

**BEFORE THE UNITED STATES
DEPARTMENT OF TRANSPORTATION
WASHINGTON DC**

In Re: Advance Notice of Proposed Rulemaking)	OST-97-2881
Computer Reservation System Regulations)	OST-97-3014
[14 CFR Part 255])	OST-98-4775

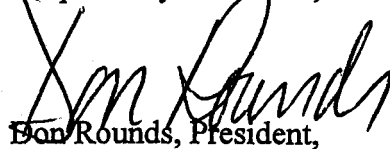
Motion for Leave to File Late the Reply Comments of:

The Consumer Alliance; Arizona Consumers Council; Florida Action Coalition Team; Consumers Alliance of the Southeast; Columbia Consumer Education Council; Consumers for Competitive Services; Consumers for Affordable and Reliable Services; Center for Consumer Affairs, University of Wisconsin – Milwaukee; American Council on Consumer Awareness; American Association of Business Persons with Disabilities; MANA; Alliance for Small Business Advocacy; Michigan Consumer Federation; Consumers Coalition of California; and, United Seniors Health Cooperative.

The Consumer Alliance; Arizona Consumers Council; Florida Action Coalition Team; Consumers Alliance of the Southeast; Columbia Consumer Education Council; Consumers for Competitive Services; Consumers for Affordable and Reliable Services; Center for Consumer Affairs, University of Wisconsin – Milwaukee; American Council on Consumer Awareness; American Association of Business Persons with Disabilities; MANA; Alliance for Small Business Advocacy; Michigan Consumer Federation; Consumers Coalition of California; and, United Seniors Health Cooperative submit this motion for leave to file late, pursuant to 14 CFR Section 302.6(c), the attached Reply Comments regarding the Department of Transportation’s Supplemental Advance Notice of Proposed Rulemaking concerning the Computer Reservation System Regulations under Title 14 CFR Part 255.

The above parties would show that the filing of these Reply Comments were delayed due to the multiple parties who were required to review and edit these comments to accommodate their views and concerns. Considering the fact that the Department of Transportation has been reviewing these rules for over three years, we do not believe that the minor delay in getting these comments filed will create prejudice to any party.

Respectfully submitted,



Don Rounds, President,
The Consumer Alliance
115 West Allegan, Suite 500B
Lansing, MI 48933

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Association of Business Persons with Disabilities; MANA;
Alliance for Small Business Advocacy; Michigan Consumer Federation;
Consumers Coalition of California; and, United Seniors Health Cooperative.**

Communications with respect to this document may be served upon:

Don Rounds, President
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Dated: October 26, 2000

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These remarks are submitted in reply to submissions made by parties commenting on the Supplemental Advance Notice of Proposed Rulemaking in the above dockets. We will focus on matters that are important to consumers – not to suppliers and competitors in the travel distribution business – because it is our voice that is often lost in the thousands of pages of testimony, exhibits and commentary that have been filed in this docket over the past three years. Yet it is the interest of people – consumers, if you will - that Secretary Rodney Slater has said are the department’s foremost concern in making and revising transportation policy. See, Leading the Way to Transportation Excellence in the 21st Century, A Report to the Nation, U. S. Department of Transportation, May 2000. Most of our comments are directed at air travel distribution, in general, and at the proposed Orbitz site in particular, since those issues seem to be at the heart of the Department’s latest request.

When the original computer reservations system rules were adopted in 1984 by the Civil Aeronautics Board, and later modified in 1992, the Department of Transportation (DOT) determined that the risk (and actual practice) of consumer deception was far too high to be left to the carriers’ discretion and market forces alone.¹

¹ “In finding that CRS rules remained necessary to promote airline competition, we determined that market forces still did not discipline the price or level of service offered participating airlines by the systems, **that CRS owners would still use their control of the systems to prejudice airline competition if there were no rules**, and that system could still bias their displays of airline services if there were no rules requiring unbiased displays. 57 Fed. Reg. At 43783-43787” Supplemental ANPR . July 24, 2000 (emphasis added)

As the airline owners of the original computer reservation systems (CRSs) demonstrated, controlling information on the computer screens of travel agents was a very powerful force to affect ticket sales – in their distinct favor and to the detriment of consumers and to other airline competitors who did not own their own CRSs. The airlines also demonstrated that they would not change their system of biasing screen information and punishing small airline competitors absent governmental regulation.

Since travel agents were the conduit through which information flowed to consumers, the DOT correctly perceived that consumer protections should be built into the language of the CRS rules to make certain that travel agents obtained unbiased, accurate and complete information from carriers. Travel agents could not provide objective, helpful information if the source of their information was biased. In these pre-Internet days, travel agents were the only ones who had electronic access to the airline and hotel databases and agents provided a valuable service by searching out the best prices and schedules that the consumer wanted. The ability instantly to book a reservation and to provide the customer with a ticket “while they waited,” constituted one of the first, and earliest forms of electronic commerce - and it was hugely successful.

The same consumer protection philosophy that guided the Department’s actions in enacting the CRS rules, we submit, applies equally (if not more so) today where, thanks to Internet-based technology, consumers sit at their personal computers and access information directly from the airlines own systems or through Internet sites

Today the expertise of the travel agent has come on-line in many respects giving consumers greater access to information and giving them the power to make better informed decisions. On-line agents can provide information around the clock – at times that are convenient for consumers. Consumers have the ability *themselves* to search for and compile travel information from a myriad of on-line sources. They can pick from sites that specialize in vacations, adventure travel and business travel. They can search for nearby attractions and for hotels rooms and cars at the time they look for air travel options. Where it was not possible before, today the consumer has the option of looking and booking directly or going through a travel agent, providing greater choice and flexibility for consumers.

However, without protection from the Department of Transportation, the one thing consumers still *cannot* detect is any evidence of bias in the computer programming or screen presentations that will keep them from getting the most economical and efficient travel options². That is why the need for that information to be unbiased, accurate and thorough is as great today as at anytime in the past, indeed, perhaps more so since consumers are not as experienced in picking up airline “tricks” and the appearance of “neutrality” is so easily created in a digital environment. In short, consumers need for the market place to remain open and accessible and **not** subject to unseen manipulation. That is currently the situation in the off-line world of travel distribution thanks to DOT rules. Extending the CRS rules to Internet-based sales is the only reasonable means to accomplish that goal in on-line transactions.

² We concur with the comments of the Consumers Union that, “[I]n an unregulated environment, consumers have no assurance that data on travel websites is not being omitted because of deals with airlines.” Consumers Union filing, page 5. Our concerns are both with the need to disclose special deals, which in many cases may actually *benefit* consumers, as well as the need for regulatory guidance and enforcement to prevent bias.

Most importantly, as many commentators (most particularly ASTA and Consumers Union) pointed out in their previous filings, the airlines have an abysmal track record of protecting consumers and are regularly (and correctly, we believe) charged with trying to manipulate the system to increase the cost of travel that consumers pay. Consumers recognize that commercial airlines are private businesses that are in business to make a profit for their owners. Nevertheless, those profits are being paid by consumers of air travel and they do not believe they are getting a fair deal. Study after study shows that consumers are not happy with the price, service or selection they are provided in most markets.

Consumers **do not trust** the major airlines for a very good reason. These airlines have shown a disregard for consumer concerns until faced with the prospect of governmental intervention. Consumers **do not believe** that the same airlines who have resisted efforts to provide “lowest fare offered” information through traditional sales channels, will adopt a totally different philosophy in the operation of the jointly-owned and jointly controlled Orbitz web site. Consumers **do not want** a return to the pre-CRS rules days when airlines could and did surreptitiously influence consumer choices without their knowledge.

These concerns are not about another day and another time. They are current and they are real. One need look no further than at the highly questionable practices of Delta Air Lines, first disclosed last year in an Atlanta newspaper, in withholding information from the public about the contractual obligation it extracted from the Priceline reverse auction site that in many cases *prohibited* competing airlines from responding to consumer bids for lower air fares than Delta had pre-determined it wanted to accept in the Atlanta market. It was only after Northwest Air Lines went “public” with its protest (arguably only because they were not able to cut a similar deal for themselves at their hub airports) that consumers became aware that the marketplace was being manipulated by an unseen hand – and it was only within the past few weeks that Delta agreed to change its policy, nearly a full year after the practice was first disclosed.

Why were Delta and Priceline able to get away with these deceptive acts? The only answers that consumers have are that there were no DOT rules or regulations to prevent it, that “caveat emptor” is alive and well in the airline pricing departments and that airlines do not want consumers to know about how they are manipulating the marketplace. DOT can and should correct that situation by acting promptly in the interest of consumers and by requiring airlines to provide full and accurate information through every channel of distribution they use where more than one carrier’s flights are offered³.

³ In this regard we respectfully disagree with other commentators who suggest that the CRS rules should apply to every web site offering, including those on carrier’s individual web sites. It is our belief that the risk of consumer deception is much less on an individual carrier’s site, where it is obvious that the carrier is pushing it’s own product through direct sales. Individual carrier sites do not give the same appearance of neutrality and objectivity that multi-carrier sites portray and, as a general rule, do not hold themselves out as providing comparative data about other carriers. However, low fares offered on an individual carrier’s web site should also be available through *other* means, such as the telephone or store-front sales offices, because the failure to offer these low fares to people who do not have Internet access will adversely affect those who are generally least able to afford them, particularly African-American and Hispanic communities where Internet access is still quite low relative to other groups. See, *Falling Through the Net: Toward Digital Inclusion*, A Report by the U.S. Commerce Department, October, 2000.

The failure to act quickly in this docket, before other incidents of a Delta/Priceline nature occur, would send airlines a message that DOT will ignore its regulatory authority over deceptive practices – a legacy that will result in continuing consumer harm for years to come⁴. Instead of continuing to postpone action on the CRS rules, as DOT has done for the past three years, the Department should follow the advice of Inspector General Kenneth Mead when he told the Senate Commerce Committee in July of this year that new CRS rules should be implemented before the Orbitz site is launched and before any [further] damage could be done. See, Testimony of Kenneth M. Mead, *Aviation and the Internet*, Hearing by the U.S. Senate Commerce Committee, July 20, 2000.

The Wolf in Sheep's Clothing

Although the site has not yet launched, the threat that is posed by Orbitz is real and should be dealt with forcefully by DOT. Those are strong words, yet as pointed out above, consumer skepticism is not without a factual history. From the consumer's viewpoint it appears that Orbitz' owners have colluded to create a grand deception masquerading as a consumer-centric web site. Whether this is their real goal or whether their statements about providing greater consumer choice are sincere, there are many questions that should be addressed by DOT in this proceeding before Orbitz is permitted to launch its site.

For example, Orbitz claims that its "new" technology will provide consumers with greater choices for the lowest fares and flight options. While the test software developed by ITA seems to provide more first screen options, consumers are generally more interested in the validity of the information displayed, than in the form of the screen presentation. It does not matter whether the picture on the screen is pleasing to the eye if the information it conveys is biased, misleading or incomplete.

A recent examination of the much-vaunted software revealed that the promise may be more than Orbitz can deliver. Consumer representative James Brown, a professor at the University of Wisconsin, requested flight information for a round trip ticket from Milwaukee to Dallas departing on October 17, 2000 between 10 A.M. and 2 P.M. with a preference for Northwest Air Lines. The Orbitz/ITA software returned a screen showing six flight options, all with one connection and all priced at \$664. By going directly to the Northwest Airlines site, however, using the exact same criteria, the consumer was informed of six flight options all priced at \$434 – a \$230 difference!

Orbitz' comments to this Docket assert that the booking fees paid by airlines to computer reservations systems are excessively high and result in consumers paying higher ticket prices – a situation that Orbitz claims it will help solve. While we are ill-equipped to address (or even fully understand) the issue of booking fees, the consumer harm argument Orbitz makes rings very hollow.

⁴ Orbitz claims that regulatory action should not be taken until after the site has been launched, if at all, and that in any event, they should be trusted to be fair and unbiased because they are contractually bound to do so. This position was summarized by Orbitz CEO Jeff Katz when he told the Senate Commerce Committee that bias would not occur "on my watch." Consumers agree with the sentiments of Senator Richard Bryan, who responded to Mr. Katz that the days of *caveat emptor* have long since passed. See, *Aviation and the Internet*, Hearing by the U.S. Senate Commerce Committee, July 20, 2000.

First, there is no claim by the airline owners of Orbitz that any cost savings would be passed along to consumers – indeed the history of the airlines in this regard would lead to a contrary conclusion. When, for example, the ten percent airline ticket tax expired a few years ago, then American Airlines CEO Robert Crandall told Congress that the airlines did not lower ticket costs because it allowed them to improve their profitability. (See, Testimony of Robert Crandall before the Aviation Subcommittee of the U.S. House of Representatives, February 13, 1997). When fuel prices were at their lowest levels approximately a year ago, airline ticket prices did not fall, but increased. See, *Airfares: Flying into Pockets of Pain*, by Donna Rosato and Paul Overberg, USA Today, February 23, 1998; *September Business Fares Up 7% from Year Earlier: American Express*, Dow Jones News Service, November 20, 1998.

Second, if the airlines were so concerned that booking fees were excessive, the airlines themselves had the ability to lower their own costs – or, at a minimum, introduce competition into the marketplace. Until late last year, Continental Airlines owned a significant portion of Amadeus. Until March of this year, American Airlines owned and controlled Sabre, the largest CRS. Even today, Delta, Northwest and TWA own 100% and control the Worldspan CRS. United Airlines still maintains some ownership in the Galileo computer reservation system – and must be one of its biggest customers. All but TWA are equity owners of and will control Orbitz.

If these airlines were truly interested in lowering their costs (and passing those savings along to consumers) wouldn't they have reduced the booking fees of the CRSs they owned instead of creating a new cartel? If the Orbitz owners believed that CRS booking fee increases were excessive, wasn't it the airline owners of those systems who imposed the fee increases upon themselves? Do they really believe that DOT is so blind to the reality of the CRS marketplace, and how those fees came into existence, that they continually parade around the argument that CRS booking fees are an issue for which Orbitz is the sole and exclusive solution?

It seems more likely to us that the airline owners of Orbitz have engaged in a grand game of self-dealing. Instead of portraying themselves as the sheep that are being sheared by the CRSs and by independent on-line travel sites, aren't these wolves merely wrapping themselves in a virtual web of sheep's clothing to further deceive consumers and DOT and increase their profitability?

It is perhaps most interesting that Orbitz comments focus extensively on the benefits it will bring to its airline owners (e.g. lower booking fees) and spend virtually no time discussing the Orbitz business model or how Orbitz, per se, can be successful or profitable. Indeed, if the Orbitz site is designed and can only operate only with continual financial subsidization from its airline owners, then DOT should be greatly concerned about and should address in this rulemaking the significant anti-consumer, anti-competitive nature of their business model.

Expansion of the CRS rules to Internet sales is NOT regulation of the Internet

Another incredible argument made by Orbitz and its airline owners is that by extending the CRS rules to Internet sites, DOT will somehow trample onto the sacred ground of Internet regulation – an argument that is also met by consumers with great skepticism.

Assume, for a moment, that the Orbitz owners decided to sell their corporate stock directly to the public, via the Internet – at advertised prices that would be as low or lower than stock offered on any stock exchange. Would they claim that the Securities and Exchange Commission rules did not apply to them simply because the sales conduit to consumers was the Internet? Would they claim that the consumer disclosure regulations and sales materials/advertising rules would not apply because they did not sell through a bricks-and-mortar stock exchange? Would they claim that they could charge different prices to purchasers based upon whether the purchaser bought through a web site, brokerage house or over the telephone? We think not – or at least not with a straight face!

Regulation of the sale and exchange of corporate securities and commodities, even when those purchases can be made directly by consumers via web-enabled Internet sites, is still subject to appropriate regulation by federal and state authorities – and few, if any would seriously argue that these regulations constitute a burden on the development of the Internet, as Orbitz has claimed.

The basis for regulation of the securities and commodities markets is predominately for the protection of consumers and to protect a free, vibrant, neutral and competitive marketplace. That same principal is true of the reasons for the extension of the CRS rules to the marketplace for travel distribution. Rather than burdening the Internet, having reasonable rules of the road that protect consumers by mandating full disclosure and by prohibiting nefarious methods of price deception, are in the public interest and would enhance competition rather than constrict it. Why? Because consumers will have confidence in a marketplace they know is neutral and unbiased. Absent governmental oversight, consumers will have no assurance that the on-line broker of their transactions will, in fact, be honest and will protect their interest.

The Orbitz MFN Clause Will Hamper Competition, Not Promote It.

The duplicity with which Orbitz addresses the issue of mandatory participation and the Most Favored Nation (MFN) clause contained in their written contract is almost beyond rational belief. On the one hand they claim their MFN clause will aid consumer confidence because it will prohibit Orbitz from being “disadvantaged vis-à-vis any other channel.” [Orbitz comments at page 43](#). They excuse their “standard non-discrimination commercial arrangement” (the MFN clause) with the comment that participating carriers “are required only to offer Orbitz the same fares that they make available to the general public through any other channel.”

Yet a few pages later, in their attempt to change the rules that have protected consumers by creating a level playing field, they suggest the Department should repeal the mandatory participation rule [Part 255.7] alleging that it has harmed consumers and has not worked to foster competition. Do Orbitz’ airline owners seriously contend that they can contractually mandate that participating carriers participate in Orbitz to the same extent that they participate in any other channel of distribution and, at the same time, oppose mandatory participation by airline owners in other CRS systems as anti-consumer? We think not.

Most significantly, the Orbitz filing itself demonstrates how the MFN clause is anti-competitive. Here is what they say:

“ At the outset, it is important to remember that there is nothing in the agreement between Orbitz and its participating carriers that prohibits a carrier from entering into a similar deal with another travel website, such as Travelocity, or with an entity in any other channel of ticket distribution. Nor, for that matter, is there anything in these agreements that would prevent an airline from entering in to a less favorable deal, if it chose to do so.”

What they do **not** say is that their agreement does prevent an airline from entering into a **more** favorable deal (which we believe would provide a lower-price deal for consumers.) In other words, the MFN clause prohibits an airline from making selected low-cost offerings through any other channel of distribution if it were not offered to Orbitz. This, in our opinion, would lead to the maintenance of prices, could be considered a form of price-signaling. As the “Father of Airline Deregulation” (former CAB head) Dr. Alfred Kahn told the Senate Commerce Committee, the MFN clause will also discourage discounting. See, testimony of Dr. Alfred Kahn, *Antitrust Issues in the Airline Industry*, Senate Commerce Committee, July 27, 2000. If the DOT does nothing else to protect consumers, we urge it to prohibit Orbitz from enacting or enforcing its MFN clause.

Many consumers will be prohibited from obtaining low fares by Orbitz

While Orbitz claims that it will not have exclusive access to any low fares, what they disingenuously fail to say is that their contract encourages exclusivity. Consumers fear an airline-owned Orbitz will become the exclusive multi-carrier source for heavily discounted tickets, with the airlines denying competing ticket marketers access to their lowest fares. Such a monopoly would force cost-conscious travelers with access to the Internet to use Orbitz, driving other travel sites out of business, including traditional travel agents. Then, with reduced competition for their captive agency, the airlines would be free to maximize their profits by controlling the amount of information and the number of discounted tickets offered on the Orbitz site.

Giving Orbitz exclusive access to the lowest fares would also mean that consumers who don't have access to the Internet, or prefer not to make purchases there – including a disproportionate number of low-income, elderly, and less educated persons – could not buy the least expensive tickets⁵. Additionally, many consumers simply are uncomfortable giving out credit card information over the Internet until they have complete confidence that their financial transactions will be secure and private. Orbitz will prohibit those consumers from gaining access to the lowest fares offered. This Department should go beyond its recent decision this past week requiring airlines to advise consumers that lower fares *might be* available on the Internet and (1) require the airline owners to say what those specific fares would be and (2) require that the airlines make their fares available through multiple channels that are accessible, at least in part, by persons who do not have Internet access.

⁵ “ To say that virtually everyone has access to the Internet is a gross exaggeration, “ he added. “Low-income people, who need the lower fares the most, are the ones who have the least access to the Internet.” Comments of Donald L. Pevsner as quoted in *Airlines Ordered to Tell Callers Internet May Offer Cheaper Fares*, The New York Times, October 21, 2000.

Conclusion

Consumers want access to the lowest possible fares through channels of communication that are convenient, reliable and worthy of consumer trust. History has demonstrated, and the CAB and this Department enacted the CRS rules in response to it, that the airlines cannot be trusted absent regulatory guidelines. In pre-Internet days, the CRS rules provided a level playing field for travel distribution, providing consumers assurance that the airlines could not engage in unseen manipulation of the marketplace.

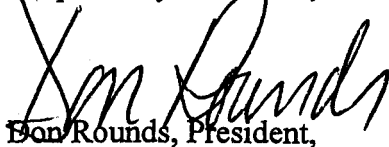
However, there are currently no such protections to consumers in an on-line, Internet-based world – the fastest growing segment of travel distribution. That is why, we submit, this Department should act quickly and decisively to protect consumers' interests. DOT should not wait until there is a replay of the situation that existed in the early 1980s before the CRS rules were adopted. Nor should DOT carry this proceeding over into yet another calendar year and another administration.

The CRS rules should be re-written well before the Orbitz site goes "live" so that consumers can look forward to having increased options and accurate, unbiased information they can use to make travel purchasing decisions. The only realistic way for consumers to have confidence that they will not be deceived is for DOT to ensure that Orbitz and any other airline-owned travel distribution sites will be neutral and unbiased. Consumer confidence will be lost if DOT waits until "the horse is out of the barn."

At a minimum, DOT should extend the current rules to multi-carrier on-line travel agents. It should demand that Orbitz eliminate the anti-competitive, anti-consumer MFN clause from its contracts. It should also demand that airlines provide information about its lowest fares offered to the public through every channel of communication it uses. To do otherwise would extract an unnecessarily heavy toll from those who can least afford it.

DOT has extended the current rules for three consecutive years in order to study them. Now the airlines are asking for further delay (or no action at all) in updating the CRS regulations. To continue to delay is not in the consumer's or the country's best interests. It can only benefit those entities who seek to operate in a *caveat emptor* world and for whom the word "delay" has seemingly become a substitute for customer service.

Respectfully submitted,



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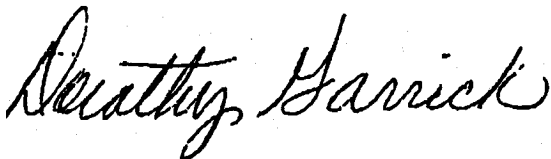
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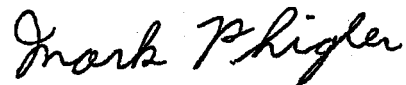
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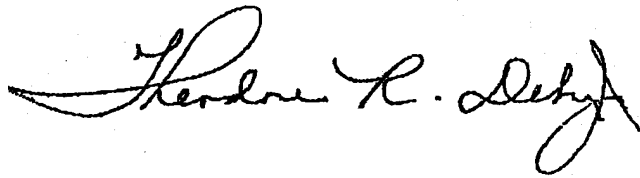
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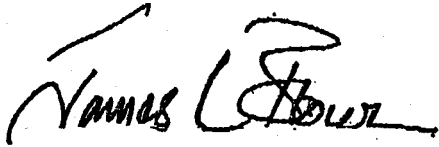
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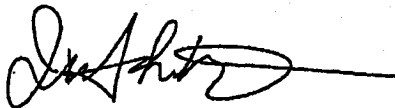
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October 23, 2000

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Re: Docket - OST-97-2881
Docket - OST-97-3014
Docket - OST- 98-4775
Comments on the Supplemental Advance Notice of Proposed Rulemaking

Dear Sirs and/or Madams:

This letter is written in support of the comments prepared by Mr. Don Rounds being submitted as a separate document.

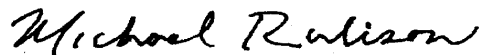
In our view, business abhors competition and does what it can to avoid it. More, some businesses will lie to or deceive consumers when they perceives a benefit without an offsetting cost.

Clearly, airlines have pursued various strategies to reducing competition. The proposed jointly-owned and jointly controlled Orbitz computer reservations web site appears to be headed in the same direction: impeding competition -- through programming that conceals vendor preferences in the data shown to consumers accessing a web site. On-line data screens and transactions should be subject to the same rules currently in force for off-line purchases of airline services.

To reiterate one of Mr. Rounds' comments: consumers "do not believe they are getting a fair deal. Study after study shows that consumers are not happy with the price, service or selection they are provided in most city-pair markets." This comment resonates with us. We believe that the service and choices we have from Raleigh-Durham airport is not as convenient or flexible as it was in the "bad old days" of FAA regulation.

NCCC supports Mr. Rounds' proposed remedies as given in his submission.

Sincerely yours,



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