fees cannot possibly compensate for the revenue agencies lost to the commission cuts, especially for the smaller leisure-focused agency. It is widely believed, moreover, that service fees have peaked – travel agencies cannot realistically increase them without significant loss of business.

Travel agencies remain dependent upon the airlines for moving their clients to and from the start/end points of cruises and tours they sell. It is well documented that the traveling public continues to depend upon travel agencies of the more traditional type for a huge share of their air travel purchases, thus cementing the bond that ties the agencies to the airlines. A great deal of the relationship between the airlines and the agencies presents itself as collective airline action, further deepening the power base that enables the airlines to exert market power over the agency community as a whole. This collective action, through the Airlines Reporting Corporation, through Orbitz, and through marketing alliances with antitrust immunity in some cases, makes the market power of the airlines irresistible in most instances. The power is so great that the airlines have been able to deny their lowest fares to their largest agencies with relative impunity.

B. Airline Practices Are Interfering with Travel Agencies Adapting to the Internet-driven Marketplace.

Contrary to popular misconceptions, travel agencies are now well connected to the Internet and the electronic way of doing business. The most current data indicates that 98 percent of travel agencies have online services in their offices. Sixty-two percent of the industry firms have a Web site.

The realities of Internet business, however, are that agencies on average generate only about 6 percent of sales through Web-based leads and make only 10 percent of total bookings through Web sites. Most of those bookings are tours using tour operator Web sites.

The reasons for the low penetration of the Internet into actual agency sales are quite clear. While three-quarters of agencies may check the Internet to make comparisons with fares derived from CRS displays, there are major dis-incentives to agencies' use of the Internet in many cases. As stated by the National Commission,

"The ways in which Web fares are now distributed ... pose an indisputable impediment to efficient travel agent operations."

The National Commission considered this issue at length and found the following obstacles:

(1) the agency cannot manage the passenger record as they can with CRS transactions, defeating the client's expectations and the agency's need to add value,

(2) Web displays and booking procedures are very slow compared to the CRS in the hands of a skilled user,

(3) Agents generally cannot automatically transfer transaction data into their back-office systems; duplicate entry wastes time and increases errors,

(4) Passenger information has to be entered and updated on multiple Web sites,

(5) Agents with a productivity based CRS contract get no segment credits for Internet bookings.

Travel agencies therefore remain highly dependent upon CRS services for the vast majority of their bookings. There is no foreseeable market development that is likely to change that dependency. A few small firms are marketing software systems that enable travel agencies to search the Internet more efficiently while making CRS inquiries, but these services are under attack by the network airlines and in any case only address one of the five major obstacles to greater Internet use by agencies.

C. Changes in CRS-Travel Agency Relationships Indicate Competition is Working.

There have been changes in the typical agency CRS contract length in recent years. In 1998, only 11 percent of agencies had a three-year contract, whereas 39 percent operate under one today. The decline in average length of contract has been steady since 1998. These changes reflect the pressure that travel agencies are under to have greater flexibility in responding to changing technology. As agency interaction with the Internet increases, interest in very long term CRS contracts wanes. The involvement of agency franchising firms such as Carlson Wagonlit and consortia in negotiating CRS contracts for their affiliated agencies has likely contributed to shortening the average length of CRS contracts.

For similar reasons, agency leasing of CRS equipment from vendors has changed. On average only 70 percent of agencies with CRS lease it from the vendor, down from 85 percent in 2000. ASTA expects agency investment in hardware and software, and thus agency costs, to continue to grow as agencies seek greater independence from long term affiliation and dependency on one provider. The market appears to

be accommodating the agencies' interests in this respect. Indeed, some of the signing bonuses, about which more later, are really nothing more than the CRS's sharing the savings they achieve from not having to invest in and supply hardware and communication lines to the agencies. ASTA has not heard anything to indicate that CRS's in general have resisted agencies seeking to own and manage their own equipment.

Another area of significant change is the penetration of productivity-based CRS contracts. In 1998, this feature was in 91 percent of agency contracts, but had fallen to 56 percent in 2002. The number of agencies paying a fixed monthly fee has more than tripled since 1998. Moreover, the number of threshold segments in the contracts has reversed course, rising from 201 to 252 between 1995 and 1998, then falling to 194 in 2002. Both of these changes are attributable to three forces: (1) each CRS has developed a no-minimum, no booking threshold Internet-based CRS contract option for agencies with low air volume, (2) productivity clauses punish agents every time they make a booking directly on the Internet, and (3) the CRS's have generally been responsive to agency requests to renegotiate their segment thresholds in the wake of commission cuts and other industry dislocations.

Other changes related to productivity have occurred, including a recent decrease in the percentage of agencies whose contracts include a productivity shortfall penalty. Out of the 56 percent of agencies with productivity pricing clauses, 71 percent report the presence of a penalty provision for falling short of the stated booking goals.

The productivity contracts, on the other hand, remain lop-sided, on average, in favor of the CRS vendors, likely a further reason for their declining popularity. For example, the average shortfall charge is $2.28 per segment, whereas the average incentive for exceeding the booking threshold is only $.67. On the other hand, the percent of agencies entitled to some credit has increased from 46 percent in 1995 to 62 percent in 2002.

In practical effect, the penalties are very significant. Twenty-nine percent of agents reported they occasionally, regularly or always fall short and incur a penalty. In today's economic environment, this is a serious situation. Overall air segment production by agencies with productivity contracts has fallen sharply. The average segment production is down almost 13 percent since 1998, but the median, which more accurately reflects the smaller agencies' performance, is down 50 percent.

The situation with inducement payments by CRS vendors is also pertinent to this rulemaking, as these payments represent a very significant income stream for those agencies that can negotiate them. Because competition exists between the vendors in many cases, over half of agencies do not pay any monthly fees for their CRS systems. About 60 percent of agencies received some kind of signing bonus from

the vendor, an increase from 48 percent in 1999. The vendor in such cases depends for its revenue stream entirely upon the airline-paid booking fees generated by agency sales on those carriers. The agency uses these payments to supplement service fee income, which does not begin to compensate for commissions lost to the cuts. The participation of more than half the retail industry in signing-bonus contracts means that any reduction in such payments or other incentives will have a large and widespread effect through the retail agency community.

III. Should the Rules Be Continued or Terminated?

....

The Department cannot conclude that future CRS behavior will not be influenced by airline ownership and control until there is an on-the-record finding that the Worldspan sale will in fact terminate all such ownership and control and that the airline ownership of Amadeus has been neutralized, especially in light of the ongoing relationship between the owners of Worldspan and Orbitz. After the press release announcing the sale of Worldspan, an email was sent to Worldspan subscribers stating:

"Even after the closing the deal, Delta and Northwest will remain Worldspan's largest travel supplier customers, and we will continue to strengthen the relationship we have built with American Airlines."

The ownership and control situation is, therefore, muddled at best. The Department cannot make supportable findings regarding future airline/CRS behavior until the facts regarding airline interests in CRS's are fully exposed on the record and public comment has been received.

Beyond ownership and control, the nature of the other relationships between the U.S. network airlines and the CRS vendors remain completely opaque. In what would seem to be a strong, if not conclusive, admission that the regulations cannot be extended to non-airline owned CRS's, the current rules provide that "each carrier that owns, controls, operates or markets a system shall ensure that the system's operations comply with the requirements of this part." The jurisdictional hook clearly is airlines not the CRS's themselves.

The emphasized text indicates that CRS's as such were understood to be reachable by DOT only through the airlines that owned them. The entire nature of the marketing relationship between some network airlines and the CRS vendors not owned by any airline is a complete mystery on this record. The NPRM says virtually nothing about it and when it is discussed briefly, the proposal is to continue the rules for such carriers while expressly declining to define what the crucial "marketing" relationship is that will bring the carrier, and thus the marketed CRS, within the regulations. In fact, a marketing relationship can be structured to give a party more actual influence over the other

party than possession of a small equity interest would confer.

We respectfully submit that before the Department can determine whether and what regulations are required in the face of some retrenchment in airline investment, it must first elucidate the nature of these marketing relationships and how they might affect airline and CRS behavior in a "deregulated" marketplace and receive public comment on those findings.

The NPRM cites instances of non-equity-owning airlines opposing rules that prohibit tying of marketing benefits to CRS subscription. If these marketing relationships are not fully examined, there will be no factual predicate for a decision that, absent the regulations, industry behavior will conform to competitive principles. If the Department does not have that information, it must get it. It must conduct the "investigation" required by Section 411 as the predicate for a "decision" under that statute one way or the other.

If the Department fulfills the obligation to investigate and set forth the marketing relationship issues, and concludes that up-front "regulation" is not necessary to conform industry behavior to competitive norms most of the time, it must then confront the question of what will happen if its expectations prove too optimistic. What, for example, will happen if the rules are removed and one or more CRS's engage in some of the behavior that was formerly banned? What enforcement resources will actually be available to bring the CRS and its airline allies, if such are involved, into conformity with Section 411 requirements? To whom will travel agents be able to turn to get swift and certain relief if contract abuses or other problems emerge? The history of DOT enforcement practices and the resources devoted to the subject do not offer encouragement to travel agents caught in the war between the large airlines, on which the agents are dependent for most of their business, and the four CRS's, on which the agencies are almost totally dependent for reservations information and booking technology.

What will happen if airlines begin to expand their withholding of inventory and fares from the CRS's to include regular published fares, with destructive effects on consumer access to full comparative information, a development presaged by the network airlines' conduct of the business of Orbitz?

And, ultimately, what kind of transition is necessary to assure that the marketplace is not fatally disrupted? The planning and expectations of many businesses, most of them small by federal government standards, depend on the current rules. These firms cannot possibly be expected to have contingency plans for the huge array of possible combinations of outcomes in this case. They are entitled to

fair notice and an opportunity to conform, and thus a considerable transition period would be essential if the CRS rules are to be

eliminated entirely or substantially.

IV. Most Travel Agencies Will Never Need, Want or Use Multiple CRS's.– Multiple System Use is a Pipedream.

CRS usage by agencies has declined somewhat in recent years (91 percent of ASTA Automation respondents use a CRS), but this reflects not a reduction in dependency on the part of full-service agencies but rather the elimination of the air transportation line of business by agency firms choosing to focus on more lucrative lines such as tours and cruises. Agency dependency on CRS's for air sales is reflected in the fact that on average 87 percent of agency air bookings are made through CRS.

Another matter that received much attention in the NPRM is the typical reliance of agencies on a single CRS system. In fact about 94 percent use only one system.

Agency dependency on one system is not, however, driven by incentives paid by CRS vendors, but by the complications of managing passenger data in multiple systems and integrating it with back office systems. Those complexities require management staff and integration software that is generally only within the reach of very large agencies with multi-regional or global reach. For the small agency that is most typical of the industry (94 percent of firms had sales under $5 million in 2001 and 69 percent had fewer than 6 CRT's), a second system would entail increased complexity and cost with no realistic prospect of a return.

....

.... We demonstrated in Section II above that there are massive obstacles to the use of multiple systems and databases and that these have little to do with CRS contract practices. We do not agree with the criticism of CRS's for offering favorable equipment deals to travel agencies as an inducement for the agency to install and use the system. Such commercial activity is evidence of healthy competition, and it would be extremely counterproductive and irrational for the government to outlaw such conduct in the guise of reducing CRS market power to help the airlines.

The proposed change in the rules to allow agencies to access third-party software services from CRS-leased equipment will likely produce little change in the marketplace. CRS's facing use of their systems in a manner that reduces the stream of booking fee income (substantially the only income stream that installation of the system produces) will likely charge fees to agencies that use their hardware in this manner, further deterring such use. But independent of whether use of CRS-leased hardware for third party sources is required, the Department should, as suggested in the NPRM, prevent discrimination against

back-office use with third-party sources and from using the system service fee structure to prevent agencies from taking advantage of the third-party rule.

V. Booking Fees Are Under Competitive Pressure Now.

....

It seems, moreover, that if the key concept of the NPRM is to improve competitive pressure on the CRS's to moderate fees, that goal has already been largely achieved by the emergence of the Internet channel and the airlines' determined efforts to shift as much business to it as possible.

The National Commission received extensive oral and written testimony on the subject of CRS booking fees. Its conclusion was that:

"The Commission agrees that the difference between web fares and other prices cannot be justified solely on the basis of booking fees, and that the fare differentials serve the strategic goal of bypassing travel agents."

And:

"Since airlines want to attract passengers to the web, fare differentials are designed to stimulate increases in traffic to the web, not to reflect cost differences. Airlines undoubtedly want to avoid booking fees, but the determining factor in establishing the price of a web ticket is whether it will generate incremental revenue for the carrier. In the long run, the carrier bypass strategy may force CRS vendors to reduce fees."

To the extent that air travel purchases move to Internet-based sources and particularly to the airlines' own Web sites, and to the extent that direct connections using the Internet are established between airlines and travel agencies, CRS booking fees will be avoided and the CRS's will have the sought-after incentive to reduce booking fees.

The development of the Internet distribution option for airlines thus creates an alternative that puts direct pressure on booking fees. No new rules or elimination of rules are required for the airlines to exploit fully the Internet option and they are in fact doing so. ....

VI. Travel Agency Contracts Should be Subject to Standards of Commercial Reasonableness.

....

VII. Productivity Pricing Penalties Should be Prohibited.

Productivity payments are a reflection of a division of the value of the CRS subscriber contract between the CRS and the agency, based upon expected revenue from booking fees paid by the ultimate beneficiary, the airline. The purpose of productivity clauses is to manage the revenue expectations from placement of the system against the costs of providing it.

The "base price" of the contract, usually per month, is based upon a certain level of production. This may appear to be a "discount" from a "rack rate" but in reality it is simply the level at which a certain number of bookings will yield revenue for the vendor in line with the values it has negotiated with the agency. "Productivity" then applies to either penalize the agent, by increasing monthly fees due the vendor, if the revenue stream does not meet bargained-for expectations or to reward him (to a much smaller degree), with payments or reduced monthly charges, if the revenue stream exceeds that level.

If there were no productivity, other bases for pricing the contract would develop but they would perhaps not be as fine-tuned to the revenue stream that both parties expect when they strike their bargain. Conversely, the absence of productivity pricing does not mean that the agency is any freer to "add another system" than it would be with a productivity clause in its contract.

....

All that said, the fact remains that productivity clauses in CRS contracts are a significant obstacle to travel agency adaptation to Internet booking options. The airlines seem determined to move as much of their business to the Internet as possible. To that end the large network carriers particularly continue to induce consumers to buy directly from them or their chosen retail instrument, Orbitz. The inducement is based on providing to their own Web sites and to Orbitz, but generally to no one else, the lowest fares the carriers offer, as well as routine offers of extra frequent-flyer miles for online buying.

Many consumers find the Internet an acceptable way to buy at least some types of travel services. At least three major non-airline affiliated online retailers have established themselves as Internet businesses, and they are sometimes able to acquire special low fares as well. The so-called "traditional" travel agencies must, therefore, be able to offer services on the Internet and must also be able to book on the Internet in order to remain competitive in the travel segment for which the fare level is the controlling element.

Productivity pricing clauses penalize the traditional travel agent every time she books on the Internet, because the CRS's, not able to get a booking fee, do not give segment credit to the agent for such bookings. This penalty is a huge obstacle to travel agency adaptation to the

Internet-driven marketplace for those agencies that remain under fixed term agreements and must be removed. And the penalties operate differently from the "bonus" aspect of productivity clauses. The bonuses, such as exist, reward useful economic behavior and share the results between both parties to the contract. The penalties, on the other hand, often punish conduct that is beyond the agent's control. Failure to achieve booking thresholds agreed to years before can result from external economic conditions (war, recession) or from airline bypass conduct (inducements to consumers to book away from agents in favor of airline Web sites).

The Department has, with little explanation, also proposed to ban other forms of inducements to an agency to use a system. This is, we believe, a completely unwarranted regulatory interference in a part of the marketplace where competition is alive and well. Moreover, as shown in Section III above, a large share of agencies receive inducements of one kind or another. Elimination of that economic benefit will be the death knell for many agencies for whom those inducements are the difference between profit and loss in a commission-less market. If the Department wants to devastate the retail distribution system, this is the way to do it.

And the asserted goal of inducing multiple CRS usage will not, as we have shown, be achieved in fact. Eliminating the inducement income is not going to make it one whit more practical for any travel agency to acquire two CRS systems. Agencies' reliance, in almost every case, on one system is driven by the basic economics of the business and the manner in which booking information is created, stored and managed. There is no realistic way that regulatory changes can alter these basic realities. The ban on inducements will be catastrophic for many travel agencies and produce no benefit in terms of increased competition for anyone.

VIII. Regulation of Internet-Based Airline Distribution Systems and Travel Agency Fare Advertising Is Unnecessary and Inappropriate.

The CRS regulations have their roots in airline conduct. They have been effective, in varying degrees, in controlling the disposition of the airlines to use their market power directly and through the CRS's to distort competition in air transportation service delivery. There is no record of similar conduct among Internet-based travel agencies, whether of the "pure" model or the hybrid model which is spreading rapidly among so-called "traditional" agencies. There is, similarly, no evidence that travel agency advertising practices, on or off-line, have caused injury to consumer interests or that they are likely to in the intensely competitive marketplace in which agencies operate (a fact found and described throughout the NPRM).

....

A. CRS Displays of Fare Information Should Include Fuel Surcharges .

....

B. Travel Agency Service Fees .

In many ways this is the most extraordinary part of this rulemaking. This is a solution looking for a problem to solve, and, as is characteristic of such solutions, a tangle of complexity has been created where no real issue has ever been identified in fact. ASTA is strongly opposed to the adoption of regulations in this area unless the Department can justify them by reference to meaningful data showing problems of consumer deception arising from travel agent "display" or quotation of service fees.

Not only does the proposal create a complicated and unnecessary set of detailed procedures regarding disclosure, but it substantively interferes with travel agencies' setting of fees in the first instance. It is nothing less than substantive price regulation. If firms were to agree with each other that they would never establish a price based upon a percentage of the value of the product sold, is there any doubt that the government would attack the agreement as price fixing? How then can DOT justify telling a travel agency that it may never establish ad valorem service fees?

The March 3 issue of Travel Weekly has a story about a successful agency that charges fees as a percentage of ticket price without problems for the clients. ASTA's 2002 Service Fee report shows that 25 percent of agencies charge on a basis other than a flat fee. Some 31 percent indicated that their fees were "price dependent." Even more important, since the network airlines eliminated all base commissions, it is more important than ever that agencies be able to adapt their charges to suit customer needs. Many agencies have indicated that they intend to move away from flat fees and toward more value-based, price-dependent fee structures. The Department of Transportation has no lawful interest in this matter unless and until it can show with hard evidence that consumers are being adversely affected in fact. No such evidence exists.

....

.... The proposed rules should be withdrawn.

IX. Tying Practices Should be Barred.

....

X. Sale of Marketing and Booking Data to Airlines Must be Restricted.

As might be expected, ASTA disagrees fundamentally with the Department's expressed concerns about the use of override commissions to incentivize travel agencies. Despite much theorizing by

various parts of the government on this subject, there is no meaningful evidence that override commissions have ever in fact interfered with consumer welfare. Override or bonus commissions are the last vestige of airline compensation of travel agencies and produce an income stream that is crucial to the profitability of some agencies. It is not a proper goal of the Department in this rulemaking to try to rearrange the flow of compensation to better serve one segment's economic interests over those of another.

....

XI. Display Bias Rules Should be Continued; Code Share Displays Should be Limited; Agency Display Management Serves Client Interests.

....

XII. Contract Clauses Restricting Airline Choices on System Usage Should be Retained.

....

XIII. ....

XIV. DOT Authority to Regulate CRS-derivative Issues.

XV. Definitions.

....

A. Strike the Phrase "under a formal contract with the system."

....

B. Eliminate the Unnecessary Term "Neutral."

....

XVI. Enforcement Mechanisms.

ASTA notes the Department's express and repeated assurance that it is ready to enforce the CRS rules "vigorously" in the future. There is nothing more to be said on this subject at this time.

XVII. Effective Date of Rules.

....

XVIII. Regulatory Flexibility.

The NPRM acknowledges that the proposed changes to the CRS rules will have a significant, and in many cases adverse, economic impact on a substantial number of small businesses. That finding requires DOT to perform an initial regulatory flexibility analysis (IRFA) in which the economic impacts on all affected small entities are estimated and any alternatives that will accomplish the goals of DOT while minimizing the adverse effects on small businesses are identified. The IRFA failed, however, to assess the economic consequences of the proposed rule changes on the 98 percent of the travel agencies in the United States that are deemed small businesses. ....

The failure to assess the economic impact on small travel agencies is a fatal flaw in the IRFA. The IRFA represents the Regulatory Flexibility Act ("RFA") equivalent of a draft environmental impact statement. In NEPA situations it is essential that all effects on the environment be evaluated in order to ascertain whether the mitigative alternatives considered by the agency are reasonable. Similarly, it is impossible to determine whether DOT's consideration of alternatives that might mitigate adverse economic consequences is reasonable if an entire sector of the industry subject to the regulation has not been examined. Thus, the failure to estimate the impact on small travel agencies prevents the regulated community, and possibly the courts, from determining whether DOT made a reasonable effort to comply with the RFA.

The failure to assess the economic impact on small travel agencies also calls into question the Department's compliance with the outreach requirements of § 609(a) of the RFA. That section requires the agency to try to get input from small businesses beyond publication of the proposed rule in the Federal Register. By omitting from its assessment small travel agencies, DOT did not perform necessary outreach to obtain input from affected small entities. DOT should revise its IRFA and delay reaching a decision on the final rule until such time as it disseminates a revised IRFA to all affected industry sectors that specifically identifies the areas of adverse impact. Not all travel agencies are represented by industry associations and even those that are may wish to file comments of their own. It is unreasonable, however, to expect each small business to read and absorb the entirety of a rulemaking of this magnitude in search of those particular features of special economic interest to them.

The omission of small travel agencies from the Department's economic assessment results constitutes an inadequate consideration of alternatives that will be less burdensome on small businesses or minimize lost opportunity cost. Again returning to the analogy to NEPA, if the most important aspect of an environmental impact statement is the consideration of mitigative alternatives, see 40 C.F.R. § 1502.14 (noting that consideration of alternatives is the heart of environmental

impact statements), then the heart of the IRFA is the consideration of alternatives to lessen adverse economic consequences or minimize lost opportunity costs. Simply stated, the alternatives did not adequately address methods for reducing the adverse economic consequences on small travel agencies.

As an example, and as already noted in these comments, small travel agencies receive various incentives from a CRS to adopt and maintain its system. The IRFA does not even discuss loss of the inducements income stream. Elimination of such incentives will severely reduce income to travel agents that already has been severely constricted by the actions of airlines to eliminate commissions for booking tickets. When the already impaired status of travel agency income (which will be further damaged by war in the Middle East) is considered together with the recommended rule changes, there will be a devastating impact on small travel agencies. Ultimately, the consumer will suffer as competition for travel services is reduced.

For the foregoing reasons, the Department's We reiterate our proposal that the Department develop an adequate IRFA, develop an appropriate outreach program and reopen the comment period so small businesses, particularly travel agents can comment on specific issues that will have adverse effects on them, and use the new information in developing a final rule and final regulatory flexibility analysis IRFA is inadequate. .

Respectfully submitted,

Paul M. Ruden Attorney for the American Society of Travel Agents, Inc.

March 17, 2003

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House Committee on Small Business

"CRS Regulations and Small Business in the Travel Industry"

June 26, 2003

Prepared Remarks of Ms. Norma R. Pratt, Rodgers Travel, Inc., Philadelphia, PA

Mr. Chairman, my name is Norma Pratt and I am President of Rodgers Travel in Philadelphia, Pennsylvania the oldest African American Continuous operated Travel agency in the United States. Although we are affiliated with American Express, we are an independent minority, woman-owned small business.

Our agency is an 8 (a) firm and holds several DoD and GSA contracts to perform services for federal agencies in California, Colorado, Delaware, New Jersey and Pennsylvania. We also have been certified by the Commonwealth of Pa, The Minority Development Council of Penn, New Jersey and Delaware and the City of Philadelphia.

Since our founding in 1949, Rodgers Travel has been dedicated to providing professional and cost efficient travel services to government, corporate and leisure travelers. Worldwide. I have been actively involved in Rodgers Travel since 1974.

Today we employ 40 persons. We have worked hard to build a business that is important to our community, to our customers and to our employees, but it has not been easy. We have stayed in business and continued to serve our customers by being innovative, flexible, patient and always focused on those things that cause people to want to do business with us, but the obstacles have been high and the hours long. Most of our problems have been caused by the airlines inability to conduct their businesses as efficiently and innovative as I have run mine. Perhaps they should pay more attention to those things that cause people to want to do business with them rather than paying attention to their stock options and undeserved bonuses.

My company, Rodgers Travel has gone from handwriting tickets for walk-in customers to having our own web site. Yet, we estimate that 50% of our traditional African American clients and a very large percentage of the military enlisted personnel we serve do not have Internet access and for them, our agency is the only place in their immediate neighborhood where they can learn about all of their options and independently exercise the freedom to select travel methods of their own choosing.

We need to be able to continue to provide objective advice to our traditional walk-in clients and our government clients nationwide. Yet

under DOT's proposal, airlines will be able to put their fares only on some CRSs and not in others. I believe that all airlines should be required to put all of their fares in all CRSs. This will help ensure that lower income folks are not being discriminated against because they do not have personal Internet access to all airlines and all fares. Travel Agencies need all fares and all inventory content in all CRS to make that happen.

Our customers tell us that they appreciate the value we give them, even when we were forced to start charging them a fee that became necessary when the airlines told us (travel agencies) they would not pay us for selling their seats.

If the Department of Transportation's proposed changes in the rules governing travel distribution are allowed to go forward as proposed, not only would lower income people without Internet access be denied fare access equality but also small businesses such as ours will be harmed in many ways...harm that is unnecessary and completely preventable.

Under our present CRS contracts, the more productively we use the CRS system the more money we either make or save depending on volume. In effect we are paid a commission by our CRS vendor for each booking. This is a vital source of revenue for our company and for most other travel agencies. Without this income, we will be forced again to raise the cost of an airline ticket to those who can least afford it. Or, the travel agency will be out of business.

I cannot understand why the DOT believes that it should prohibit us from being paid based upon performance, which I always thought was a hallmark of the free enterprise system. In other words, I cannot understand why the government would pick winners and losers in the travel distribution arena...and the losers would be us, the small businesses that are the backbone of the nations economy. And the other losers will be the lower income Americans.

As I see it, there can only be one possible explanation for these proposals. DOT doesn't have a clue about how the travel distribution system works and how it affects Americans in the real world.

I understand that DOT is supposed to fully consider the impact of its rulemaking on small businesses. But it seems obvious to me that DOT has not spent 10 minutes thinking about Rodgers Travel and other small businesses like mine. Neither have they spent any time considering how it will effect the Internet unconnected Americans. It seems to me that it will only help the airlines continue to operate their businesses poorly.

Well, Mr. Chairman, I'm sick of government action that helps the airlines. I understand the airlines have armies of lobbyists and many ways to influence regulations. I watched from the sidelines as Congress

gave the airlines repeated taxpayer bailouts over the last two years. And now DOT wants to give them yet another handout.. this one at my expense.

So today I am here to tell you: (1) The DOT proposal is wrong, and (2) if DOT does not change it for the better, I hope you will intervene to keep them from taking away my ability to provide objective advise to my clients, my ability to enter into contracts as I see fit, and my ability to make a profit from my hard work and good business practices.

Thankfully, the small business committee is taking an interest in this issue....and I hope in stopping this nonsense. I hope you'll tell DOT to forget it. The light you are shining on this issue is the enemy of a policy that thrives on darkness.

On behalf of small travel agencies and the small business they serve through out this country, thank you for noticing this problem and for helping to correct this injustice.

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House Committee on Small Business

"CRS Regulations and Small Business in the Travel Industry"

June 26, 2003

Prepared Remarks of Mr. David Schwarte, Executive V.P. & General Counsel, Sabre Inc.

Mr. Chairman, Congressman Gonzales, thank you for the opportunity to appear this morning. I'm Dave Schwarte, Executive Vice President and General Counsel of Sabre Holdings Corporation. Our Sabre Travel Network business unit operates the largest computer reservation system (CRS) in the world, and has served the travel industry with innovative distribution services for 27 years. Through our CRS known as Sabre, we provide travel automation services, including air transportation information and booking capabilities, to our 16,000 travel agency customers in the U.S., 5600 of which are small businesses. We are not a small business ourselves, but we are intimately involved in helping these small businesses succeed, and we are intimately aware of the many ways in which the proposed DOT rules will hurt them and us.

The Sabre CRS does not sell, provide or arrange air transportation. Our automation services allow our travel agency customers to make reservations with more than 400 airlines, 50 car rental companies, 232 tour operators, nine cruise lines, 36 railroads and 234 hotel companies covering approximately 60,000 hotel properties.

At the outset, allow me to express my thanks for holding this timely hearing. The witnesses you have assembled today will undoubtedly reflect the sentiments of the vast majority of those who have participated in this rulemaking: specifically, that the Department of Transportation's Notice of Proposed Rulemaking (NPRM) is headed in exactly the wrong direction, and that it favors the major airlines over all others, including low-cost carriers and small businesses. I hope this morning's hearing will reveal the detrimental impact this proposal would have on many in the travel industry – particularly our small travel agency customers and the consumers they serve.

This morning, I'd like to use my time to:

1. Highlight the problems with the DOT's NPRM that will devastate our small business customers;

2. Provide the historical context that led to regulation of CRSs in 1984 and describe how the marketplace has changed;

3. Review the critical role that the Sabre Travel Network plays in

automating small travel agents in the United States; and

4. Offer a simpler, better alternative to the NPRM that is the right choice for today's industry.

Mr. Chairman, DOT has constructed a proposed rule based on antiquated facts that is imbalanced and anti-consumer. It seeks to deregulate the behavior of large airlines while increasing regulations on travel agents and the CRSs. It seeks to micromanage the way that CRSs like Sabre do business with their travel agency customers, by limiting the length of our contracts and telling us how we can compensate travel agencies for using our systems. And it does so without justification, regulatory or otherwise, and by misreading antitrust law and marketplace conditions.

This rulemaking has been ongoing for six years, during which time the marketplace for travel distribution has dramatically changed. While the Department of Transportation has been rolling over the existing CRS rules year after year since 1997, the Internet has become a major force for the sale of airline tickets. Once nearly 90% of all travel was booked through CRSs, while today that has dropped to just over half. In addition, the airlines that previously owned CRSs have been selling their stakes – this summer, assuming that the Worldspan transaction closes and is what it appears to be, all three U.S. CRSs will be totally free of airline ownership. Of course, as I will discuss below, it was the vertical integration of airlines with CRSs that justified these rules in the first place. With that link broken, the necessity for these rules has been lost. After six years of delay during one of the most dynamic periods in travel distribution history, DOT finally came out with an NPRM in 2002 that does not reflect today's reality. We can only hope that DOT has heard loud and clear that its proposal was out of touch and fundamentally flawed, and they will change course.

Mr. Chairman, the docket at DOT is filled with thousands of pages criticizing the Department's proposal. In addition to the vast majority of the industry – including large airlines like United, 456 small- and medium-sized travel agents, consumer groups, CRS companies, online agents and think tanks – other federal agencies have filed strong comments questioning the legal analysis, the effectiveness and the lack of small business impact analysis of these proposed rules. The Federal Trade Commission rejected the DOT's legal justification for its NPRM, noting that DOT relies on an erroneous reading of current antitrust policies and existing case law. In rejecting almost all of the DOT's proposals, the Department of Justice called for near total deregulation of the CRS industry when the current rules are set to expire on January 31, 2004. DOJ specifically recommended that DOT drop all rules that restrict the terms and conditions of CRS agreements with travel agents and stated that the CRS rules "have failed to make the CRS industry more competitive, have imposed costs of their own on consumers and should not be extended." Today you will likely hear from the Small

Business Administration Office of Advocacy that the ball has been dropped on the required Regulatory Flexibility analysis. And judging from the Office of Management and Budget's extraordinary redlined versions and competing drafts of critical NPRM documents that DOT has placed on the docket, it is quite clear that OMB has a contrary view about the intrusive selective regulation DOT has proposed.

The current CRS rules that regulate CRS contracts with travel agency subscribers are already intrusive. Yet, the Department has proposed not only to readopt them, but also to micromanage subscriber contracts in several other (and unnecessary) ways. There is no question that CRSs compete – and have always competed vigorously – for the business of subscribers. Prolonged – and indeed increased – regulation will only stifle that competition.

There's also no question that many travel agencies – particularly small agencies – are facing business problems today. It's not an easy time to be a travel agent. But these problems are not caused by CRSs, and no amount of regulation of CRSs will solve them. The report of the National Commission to Ensure Consumer Information an choice in the Airline Industry, issued in November 2002, put it well: "[t]he Commission is concerned about the plight of travel agents, but believes that their problems are caused by economic forces that lie beyond the ability of regulation to control."

Allow me to spend a few minutes discussing three of the most crucial issues to our customers:

1. Length of Contract:

DOT contends that CRSs like Sabre have market power, and that one of the ways to reduce that power is to further restrict the length of a CRS contract with a travel agency. DOT seems to believe that if not for the power that CRSs have over travel agencies, the agencies would be constantly moving among CRS vendors, using one or more at a time.

On the issue of market power, DOT is simply wrong. But even if they were right, regulations like these are the wrong way to deal with it. As the Department of Justice said in its filing, DOJ "has seen no evidence that regulations designed to erode the power have succeeded in the past or are likely to improve the situation in the future. Rather, experience over the past twenty years has shown that many of the existing regulations…have been ineffective…."

As I mentioned, with the growth of the Internet, the percentage of travel booked through CRSs has decreased over time. Today, only 53% of air travel is booked through CRSs, including Internet travel agencies (such as Travelocity, Expedia and Orbitz) that use CRSs as booking engines. But what you will find, Mr. Chairman, is that travel agents and CRSs have forged important ties that serve the consumer interest and the

interest of small business.

Airlines are not looking out for the interests of travel agents – CRSs like Sabre are. We are putting automation tools in their hands and giving them access to content. We're devising flexible contracts that work for agencies. In short, we're helping them survive. And rather than encouraging our efforts to make this sector of the travel industry viable, DOT would undermine them through these rules.

The current CRS Rules fix the maximum contract length at five years. DOT has stated it is considering a reduction in maximum contract length to three years. This is entirely unnecessary. Today, Sabre's primary contract offered to small travel agencies is a three year agreement. Our larger agencies are offered contracts with a choice of anywhere between one and five years. We and other CRS providers offer a variety of contract lengths because that's what our customers want. There's no market failure to justify government intervention here.

One travel agent, Terry McCabe of Stratton Travel Management, testified at the DOT hearing on May 22, 2003, and challenged the DOT proposal. She said, "On the most basic level I have to ask why the Federal Government is telling me how long my contract can be. When it comes to contracts, the marketplace is working. Many travel agents renegotiate their contracts before their expiration, so there's no need for the government to reduce the maximum length to three years. Other agencies might prefer to have contracts longer than five years if it makes sense for their businesses. I do not believe that there's any reason for the government to dictate the terms of my CRS contract. Get the government out and let me sign the contract that works best for my company."

2. Productivity Pricing

The NPRM is filled with meddlesome and unjustified regulations, and none would be more damaging to travel agents than DOT's proposal to prohibit productivity pricing. The Department proposes to "restrict or potentially prohibit" productivity pricing and "financial incentives" of a similar kind. The proposed rule would bar a CRS from offering payments, discounts or other "financial inducements" to obligate or "encourage" a travel agency to use that CRS for a minimum share of the agency's transactions. It would also prohibit a CRS from imposing penalties or liabilities on a travel agency for failure to achieve such a minimum share.

Again, DOT relies on its faulty assumption that CRSs have market power that must be curbed. In the NPRM, DOT claims to be restricting this type of incentive because it wishes "to keep the systems [CRSs] from using contractual practices that deny travel agencies a reasonable opportunity to switch systems or use multiple systems." In reality, this proposal would hurt travel agencies more than any other industry

participants. Small travel agents are not calling on DOT to pressure them into using multiple systems, which in most cases is inefficient, and if DOT had studied the industry more carefully and asked agents for their views, they would have told them so. And that really goes to the central deficiency of this rulemaking for today's hearing – there appears to have been no outreach from DOT to travel agents to gauge the impact of these rules on their businesses.

There is simply no justification for the Department to restrict the use of productivity pricing. Doing so would interfere with rational, efficiency-seeking behavior by CRSs and travel agencies. There is not a single travel agent out of the several hundred who have weighed in on this docket who supports this proposal. Not one.

DOT certainly hasn't considered this from a business perspective. The reality is that CRS marketplace is highly competitive. In order to get and to keep travel agency business, CRSs offers various incentives. While Sabre remains ready to provide incentives up-front to travel agencies with credible business plans, incentives that will enable them to buy their own equipment and make other investment in their business, we would be less inclined to provide that seed money if the agency could use the hardware Sabre funded to make all or a substantial portion of its bookings on another CRS. Booking share commitments from agencies are an eminently practical business solution to this real world problem. Yet, it is a solution the new rule would ban.

This is simply not an area where regulation of freely negotiated commercial agreements can be justified. Sabre and the travel agencies that it serves are fully capable of deciding whether, in each subscriber relationship, a productivity incentive is or is not appropriate and exactly what it should look like. Sabre offers several contract options, and some of Sabre's customers, large and small, have wanted share-based incentives in their contracts.

In its NPRM, the Department fails to articulate any rationale as to why such clauses are harmful to consumers or travel agents. In fact, it completely ignores the devastating effect prohibiting or limiting CRS incentive payments to travel agents would have on their businesses. Since the airlines eliminated base commissions to travel agents, the incentives an agency gets from a CRS –in exchange for booking a certain amount through that system – are in many cases the only source of income they've got left, aside from customer-paid service fees. And many of our travel agency customers tell us that they simply can't raise their service fees any higher or they'll lose customers.

Even Sabre's smallest travel agency customer has the opportunity to receive incentives for booking through our system. It's a good business proposition for both sides – and the concept of a volume discount is certainly accepted in other industries. As Terry McCabe of Stratton Travel Management testified at the DOT hearing, "There is no

justification for a ban on productivity pricing. These types of arrangements exist in many other industries. If someone makes an investment in my business, they are entitled to some assurance of a return on that investment. It is as simple as that."

3. Access to Content

In the travel distribution business as in any other, you have to sell what your customers want in order to be successful. The thing we hear from our customers most is that they want to have the full array of travel options and fares available in the system they use. Agents have been particularly focused on getting so called "webfares"-- the discounted airfares often found only on the Internet. We've been constantly working to try and get the full array of fares for our subscribers.

In October 2002, Sabre began a new program for airlines, offering to reduce its booking fees by 10% and not raise them for three years, in exchange for an airline's agreement to provide all of its webfares to Sabre and its travel agency clients. To date, a number of airlines have accepted our offer, including USAirways and United. Interestingly, despite their current financial challenges and their rhetoric about the need to reduce their costs, none of the other major carriers have accepted the offer to lock in a 10% reduction in booking fees for the next three years. Oddly, Worldspan – the CRS today owned by the very airlines that are complaining about booking fees – has not offered a similar discount program.

Although well intentioned, we believe DOT just does not recognize the value that travel agents, both online and brick-and-mortar, bring to consumers. It was online travel retailers like our subsidiary Travelocity.com that helped turn airline yield management on its head. Instead of hiding fares or trying to maximize the highest fares you could extract from a given consumer, Internet retailers empowered consumers directly and pioneered low-fare search finders, and multiple airport searches. Travel agents of all kinds today provide independent, objective, and experienced advice to travelers facing a dizzying array of options that changes by the hour. In contrast, direct airline call centers and airline web sites do not always provide objective, low-fare options. Yet, that's where DOT appears to want to push consumers. The NPRM's focus on reducing CRS ownership of travel agency equipment (which is happening anyway without government intervention) and on limiting the length of contracts are designed to decrease use of the bricks-and-mortar agency and the CRS channel. DOT is pushing agents and consumers to book directly with suppliers on the Internet.

Yet another manifestation of this drive to steer consumers toward more limited offerings in large-airline dominated distribution channels is DOT's statement that it is actually considering a blanket prohibition on enforcement of any parity clauses. The clauses, in the agreements between CRSs and air carriers, provide a mechanism for the CRS to

bargain for agreements for airlines to provide all low fares and other non-discriminatory treatment of those who use the system for information and booking. If they are prohibited, brick-and-mortar travel agents and the consumers who rely on them will be deprived of the broadest selection of outlets for such products.

Travel agents are asking why would DOT choose to ban contracts that would give travel agents wider access to fares through the CRS that they use? The Justice Department has recognized that parity provisions can be very pro-consumer and has not recommended any blanket prohibition. Again, however, it appears that DOT is considering such an interference in arms-length bargaining in order to benefit the large airlines that would prefer not to have to widely distribute their best fares. Much of this NPRM was designed by DOT to help the airlines that continue to struggle. But the Department of Transportation shouldn't be in the business of pushing consumers to one channel – owned largely by airlines – over another. The government should not be in a position of picking winners and losers. There's simply no reason for this kind of intervention.

I'm sure the other witnesses this morning will provide you greater detail as to the impact of the specific proposals in the NPRM on small businesses. Our customers have told us it would be very significant. A group of 456 small and medium sized agencies filed comments in the DOT docket that said, "These proposed rules ignore history and common sense. They embark upon a misguided path of selective deregulation that will have many negative consequences for consumers and competition." I couldn't agree more.

When considering the CRS rules, it's helpful to consider the history that led to their adoption in the first place. In the late 1970's and early 1980's, CRSs were owned by major airlines – Sabre was owned by American, what was then Apollo was owned by United, and so on. The airlines that owned these systems used them to adversely affect airline competition – they biased the displays in favor of the airlines that owned the systems and charged competitors very high fees.

The Civil Aeronautics Board (CAB) was concerned about vertical integration – airlines owning CRSs that were the primary source for travel agents to get information and sell tickets to consumers. Recognizing the dangerous impact this vertical integration could have on competition, the CAB adopted the CRS Rules in 1984. The CRS Rules were updated in 1992 and were set to be revised again in 1997. For the last six years, DOT has repeatedly extended the existing rules until it issued its NPRM last November.

During this time, the CRS marketplace has dramatically changed. Airlines have sold – or will soon sell – their stakes in the three U.S. CRS companies. American spun off Sabre in 2000, Galileo was sold by United to Cendant in 2001, and Delta, Northwest and American are

scheduled to spin Wordspan off this summer. The fourth CRS, Amadeus, is based in Europe has partial ownership by three European carriers and has a very small share of the U.S. market.

Rapid technological changes, proliferation of alternative business models and trends toward independent providers have made the CRS rules, written 20 years ago and last updated in 1992, out-of-date and serious impediments to competition. The rules were designed for a different time, when all CRSs were owned and manipulated by their airline owners, and other distribution options were impractical and limited. The market for air transportation distribution has changed drastically since then. In addition to divestiture, CRSs now face severe competitive pressure from airline direct sales centers and web sites, online agencies and other forces. Competition now forces them to offer flexible terms and to lower their fees to their customers, belying any airline and Department claims that CRSs have crippling market power.

CRSs and travel agencies read the NPRM and cringe because the marketplace DOT describes in its NPRM doesn't exist today, if it ever did. This NPRM is filled with solutions for problems that simply do not exist.

While much has changed since the rules were first adopted in 1984, what hasn't changed is Sabre's commitment to deliver innovative solutions to both travel suppliers and its travel agency customers that allow them to gain additional value from the Sabre CRS. For a small travel agency like Limelight Travel in Queens, New York as well as for National Travel Systems and Rodgers Travel, the Sabre CRS provides a critical lifeline. Of course, Sabre automates travel agencies of all sizes, including some of the largest in the world. But because we recognize the unique needs and important nature of the nation's smallest travel agencies, we've developed an innovative new program that provides those agencies free access to the Sabre system and rewards for every booking they make through Sabre – the Simplicity Plan.

The Simplicity Plan is only available to our smallest travel agency customers –those that generate less than 10,000 annual bookings. We developed this program to respond to the uncertainty these small businesses were facing – commissions from airlines were reduced and later eliminated altogether, demand for travel was fluctuating wildly, and it was tough for a travel agent to find an economic model that allowed them to serve their customers. Through the Simplicity Plan, we help these agents buy their own computer equipment and get connected to the Internet and provide them free access to Sabre. They have no minimum booking commitment, but if they do reach a threshold level, they receive incentive payments for each booking they've made back to the first.

Emilio Vozzolo, owner of Limelight Travel, told us, "Simplicity is simple.

It gives me an opportunity to change the way my agency does business and I'm receiving financial rewards I never got before. I would suggest any agency, regardless of size, to go with this plan."

The mere existence of the Simplicity Plan challenges one of DOT's key assumptions in its NPRM and highlights their failure to properly analyze the impact on small business. One purpose of the NPRM's proposed new rules is ostensibly to protect travel agencies from being locked into CRS contracts (which the NPRM imagines are oppressive or extensive). After American Airlines spun off Sabre in 2000, we began to offer two standard contract types, the Simplicity Plan (for smaller agencies with 10,000 or fewer annual bookings) and the Optimal Earnings Plan (OEP) for larger agencies. These new contracts are more flexible and provide greater benefit to the agencies than those that were offered when we were airline-owned. At present, more than one third of Sabre agencies have signed these new contracts. We expect that percentage to rise to two-thirds by the end of 2004 and to 100 percent by 2006.

The original purpose of the rules – curbing anticompetitive airline behavior – no longer applies in the absence of airline ownership of CRSs. In its NPRM, DOT has turned the original purpose of the rules on its head. Instead of focusing on airline behavior, the proposed rules restrictively regulate CRS's and travel agents while giving the airlines free reign. It appears that the Department of Transportation is determined to do whatever it must to help the airlines through this difficult time – including giving them a regulatory gift at the expense of others in the industry. This is the wrong way to go.

We believe that the time has come to sunset the CRS rules completely, not just for some industry players. The market has changed dramatically since 1984 – and indeed since the rules were supposed to have been reviewed in 1997. The need for CRS rules has gone, and it's time to truly and completely deregulate.

What the DOT has proposed – partial deregulation – is the worst possible option for discount airlines, CRSs, travel agents large and small, and most importantly consumers. Partial deregulation doesn't work because it picks winners and losers. It helps the big airlines and hurts the other players in the industry. This NPRM was a misguided compromised that must be stopped.

Small businesses will benefit from a deregulated environment. Without burdensome and unnecessary regulations, CRSs like Sabre will have the ability to negotiate fair, free market deals with airlines for content. And if we are free to negotiate those deals, small travel agencies and their small business customers will win.

Of course, with deregulation should come vigilant enforcement of the competition laws by the Department of Justice and Federal Trade

Commission. This would be particularly important if the airlines were ever to again attempt to reenter the CRS market through Orbitz – the website jointly owned by American, Continental, Delta, Northwest and United – or through any other vehicle.

Deregulation is a far better alternative than the NPRM. The time has come to sunset the CRS rules. DOT can easily – and should – do this by withdrawing its fatally flawed NPRM.

Mr. Chairman, thank you for the opportunity to appear this morning. I'd be pleased to answer any questions.

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House Committee on Small Business

"CRS Regulations and Small Business in the Travel Industry"

June 26, 2003

Prepared Remarks of Mr. David L. Rojahn, DTR Travel, Inc., Englewood, CO

Chairman Schrock, Members of the Subcommittee. I am honored to have this opportunity to testify before you today as a small business owner on the Notice of Proposed Rulemaking (NPRM) on the Computer Reservation Systems (CRS) pending before the Department of Transportation (DOT).

My name is David Rojahn. I am president of DTR Travel, Inc. in Englewood, Colorado, which is a suburb of Denver. My wife and I opened our travel agency in 1993. DTR Travel employs three agents. Our business mix is primarily leisure and small corporate accounts. DTR is a member of the American Society of Travel Agents (ASTA) where I have recently served as the President of the Rocky Mountain Chapter. I request that my written statement be made part of the Subcommittee's hearing record.

Mr. Chairman, I believe my business is pretty typical of the small businesses that constitute the vast majority of travel agencies still serving millions of travelers from every corner of the United States. My business has grown up under the CRS rules that have been in effect since 1984. We have never known another regime.

The existing CRS rules have worked well. Small travel agents have obtained more and more services through their CRSs, and options for subscriber contracts have increased over time. CRSs have showed flexibility especially in helping small travel agents deal with economic pressures since September 11.

This is not to say that we think continued regulation is the best approach. In fact, I can tell you that we strongly share ASTA's view that no regulation at all would be far preferable to the regulations now being proposed by DOT, which seem to be aimed squarely at making my business extinct.

The proposed rules seem to be heavily weighted in favor of the largest airlines and Orbitz. This seems unhealthy, and it will likely have a negative effect on CRS services and the economics of small travel agencies. As Paul Ruden testified on May 22 before the DOT, the large airlines are the problem, not the CRSs. The airlines are attempting to take as much business away from small agencies as they can. The

proposed rules support the large airlines in this regard and should not be adopted.

Specifically, the proposal to prohibit productivity pricing and other CRS incentives is inappropriate. Productivity bonuses are a means by which CRS's share the rewards of good performance by the agency, something that the large network airlines seem determined to avoid. They want to keep the rewards of more efficient means of doing business for themselves and to shut out travel agencies from any meaningful source of supplier-paid revenue. A small travel agent may decide that another type of contract is preferable, but all agents have and should continue to have the option of choosing productivity pricing if it makes good business sense.

Also, small travel agents have subscriber contract options that allow them to choose the model that fits their needs. Small agents on the Galileo system, for example, can choose Select and Connect and avoid production requirements altogether. Moreover, agents can choose different contract lengths that are available, and an agent should be able to choose the length that best fits its needs. Some small agents still prefer a five-year contract, which provides stability and better economics, while others want more flexibility. The CRS's have generally provided that flexibility, a business approach that once again seems lacking in the large network airlines.

DOT says it needs to make some changes in order to allow travel agents to use alternatives to CRSs. Though I embrace having many alternatives to include in my tool kit, it doesn't make sense for a small travel agent to use more than one CRS, for the training would be costly and unproductive, not to mention the additional technical cost to support multiple network connections. Subscriber contracts provide room to use such alternatives if the travel agent wishes. As technology develops, maybe this will make more sense as a practical matter, but changes in the rules to prevent travel agents from making deals with the CRSs are absolutely inappropriate.

DOT and some parties suggest that travel agents should pay more of the CRS costs/fees. Airlines are the ones that derive the primary benefit from CRS services, and they should pay the lion's share. Travel agents are just the agents of the airlines. Small travel agents could not pay more, since they are financially stretched as it is (particularly since airlines stopped paying base commissions and small agents have limited opportunities for revenue from override commissions). The idea that we or our customers can and should pay directly the airlines' booking fee expenses is a uniquely bad idea and one that, I understand, even the Justice Department is no longer pressing.

Small travel agents need access to a broad inventory in order to service their customers well and retain their base of business. We don't want to be pawns in a power struggle between the airlines and CRS's over

listing and delisting. We don't want Delta, NW, and American to be able to to disadvantage the CRSs that compete with Worldspan (e.g., extending benefits only to those travel agencies that use a CRS marketed by that airline). Small agencies cannot be expected to switch back and forth between CRSs as airlines join or drop out of CRSs. Consumers will become extremely frustrated by finding that the agency of their choice does not have efficient access to all available services and fares. While it is easy to say that they can just call another agent or just go on the Internet, this kind of confusion will simply add to the other reasons why many people are reluctant to travel at all these days. And the proposed sale of Worldspan doesn't help much because Delta and NW have announced that they will maintain strong marketing ties to Worldspan.

Mr. Chairman, I am not a lawyer and not an expert on CRS rules. What I am is a small businessman who understands what he needs to do business in today's technology based world. It is beyond understanding that the Department of Transportation, with no apparent study of the specific consequences for businesses like mine, would propose to ban CRS's, the area of the marketplace where competition is strong, from engaging in normal commercial incentive practices with travel agencies. We oppose this effort in the strongest possible terms. The goal of inducing travel agencies to use multiple CRS's and thereby lowering airlines' booking fees will not be served by this effort. It will simply enrich the airlines at the expense of small businesses across the country, causing many to simply fail.

In conclusion, I thank the Subcommittee for the opportunity to testify today on DOT's proposed CRS rules I strongly urge the Small Business Committee to convince the DOT that any new CRS rules should retain flexibility in travel agent agreements with CRSs especially productivity and other incentives

Thank you.

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U.S. HOUSE OF REPRESENTATIVES
SMALL BUSINESS COMMITTEE

SUBCOMMITTEE ON
REGULATORY REFORM AND OVERSIGHT

CRS REGULATIONS AND SMALL BUSINESS IN THE TRAVEL INDUSTRY

2360 Rayburn House Office Building

June 26, 2003

STATEMENT OF GALILEO INTERNATIONAL

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STATEMENT OF GALILEO INTERNATIONAL

Galileo International appreciates the opportunity to present its views on the effect on small businesses of the Department of Transportation's proposed changes to its computer reservation system ("CRS") rules. Galileo is one of four CRSs operating in the United States today. We are headquartered in Parsippany, New Jersey, with additional offices in Rosemont, Illinois, and Denver, Colorado.

Galileo and Travel Agents

CRSs provide travel agents, airlines, and other travel suppliers with a highly efficient tool to manage millions of pieces of constantly changing travel information. As the American Society of Travel Agents ("ASTA") has told the Department of Transportation, "the scope of total information available through CRS is unequaled by any other technology."[1] CRSs have given travel agents (including small travel agents) the ability to communicate instantly on a world-wide basis with a myriad of travel suppliers. CRSs allow travel agents, large and small, to access efficiently the huge amounts of information on airline and other travel services. ASTA has noted "the extraordinary efficiency of the CRS systems as information and booking technologies."[2]

Galileo believes that small travel agents perform valuable services to consumers and are important to the long term success of the air transportation industry in this country. Over the years, Galileo has been a strong partner with the travel agency community. We have devoted

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[1] *See American Society of Travel Agents, Inc. and Hillside Travel, Inc. v. Delta Airlines, Inc., et al.*, Docket No. OST-2002-12004, Complaint filed March 28, 2002, at ¶ 15.

[2] Comments of the American Society of Travel Agents, filed in Department of Transportation Docket No. 97-2881 (March 17, 2003) ("ASTA Comments"), at 2.

special attention to the needs of small and medium sized travel agencies through a network of support entitled the Small Business Accounts management region ("SBAM"). The SBAM team developed a productivity appraisal service designed exclusively for smaller agencies to help them use the many Galileo product solutions that are available to them.

Galileo has worked with small travel agencies to help them survive the tough economic times that have plagued the industry. As one example, in the wake of the September 11 tragedy, when the entire travel industry came to a virtual standstill, Galileo was the first CRS to provide financial relief to the industry. In essence, tens of thousands of agencies paid no lease fees for their computer equipment for this period. These adjustments afforded important financial relief to travel agents, particularly to smaller agencies that had few resources to fall back on. In total, Galileo provided millions of dollars in relief to the agency community in the aftermath of the September 11 tragedy.

Galileo recently introduced a flexible pricing program known as "Select and Connect," designed to help small agencies that generate fewer than 20,000 bookings per year. In early 2002 it became clear that the events of September 11, combined with the airlines' new zero base commission policy, was negatively impacting smaller agencies over the long term. Galileo's new Internet-based "Select and Connect" pricing program provides small agencies with a more cost-effective method of distribution while allowing them to earn revenues if they achieve certain booking targets.

The Department's Proposed Rules

The existing CRS rules have been positive for travel agents, including smaller agencies. Travel agents have benefited from introduction of new services and low prices, the result of vigorous competition among CRSs. The Department's proposals to amend the rules, on the other hand, will adversely affect travel agents and will almost certainly cause many smaller

travel agents to go out of business. The proposed rules are weighted heavily in favor of the largest airlines and the distribution system these airlines jointly control, known as Orbitz. If the Department's proposed rules take effect, they will provide the largest airlines with a huge advantage over other industry participants, particularly small travel agencies.

The Office of Advocacy of the U.S. Small Business Administration ("SBA") has advised the Department that its notice of proposed rulemaking ("NPRM") does not adequately analyze the economic effects that the proposed rules will have on small businesses.[3] So far as Galileo is aware, the Department has not responded by providing the analysis required by statute.[4] The Department's failure to consider adequately the effects its proposals will have on small businesses is particularly troubling. As explained below, the proposed rules will have a crippling effect on these businesses.

The Mandatory Participation Rule

Travel agencies survive by providing consumers with accurate, comprehensive information about travel options. If a travel agent cannot provide this information, the agent will not survive. Unfortunately, the Department's proposals undermine travel agents' ability to obtain comprehensive information.

If implemented, the proposed rules would allow large airlines to withhold information from CRSs and, as a result, from travel agents.[5] The Department proposes to abandon the mandatory participation rule, which provides that an airline that owns a CRS may

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[3] *See* Comments of the U.S. Small Business Administration, Office of Advocacy, filed in Department of Transportation Docket No. 97-2881 (March 14, 2003) ("SBA Comments"), at 3. The Regulatory Flexibility Act ("RFA"), 5 U.S.C. §§ 601 *et seq.*, requires that an agency consider the economic impact that a proposed rulemaking will have on small businesses.

[4] *See* SBA Comments at 2.

[5] Because of their efficiency, travel agents strongly prefer to use CRSs for booking travel.

not withhold participation and flight information from competing CRSs.[6] ASTA and many individual travel agents have spoken out against this proposal. ASTA states that this proposal "may lead . . . to the disruptive withholding of additional services and fares from various CRSs by various airlines seeking leverage, with the result that travel agencies and the public will have an even more difficult time acquiring and evaluating travel choices."[7] The SBA advised the Department that a number of travel agents had expressed concern about the proposal to withdraw the mandatory participation rule.[8]

In order to provide adequate protection from anticompetitive airline conduct, the mandatory participation rule should be extended to cover carriers that have marketing or other financial or operating affiliations with a CRS that would give them a similar incentive to withhold participation and services from other systems. This is particularly important in view of the upcoming sale of the Worldspan CRS, in which the three airline owners (American, Northwest, and Delta) will sell their equity interests to a non-airline company but Northwest and Delta will retain marketing relationships with Worldspan.

Orbitz

The danger that the large airlines will withhold participation and flight information from competing CRSs is especially strong now that the five largest U.S. airlines own and operate their own distribution system, Orbitz. Ownership of Orbitz provides the large airlines with the same incentives to distort competition that the mandatory participation rule was

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6 *See* Department of Transportation, Computer Reservation System (CRS) Regulations; Statements of General Policy; Proposed Rule, 67 Fed. Reg. 69366, 69393 (Nov. 15, 2002). (This document will be cited as "NPRM at [page number].")

7 ASTA Comments at 45.

8 SBA Comments at 4.

designed to prevent. Specifically, these airlines are likely to manipulate access to their flight information in order to cripple the effectiveness of non-Orbitz distribution systems, including brick and mortar travel agents. If the mandatory participation rule is eliminated, the Orbitz owners will have both the ability and the incentive to deny competing CRSs and travel agents access to the information they need to survive. Consumers will move away from using travel agents if they perceive that the agents cannot provide the same choices and options as Orbitz. For a small travel agent, the loss of even a few customers can have a big impact on profitability.

Orbitz already uses its inherent commercial advantages to compete directly with smaller travel agents, not just for individual consumers, but for the corporate accounts that many travel agents need to survive.[9] In its reply comments on the NPRM, ASTA states: "Orbitz's owners have succeeded in transferring from travel agents an estimated $22 billion in commission income since 1995. They have engaged in a prolonged, deliberate and unrelenting campaign to disintermediate travel agencies of all kinds and to take over the retail distribution function themselves."[10] The Department's proposed elimination of the mandatory participation rule will facilitate this disintermediation and hasten the decline of small travel agents.

Galileo urges the subcommittee to consider the Department's overall regulatory posture toward Orbitz and the potential effect on small travel agents. Orbitz is an airline-owned distribution system that, through a most favored nations ("MFN") clause and other provisions, encourages airlines to withhold information from the traditional CRSs used by travel agents and to remove agents from the travel distribution business entirely. In short, Orbitz ownership

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[9] *See* link to "Orbitz for Business" at http://www.orbitz.com (soliciting corporate accounts to switch from offline agents).

[10] Reply Comments of the American Society of Travel Agents, filed in Department of Transportation Docket No. 97-2881 (June 9, 2003) ("ASTA Reply Comments"), at 3.

provides the large airlines with the same sorts of unfair distribution advantages that CRS ownership provided to the airlines when the original CRS rules were promulgated. And Orbitz recently began to offer its services to travel agents through new software, seeking to displace traditional CRSs.

Many travel agents (including small travel agents) have commented that the Department should treat Orbitz as a CRS for purposes of the mandatory participation rule and other CRS rules.[11] The Department, however, has so far been reluctant to regulate Orbitz or even to explain why it has not done so. Without regulation of Orbitz, however, the Department will not be able properly to protect small businesses. As ASTA has observed, "[t]he Department should . . . explain why, in light of the history of airline driven prejudice to competition using CRSs as the instruments, it makes sense to unleash an entity owned by airlines with 80 percent of the domestic air transportation market into the retail arena with no restraints whatever on its behavior."[12]

Productivity Pricing Arrangements

The current rules permit CRSs to agree to provide travel agents with volume-based incentives, or productivity payments. The Department has proposed to eliminate such productivity pricing arrangements.[13] This change would seriously injure many travel agents for whom these payments represent a key source of income.

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[11] *See, e.g.*, Comments of Custom Travel, filed in Department of Transportation Docket No. 97-2881 (March 17, 2003), at 1; Comments of Sand Canyon Travel, Inc, filed in Department of Transportation Docket No. 97-2881 (March 13, 2003), at 1; ASTA Comments at 49.

[12] ASTA Comments at 49.

[13] NPRM at 69408.

Volume incentives are a common business practice. Productivity arrangements have expanded to play a more important role in response to the large airlines' decision to cut base commissions paid to travel agents.[14] Once the large airlines decided that they would no longer pay for travel agents' services through commissions, there was greater pressure for CRSs to make productivity payments so that travel agents could remain solvent. If the Department prevents CRSs from making these payments, many travel agents will not have the revenue streams they need to survive. This problem will be particularly acute for the smaller travel agencies, which lack the bargaining leverage to negotiate for override commissions.

The current CRS rules do not *force* travel agents to accept productivity payments from the CRSs. As travel agent organizations have advised the Department, many subscriber contracts do not include productivity arrangements. However, some travel agents continue to choose contracts with productivity pricing terms because those terms provide substantial benefits and fit their needs. The Department should not prevent travel agents from making this choice.

The Department claims that elimination of productivity pricing will make it easier for travel agents to use multiple CRSs or to use the Internet to make bookings.[15] However, ASTA and other travel agents stressed in their comments on the NPRM that travel agents have significant business reasons not to use multiple CRSs and that productivity arrangements do not foreclose use of other booking channels if a travel agent has business reasons to use these other channels.[16] The Department's assumption that travel agents want to use multiple CRSs is particularly misguided in the case of smaller agencies for whom the administrative burdens of

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14 *See* ASTA Reply Comments at 18-19.

15 NPRM at 69408-09.

16 *See, e.g.*, ASTA Comments at 23-24.

using multiple CRSs are particularly onerous. Thus, there is no justification for a step that will have negative economic effects on a number of travel agencies, including small agencies.

Other Subscriber Contract Terms

The Department also proposes additional restrictions on contracts between CRSs and travel agents that, among other things, will limit the permissible length and damages provisions of those contracts.[17] CRSs and agencies currently have the freedom to enter into subscriber contracts of any length up to five years. Some agencies prefer shorter contracts that provide them with the flexibility to renegotiate terms on a more frequent basis. However, others prefer the stability and lower price that a longer contract can provide. Small travel agents have taken advantage of the flexibility available under the current rules and obtained contract terms that fit their business model.

Small businesses are a diverse group. It would be a mistake for the Department to replace the variety of contract alternatives that have developed under the current rules with a narrow set of "cookie cutter" provisions. The Department should not deprive small travel agents of the opportunity to choose terms best suited to their needs.

Conclusion

Like the SBA Office of Advocacy, Galileo is concerned that the Department has not adequately considered the impact its proposed rules will have on small businesses -- both as a legal matter under the RFA and as a matter of sound policy. The Department's proposed rules, if adopted, will allow the large airlines, through Orbitz, to use their leverage to continue to drive small travel agents out of business. These rules will prevent travel agents from receiving productivity payments without providing a mechanism for agents to recover this income -- a

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[17] NPRM at 69404-08.

result that will impose special burdens on smaller travel agents with limited financial resources. Finally, the proposed rules will limit the ability of smaller travel agents to negotiate subscriber contract terms that best meet their needs.

In sum, if they were implemented the Department's proposed rules would cause substantial harm to small businesses. Galileo believes that the best outcome for both small businesses and the travel industry as a whole would be for the Department to retain the existing rules, with strengthening of the mandatory participation rule.