ISSUES IN THE TRAVEL AGENCY BUSINESS

HEARING

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SUBCOMMITTEE ON REGULATORY REFORM AND OVERSIGHT

OF THE

COMMITTEE ON SMALL BUSINESS
HOUSE OF REPRESENTATIVES

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CONTENTS

ISSUES IN THE TRAVEL AGENCY BUSINESS

THURSDAY, MAY 2, 2002

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

The committee met, pursuant to call, at 10:00 a.m. in room 2360, Rayburn House Office Building, Hon. Mike Pence (chairman of the committee) presiding.

Chairman PENCE. I would like to call the Subcommittee on Regulatory Reform and Oversight, the Committee on Small Business, into session.

This hearing is entitled Issues in the Travel Agency business, and the Chair has a brief opening statement. We will also recognize the gentleman from New York, and also the ranking member for opening statements before we recognize the distinguished gentleman from Florida for our first panel, and I appreciate very much his attendance.

Travel agents provide a service that most Americans take for granted. Unlike many other businesses, most Americans do not have daily contact with travel agents. We often forget that travel agents play a vital role in ensuring that Americans reach their intended destinations. They are a critical small business in many American communities.

The necessary role that they play in the American economy was evident in the aftermath of the events of September 11. Riveting testimony provided by Bonnie Adams before this subcommittee on October 11 demonstrated the necessity of having a healthy and viable travel agency business in the country. As Ms. Adams testified, "Travel agents were in their offices trying to help the many thousands of people stranded by nationwide airport closures. Many of them provided free assistance to people who had bought their tickets on the Internet and had no one else to contact for help."

Today's hearing exams issues that are affecting the financial viability of the travel agency business. Technology has progressed to the point where many consumers are no longer using travel agents to purchase tickets or plan their holidays; rather they are using the Internet to investigate fares, see pictures of resorts and make reservations. New companies such as OneTravel.com and Orbitz were formed to take advantage of this new technology. This new technology even has affected how the federal government contracts for the provision of travel agency services.

If there are cheaper and better ways for businesses to provide services than through travel agents, then the market has spoken.

Travel agents will have to adapt to the changing economy just as many other small businesses have in the information age.

However, the changes brought in the distribution of travel-related services, especially airline tickets, must at the end of the day be fair, particularly in light of the extraordinary commitment that this Congress made in the fall of 2001 to the airline industry itself. These changes cannot come as a result of unfair competitive practices by companies interested in extending their market power in the provision of air travel to new businesses or regulatory decisions that bias the marketplace in favor of certain interests.

Before Congress takes any action, it is important that we understand the economic and regulatory problems faced by existing travel agents. We must also comprehend how new technologies and organizations are providing innovation in the delivery of travel services. Solutions to problems facing travel agents cannot stifle innovation, nor should the government favor new ways of doing business if they are based on unfair or unjust competition. The new system for selling and distributing airline tickets is not necessarily better if the system unfairly capitalizes on the existing market power and substantial federal assistance provided to the airlines.

The issues being addressed in today's hearing are important as evidence by the appearance of good friend, Mr. Foley, the Co-chair of the Congressional Travel and Tourism Caucus, who has my taken time to speak on this issue in this panel today.

If, in my estimation, unfair practices are endangering America's small travel agents, I will do my part to ensure that those unfair practices should be corrected. However, if the changes facing the travel agency business are the natural evolution of this sector of the economy, then I as a conservative would be loathe to take action.

So I am here to learn about the industry and the changes in the agency business and its challenges for the future.

And before recognizing several of my colleagues, let me specifically welcome Mr. Grucci from New York to our subcommittee. He will have the opportunity to make a statement after the ranking member if he should arrive. I also want to credit Mr. Grucci for his unique role in encouraging this hearing, and calling this issue to the attention of this subcommittee.

I also want to thank and appreciate the former Chairwoman of this subcommittee, Mrs. Kelly, also from New York, who will be joining us as the morning proceeds. Your leadership has been an encouragement to the Chair and is largely responsible for our work today.

With that, let me begin, as the ranking member is not here, by recognizing Mr. Davis from Illinois if he would have any opening statement at all.

Mr. DAVIS. Thank you very much, Mr. Chairman, and I appreciate the opportunity to be here and to participate in this hearing, and I certainly want to welcome Representative Foley and look forward to the testimony of all those who have come and will participate.

I am not a member of this subcommittee, and I had not intended to necessarily have any comments other than to suggest that I am seriously interested in the viability of the industry. I come from

Chicago, which is transportation center of the universe as far as I am concerned, and as far as many other people are concerned. And so there is a great deal of activity, there is a tremendous amount of interest, and we have a great deal of concern that the industry remains viable, healthy and alive. And so I came to learn, to hear what is taking place, and I appreciate the opportunity to make those comments.

Chairman PENCE. We thank the gentleman from Illinois and appreciate his time in participating.

Also, as I mentioned before she arrived, I want to recognize for any remarks the former Chairwoman of this subcommittee who sent a pace in the previous Congress, one that we have tried to keep up in the regulatory reform area of small business, and recognize Mrs. Kelly from New York for any opening comments.

Ms. KELLY. Thank you, Mr. Chairman.

I simply am delighted that you are holding this hearing. I think it is something that we very much need to address because the travel and tourism industry is one of the things that forms the heart of our small business network across this nation, and anything affects them adversely is likely to affect the economy of the nation. So I appreciate your holding this hearing, and look forward to the testimony from our witnesses today.

Chairman PENCE. And thank you.

And lastly, the gentleman who first called this issue to the Chair's attention, and is largely responsible for having been the genesis of the hearing today, the gentleman and fellow freshman from New York, Mr. Grucci.

Mr. GRUCCI. Thank you, Mr. Chairman, and I too would like to associate myself with your remarks. I do not believe that this is a hearing today to determine whether or not an industry should or should not survive because of how competition functions.

Mr. Chairman I am outraged that there is not one airline representative at this meeting and I know they have been invited to be here. I think it is a disgrace that they have completely ignored Congress and its invitation to join in to understand what is going on because the bottom line here is that the airline industry had come to Congress with a legitimate problem, and had asked for help. And the taxpayers of this country rose to that occasion, to the tune of $15 billion. And we in Congress, and myself included, voted to support the airline industry, recognizing the huge impact that the airline industry had on traveling America—all the associated businesses that went along with our airline industry, our hotels, our restaurants, our limousine services, our taxi companies, and yes, our tourism, and the travel agents who play a big part in making tourism possible.

They came to us and they said with a $15 billion package, we would be able to stay in the air. We would be able to continue to fly people around, and as a result all of the industries that depend upon airline travel will be able to survive, stemming off hundreds of thousands of job losses throughout the country as a result of the grievous attacks on September the 11th.

Well, shortly after Congress stepped up and did what it felt was the right thing to do, the airline industries withdrew its commissions to the travel agencies all across the country, not with any advanced warning, not by sitting down with them and trying to negotiate a different rate schedule, but simply through their fax machines they received a document that said as of a certain time on a certain date you will no longer be receiving commissions, of which travel agencies probably close to 75 percent of their business revolves around commissions.

Now, again, this is not to determine whether or not the airline industries ought to pay the commission, but certainly the airline industries, in my opinion, made very strong representations that with that $15 billion no one would suffer further; that they would be able to keep moving and keep the economy going strong.

Well, not only did they not live up to their obligation and their commitment, in my opinion, they have also now duped the consumer who no longer will have the ability to deal with a human voice unless they want to pay additional fees, but the consumer is not seeing the benefit of the reduction in the commissions that are being saved by the airline industries. Those commissions are still embedded in their ticket price, but what is happening is the airline industries are pocketing that commission.

Our travel agencies are being asked to take on a burden of dealing with the general public and not getting compensated by the airline industries, all at a time when an organization and a company known as Orbitz is receiving commissions and continuing to flourish, and ironically is sponsored and funded by the five major airlines in the United States. They are under an investigation by the Justice Department, and I am going to be following that investigation very closely.

But the thing that really irked me the most was when it was brought to my attention that it is only American travel agents that have lost their commissions. There is still a nine percent commission being paid in Australia, the Bahamas, Brazil, the Czech Republic, Greece, Hong Kong, Hungary, Ireland, Indonesia, Israel, Italy, Jamaica, Jordan, Korea, New Zealand, Poland, Portugal, Saudi Arabia, and Zimbabwe. And a 10 percent commission is in Bermuda, Colombia and Peru. And what do we get in America for our hard-working, small business people from the airlines? Zero.

And what do we get today from the airlines? Zero representation here at this hearing. Mr. Chairman, I am outraged that they are not here, and I think this committee ought to do all that it can to empower them to be here to testify at a subsequent hearing, including but not limited to the power that we have of subpoenaing.

I have a written testimony that I will submit to the Chairman for purposes of incorporating in the record today. I am interested in hearing from our travel agents. I think that they will have a story to tell that will be very compelling, and I welcome our colleague, Mr. Foley, who will be testifying in just a moment.

Thank you, Mr. Chairman, and I yield back the remainder of my time.

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

Chairman PENCE. Thank you, and the Chair recognizes the ranking member for this subcommittee from Pennsylvania, Robert Brady, for any opening remarks.

Mr. BRADY. Thank you, Mr. Chairman. I apologize for being late, and because of my tardiness I will not bore you with an opening statement. I will just submit it for the record, and I am interested to hear what my colleague and friend, Mr. Foley, has to say.

Thank you.

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

Chairman PENCE. Thank you, and the Chair is pleased to welcome to this hearing today as our first panel the Co-chair of the Congressional Travel and Tourism Caucus, a man very, very familiar with these issues as they bear both on small business and the economy at large.

The gentleman from Florida, Mr. Foley.

STATEMENT OF THE HONORABLE MARK FOLEY, REPRESENTATIVE FROM THE STATE OF FLORIDA

Mr. FOLEY. Thank you very much, Chairman Pence. I feel like just revising and extending Mr. Grucci's remarks and calling them my own because they really hit on a number of topics that I wanted to discuss.

Mr. Chairman, Mr. Brady, Mrs. Kelly, Mr. Davis, and Mr. Grucci, I appreciate and thank you for the opportunity to speak regarding the state of travel and tourism, and travel agents in the current economic environment.

The termination of the pay-based commission structure to travel agencies should serve as a warning light—much like the low oil light in your car. While eliminating commissions for travel agents does not appear from the outset to have an immediate impact on travel, this small change has the potential to lead to a seizure of parts of this economic engine if ignored.

As a former travel agent and now the Co-chairman of the Congressional Travel and Tourism Caucus—along with Congressman Sam Farr—the news of this removal of the pay structure by the airlines hit especially close to home. In fact, last month I sent to a letter to Attorney General John Ashcroft to review the actions of the airlines questioning the timing of the airlines dropping commission payments within days of each other. I would like to submit that letter for the record.

Travel agents play an important role as a filter, an educator, a promoter and feeder to the purchasing public. In bad times, the airlines have relied on travel agents to bolster sales, but with the advent of the Internet airlines are expressing more hubris. In fact, during those bad times they are often referring to us as their partners in the travel and tourism industry. In good times, we are ignored and neglected. In fact, the airlines have entered in the online travel market in force—something that in itself reflects our changing times.

Let me say for the record that I believe in a robust market economy, as does the Chairman. And in my last seven and a half years in Congress as a frequent, frequent flyer I can attest to the special role that the airlines play in the United States.

However, our efforts to promote the airlines, including the $15 billion bailout of the airlines, carries a responsibility from the airlines to the American public. That $15 billion payment from the taxpaying public makes them, in a sense, de facto shareholders in the major airlines.

In my meetings with virtually every segment of the travel and tourism industry in the wake of September 11, I heard various proposals to buoy the second largest industry in the United States. I, too, share Mr. Grucci's dismay at the fact that no airlines chose to appear. During the discussion of the $15 billion bailout, I could not get through the hallways because of the clutter of airline representatives that were there begging and asking for salvation.

One of my personal concerns with the airline bailout was that it would not filter down, and I said this at the time, through the airlines to the family-owned travel agencies, the baggage handlers, the taxi cab drivers, and other related interests.

And the decision to drop travel agent commission seems to bear that concern out.

When a consumer walks into a travel agency, the airline ticket they purchase are often just a part of the overall travel package. By the airlines undercutting commissions, they are undercutting potential ground transportation, accommodations, and entertainment service sales offered to the traveling public by travel agencies. While it has been suggested by some that this latest round of commission cuts is the result of September 11—and I sincerely hope this is not being spread by the airlines—the truth is that airlines have been ratcheting down commissions for a number of years, and this has been a final blow that travel agents have been predicting for years.

Mr. Chairman, it is critical that the traveling public continue to have free market access to an assortment of travel services and fares provide by travel agents.

I thank you for calling this hearing, and I appreciate the members' interest in this subject.

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

Chairman PENCE. I thank the gentleman for his comments, and in the midst of a very busy schedule your passionate remarks are a very important commencement for our hearing today.

I want to recognize the gentleman from Puerto Rico who has joined us, if you had any opening remarks on this before we begin our next panel.

With that, I will invite anyone on the panel that may have any specific questions or wish to amplify the comments made by Mr. Foley, and would begin with the ranking member.

Mr. Grucci.

Mr. GRUCCI. No. No, thank you, not at this time, Mr. Chairman.

Chairman PENCE. Ms. Kelly? Anyone?

Ms. KELLY. No.

Chairman PENCE. Okay, with that, we will——

Mr. FOLEY. Thank you, Mr. Chairman.

Chairman PENCE [continuing]. Dismiss the witness, and again thank you.

And our second panel, if you could take places at the table, we will begin very quickly.

[Pause.]

Chairman PENCE. I would like to thank you for coming to this hearing of the Subcommittee on Regulatory Reform and Oversight, and we thank you for your commitment to good government, your willingness to dedicate time and appropriately travel to participate in this discussion.

I want to let you know the ground rules. There are little light boxes in front of you. Those of you that are veterans are already familiar with the system. Each of you will be recognized for five minutes, and the green light means go, and yellow will come on about a minute before your time is up, and the red light, we ask you to respect, knowing that your full statement, if you do not waiver from your prepared statement, and we can add the balance of your statement to the record for the hearing and you need not be concerned about that being added.

And we will, in the interest of time we will hear from all of the witnesses, and then proceed with questions from the members in attendance if that meets with the approval of everyone on the panel.

And the Chair now recognizes the gentleman from New York, who will introduce our first witness.

Mr. GRUCCI. Thank you, Mr. Chairman.

It gives me great privilege to introduce Lou Fenech. Lou opened Royal Holiday Travel in Glen Cove, New York, in 1976, and worked as the general manager. The company was expanded in 1984, with a branch office in Sayville, New York, where it is currently.

He is the president of the company. Lou is a graduate of Georgetown and received an MBA from Long Island University. It is also important to note that Lou is currently a deputy squadron commander of the Civil Air Patrol.

Lou came to me in March to discuss the impact of the elimination of commissions to travel agencies, and has educated me on the problems travel agencies are facing regarding access to fares.

It gives me great privilege to introduce to you Lou Fenech.

STATEMENT OF LOU FENECH, PRESIDENT, ROYAL HOLIDAY TRAVEL

Mr. FENECH. Thank you, Mr. Grucci.

Chairman Pence, Congressman Grucci, and members of the subcommittee.

My name is Lou Fenech. I am president of Royal Holiday Travel of Glen Cove and Sayville, New York. We are a 26-year-old travel company.

Mr. Chairman, thank you, and Congressman Grucci, for providing this opportunity for me to testify today. The main reason for my appearance before this esteemed committee is to provide information that will help you focus on the current state of the travel industry.

The majority of travel agencies are small companies, specializing in leisure travel. Over 52 percent of them are owned by women. We are active members of our local downtown business communities, members of our local chambers of commerce, and are taxpayers. We support our local schools, sports teams, charities and places of worship. We are your neighbors, your relatives and your friends.

We are also in trouble. For many years our company and many companies just like us have relied on the sales of airline tickets as a major component of our income picture. When you stop to think about it, wherever a client may decide to go most trips begin with a trip on an airplane. Now, under the guise of survival the airlines have decided to change their distribution system and discard the sales force that has kept them in business and helped them to grow over these past five decades.

We all know the toll of the tragedy of the September 11th has taken on this country. I believe that the travel industry has been the hardest hit of all. I also believe that when a major industry appears before Congress and is granted a generous aid and assistance package funded by our taxes it should be incumbent on them to ensure that this largesse not be used only for their own survival, but also for that of the countless small businesses that rely on them. Failing that, at least not make the situations of these small business any worse.

This was not the case with the airlines. Not only did they received a $5 billion grant and up to $10 billion of loan guarantees, they turned right around and cut our commission to zero. They claim that the consumer should have to choose between paying for our expertise and buying directly from them.

They also told both Congress and the travel public that it was our fault that they were not profitable. Yet airfares have actually increased since our commissions were cut.

The reality of the situation is plain to see. The airlines have been hemorrhaging money since the advent of deregulation when they undertook a campaign of global expansion. The cost of this expansion were staggering. So too were the loans that they took out to pay for it. The problems arose in late 1980s and early 1990s, when their loans came due at precisely the time of an economic period of slowdown, extended period of economic slowdown. Airlines began to go bankrupt, there were many mergers and acquisitions, and the number of airlines dwindled to the few that are left today.

Now faced with reduced competition, the airlines, led by Delta Airlines, began a campaign for the systematic destruction of the travel agency distribution system. Over a seven-year period they took our commission from 10 percent to zero, an agonizing bit at a time. It is interesting to note that the only major carrier not to take this path has been Southwest Airlines, who to date have supported the travel agency distribution system, and seems to be the only carrier to remain profitable.

This cut to zero only affected travel agents in the U.S. and Canada. Travel agencies in countries around the world in places like the Persian Gulf, including Yemen, are still paid nine percent or more by these various same airlines.

Old-timers in our industry tell stories about the first commercial airplane flights and how much trouble they had in converting their steamship clientele to airline passengers. I can tell you stories from my 26 years in business how difficult it was to sell an air ticket after a DC–10's engine fell off or after someone blew up an airport half way around the world. Even now, over seven months after the 9–11 tragedy, and with all the billions of dollars that were spent to make our airport secure, we still have a hard time convincing clients to fly. We have always felt that this was just part of our job. It was part of what we were being paid to do—until now.

The major airlines' elimination of the commission traditionally paid to travel agents on the sale of domestic airline tickets is anticonsumer and anticompetitive. It threatens to deprive consumers of their access to their preferred source of travel information, and tickets. It threatens to deprive the public of their only source of neutral and objective comparative information. It relegates consumers to the airline-controlled distribution channels where they will inevitably be directed to choices serving in the airlines own bottom lines.

Congress has expressed its interest to continuing the availability of travel agent services. Your holding this hearing is indicative of your desire to help.

In light of the actions being taken by the airlines, we respectfully request the following actions:

Please pass HR 1734, giving travel agents access to all fares. Please urge the DOT to aggressively investigate Orbitz. Press the DOT to complete the appointments to the national commission to ensure consumer choice and information in the airline industry. Finally urge the DOT to launch an investigation to review the actions of the airline industry specifically relating to the appearance of collusion and the imposition of zero commissions and their concerted effort to eliminate the travel agency distribution system.

I thank you very much for your attention.

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

Chairman PENCE. Thank you, Mr. Fenech. We will come back to you after the panel is done testifying for questions.

I think our next witness is also to be introduced by the gentleman from New York, Mr. Grucci.

Mr. GRUCCI. Thank you, Mr. Chairman.

Yes, and indeed I would like to introduce our next witness, and I think it is indicative that she is here to testify today because over 50 percent of the travel agencies are owned by women, and 82 percent of the workforce are women, and we can see who will be impacted most by these airlines' decisions.

Celeste is the owner of the Empress Travel in Coram, New York, a small neighborhood mom and pop full service travel agency. She has been a travel agent owner since she entered the business in March 1978. She volunteers currently as president of New York State Chapter of the Association of Retail Travel Agents, ARTA, the largest nonprofit trade group representing travel agents exclusively. She serves on the ARTA's board of directors.

Welcome, Celeste.

STATEMENT OF CELESTE SIEMSEN, PRESIDENT, EMPRESS TRAVEL OF CORAM

Ms. SIEMSEN. Chairman Pence, members of the subcommittee, good morning.

I thank you very much for inviting me here this morning to speak at this hearing. My name is Celeste Siemsen, and I am very proud to appear today as a small business owner in New York's First Congressional District.

I would like to take this opportunity to thank Congressman Grucci, who is our congressman, for having these meetings arranged. It is very important to small business and the travel agency community that our voices be heard in Washington at this time.

I make my living as the owner of Empress Travel, a full service neighborhood mom and pop agency, which I opened up 24 years ago, seven months pregnant with a three-year-old in the back room. It is located in Coram, New York, and with the little spare time that I do have raising a family and running a business, I do volunteer as the president of New York the Association of Retail Travel Agents. I am also the past presidents of Travel Agents of Suffolk County, TASC, and currently the legislative chairperson.

Today, I closed my agency to travel at my own expense to Washington for one reason and one reason only—survival. Thousands of other small business owners around this country like me need your help to defend our business against the unfair practices of the major U.S. airlines. We are facing these threats in two key areas: One, unfair commission policies; two, unfair restrictions on selling airline tickets over the Internet.

First, let me speak about the airlines' commission policies. After September 11th, Congress was hit immediately by a powerful, multimillion dollar airline lobbying bailout package, five billion in direct cash gifts, 10 billion in guaranteed federal loans. Less than 72 hours after the first plane hit a target in New York City the airline lobbyists had drafted this legislation and started lining up support in Congress.

On September 22, President Bush signed the Air Transportation Safety and Stabilization Act, guaranteeing this money for this airlines. Throughout the hearings and discussions on Capitol Hill from September 11 to September 22nd, the message was the same. Congress wants to help the airlines. The airlines promise in turn that helping them would naturally assist the other related industries.

That is not true in the case of travel agencies. What happened is that the airlines took the $5 billion taxpayers' dollars, mine included, and six months later they steamrolled over small businesses like mine in a direct attempt to put us out of business.

Here is what they did. With these tax dollars in hand, they cut the commissions paid to travel agents like myself for selling airline tickets to zero. That is correct, zero. In other words, the airlines want the travel agents to work for free, and in serving our customers who want to buy airline tickets.

What makes the situation even worse is that the airlines have attacked only the American agents, and as Congressman Grucci has already stated to you, the chart that I have here shows that the major carriers, like Delta Airlines, continue to pay full commission to travel agencies in the Bahamas, Egypt, The Caymans, and other overseas countries while the U.S. agents get paid zero.

What does this say about the trust Congress has put in the airlines after September 11, when travel agencies in Korea, the Persian Gulf, and even Afghanistan get full commission by the U.S. airlines, while hard-working American travel agents like myself get paid zero?

The zero pay policy has hit our industry hard. Four out of five travel agents are women. We own most of half of all the U.S. travel agencies. Most U.S. agencies get paid less than $2 million in annual volume sales, averaging salaries of $28,000 for front-line agents, and $35,000 for agency owners.

Unlike the airlines last fall, I am not here to ask for a bailout. I am asking for fairness. Why should these airlines receive federal bailouts, guaranteed loans, antitrust immunity, or any other taxpayer-funded benefits, when they are competing unfairly in the marketplace?

In other words, we are asking for a level paying field. If Delta Airlines, American Airlines, United Airlines, and other carriers want to pay overseas travel agents while they put U.S. travel agents out of business, well, that is their business—but not very patriotic where I come from. But they do not need to have anymore help from Congress to do this in their plan.

I would like to also address the second thing that is very important to the travel agent community, and at least maybe—we could at least get a start in granting the travel agent community antitrust immunity as the airlines enjoy right now. This will give us the same privilege that the airlines have to cooperate with each other.

Thank you once again, Chairman Pence, and the members of the committee, for your time and attention this morning.

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

Chairman PENCE. Thank you, and having started a small business in my basement when I was not seven months pregnant, I appreciate your success.

I want to recognize the gentlelady from New York who will introduce our next witness.

Ms. KELLY. Thank you, Mr. Chairman.

I am very pleased to find Stan Morse here this morning. It is my pleasure to introduce him. Stan and I have been working together for a long time. He comes from a small town, like many travel agents. Millbrook, New York is a place where people go into Stan's business because the trust Stan. They know if they walk in to Stan's office and say they say, "Stan, I want to go to a particular place, can you help me? Can you help me find not only plane reservations but can you tell me where the best hotel is, and is there shopping?" Stan gives a full service to the people who come into his office. This is what travel agents do.

And I also sit on the air subcommittee in Congress. I heard the testimony of the airline industry, and I voted to give them, I am somebody who voted willingly to give them the money to help them get the bailout that they needed following 9–11.

However, I find it extremely troubling that that money that we voted to give them did not go anywhere except into the airlines' personal pockets, so that the airlines, they said, would continue to run. They, I believe, used the public's concerns about safety in the air, and at this point it is, as we see repeatedly in the newspapers, somewhat in question, but they used that concern about safety to gain money from the Congress, and it was our intention that some of that would go on into travel agents fees to help the travel agents survive the terrible impact that 9–11 had on their businesses. In fact, that did not happen.

I know of two other people that I represent who have sold their travel agencies in the last year simply because they feel they can no longer survive and provide the quality of service that they have been able to do in the small towns that I represent because of the squeeze that they are experiencing from the large airlines because of the lack of commissions.

If we in America value the quality of our small town life, if we value the people who are there helping us get our travel plans and having an individual, a face that we know that is helping us travel, I believe very strongly we have to support people like Lou and Celeste and Stan Morse, my constituent. And I am very proud to have Stan here today because Stan is not only a small leisure travel agency in Millbrook, New York, but Stan is the president of the Hudson Valley Chapter of ASTA, the American Society of Travel Agents, and we have a lot of those members in my district.

So, Stan, I am glad to have you here speaking for them, and speaking for so many of the people who are members of your organization. Welcome.

STATEMENT OF STAN MORSE, PRESIDENT AND OWNER, MARSTAN TRAVEL

Mr. MORSE. Chairman Pence, Congressman Davis, Congressman Brady, Congressman Grucci, and Congresswoman Kelly, thank you sincerely for allowing us to speak at this hearing today.

I am co-owner of Marstan Travel of Millbrook Limited, a small leisure travel agency in New York State. I am also president of Hudson Valley ASTA, with 200 members.

The purpose for appearing here today is to provide some factual data on travel agencies in the United States. For reference, the data are from the 10-year period 1991 to the year 2000. The year 2001 was a unique year for the travel industry and for the most part deserves special attention, particularly due to the events of September.

During the 10-year period from 1991 to the year 2000, sales of airline tickets in the United States rose from $48 billion to a whopping $83 billion, an increase of 73 percent. For the same 10-year period of time, the number of air tickets rose from 150 million to 200 million, an increase of 33 percent. These data show America likes air travel, and has cultivated that liking.

Travel agents were critical to this increase in air travel for we produced over 80 percent of the airline tickets for the traveling public from 1991 to 2000. And despite the introduction of Internet tickets in the late nineties, agents still produce about 75 percent of all airline tickets in the U.S. today. Only approximately 10 percent of air tickets are done online today, and it is apparently that the great majority of American travelers still want to use travel agents over the alternatives of ticketing on the Internet or by calling the airlines directly.

But from a travel agent's perspective, the airlines have nearly done everything they can to push us out of air ticketing. During the period of 1991 to the year 2000, especially as the fallout of five successive commission caps and cuts starting in 1995, the number of U.S. travel agencies has dropped from 23,000 to 18,000, a decrease of about 21 percent. Just one year later, a few short months ago at the year end of 2001, the number of travel agents dropped further to the 16,000 range, a drop of nearly 30 percent since 1991. And on March 14, this year, just six weeks ago, all commissions were eliminated for all small U.S.-based travel agencies. And I believe everyone in this room understands the words “zero commissions.”

And where there is zero dollars coming in, over 95 percent of the small agencies nationwide now charge service fees. The average service fee for a small travel agency today is 20 to 25 dollars. My agency, for example, has been forced to charge an average fee of $40 per airline ticket, and as a result we have seen a sharp drop in airline ticketing since its starting fees five years ago.

With fewer tickets, our computer contracts are in question since we are required to produce a minimum number of tickets to avoid severe penalties for shortfalls.

Now, on top of all of this is Orbitz, the consortium of five of the six major airlines, which offers low-fare tickets online. The only major U.S. carriers not signed onto Orbitz is Southwest Airlines. The major airlines behind Orbitz, that is, American, Delta, United, Northwest and Continental, carry over 75 percent of all air passengers today. And since small travel agencies are out of the commission picture, the major airlines through Orbitz have set their sights on limiting Travelocity and Expedia, their two biggest competitors.

At first blush, the low fares offered by Orbitz appear to benefit the traveling public, but once Expedia and Travelocity are gone, the sky may be the limit for what the airlines can charge for air tickets. And with drastically lower airfares available online, fares which are not available to travel agents, the airlines have delivered the second blow to travel agency.

First it was commission elimination. Now it is low fares not available to travel agents and available on the online.

One year ago there were seven major airlines, and now there is six; five of which have banded together in Orbitz. Travel agents feel we have passed through oligopoly to the early stages of airline monopoly. Clearly, it is a bad position both for travel agents and the traveling public in general. What we both need is a level playing field in air ticketing.

Thank you.

[Mr. Morse’s statement may be found in the appendix.]

Chairman PENCE. Thank you, Mr. Morse.

Our next witness that the Chair will recognize is Jacky Alton, who is the president of CWT Travel and Almeda Travel.

In addition to having a master’s in education from Howard University, she got a B.A. from Fisk University, and currently is responsible for the overall management of government, military and corporate operations nationwide for CWT and Almeda. She manages the overall operation of six locations in defense travel region five, two locations in defense travel region one, three locations in region four, as well as a home office in Houston Texas, and is another great example of the role of women in this industry, and the successful role that women play in the travel industry as well, as well as, I might add, minority women.

And so we recognize Jacky Alton for five minutes, and thank you for being here.

STATEMENT OF JACQUELYN ALTON, OWNER, CWT/ALMEDA TRAVEL, ON BEHALF OF THE SOCIETY OF GOV'T TRAVEL PROFESSIONALS

Ms. ALTON. Thank you, Mr. Chairman, and thanks to this subcommittee for inviting me.

I would also like to tag onto Celeste. I will have been in business 25 years June 1, and raised both of my children in the travel agency industry, and my son is working in it now. I am very disturbed because I do not know if he has a future or does he need to look for another position outside of this industry, with what is happening.

Although there are some positive signs of improvement, I am speaking in regards to government travel specifically though, there are positive signs of improvement in the $20 billion government travel market, much will depend on a win/win relationship of government contracting officers and the travel industry in the months ahead.

The Airlines Reporting Corporation as of March 2002, as has been stated, shows a very large decrease in the past 12 months of travel agencies. For every new travel agency location on an annual basis, we estimate 13 closed their doors. Regrettably, one of these casualties happened in Indiana, of one of our members who was a federal government subcontractor.

Small businesses have insufficient opportunities to bid on and retain federal government contracts. In a typical travel management relationship, we see four major hurdles faced by these small businesses.

The first one is the RFP and contracting phase. Small business set asides are few. DOD plans to bid out approximately 28 travel management contracts as small business set asides, 8.6 percent of DOD's estimated total air volume. That is a long way before the 23 percent federal small business goal is reached.

A second one is bundling of travel management into IT and other contracts.

A third is the A76 studies which have been brushed aside. And then we have incomplete RFPs; RFP writers should be required to respond to their own work. Requiring past performance in similar work areas. GSA and DOD propose that the government procure travel management technology in many cases from a single Global Distribution System vendor, and that all travel agents would be required to use the same GDS system.

Another obstacle is the unreasonable contract length of time, that this travel system is requiring 60 days or no notice, to cancel contracts that roll into the new round of reprocurement, at no cost to the government.

Zero commission, as others have stated, is a very large obstacle. Small travel agents are less competitive in RFP financial evaluations.

The last one is the improper use of size standard codes. An example is Peterson Air Force Base using NAICS 561599 of $5 million income, and then Wright-Patterson Air Force Base at the $5 million level as published in Commerce Business Daily. Many disaster relief loans are being made at the $3 million level, but the basic services contracting remains at $1 million for the travel agent.

Increasingly, micromanagement by the government poses a problem. The travel industry has experience in negotiating and operating best value programs. Wage determination by the U.S. Department of Labor. End-to-end travel solutions currently being developed by DOD and other have placed must of the responsibility of a trip planning and sort out of options on the traveler.

Lastly, leave the travel arrangements to those who are trained, proficient and knowledgeable about government travel, and industry regulations.

Financially, equity value of travel agency ownership has plummeted the past several years with parallel cuts in available levels of bank lines of credit. Many government receivables are in the 90–day column versus the Federal Prompt Pay Act.

Last year we had $40,000 of federal receivables, and I am a small business, that were outstanding for one year. That is very hard for me to have to deal with.

Small travel agency owners and managers basically worked without compensation in the months following September 11th. Layoffs of long-term and family employees have been particularly painful. I personally had to not take a salary from October to January so that I did not have to lay off the majority of my staff.

There is still a delay in waiting for policy directives, especially at DOD. Failure to provide equitable adjustments on an objective and timely basis. For rebid, the large size of some small business set aside contracts and the low-size standard can force an incumbent into the position of not being able to rebid. I am in that position now. I am being penalized for growing and working hard.

In conclusion, Mr. Chairman, the answer to your basis question is that small travel agencies remain at a disadvantage in bidding on and operating government travel contracts at a reasonable profit. That disadvantage is growing as government priorities favor technology investments for the basic service of travel management, and lessen its commitments to small business and free enterprise.

Thank you very much.

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

Chairman PENCE. Thank you, Ms. Alton, for being here and for that presentation.

Gary Doernhoefer is a man with an extraordinary background both in the area of airline work as well as being an accomplished author and researcher in the area of antitrust law while at American Airlines. As an attorney, he completed the successful settlement of the ATPCO antitrust litigation with the Justice Department and private class action lawsuits. He is the author of a case study on the unsuccessful regulatory efforts to gain approval of the American Airlines/British Airways alliance, and he published a book with the Brookings Institute entitled "Antitrust Goes Global."

In 1998, Mr. Doernhoefer became senior counsel, government affairs, for American Airlines, working full time here in Washington. He represented American Airlines here on Capitol Hill, and became a widely respected voice for the industry and antitrust law.

In September of 2000, he accepted a position as vice president and general counsel for Orbitz, LLC, the name of which has come up in some comments already. And it is a technology development company supported by what has been described as a consortium in the airline industry to create a new website to distribute air and other travel services over the Internet.

Inasmuch as Mr. Grucci pointed out, the lack of a presence of a representative of the airlines here, we are especially grateful, Mr. Doernhoefer, that you would be willing to join us for the subcommittee representing the company with which you are affiliated, and address many of these issues, and you are recognized for five minutes.

STATEMENT OF GARY DOERNHOEFER, VICE PRESIDENT AND GENERAL COUNSEL, ORBITZ

Mr. DOERNHOFFER. Thank you, Mr. Chairman, and members of the subcommittee, and Congressmen Grucci.

On behalf of Orbitz, the online travel agency, and its 180 employees that go to work every day in downtown Chicago, let me express my appreciation for the opportunity to be here and talk about some of these issues.

It is well known that there is a wave of change sweeping across travel distribution systems, and change is always a frightening thing. Orbitz believes, however, that while these changes bring new challenges to travel agents, many industry observers underestimate the skills and value that professional travel agents have and their ability to adapt to new business conditions.

Most importantly, however, the changes in the industry are bringing about needed relief to a distribution system that is broken; a system that for years has boasted leading edge technology in the form of computer reservation systems, or CRSs, but that were deployed in a tragically inefficient and unnecessarily costly structure.

Let me talk about the structure for a moment. Textbook economics would state that any marketplace operates best when the consumer pays directly for the service or good they buy. An educated consumer can weigh a product's benefits and costs and make reasonable decisions. Over time, in a competitive market, this simple structure will force all sellers of the service or good to compete to offer superior quality at a reasonable price.

Travel distribution is not so simple. Historically, airlines sold most of their seats through a distribution chain with many steps. A consumer calls a travel agent, the travel agent uses a CRS to find fare and schedule information, the CRS taps into the individual airlines' systems to determine whether there are seats still available, and to place the booking.

This distribution chain has not followed the simple market I just described because at two points in the chain the party receiving the service is not the one that pays for it. Travel agents provide a service to the consumer, but they were paid a commission by the airline.

Likewise, the CRS provided information and booking services to the travel agent, but again the CRS was paid a booking fee by the airline, not the travel agent. These distribution costs, travel agent commissions and CRS booking fees, became part of the airlines' marginal cost for selling each ticket. As these costs went up, fares had to go up as well.

The consumer was ultimately paying for these distribution services indirectly through hidden costs driving higher airfares. Eventually, this inefficient structure led to distribution costs becoming the third highest cost category for the airline industry, behind only labor and fuel.

Not surprisingly, this system could not last. As airlines faced pressure to reduce costs, they lowered what they could—travel agency commission—starting in 1995. But the overall system adjusted, just as you would expect. To make up for the lost commission revenue, travel agents began charging their customers directly for the knowledge, expertise, and professional service they provided. And where the agents earned the fee with good service, customers have been willing to pay it.

The latest round of commission cuts is nothing more than the logical conclusion of this seven-year process. Finally, the cost of the professional service offered by the travel agent to the consumer is now transparent to the customer, because it has been removed as a buried element of airline marginal costs and put squarely on the table for the consumer to see and evaluate.

The travel agents' concerns are still legitimate however, and should not be minimized. Travel agents are still caught in a paradox. Although the small travel agent may now collect nothing from the airline, they nevertheless appear to the airline to be an expensive means of distribution.

Ending commission payments eliminated only one of the two costs borne by the airlines when a travel agent sells a ticket. The airline must still pay a CRS booking fee for every travel agent transaction. Although the airlines have unbundled the cost of travel agent commissions from their other marginal costs, the CRS booking fee incurred on every transaction remains obscenely high and obscured from competitive pressure.

The CRSs, originally built and owned by the airlines, are now largely independent. Each of them has thousands of travel agents locked into using their system and thereby generate booking fees that the airlines must pay. For years, nearly every airline has had to keep paying spiraling CRS costs or risk losing sales to the thousands of travel agents if the CRS removed that airline from the computer displays. And the travel agents that contracted for CRS service had no incentive to bargain for lower booking fees, because they did not have to pay them—they were charged directly to the airlines.

Only Southwest Airlines, and more recently and to a lesser degree, JetBlue, have successfully avoided this trap, largely shunning travel agency distribution while conditioning its customers to book directly with the airline.

Unable to subject the CRS booking fees to competitive pricing pressures, the airlines seized on the Internet as a lower cost alternative. Each developed their own website and for the last five years encouraged customers to book there by making some of their lowest fares available exclusively on their own sites.

The in June, 2001, Orbitz was launched as a lower cost alternative to the two dominant online travel agents, Travelocity and

Expedia. Just as the airlines had reserved their webfares for their own low cost websites, Orbitz earned access to the webfares by offering the airlines much lower distribution costs than any of its competitors, including a rebate of the booking fee.

The key to understanding the business model of Orbitz is to understand that it offered the airlines—all airlines—a deal; lower distribution costs, including a rebate of a portion of the CRS booking fee, in return for a promise to let Orbitz sell all of their inventory, including webfares.

It is not an exclusive offer and competitors have finally begun to lower their costs and gain access to the webfares as well. But it is a trade, lower costs for access to inventory. And if the government were to require airlines to give everyone the same access to fares regardless of the cost of sale, there would be no point in Orbitz or anyone else offering to lower costs of distribution for its service. We would quickly return to the same broken system that existed before we launched.

Orbitz is no more threatening to traditional travel agents than Travelocity or Expedia. Today, only 12 to 14 percent of total travel is purchased via the Internet. Of that, roughly half is sold by individual supplier sites like AA.com or Hilton.com. The rest, only five to six percent, or six to seven percent of total sales, is split among third party sites like Expedia, Travelocity and Orbitz. Orbitz is still the smallest of the three in total travel sales. Thus, Orbitz' market share in the total distribution market is less than two percent.

Mr. Chairman, I have one conclusion that will help, I think, shed significant light on this if I may continue.

There is a way out of the travel agents' paradox. Given time, there is little doubt that the Internet will develop a direct substitute for the CRSs and their high cost. Many travel agents already make bookings directly on airline websites or other Internet agencies, thus accessing the webfares for their customers.

Today, that is cumbersome. Tomorrow, we hope it is not going to be. Other companies and Orbitz are all working on better technology to help the travel agent place bookings around the CRSs and have access to the webfares. If we let the market work, the solution is near. In the meantime, we really should avoid rushing into government regulation that may in fact cut off the market's first healthy response in ten years to mend a broken distribution system.

Thank you, and I appreciate your allowing me a few extra moments.

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

Chairman PENCE. Thank you.

Our last witness is Michael Thomas who is the president and CEO of OneTravel.com. He is the founder of that Internet travel company. He is recognized in the industry for creativity and innovation. Graduate of both Dover College and Exeter University in England; recognized in the Travel Agent Magazine as one of the 100 rising stars. Recently he has been profiled in New York Times and Success Magazine.

He is near and dear to my heart because he is the very imagine of a entrepreneur with very little gray hair.

Mr. THOMAS. More every day.

Chairman PENCE. We appreciate very much your willingness to be here and to give us your perspective on these issues. Michael Thomas is recognized for five minutes.

STATEMENT OF MICHAEL THOMAS, PRESIDENT, ONETRAVEL.COM

Mr. THOMAS. Thank you, Mr. Chairman.

I am Michael Thomas, President and Chief Executive of OneTravel.com., an online travel agency based in East Greenville, Pennsylvania. I appreciate the opportunity to appear before the committee this morning to discuss critical issues relating to the online travel distribution systems and our inability to access and sell the best fares.

I founded OneTravel in September 1995, in a barn on a sheep farm in rural Pennsylvania just as the online travel agency was developing. The barn reinforced the culture I wanted to create for OneTravel; one of thrift and creativity.

The launch of Orbitz in June 2001 marked a major turning point in the distribution of travel services since Orbitz was formed by and is wholly owned by the five largest U.S. airlines who collectively control about 80 percent of the domestic air travel market. Orbitz was structured by its airline owners so that it would inevitably dominate the distribution of air travel. This domination results from two provisions in the contract that airlines must sign in order to participate in Orbitz;

First, a most-favored nation or MFN provision under which an airline must offer to Orbitz any fare that it offers anywhere else as well as its webfares posted on its own site. This provision has the effect of eliminating the incentive for airlines to negotiate special deals with other travel distribution outlets, thus ensuring that Orbitz alone receives the best fares.

Second, the Orbitz agreement provides that airlines must fulfill annual promotional support for the benefit of Orbitz, and that one of the means of meeting that promotional obligation is to provide fares exclusively to Orbitz.

These two contractual provisions have resulted in Orbitz's dominance in the offering of exclusive discounted webfares for domestic airline travel, and we find ourselves unable to effectively compete against Orbitz.

It is no surprise that in the period since its launch in June 2001 Orbitz is now as large or larger than Travelocity and Expedia, and on a course to dominate the online distribution of airfares. It has already attained booking revenue in excess of over $1 billion.

Ironically, while the number of users of online services is growing, we and other agencies are effectively being foreclosed from the sale of domestic airline tickets and being forced to do as best we can on refocusing on tours, cruises and vacation packages.

Our experience has shown that a difference of only a few dollars between competitive airfares is frequently sufficient to determine a consumer's choice of websites for purchasing tickets. The impact of the Orbitz only webfares on our business is clear. While the total number of unique visitors to the site has increased substantially during the past year, the look-to-book ratio has declined 45 percent, to a mere 0.63 percent of all unique visitors. This means that while OneTravel is experiencing some of the same general increase in interest by the public as the large online travel agencies are now experiencing, fewer customers are actually booking on OneTravel because it does not offer competitive pricing in many markets due to its lack of webfares and special deals with Orbitz owner airlines.

OneTravel's total monthly revenue from domestic air bookings has declined substantially since Orbitz's launch. I attribute this loss of revenue in large measure to Orbitz's ability to use the joint powers of its owners to restrict fare access and thus competition. In fact, this marks the first year since the launch of the company that we experienced a significant reduction of revenue in one of our key business segments.

Naturally, this loss in domestic airline booking revenue has also made it more difficult for us to diversify our business into other travel areas. And the same, of course, holds true for the many off-line travel agencies that are small businesses and that are also suffering as a result of the unique ability of Orbitz to offer the special discounts reserved for it by its airline owners.

Orbitz claims that its growth is not due to these anticompetitive clauses in its contract, but because it uses superior search technology. This is not accurate. Orbitz uses a search technology called ITA, which it licenses and is available to others, including OneTravel. Orbitz's growth is due instead to its exclusive access to low-cost webfares.

According to a Sabre recent filing with DOT, on any given day up to 75 percent or more of the first 10 options displayed on Orbitz in response to a specific city pair request are webfares that are not distributed to independent travel agencies like OneTravel.

Orbitz claims that it is unbiased and that it is the only neutral travel website. However, the truth is that Orbitz is heavily biased in favor of its owner airlines which reserve their best fares for Orbitz alone. This not only disadvantages other online travel agencies, it also disadvantages small airlines.

According to a Sabre recent filing with DOT, from the period of July 1, 2001 to February 28, 2002, 71.6 percent of the airline bookings made on Orbitz were for flights on Orbitz's owner airlines. This compares to 51.3 percent big–5 bookings on OneTravel, a 40 percent difference.

The airline owners of Orbitz claimed that they formed Orbitz in response to the alleged high cost of distributing airline travel through CRSs. It is now, however, more expensive for airlines to sell tickets through Orbitz than through OneTravel.

The major airlines have eliminated commissions to all travel agents, including OneTravel, but Orbitz requires its airline participants to pay transaction fees of about $7.50 per ticket to Orbitz. The total cost to an airline of an Orbitz-issued ticket is about $14. In contrast, on OneTravel there is no commission, so the same ticket would cost about $7.50, about half as much.

The data established that Orbitz's claims that it would provide a lower cost alternative to travel distribution by other outlets is not well grounded in the fact.

To address these consumer harm and competition concerns, and preserve the role of small business and travel distribution, this committee should urge the department to prohibit Orbitz by virtue of its joint airline ownership from enforcing its MFN clause, and from entering into arrangements that allow it exclusive access to webfares.

Thank you for your consideration of my testimony. I would be more than happy at this time to answer any questions.

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

Chairman PENCE. Thank you, Mr. Thomas, and I want to thank all of the witnesses for very compelling and very challenging presentations. The Chair will ask a couple of questions to get things started, and then we will yield to the ranking member, and Ms. Kelly and Mr. Grucci, Mr. Davis, respectively, as their time permits them to remain, although I will reserve a few questions for later in the hearing in the interest of my colleagues' time.

Let me begin with Mr. Fenech and Ms. Alton and those that are involved directly in the industry on a day-to-day basis.

Mr. Fenech, you said that seven years ago the airlines began to cut commissions, and we heard testimony from Mr. Morse about the decline of agencies during that period of time; 1991, 23,000 agencies, and then today down to 16,000 agencies. We have heard testimony today that there is a wave of change that is productive and good for the consumer and for the industry.

What I would really like, if you could just limit your comments to maybe a minute, the agents in the room to address the issue for the committee of the criticality of the commission structure in particular to your business given the fact that we have acknowledged that there have been changes, the travel agency business has changed and evolved, and added service fees.

But what is the long-term prognosis, beginning with Mr. Fenech, and we will just go in order, if this is not in some way addressed or if there is not balance restored to that relationship, in your view?

Mr. FENECH. Thank you, Mr. Chairman.

Chairman PENCE. And I guess I would ask, the ultimate question would be, is the industry essentially—is the small business industry of travel agencies destined to go away or is it simply going to continue to winnow?

Mr. FENECH. I would like to answer that question and also give you a little other information as well on that point.

To ask whether we are going to go away, it depends. If all of our suppliers follow the airlines' lead as already Hertz, Avis and some of the major car companies have done, yes indeed the travel agency industry is doomed. We are an agent just as if we were a sports agent. We get paid a commission for doing a service for a client. We have always been agents of the airlines, okay. We have not been agents of the consumer. The airlines have made that very clear to us by the fact that they have made us sign an agreement with no negotiations whatsoever. It is a take it or leave it agreement.

They make a change to it. They send us the change and say here it is. It is effective immediately. No bargaining, no negotiation.

Whenever we have attempted to gain the right to bargain we have been told that we are in antitrust—against antitrust laws. We are not allowed to—we are not allowed to be together to bring this 75 to 90 percent of the distribution to bear.

Companies, large travel companies, notably the American Automobile Association, and those companies were not as affected by these cuts because they have the right within their own organizations to stop the sale of a specific airline offending or whatever.

Chairman PENCE. Let me interrupt you if I can, and go to Ms., is it Siemsen?

Ms. SIEMSEN. Siemsen, yes.

Chairman PENCE. Siemsen, thank you.

Pretty powerful statement there. Is it your understanding in your career, and I will ask this of the others, that you were agents of——

Ms. SIEMSEN. The airlines.

Chairman PENCE [continuing]. The airlines.

Ms. SIEMSEN. Right.

Chairman PENCE. When a person came through the door, you were not the agent of the customer. It was always your understanding and so the breaking of a compensation relationship there fundamentally changes your——

Ms. SIEMSEN. Definitely, and also you have to realize that in order for me to sell airline tickets, the airlines have to supply us with the information which in the beginning we were done through a CRS system, which was initially set up by the airlines themselves. They themselves set the rules about it.

Now, a discussion was made about paying for the CRS system. I have had a CRS system in my office for over 15 years and I pay a monthly fee for my CRS system. Those agencies that are larger than myself that can make the segment count on those CRSs were able to negotiate a fee to be able to come out with zero cost to them for a CRS. But I have a \$350 a month fee that I have to now pay to keep an airline system in my office, and I am not getting paid to sell their airline tickets anymore.

My whole concept of figuring out my budget was based on I was expecting to get X amount of money. And I have to tell you, I did not start charging service fees, I come from an area that, unlike so other areas, my clients cannot afford to spend an extra \$25–\$30 for an airline ticket. They just do not have that kind of money. They are the same kind of clients that do not have the money to go and buy a computer, and a majority of them do not even have a credit card. They come in with cash to buy an airline ticket.

So now they are going to be penalized, spending more money for an airline ticket because in order for me to stay in business I have to now charge him a fee to be able to purchase an airline ticket because they do not have a credit card, they do not have a computer.

Chairman PENCE. Let me go to Mr. Morse if I can with the same question. You were the one that threw out these statistics that describe an industry that is imploding because of this broken relationship.

I am intrigued by Ms. Siemsen's comment that, particularly for small businesses the CRS system becomes now not only not a profit center but it is a drag on the system.

Ms. SIEMSEN. I called it an albatross around my neck.

Chairman PENCE. Forgive me for interrupting, but let me let you address that for just a minute.

Mr. MORSE. Well, back in 1995, just before the commission cuts and caps occurred, our agency was selling about 900 segments of air a month. A segment is an individual flight somewhere point to point. As of this last week, we were down to below 300 segments. My contract calls for 300, and if I am on a shortfall for any length of time it is a fine flat out. It is a cost to doing business.

We introduced fees over this year, this period of time. We started out with a $10 fee, went to 15, went to 25, and with going to zero, we now have to charge $25 plus five percent of the air ticket. That just covers basic costs, Congressman, just basic costs. We do not make a penny on this dog-gone thing.

Now, the problem is that that differentiates the cost to the customer by a 40 to 45 dollars cost for going directly to the airlines.

Chairman PENCE. Right.

Mr. MORSE. They are coming less and less to us.

Now, my agency is located in a good position. We will probably survive even though we are doing less and less air ticketing, and do not forget, the air ticketing is critical to any vacation travel outside of your geographical area that you cannot drive. You must use the air. And yet it is being cut off and we are being cut off.

We have had five agencies in three other local communities near Millbrook, New York that are going out of business.

Chairman PENCE. Let me interrupt if you if I can.

Mr. MORSE. Yes, sir.

Chairman PENCE. And we will have more time.

But, Ms. Alton, how central is specifically the issue of commissions to the small business travel agency industry going forward?

Ms. ALTON. For me, like others, lots of people do not have computers, especially minorities and senior citizens do not have the access to computers and the ability to deal with that. So consequently, they want to come to a travel agency. But when they find that we have to charge a fee, then they get on the telephone, or something else but that very much impedes travel because people try to say everyone has a computer these days. That is exactly not true. Everyone does not have a credit card either, and I find that a lot with my constituency. They come and pay by cash, so they do not have the opportunity to pay—even if they had a computer, they would not be able to go online and do that.

Chairman PENCE. Can you continue to provide that service though if there is not some correction in the commission structure?

Ms. ALTON. No, we cannot continue to provide it because some people just cancel trips. They just cannot afford to pay. I have so much allotted for that. But at zero commission, it is like we are working on piece work and however many tickets we sell per day, and whatever the service fee is, that is how much we make. And if we do not sell any tickets that day, then we have to start sending people home because we do not have any form of payment.

Chairman PENCE. All right. Thank you.

Let me just ask one more question to Mr. Doernhoefer. You obviously have a great expertise in antitrust law, and there have been some terms thrown around in this hearing that I am sure are defined terms for you, and there has even been calls for DOT to investigate the possibility of collusion between the airlines and Orbitz.

And explain to this committee how we should not view Orbitz in the way that has been characterized by some of the witnesses today; that we should not view it as a collusion of half a dozen major airlines that are simply trying to essentially eliminate the current distribution system and replace it. And in a free market environment that would not be wrong, but the possibility of unfair competitive practices and the possibility of collusion is obviously a very serious allegation.

How is it not that case, in your judgment?

Mr. DOERNHOEFER. Well, Mr. Chairman, there are published guidelines from the antitrust division of the Justice Department and the Federal Trade Commission specifically on this topic of collaboration among horizontal competitors, and Orbitz was designed with a very careful eye to meet the issues that are raised by those.

But my best answer to your question is to give you an analogy. I liken what Orbitz is and does to a farmer's market. If you had 20 farmers in rural Ohio where my family lives, each of whom have a roadside stand to sell their product, and they sell their product through major distribution centers like grocery stores and so forth, very much like the travel agency community. And one day five of those farmers decided to buy some land along the highway and set up some tents, and then went to all of the farmers in the community and said, I will rent you space. I will charge you a fee for selling your produce in my farmer's market, but I will charge everyone exactly the same. And those 20 farmers came to that farmer's market and sold those produce in the farmer's market, and are still in their own roadside stands for less money than they sold the same product in the grocery stores and so forth. That is an exact parallel to what Orbitz is. We are the farmer's market of the travel distribution industry, created by five; same offer made to every airline in the United States, including the small airlines, and I have entered for the record a letter from National Airlines that talks about how much we have benefited their ability to distribute their product; a small airline that finds our offer and our resource a very valuable resource.

Chairman PENCE. Thank you. I am going to do two things here very quickly before I recognize the ranking member for any questions. I am going to do that, but simultaneously excuse myself very briefly as I am involved in the farm bill debate on the House floor that just began a few moments ago. Using your farm analogy, you reminded me. And I am going to ask the former Chair of this subcommittee if she would be so gracious as to take the gavel in my absence, and while she moves her chair I will recognize the ranking member for any comments or questions that he might have for the panel.

Mr. BRADY. Thank you, Mr. Chairman.

Mr. Morse, how long have you been in the travel business?

Mr. MORSE. We have had our agency now for 18 years. I have been a front-line agent for nine.

Mr. BRADY. Eighteen years.

Mr. Doernhoefer, the airlines that deal with you and deal with Orbitz, they save money by doing that?

Mr. DOERNHOEFER. Yes, sir. They do. When we first entered in these agreements, we took what was then the market price of commission that was being paid to online travel agents, like Expedia and Travelocity, people who were there before us. We offered the airlines a declining cost schedule over the subsequent years so that every year that payment, we would start lower than they were then, and we would get lower every year. We addressed this CRS problem and worked out an arrangement by which we could give the airlines back some of the money that they were paying to the CRS to lower both the commission fees and the CRS fees, and it was an offer that was wildly successful. We have 44 airlines, not just our owners, but 44 airlines that accepted that agreement, and we sell all airlines. In contrast to the testimony that was presented a moment ago, any airline, every airline is sold on Orbitz except Southwest, and that is at their choice, not ours.

Mr. BRADY. Okay. So I am trying to get this in my own mind that we have people here with 18 years, 24 years, 26 years, 25 years of experience in business, respectfully, and we are—to elaborate on my new Chairperson's comments—we are bailing out our airlines to the tune of billions of dollars, and they are now trying to save a little bit of money at the expense of these people that are in small business for all these years.

And this lady here has to lay off her son, and I am wondering—I mean, they had to sit with a proverbial barrel when that happened. But I am wondering where we are going here as a Congress that we are bailing out billions and billions of dollars so they can get money to put people out of business that have been in business for 20 some years. I just have a problem with that, and I think I am going to have a problem with that for a long time to come, especially if there is anymore of the bailouts that are going to come in front of us. Madam Chairman, that is all I have.

Ms. KELLY. Thank you very much. Mr. Grucci.

Mr. GRUCCI. Thank you, Madam Chair.

Before I start in my questioning, I mentioned in my opening remarks that there were no one here from the airline industry. Let me just give them an opportunity to identify themselves if indeed they have arrived since my opening comments.

Is there anyone here from the airline industry? Any representative from the airline industry? I know they are not at the panel, but is there anyone in the audience? [No response.]

Mr. GRUCCI. No, not one representative from the airline industry chose to come to this hearing today. I think that in itself speaks volumes of what is going on in the airline industry. I want to ask a question regarding Orbitz. You had indicated that Orbitz—does Orbitz get a commission from the airline industry?

Mr. DOERNHOEFER. Yes. I mean, effectively, yes. There is a fee. It never happens to be called a commission in the agreements, but they receive a payment.

Mr. GRUCCI. You receive some kind of reimbursement for your service?

Mr. DOERNHOEFER. Yes, sir.

Mr. GRUCCI. Who started the—who started Orbitz?

Mr. DOERNHOEFER. Well, the long history of Orbitz is that it initially was an effort by the entire industry, the Air Transport Association. That effort sort of failed and fell apart, and was resurrected by Delta, United, Continental and Northwest, and they made the initial investment, and American Airlines invested later.

Mr. GRUCCI. Are they still the major investors in Orbitz?

Mr. DOERNHOEFER. They are.

Mr. GRUCCI. Are those the same airlines that you get commissions from?

Mr. DOERNHOEFER. We get commissions——

Mr. GRUCCI. Fees.

Mr. DOERNHOEFER. We get fees, essentially a commission, from all of the airlines—from all airlines that sell through us. A couple of airlines have recently, who had not signed our agreement, our charter associate agreement, but we were nevertheless selling their product have come to us and said no more, they are not paying those fees anymore.

Mr. GRUCCI. What is the return on the airlines' investment? Do they get a percentage of the profits of Orbitz?

Mr. DOERNHOEFER. We are still a private company and we have yet to turn a profit, so there has been no return.

Mr. GRUCCI. So there is no reimbursement. What is the anticipated return of investment for the major airlines that funded Orbitz?

Mr. DOERNHOEFER. That would be far too speculative for me to be able to even guess at at this stage in our life. We have been up and running less than a year.

Mr. GRUCCI. Is it fair to assume that they are getting a benefit currently?

Mr. DOERNHOEFER. Well, the entire industry, the entire airline industry is getting a tremendous benefit in that we entered the market and started putting pressure on all aspects of the distribution channel, both—particularly Expedia and Travelocity, our competitors in the online market. We have forced them to match some of the offers that we made. They have lowered their payment schemes, and we put pressure on these Computer Reservation System fees, and we will continue to do so——

Mr. GRUCCI. Does any member of the airline industry sit on the board of the directors of Orbitz?

Mr. DOERNHOEFER. Yes. All of the members, all of the current members of the board of directors are from the five airlines that still own us, plus our CEO.

Mr. GRUCCI. Where did your CEO come from?

Mr. DOERNHOEFER. Well, his background is he was once at American, then at Sabre, the largest of the computerized reservation systems. Then he ran—he was chief executive officer of Swiss Air for a number of years, and came from Swiss Air to Orbitz.

Mr. GRUCCI. So with the exception of the CEO, the rest of your board of directors are comprised of the five airlines that have funded Orbitz?

Mr. DOERNHOEFER. Yes, sir.

Mr. GRUCCI. I do not have a quarrel with Orbitz. I do not wish to think that Orbitz, and I am not going to get involved in the Justice investigation that is underway, what are they investigating you for? Is it an Antitrust investigation that is underway.

This hearing today is to understand if the travel agents that have appeared before me in my district and now here have a legitimate beef, and it seems to me that they do. It seems to me that there is some discrimination that is taking place by the airline industries against an industry that has serviced them for so many years, and it appears to me, and I am not an attorney and I do not wish to engage you on the battlefield of legal scholarly discourse, but I believe that there is a benefit coming back to the airline industry as a result of owning an agency that pays itself a commission. Since the airline industry is the board of directors, one could argue that they own the company. And as a result of that, not only through their investment, but through their management of the company they are paying themselves a commission that they may not be realizing currently, but in doing so they are not paying commissions to other American travel agents, but are paying commissions around the world.

I guess one can make an argument that that those who came here to do such terrible evil to us has bought a ticket from an agent in Saudi Arabia or some other Middle East country, and that agent got paid a commission. Here in this country that cannot happen. To me, that is wrong.

And so my issue here very clearly is that we stepped up at the request of the airline industries, and as mentioned earlier by the ranking member, you could not walk down these halls without getting bombarded by airline people, whether they were the lobbyists, the CEOs, the people who had a legitimate problem were here walking these halls, camping out on our doorsteps, asking us for the kind of support that they needed to keep an industry alive.

And I really do not have question for any of you because none of you can answer this question because nobody from the airline industry is represented here today. So you know, you are going to have bear with me while I vent a little bit.

The issue that now comes up is the CRS. My understanding is that the CRS was established by the airline industries. Would any other travel agent—want to comment on that? Lou, do you have any——

Mr. FENECH. Yes, sir.

Mr. GRUCCI [continuing].—Knowledge of the CRS, its formation, who formed it, how it came about and what it does?

Mr. FENECH. Yes, sir. I have been involved with the CRSs since 1979, when we were first automated.

Basically, at the time you had to show a certain volume of sales before an airline would automate you. The original airline automation services were done by TWA, which was PARS, Eastern, which is now defunct, United and American. American Sabre is still the number one CRS, and a number of agencies subscribe with Amadeus, which is now the derivative of the Eastern Airline system, having gone back and forth between Continental and their ownership, and mergers and acquisitions.

Truthfully, the way this all comes down to it, at the very base, if you boil it all down, the CRSs are the airlines. The CRSs—the airlines have been forced to divest themselves of the majority interested in the CRSs. However, they still maintain an interest in the CRSs. So in effect, they are charging themselves booking fees.

They have always set those booking fees, and then what they do is they turn around to use and say you will now make these bookings utilizing our system. We will then either give it to you if you can generate enough income for us via the segments. You will then be given a system for free to operate. We still have to pay to have our ticket stock sent to us. We still have to pay for the security of that ticket stock and the system.

In addition to that, now they are telling us, most of these CRS companies are switching over to an Internet-based product which is saving them money again. The cost of the CRSs has always been borne by the travel agent. We are the ones that are using the system.

The other question I have about CRSs and the Orbitz issue, the whole thing is owned by the airlines, again. So if they are asking us to pay for the internal development and the losses that they have been sustaining all the way along, where are they getting this money from? It is coming from our commissions again. They are not paying us the travel commission because they say that they are losing money. That money is being lost basically as a part by the amount of research and development money that they have had to pay to inaugurate these systems.

Mr. GRUCCI. Thank you.

I have one more question if I may, Madam Chair, and it's to Mr. Thomas.

If the move is to online ticketing, which I guess the argument from the airline industries would be that is in the best interest of the general public because now they can receive cheaper airline fares even though it puts an agency and an industry out of existence, which I do not believe is the right thing to do, but that is a second issue. The issue is why are you not applauding this move, why are you at a competitive disadvantage with colleagues of yours who are online service?

Mr. THOMAS. Congressman Grucci, it is an unfortunate reality that the airlines through the creation of Orbitz and the fact that they have put two measures in—contractual measures in place to provide themselves an effective monopoly position, the MFN clause, as well as exclusivity provisions, that they have access. The sole access to all the webfares and the webfares make up an increasing, increasingly great part of the fares that are out there, and these fares are typically lower than the fares that are put into the CRSs, and therefore provide a competitive advantage to Orbitz. These are fares that are oftentimes—sometimes five to 10 dollars cheaper even when you count the service fee that Orbitz puts on their tickets, and sometimes hundreds of dollars.

The other day I did a search and I found the cheapest fare one travel, and ITA software, which is the technology that Orbitz uses, in the several hundred dollar range, it was five—six hundred dollars, and the lowest fare on Orbitz was $200. So the discrepancies are sometimes striking and very significant.

Mr. GRUCCI. So if I could just understand this correctly. Even online service get two different prices? Orbitz gets one, and you get another notwithstanding the issue that the travel agents get even a third because they now have to tack on a fee to the ticket price.

So you are not on a competitive basis with other online servers, namely, Orbitz, because the airlines give them a favorable, a favorable rate versus one that they give you?

Mr. THOMAS. That is correct, and essentially I view that as a subsidy by the airline industry to Orbitz given that they are allowed to sell tickets at a lower price than are generally made available to other travel agents and/or online sites such as OneTravel.

Mr. GRUCCI. Thank you. I yield back the remainder of my time, Madam Chair.

Ms. KELLY. Thank you.

Mr. Davis.

Mr. DAVIS. Thank you very much, Representative Kelly. I appreciate the opportunity to be here and to participate. As I indicated earlier, I am not a member of this subcommittee, but I wanted to come for two or three reasons.

One, I wanted to be here to welcome Mr. Doernhoefer and Orbitz. They come from the great City of Chicago, a city that I represent and love, and continue to hope to see its development.

I also come because I have some tremendous interest in how we maintain a market-based economy, and at the same time try and effectuate as much of what I call fundamental fairness as we can in the regulation of our business and industries, trying to use regulatory devices only to the extent necessary, because obviously the more you regulate the less I think you utilize and are making use of the concept of market impact.

The questions that I wanted to ask, first to the owners of agencies, how much of your business is domestic air travel?

Mr. FENECH. Currently, my mix for our agency is approximately 45 to 50 percent of our ticketing is done for domestic airline ticketing of our whole profit mix.

Mr. DAVIS. Anyone else?

Mr. MORSE. I would say we are probably closer to 60 percent domestic.

Ms. ALTON. I would say 65 percent domestic.

Mr. DAVIS. And so anywhere from 45 to 60 percent of your activity is domestic airline travel. If that then is significantly reduced because of, one, you are not getting the commission, do you get a commission on international?

Mr. FENECH. Not by the domestic airlines.

Ms. SIEMSEN. Not Caribbean.

Mr. FENECH. Not by our United States airlines.

Mr. DAVIS. So actually you get nothing.

Mr. FENECH. Exactly.

Mr. DAVIS. And anytime a person accesses ticket through your business——

Mr. FENECH. We have to charge a fee.

Mr. DAVIS [continuing]. You have to add an addition cost to them.

Mr. FENECH. Exactly. That's correct.

Ms. SIEMSEN. Right.

Mr. DAVIS. Which of course mitigates against, unless there is some other reason, they really would not come to you? I am saying——

Mr. FENECH. Right.

Mr. DAVIS. From what my daddy taught us, I probably would not come very often to you.

The other question that I have probably has as much to do with the digital divide as it does with this particular industry because I recall just the other day in another committee asking the question about online job applications and there being some agencies that the only way you really know if there is a job vacancy you have got to go online. And it occurred to me that many of the people who were unemployed——

Ms. SIEMSEN. And have a computer.

Mr. DAVIS. In all likelihood might not have a computer, so they were disadvantaged twice.

Mr. Doernhoefer, all of your activity essentially is online, right? I mean that is——

Mr. DOERNHOEFER. We do customer support subsequent to making a booking via the telephone, but the initial search and buying the airline ticket, hotel reservation, whatever is all on line.

Mr. DAVIS. And the best fares and the best deals and the best possibilities and all of those one probably would find those through the search, I would imagine?

Mr. DOERNHOEFER. That is right. We can only sell what the airlines give us to sell.

Mr. DAVIS. Right.

Mr. DOERNHOEFER. We do not make up the fares ourselves, but the airlines, because it is less expensive for them to sell when the customer does it themselves on the Internet, either on their own—on the individual airline website or on Orbitz because of our structure and agreements, they put their lowest fares on those sites because it is the cheapest place for them to sell them.

Mr. DAVIS. And so I guess what I am getting around to is that if the dominant activity is going to be online, then we still need to find some way for what I would call disadvantaged consumers. While I represent downtown Chicago and all of the things that are there, I also represent 68 percent of the public housing in Chicago, and a lot of what is around it as well. So I have got an awful lot of consumers who need to find the best fares, but they are not going to be able to do so because they do not have computers.

Mr. DOERNHOEFER. Could I, if I may? I picked up this brochure which is from ASTA, the travel agents organization, and it is addressed to consumers. And I find a section very interesting. It describes a solution to the problem you have just identified. It says, "Some personal service agents are responding to the Internet challenge by becoming skilled Internet operators. They have added online knowledge to their prior expertise and have figured out how best to use the Internet for trips from your home city, which sites have the best deals, how to play the auction game, and generally how to take maximum advantage of what the Internet offers."

What it points out is nothing prevents a well trained professional travel agent from using the Internet on behalf of their customer and finding them that lowest fare.

Mr. DAVIS. And I know our time is——

Ms. KELLY. In the interest of responding to that, yes, I am going to extend this period just in case somebody else at this table would care to respond to Mr. Doernhoefer.

Mr. THOMAS. Yes, please.

We have still—even with what Mr. Doernhoefer said, we have still created a divide in that consumers will have to pay a premium via a travel agency as compared to what they could get the same fare directly on Orbitz, and this over time will inevitably lead to Orbitz gaining a dominant market position and with the end result being total domination and control of the North American travel market.

I think that unless steps are taken, this is where it leads because consumers are looking for the lowest fares, and over time will gravitate to any solution that provides the lowest fares on a consistent and regular basis. And as soon as it becomes widely known that that Orbitz is the site, the location to buy tickets at a lesser price, over time it will disadvantage not just the travel agents, the brick and mortar, but the online travel agencies as well and eventually will diffuse even the larger online travel agencies that today are competing vigorously with Orbitz.

Ms. KELLY. Thank you very much, Mr. Thomas.

Anyone else have something they want to add? Ms. Alton.

Ms. ALTON. It still would be a Catch–22 because if we were to book the Orbitz and the person still does not have a credit card they would not be able to make the purchase.

We also have the CRS contracts that require us to have so many bookings to be paid for, and then on top of that we all report to the Airline's Reporting Corporation, where it would be against our rules if we started using our own credit cards to pay the general public's traveling fee, which would in turn be a loss to us.

So to go onto Orbitz and to sell from Orbitz just because we can find it and using our personal credit cards would still be a Catch–22, zero commission, and then still would have to charge the person a fee.

Mr. FENECH. That is correct.

Ms. KELLY. Thank you very much, Ms. Alton.

Mr. DAVIS. Madam Chairman, if I could just say I thank you for your indulgence. This has been very enlightening and beneficial and helpful to me.

I want to thank all of the witnesses for their answers, and it just helps me to recognize that there are no simple solutions to very complex problems and complex issues, but I remain hopeful because I do not want to see any small business not be able to continue in this country. I mean, I believe that small businesses are indeed the economic engine that continues to drive our economy, and I think we need to do everything to try and preserve and protect them while letting our market impact work its will to a extent.

So I thank you very much.

Ms. KELLY. Thank you very much, Mr. Davis.

I have some questions of my own, and first, I would like to ask Mr. Doernhoefer. I do not really understand why the airlines—why it is appropriate in your view, according to your testimony, that the airlines should give you a fee and not give the travel agents a fee. I do not understand that.

You said you get a fee. How much fee do you get?

Mr. DOERNHOEFER. It will vary as I said over time. We need to make sure we put this back in perspective. When we sign these agreements, the fee schedule we were charging was lower than what everyone else was getting. So let us not lose track of that.

Ms. KELLY. Could that be because the airlines owned you and the travel agents already had their contracts with the CRS?

Mr. DOERNHOEFER. Well, we——

Ms. KELLY. I mean, somebody could have signed on to a five-year contract with CRS unknowing that Orbitz was going to sign a lower fee contract with the airlines and undercut their services, and also unknowing that the airlines were willy-nilly going to cut all of their fees.

You make a statement that I feel is just really incredibly presumptive. In the very first part of your introduction you say that, "Changes to the industry are bringing about needed relief to a distribution system that is broken." You have not demonstrated to me in one fact of what you have said so far that this system was broken, and that it allowed your entry.

So I would like for you answer that question.

Mr. DOERNHOEFER. Very well.

Ms. KELLY. About why it is fair for them to pay you fees and it is not for the travel agents to get fees.

Mr. DOERNHOEFER. Let me first address why it was broken.

Congresswoman, when we arrived on the scene there were travel agents, there were consumers, and there were CRSs, and the CRS industry, the four companies that constitute an oligopoly that were forcing higher costs on both these small travel agents and the airline industry had a higher profit margin than either the travel agents on one end or the airline industry on the other.

The middleman was taking out the profit and punishing both ends of the spectrum.

Ms. KELLY. Excuse me, sir, but the middleman was owned by the airlines also as I understand it.

Mr. DOERNHOEFER. It was not, and that is not true anymore.

Ms. KELLY. Oh, Sabre was not?

Mr. DOERNHOEFER. It is not owned by the—it is a completely independent, publicly traded corporation today.

Ms. KELLY. Currently.

Mr. DOERNHOEFER. It was not——

Ms. KELLY. But when it came into existence——

Mr. DOERNHOEFER. It has no control by the airlines. I am sorry. It is publicly traded. It was spun off by American Airlines several years ago. It has a 50 percent——

Ms. KELLY. You still have not answered my basic question. Why is it appropriate for you to get fees and they do not?

Mr. DOERNHOEFER. Okay. Now let's go to the—and you are right, I have not addressed that, but I wanted to first talk about what was broken in the industry.

The second thing that was broken and is still to some extent is that these people at this table provide a service to the consumer. The customer comes in the door, and says I need your help to find my vacation plans, find the cheapest fare, whatever. The right way to go about that, and frankly, it is something that Orbitz believes in as well, is that we serve the customer. And if we do a good job, and find them a cheaper fare, then they should pay us for that professional service, and we charge a customer a fee just like the people at this table do.

Now that——

Ms. KELLY. You tell me how you are finding a cheaper fare when they are giving you the cheaper fares?

Mr. DOERNHOEFER. We are finding——

Ms. KELLY. What effort are you putting into this when they are giving it to you? I am only looking at what your testimony is.

Mr. DOERNHOEFER. We find a cheaper fare because we went out and find the ITA software, which we have talked about, which was not fully utilized in any website. We spent tens of millions of dollars to develop a website that was easier to use, that did not rely on the CRS, which was the old mainframe technology and was slower, less efficient and more expensive. We spent tens of millions of dollars to develop an entirely brand new system with the best software we could find. No one else did that.

Ms. KELLY. Who paid for it?

Mr. DOERNHOEFER. The airlines, the owner, the owner investors of the——

Ms. KELLY. The airlines.

Mr. DOERNHOEFER. The five airlines; not all airlines, but five airlines.

Ms. KELLY. So what they were trying to do is develop, if I understand you correctly, they were trying to develop a system that would make it cheaper for them to do business; is that correct?

Mr. DOERNHOEFER. That is absolutely correct. They were trying to figure out——

Ms. KELLY. Well, they are in business. They are entitled to do that.

Mr. DOERNHOEFER. They were trying to streamline their distribution channel by cutting out the high cost GDS.

Now to your question about us receiving still a fee, I mean, frankly, this move to zero commissions is fairly new. We are under pressure from our owners and others in terms of the contract that we have signed with them. However, it is the case that small agencies are not getting paid anymore by the airline industry. Large agencies, as the testimony, came in are still being paid commissions.

We are a large agency. We sell over 20,000 airline tickets a day, and we spend tens of millions of dollars in marketing to the entire country, making sure our website is available, and we actually just can move more business on behalf of the airline industry than, unfortunately, the smallest of the travel agents cannot.

We are still being paid a fee. We are being paid, in our estimate, less fee than other comparably sized travel agencies because we are——

Ms. KELLY. Can you name—I am sorry to interrupt you, but I only have a certain amount of time also.

Mr. DOERNHOEFER. Sure.

Ms. KELLY. Can you name at least two or three other large agencies that are getting fees?

Mr. DOERNHOEFER. Oh, sure. I mean, absolutely. Things like American Express, Carlson/WagonLit, the big major agencies, and my competitors, Travelocity and Expedia are still being paid fees.

They will be paid fees to actually reward their shifting of market share from one airline to another. They will engage in contracts where they will be rewarded for performance in moving market share.

We cannot and will not do that. We are an unbiased, neutral site, but we are being paid a small fee that will decline every year for the next ten years by contract until it is essentially zero, and that was the scheme by which the airlines were trying to put downward pressure on all of their distribution costs.

Keep in mind that distribution costs ultimately go into the cost of the ticket. It has to go somewhere. And as you lower those costs, you give room for the airline industry to lower fares.

Ms. KELLY. Why do you need if you are so successful and you are getting all this input from the airlines, why do you need this most-favored nations clause?

Mr. DOERNHOEFER. When we went into business, Congresswoman, we said we need to serve the suppliers and the consumer. Every bit of consumer testing we did said the consumer is tired of having to go to 20 different websites to be sure they have the right fare.

So we said how do we encourage the airline industry as a whole to make sure we get to sell everything they are selling, and the answer was to lower their costs. It is not exclusive. Travelocity and Expedia or any agency that can move as many tickets as we can is welcome to match our costs and get exactly the same deal from the airline industry, and indeed they are. It is simply a statement that is not true to say that webfares are not available on Expedia and Travelocity today.

Mr. THOMAS. It is certainly not available on OneTravel and OneTravel is a cheaper cost channel than Orbitz is today. That is clearly established.

My concern is that Orbitz is misrepresenting the way the compensation structure is, and even though OneTravel works with a CRS the cost per ticket today is half of what Orbitz charges as charter members, and that is not including the fee that they charge on top of the money that they get from the airlines, and it does not include the fact that they get a subsidy from the airlines that allow them to have a cheaper fare even after they have put on the fee.

Furthermore, Mr. Doernhoefer said earlier, mentioned something about National Airlines, and including a record into the testimony. I would like to—my concern is really multi-fold. Aside from making sure that we have a competitive and vigorous environment for OneTravel and other players in the travel industry to thrive, I am concerned about the long-term impact for consumers, and I am also concerned about the long-term impact for low-cost carriers. I believe that Orbitz is a vehicle for the major airlines to wrestle control of the market in order for them to be able to manipulate the market in the future and disadvantage the low-cost carriers.

I would like to enter into the record a letter from Vanguard Airline that says that during the period that they were a charter associate of Orbitz, that Orbitz displayed inaccurate fare information about Vanguard flights, and blamed such inaccuracies on fabricated deficiencies in Vanguard's system. And that moreover, Orbitz strong-armed a most-favored nation clause and in-kind promotion exclusivity in a manner that we believe is not justified by our contractual agreement. The whole letter will be in the record.

Ms. KELLY. With unanimous consent, of course.

Mr. THOMAS. Thank you.

Ms. KELLY. Mr. Fenech, would you like to respond to this dialogue we have been having?

Mr. FENECH. Yes, ma'am. I just want to go over a part of one thing here. Orbitz, as you may correct me if I am wrong here, but has a great connection with a company called WorldSpan; am I right?

Mr. DOERNHOEFER. Yes, that is true.

Mr. FENECH. Okay. WorldSpan is the automation system that I subscribe to. WorldSpan has not given me any of the technology, the benefits of the technology that they have given to Orbitz. Okay, yet I am paying to be on WorldSpan. Moreover, WorldSpan is jointly owned by Northwest, Delta, and TWA, who then was bought out by American.

So, ma'am, how do they say that the CRSs are not owned by airlines when WorldSpan is clearly in fact owned by airlines?

Ms. KELLY. Thank you for explaining that.

Ms. Siemsen.

Ms. SIEMSEN. Thank you.

When I opened up my agency 24 years ago, we did things the old way. We called each airline, tried to get the best fare, handwrote the ticket, and gave it to the consumer. The airline at that time was Eastern Airlines, and they came to me and said, we have a new system that we have developed for the smaller agencies because my American sales rep tell me I did not qualify for Sabre's requirements. So my Eastern sales rep came to me and said, I have this computer system that will bring you up to date, give you technology, have all the access to all the affairs, yada-yada-yada, let us go online.

Okay, so we go online with this computer system. Now, the airlines at that time, Eastern Airlines did own System One. They set the CRS fees. They are the one that set my fees. They are the ones that set my ARC requirements. My whole life is tied into what the airlines require me to do.

I do not understand how they can sit here and claim that the airlines have nothing to do with this computer system. They set the fees to begin with on the CRS.

Mr. FENECH. They paid themselves.

Ms. SIEMSEN. Right.

Ms. KELLY. Mr. Doernhoefer, do you want to comment on that?

Mr. DOERNHOEFER. I do. There is a horrible, ugly history to the CRS industry when it was owned by the airlines. One CRS is still owned by the domestic airlines, and that is WorldSpan. The dominant agency, Sabre, has 50 percent market share and is completely independent. The other two, one is owned now by Cendant Corporation, which has hotels and rent-a-cars and so forth, and the fourth is owned by foreign airlines.

Now, those are the four choices that all of the people at this table have today to place a booking. There is essentially no other way to do it.

Congresswoman, if this committee and the people at this table would work together to eliminate the regulations which exist today to allow the airline industry and Orbitz to offer a cheaper booking channel directly to the travel agents, they would get access to the webfares and airlines could save money by avoiding the CRS fee.

We could implement that by the end of this year if there were no regulatory obstacles, but the fact is there are and we cannot—and the airlines that own us support the concept. We could do that but for the existing CRS regulations that prevent Orbitz from offering a desktop version directly to the travel agency community.

Ms. KELLY. I am interested, Mr. Doernhoefer, that your response was concerning whether or not the airlines could save money. We bailed out the airlines. I voted for a $15 million or billion dollar package to make sure—I cannot even remember how much it was, they kept coming back more and more and more—for a package to help keep the airline industry from going completely into some kind of real economic tailspin after 9–11.

Your concern right now in front of this committee this morning after having heard all of this with the travel agents, you are still concerned about saving the airlines money. We do want to keep the airlines in business, no question about it, but if we do not help them—Mr. Morse, I would like to ask you and the rest of the people at this table, are you not going to be edged out by the kinds of arrangements that we see here with Orbitz and that Mr. Doernhoefer has talked about.

Mr. MORSE. Well, the level playing field means we should have access to all fares. It is very plain and simple. Mr. Doernhoefer is saying, well, that eliminates the need for Orbitz. I do not agree. We have a free market economy, but we also have an entrepreneurial spirit going bad. We have gotten into the oligopoly and monopoly access. We need access to all the fares. We also need, for example, from the CRS contract folks, any notification well in advance of any termination contract.

Right now, Congresswoman Kelly, if I walk home today and find out that Delta Airlines has shut off my system because of maybe a debit memo that is in conflict for some period of time, I have no access. I have no control. I am all of a sudden shut down, and my Delta customer walks in the door, I cannot serve him, and that is an arbitrary thing on the part of the airlines right now.

Much of what I am saying is in the heart of H.R. 1734, the Consumer Bill of Rights, and that is what I would like to see, but level playing field in airfares is more important than anything.

May I add just a couple of little comments?

My contract for the CRSs right now stated in the year 2000. It is a five-year contract. With the zero commissions and with everything else going on right now, I have got three years of fines facing me for short falls on a contract I cannot get out of for three years.

Second of all, to pick up on Mr. Davis's point, yes, I can do the online ticketing through Orbitz or anybody else. I still have to charge that fee, absolutely. He is saying, well, you should be charging the fee. The customer is going to pay. I am sorry. The customer is going to pay the fee.

Thank you.

Ms. KELLY. Thank you very much, Mr. Morse.

The Chairman of the committee has come back so we have changed chairs. Back to you, Mr. Pence.

Chairman PENCE. Thank you. Thanks for filling in and indulging me as I participated in the floor debate, and especially thank you for your veteran handling of the hearing, I can tell on my return.

Before I recognize Mr. Grucci, we are obviously at a disadvantage because while I think we invited to the hearing several airline companies to come and talk with us, we did not get a favorable response. Neither do I think there is any representative for any of the airlines that have been mentioned today or that might be involved with as owners in Orbitz.com.

And if anyone in the room is associated with any of the airlines, you can wave your hand in the air, and I would be happy to correct the record. It is frustrating to the Chair that we do not have that representation here because I think, as the gentlelady from New York just shared, a great deal of the angst that I think is felt in the industry, and, frankly, is profoundly felt on Capitol Hill as I think this strong turnout shows at this subcommittee hearing, strong bipartisan diverse turnout shows is that following, and the number specifically being 15 billion, 5 billion in direct payments and 10 billion in loan guarantees, the memory of the Chair is very much that that airline package was sold as a way of stabilizing the travel industry in America, staving off the kinds of losses that would result in the collapse of airlines which would have affects on everyone from vendors at airports to people in the travel industry.

I guess my question, and this may not be a fair question, but given your background at American Airlines, Mr. Doernhoefer, is there—among your clients and owners, is there any sense that you bring to this hearing about a, and maybe I picked this up a little bit in your comment a few moments ago, but a desire in the wake of that $15 billion action last fall by Congress, is there a desire in the industry with which you are associated, a desire to address this issue and to stave off what we appear to see, an implosion among agents for the airlines?

And if you do not feel competent to answer that question, then I understand that, but I would be grateful if you did.

Mr. DOERNHOEFER. Mr. Chairman, I appreciate it, and I really cannot speak on behalf of the airlines other than just a very high level general sense, and that is that the airline industry today is still hemorrhaging losses at an alarming rate.

My colleagues at American Airlines tell me they are still today losing $4 million a day in their operations at a time when they are being asked to incur additional costs to increase security. So without knowing, you know, the details of their current thinking, I think you have an industry that is still very much in lifeboat mentality, and probably not looking outwardly nearly as much as we might like, but looking inwardly for their own survival.

Chairman PENCE. And certainly the Chair would recognize that focus that has to be the focus of every business. So your judgment outside looking in, but with your background in the industry, would be that there was not the expectation that the $15 billion bailout was about stabilizing the industry, it was about stabilizing the airlines specifically?

Mr. DOERNHOEFER. I guess I cannot quite adopt that view. I mean, I think—I do not know what the expectation was or how far they thought that money would go——

Chairman PENCE. Right.

Mr. DOERNHOEFER.—To actually reach some stable point, but I can tell you that the industry is questioning every aspect of its current operations, trying to figure out how to fix the predicament they find themselves in today. But I would suspect that most of that is they are looking at their own operations for how to cut costs, and how to operate efficiently and safely, and consistent with the new security regulations, and actually stem the losses.

Chairman PENCE. Mr. Fenech, one question, and then I am going to yield back to—at this point I think I am going to recognize the ranking members after this question, then Mr. Grucci had a question or two.

You made a comment that was news to me, that the airlines have not been alone in eliminating your commissions, that the rental car companies and others have. My question is has this trend essentially paralleled the reduction of commission in the airline industry?

Mr. FENECH. Well, sir——

Chairman PENCE. And how widespread is it among—excuse me for interrupting you, but I have a legal background and I understand agency relationships. And the first question in an agency relationship is who are you representing. And it strikes me as peculiar that so many of the companies that you have been representing when I walk through your door no longer pay you anything.

Mr. FENECH. It is peculiar to us too, sir.

Chairman PENCE. I do not understand.

Mr. FENECH. It is astounding to us, sir.

Chairman PENCE. Well, how widespread is that apart from the airline industry?

Mr. FENECH. Well, right now the rental companies have did this on a corporate level, so if they have a negotiated corporate rate, they have determined that those are not commissionable to travel agents, okay. It is endemic though. This is what is going to be the trend.

As the airlines do this, the rest of the industry looks at that and says, okay, let us see what the reaction is going to be. What are these travel agents going to do? Are they going to go on strike against the airlines? Are they going to stop selling their services?

We cannot do that. We have no antitrust immunity to draw any sort of a strike or even a negotiation against the practices that we have been forced to accept.

Our own agency agreements were never negotiated. They said if you want to sell airline tickets, you must have a bond, you must secure our documents, you must be open for business in a storefront location a certain member of hours per week. They investigate. They sent a representative in to look at our office, make sure we were there. No negotiation. They cut our commission. No negotiation.

Our own agreement that we have signed says that the airlines will determine compensation.

Chairman PENCE. So it is happened in part of the related industry, and you believe it will become much more acute if this——

Mr. FENECH. I am very afraid because there are major cruise lines right now which are also merging and being absorbed by each other to the point where that is also becoming questionable to our future in the commissions.

Chairman PENCE. Let me yield to Mr. Brady, the gentleman from Pennsylvania, for any further questions.

Mr. BRADY. Thank you, Mr. Chairman. Just an observation and statement, but also to answer you.

I have a union background. Be a little careful how you speak. I am liable to help you get organized, and that might be a bad thing. [Laughter.]

Mr. FENECH. I would welcome it.

Mr. BRADY. If you want to talk to me about it, I have to have my union hat and say we could always talk.

Mr. FENECH. We will do lunch.

Mr. BRADY. Okay. [Laughter.]

Mr. BRADY. I guess, Mr. Doernhoefer, I am not trying to single you out or try to look at you in any kind of way, shape or form. You are in business. You need to be in business, and you should be in business to make money, but the only thing that troubles me is that we talk about something that is broken. And I am wondering whether or not if this thing gets fixed, do 25 years of service in this table go out of business.

So maybe we need to look at it a little bit more and try to come up with some type of—whatever we can come up with and try to have you stay in business competitively, but also have them 25 years, we like to say mom and pop, and in your case mom and son. We like to keep them in business too because there is a personal touch other than pushing on a computer when you deal with a travel agency.

And I found out a lot of times that when there is a mix-up, no fault of anybody, but just there is a mix-up, that you cannot sit there and holler at that computer as much as you can maybe holler—not so much holler, but talk to one of them and have somebody tell you just what is going on.

So you know, I just think that I might appreciate you having the sharing to bring this to light, and I would like to be a part of anything to try to make some type of solution come, and maybe we should do lunch. [Laughter.]

Chairman PENCE. Thank you, Mr. Brady, and the gentleman from New York had a few more questions before we conclude here.

Mr. GRUCCI. Mr. Doernhoefer, I said earlier I do not have a quarrel with Orbitz. I think I have changed my position on that. [Laughter.]

Mr. GRUCCI. I think after listening to your testimony and listening to some of the things that were said I do have a quarrel. I have a quarrel when five of the major airlines owns an organization that markets tickets and they pay themselves a fee. And one could argue that the reimbursement to the airlines or the return on investment is the fact that they are getting the market share of the traveling public, putting other online competitors at a disadvantage because the tickets are being offered to their own organization far cheaper than others.

And then hearing you indicate that we could fix that problem by moving some kind of legislation that would allow the travel agents to become agents for Orbitz and sell Orbitz's low fares. I never heard anything about commissions being paid, but I would suspect that there would be some kind of reimbursement.

So the question that I would have is if it could happen through legislation, why cannot it happen without the legislation? Why does government need to jump into this thing to make it happen? Why cannot the industry fix its own problem before government has to?

And I do not need you to answer those questions because you cannot speak for the airlines, and I would not expect you to, and I would not ask you to be put in that position. I would once again point out that the airlines are not here to answer those questions, and as a result of that, you know, this hearing today is still left with a lot of unanswered questions.

But one question in my mind has been answered. The next time I see an airline industry representatives walk through my front door I will be a little less willing to help them and a lot more reluctant to believe what they are telling me to be true to be true.

What I would like to ask and, Celeste, you have spoke eloquently about your operation, how long you have been in business. What is going to happen to you and your business in the next year?

Ms. SIEMSEN. It depends if I can get out of my CRS contract. That is going to be a big part of it since I still have a $350 a month fee that I do not have anything to offset it right now.

I do, I am part of a franchise, so hopefully, and we are more leisure than we are corporate, which is good for me. But if the airlines go to the next step and eliminate the commission based on how I do my packages to the Caribbean. Right now we book through a tour operator. So right now their commissions have not been hit, but yet they still have contracts with the airlines through the rest of this year. So we have no idea whether or not those contracts are going to be honored for the tour operators, and that only helps me in my businesses as far as packages are concerned.

If we do not get any help, we do not get any relief, I would say I will probably be able to hold on through the rest of this year. I do not know what next year will bring considering the climate out there.

Mr. GRUCCI. One last question, Mr. Doernhoefer, and this you can answer, I would suspect. It has been reported that between 70 to 75 percent of the sales of Orbitz is done to the five major airlines that are board members and have funded the foundation in the beginning and the genesis of Orbitz. Is that true?

Mr. DOERNHOEFER. Our sales, Congressman, almost exactly mirror industry market share. So yes, because the five biggest airlines sell about 80 percent actually of all domestic airline tickets period, their sales on Orbitz reflects almost exactly their market share statistics, and that is because we cannot bias. We cannot move share one way or another, so our internal share looks just like industry share.

Mr. GRUCCI. Mr. Thomas, is 80 percent——

Mr. THOMAS. That is——

Mr. GRUCCI. Let me ask the question first.

Mr. THOMAS. I am sorry.

Is 80 percent or 70 to 75 percent of your business done with those five major airlines?

Mr. THOMAS. No, it is about 50 percent; it is actually 51 percent.

But I would like to have Mr. Doernhoefer elaborate. Given that they went to—Orbitz went to utilize the ITA technology in order to provide unbiased fair displays, it really does not explain why Orbitz meaningfully changed the display on its own site from the original design that ITA has. And I believe that that change in design is largely in order to effectively bias in favor of the major carriers that have a greater route structure.

Mr. GRUCCI. Thank you. I have no further questions, Mr. Chairman.

Chairman PENCE. Thank you, Mr. Grucci. And again, the Chair would like to say for the record that Mr. Grucci played a pivotal role in assembling this hearing, and I and other members of the Small Business Committee look forward to working with our colleague as we collate and digest what we have learned in this hearing today. But I think it is safe to say that without Felix Grucci's leadership this hearing would not have occurred.

That said, allow me to thank all of the panelists and also Congressman Foley who joined us earlier.

As I said earlier, I have a small business background having hung the fluorescent lights and put a fax machine in the basement of my house, and greatly appreciate the challenges that all of you face in the small business environment.

And I also have a great love for communication and the information age, and admire both of the men who are here and who are part of that information revolution. These are difficult issues. This is obviously a time of transition in the industry.

It is my hope that all of the participants of the panel will recognize that, and I say this on behalf of the ranking member, the gentleman from Pennsylvania, the distinguished panel of minority members who joined the committee today, the distinguished panel of members of the majority who joined the panel today, I hope that all of you who are feeling beset by these changes in the industry will have seen evidence today that this Congress on both sides of the aisle is aware, interested, as of today better informed, and poised for action.

And though the man in the cross-hairs today who did an able and capable job of speaking on his behalf and on behalf of Orbitz.Com is not a representative of the airline industry. I know that your tie is to your clients, and your former employees are deep, and I am confident that, and trust that in some informal way you will help, in addition to the media gather here today, you will help carry back the concerns expressed by many members of Congress to those major airline industries.

I think Felix Grucci's comments are fairly echoed by all of us who heard the airline bailout bill sold here on Capitol Hill not as a way of helping airlines specifically, but about stabilizing the travel industry in America which obviously the jurisdiction of this subcommittee and of the Small Business Committee generally is about looking after and tending to the interest of small business Americans, and it is our hope that that messages makes its way back to the airline industry, that there is concern on Capitol Hill and that this hearing does not represent the end of that concern. It really represents the beginning of that concern, and asking some questions that will hopefully ultimately result in—whether it is future legislation, whether it is deregulation, but that it will result in the kinds of changes that will allow all the ships to rise in this industry, and ultimately for the consumer to have the best service, which we know happens in that corner travel agency where they can walk in and get the right answers, and a word of encouragement in combination with the very best prices, and that is the ambition of this committee.

With that the Subcommittee on Regulatory Reform and Oversight of the Committee on Small Business stands adjourned. Thank you.

[Whereupon, at 12:26 p.m., the subcommittee was adjourned.]

CHAIRMAN

RANKING MINORITY MEMBER

Congress of the United States
House of Representatives
107th Congress
Committee on Small Business
Subcommittee on Regulatory Reform
and Oversight
2361 Rayburn House Office Building
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Statement of Mike Pence
Chairman
Subcommittee on Regulatory Reform and Oversight
Committee on Small Business
United States House of Representatives
Washington, DC
May 2, 2002

Travel agents provide a service that most Americans take for granted. Unlike many other businesses, most Americans do not have daily contact with travel agents. We often forget that travel agents play a vital role in ensuring that Americans reach their intended destinations. The necessary role that they play in the American economy was evident in the aftermath of the events of September 11, 2001. Riveting testimony provided by Bonnie Adams before this Subcommittee on October 11, 2001 demonstrated the necessity of having a healthy viable travel agency industry in this country. As Ms. Adams testified "Travel agents were in their offices trying to help the many thousands of people stranded by the nationwide airport closure. Many of them provided free assistance to people who had bought their tickets on the Internet and had no one else to contact for help."

Today's hearing examines issues that are affecting the financial viability of the travel agency business. Technology has progressed to the point where many consumers are no longer using travel agents to purchase tickets or plan their holidays. Rather they are using the Internet to investigate fares, see pictures of resorts, and make reservations. New companies, such as

Onetravel.com and Orbitz were formed to take advantage of this new technology. This new technology even has affected how the federal government contracts for the provision of travel agency services.

If there are cheaper and better ways for businesses to provide services than through travel agents, the market has spoken. Travel agents will have to adapt to that changing economy just as many other small businesses have. However, the changes wrought in the distribution of travel-related services, especially airline tickets, must be fair. They cannot come as a result of unfair competitive practices by companies interested in extending their market power in the provision of air travel to new businesses or regulatory decisions that bias the marketplace in favor of certain businesses.

Before Congress takes any action, we must understand the economic and regulatory problems faced by existing travel agents. We also must comprehend how new technologies and new organizations are providing innovation in the delivery of travel services. Solutions to problems facing travel agents cannot stifle innovation. Nor should the government favor new ways of doing business if they are based on unfair and unjust competition. A new system for selling and distributing airline tickets is not necessarily better if the system unfairly capitalizes on the existing market power and substantial federal financial assistance provided to airlines. The issues being addresses at today's hearing are important as evidenced by the appearance of my good friend from Florida, Mr. Foley, the co-chair of the Congressional Travel and Tourism Caucus.

If in my estimation, unfair practices are endangering America's small travel agents, I will do my part to ensure that those unfair practices should be corrected. However, if the changes facing the travel agency business are the natural evolution of this sector of the economy, then I would be loathe to take action. So I am here today to learn about the industry, the changes in the travel agency business, and its challenges for the future.

Before recognizing the ranking member of the Subcommittee, the gentleman from Pennsylvania, Mr. Brady for his opening remarks, let me welcome Mr. Grucci to the subcommittee. He will have the opportunity to make an opening statement after Mr. Brady. I also want to welcome the former Chairwoman of this Subcommittee, Mrs. Kelly from New York. Your leadership on this Subcommittee set a high standard that I am striving to meet. I also want to welcome Mr. Toomey who will be introducing one of the witnesses, Michael Thomas of Onetravel.com.

Congressman Felix J. Grucci, Jr.
Subcommittee on Regulatory Reform and Oversight
Hearing on the Travel Agency Industry
May 2, 2002

Thank you Mr. Chairman.

I would like to thank you for holding this hearing today on the travel agency industry, specifically the airline's recent elimination of commissions to travel agencies. I appreciate your willingness to work with me to coordinate this important hearing. Not only does this action seriously affect thousands of small businesses around the country; it also creates a burden to the consumer.

In the days following September 11th, America's travel industry was faced with the devastating reality that businesses of all sizes and all kinds were forced to close their doors as a result of the grounding of airlines. Thousands of jobs were lost. As we know, the success of countless businesses relies on the success of the airlines.

One such business is the travel agency. There are approximately 30,000 travel agencies across the country, employing approximately 300,000 people. The average travel agency has 5 employees and 82% of travel agents are women. These are all small businesses, many of which are family owned and operated, that are actively involved in their communities and provide a great service to communities across the country. However, they rely, almost entirely, on the airline industry.

As you can imagine, as September 11th and the days following devastated the airline industry, it also devastated travel agencies across the country. In fact, travel agencies lost an estimated $1.36 billion from September 11th to October 11th. During the first week alone, travel agencies lost an estimated $440 million.

During the days immediately following September 11th, it was the travel agents across America that were assisting countless travelers that were stranded throughout the nation. It was also the travel agencies that assisted the airlines and cruise lines when they were inundated with cancellations and questions after the attacks.

Facing near collapse as an industry that relied on the airlines, travel agencies were relieved at the talk of an "airline bailout," which would save the airlines and allow the traveling public to travel again. On September 22, 2001, the President signed the Air Transportation Safety and Stabilization Act into public law. One day earlier, along with 355 of my colleagues, I voted in favor of this legislation.

While there was some controversy surrounding the fact that the bill directly targeted the airlines, I thought that revitalizing the airline industry would naturally assist other travel-related industries.

In short, it was my intention to help the entire travel industry, of which travel agencies are a significant part.

It was with great shock and disappointment that I learned that less than 6 months after I voted in favor of this legislation, the airlines -- led by Delta and followed by American, United, Continental, Northwest, U.S. Air, America West, America Trans Air and Air Canada – decided to eliminate commissions to travel agencies.

While eliminating commission to American travel agencies, they continue paying commission to foreign travel agencies. For example, Delta Airlines provides the following commissions:

- 9% to Australia, Bahamas, Brazil, Czech Republic, Greece, Hong Kong, Hungary, Iceland, Indonesia, Israel, Italy Jamaica, Jordan, Korea, New Zealand, Poland, Portugal, Saudi Arabia and Zimbabwe

- 10% to Bermuda, Columbia and Peru

- And America - 0%.

The affects this will have on American travel agencies are catastrophic. This is simply unacceptable.

Since about 50% of income for travel agencies come from airline commissions, the loss of this income could lead to the collapse of many travel agencies and the loss of thousands and thousands of jobs.

It isn't only the small businesses that will be affected by this decision, however. This action also has negative impacts on the consumer. First of all, no relief to the consumer accompanies this action by the airlines. While commissions have been built into airline tickets for years, it seems that ticket prices are not decreasing, despite the elimination of commissions to travel agencies.

Furthermore, who is going to help the elderly person purchase a ticket who has no access to a computer? Who will assist the low-income family in rural America that doesn't have a credit card?

Consumers and small businesses alike are faced with severe consequences as a result of this action.

To survive, some travel agencies may decide to begin adding a service-fee to supplement the loss of commissions. Unfortunately, they will soon find that the majority of clients do not want to pay more money for tickets and will soon stop using travel agencies all together.

The closing of travel agencies, as a result of this action by the airlines, will lead to a massive loss of jobs. As I previously mentioned, travel agencies employ about 300,000 people throughout the nation. With an average salary of $28,000, these travel agents will not be able to afford not having a job and will be seriously impacted by the closure of their businesses.

Up to this point, airlines have relied heavily on the services provided by travel agents, which sell 75% of all airline tickets. Travel agencies are providing a great service – not only to the traveling consumer – but also to the airlines. They are selling the airlines' product and the airlines are asking them to do it without any compensation.

One does not have to look very far to understand why the airlines are no longer seeking out the services of travel agencies. Several years ago, the five major airlines, which control 75 to 80% of U.S. air travel, came together and formed an on-line travel service named Orbitz. While this company has been providing significant services to the traveling public, they have done so at the peril of other travel agencies and on-line travel companies.

A recent study indicated that 71% of airline ticket sales on Orbitz were for the 5 carriers that directly support Orbitz through commissions. Orbitz has been guaranteed a commission by these five airlines, which have also apparently given Orbitz access to better fares than other travel services.

Despite an anti-trust investigation being conducted by the Department of Justice, Orbitz continues to be funded by the five major carriers, while shutting out any competition in the marketplace by offering fares that competitors do not have access to. Not only aimed at boosting their own ticket sales, while drowning out smaller carriers and travel agencies, this anti-competitive action parallels the injustice so apparent in the airlines decision to eliminate commissions.

In a country where we assure small businesses that they can compete and succeed, the recent actions of the airlines is disheartening. Many men and women who are living the American Dream, by owning their own business and providing a great service to their community, may soon be forced to close their doors and find a new profession.

In recent weeks, I have spoken to many travel agents. Hundreds have called my office and sent letters from throughout the nation. They have relayed stories of success that are now surrounded by feelings of fear. One travel agent wrote me, *"I have been a travel agent since 1973. There have been many changes in the industry in the last 29 years, but this may be the one that destroys my profession, and it is frightening to face a complete career change after nearly a decade."*

While stories and circumstances differed in the hundreds of letters I have received, the underlying fear of each travel agent and agency owner was exactly the same.

Small businesses are the backbone of America's economy and we must ensure that we not only work to better America's small businesses, but also those that are served by the small business. The recent action by major airlines has provided a large disservice and injustice to both.

Today's hearing will highlight areas where airlines are impacting travel agencies and we must make it perfectly clear: America's small businesses deserve better, and if we help the airline industry to overcome its toughest battles, yet sit on the sidelines while they cripple other industries – then we have failed in our mission to protect small businesses and I refuse to watch that happen.

I believe this will be a very informative hearing and I look forward to working with all of you to find a solution that not only protects the future of America's travel agencies, but also secures this great service for the American public.

Thank you.

ROBERT A. BRADY
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Thank you, Mr. Chairman.

I want to thank everyone for attending this morning to discuss issues affecting travel agents today.

Travel agents are small businesses. Travel agents on average employ just five people. And Travel agents are overwhelmingly women, with over 80 percent of the companies' female owned. While travel agencies may be small in staff size they count for 75% of all airline ticket purchases.

Many small businesses throughout the country were impacted by the events of September 11, but none like the travel and tourism sector. The following weeks and months after September 11, travel agents lost $26 million each day. Now in addition, to the lost revenue resulting from a decrease in busines, travel agencies face a loss in commission.

All of the airlines, except Southwest and Midway Express, have eliminated the practice of paying travel agencies commission for domestic flights. The airlines have also begun to limit access to the lowest fares available by setting up websites that the travel agents do not have access to.

Businesses exist because of competition. Without it consumers would have only one choice. Today we will focus on whether competition can and will exist for the travel industry and what steps can be taken to ensure that all business owners have the opportunity to compete. I hope that we can work together to find solutions to the challenges ahead.

Thank you, Mr. Chairman.

Congressman Mark Foley
Committee on Small Business
Subcommittee on Regulatory Reform and Oversight
Travel Agent Testimony
May 2, 2002

Chairman Pence and members of the committee, thank you for the opportunity to speak today regarding the state of travel and tourism and travel agents in the current economic environment.

The termination of the pay-based commission structure to travel agencies should serve as a warning light, much like the low oil light in your car.

While eliminating commissions for travel agents doesn't appear from the outset to have an immediate impact on travel, this small change has the potential to lead to a seizure of parts of this economic engine if ignored.

As a former travel agent and now the Co-chairman of the Congressional Travel and Tourism Caucus, along with Congressman Sam Farr, the news of this removal of the pay structure by the airlines hit especially close to home.

In fact, last month I sent a letter to Attorney General John Ashcroft to review the actions of the airlines questioning the timing of the airlines dropping commission payments within days of each other. I would like submit that letter for the record.

Travel agents play an important role as a filter, educator, promoter and feeder to the purchasing public.

In bad times, the airlines have relied on travel agents to bolster sales, but with the advent of the Internet, airlines are expressing more hubris.

In fact, the airlines have entered the online travel market in force, something that in itself reflects our changing times.

Let me say for the record, that I believe in a robust market economy. And in my last seven and a half years in Congress as a frequent, frequent, flyer I can attest to the special role that the airlines play in the United States.

However, our efforts to promote the airlines, including the $15 billion bailout of the airlines, carries a responsibility from the airlines to the American public.

That $15 billion payment from the taxpaying public makes them, in a sense, defacto stockholders in the major airlines.

In my meetings with virtually every segment of the Travel and Tourism industry in the wake of September 11, I heard various proposals to buoy the second largest industry in the United States.

One of my personal concerns with the airline bailout was that it would not filter down through the airlines to the family-owned travel agencies, baggage handlers, taxi cab drivers, and other related interests.

And the decision to drop travel agent commissions seem to bear that concern out.

When a consumer walks into a travel agency, the airline tickets they purchase are often just a part of an overall travel package.

By the airlines undercutting commissions, they are undercutting potential ground transportation, accommodations and entertainment services sales offered to the traveling public by travel agents.

While it has been suggested by some that this latest round of commission cuts is the result of September 11 -- and I sincerely hope this is not being spread by the airlines -- the truth is that airlines have been ratcheting down commissions for a number of years and this has been a final blow that travel agents have been predicting for years.

It is critical that the traveling public continues to have free-market access to an assortment of travel services and fares provided by travel agents.

Thank you.

TESTIMONY OF THE

AMERICAN SOCIETY OF TRAVEL AGENTS

And

TRAVEL AGENTS OF SUFFOLK COUNTY

Before the

UNITED STATES HOUSE OF REPRESENTATIVES

HOUSE SMALL BUSINESS SUBCOMMITTEE

ON

REGULATORY REFORM AND OVERSIGHT

Presented by:

Louis P. Fenech, Jr., CTC
President
Royal Holiday Travel, Inc.
196 N. Main Street
Sayville, NY 11782
(631) 563-3440

May 2, 2002

Chairman Pence and members of the subcommittee, my name is Louis P. Fenech, Jr. CTC. I am the President of Royal Holiday Travel, Inc. of Glen Cove and Sayville, New York. My company has been in business for over twenty-six years. I am also the President of the Travel Agents of Suffolk County (TASC) and a long-standing member of the American Society of Travel Agents (ASTA) since 1978. I am honored to present this joint statement on their behalf and I respectfully request that my full statement be made part of the hearing record.

Mr. Chairman, I thank you and Rep. Felix Grucci for providing this opportunity to testify today. Rep. Grucci's request for today's hearing is a prime example of a member of Congress who listens to his constituents. He has played an integral part in advancing the interests of the travel agency community since 9-11 and we thank him for his support and the opportunity to help the committee to focus on the current state of the travel agency business.

Over the past ten years, our industry has been put through some drastic changes. In the early 1990's we began to realize the full effects of the deregulation of the airline industry. There was massive airline expansion and spending as the airlines accumulated tremendous mountains of debt in order to carve out their piece of the U.S. air travel market. As the decade progressed, the airlines, unable to cope with the fallout of this spending binge and faced with major reductions in the numbers of travelers, began to look for ways to cut costs. Many of them merged, went bankrupt or were absorbed resulting in the formation of a powerful "cartel" of airlines. With the decreased competition, they have divided the country's trunk route system into virtually noncompeting regions: American Airlines services the east to west routes; Delta services the northeast to southeast; Northwest services the northwest; United services the midwest. USAir and the rest of the smaller regional airlines fill in what is left of the country's airline system. This scenario was precisely what the "Economic Deregulation Model" was supposed to prevent. It is interesting to note that the only carrier not to "play ball" with this cartel has been Southwest Airlines who seems to be the only carrier to remain profitable during this period of time.

Ever since deregulation, the Travel Agency distribution system has been perceived as a threat to the airlines. Because our compensation was standardized throughout the airline industry, we were able to offer an unbiased source of fare information to the traveling public. We were able to find the lowest fare, regardless of airline, to the client's destination without thought of which airline compensated us and which did not.

Armed with motive and opportunity, the airlines embarked on a campaign to eliminate or at the least severely impair the public's access to travel agents. That course of conduct has substantially reduced, and now threatens to eliminate, competition in the market for travel services and to injure consumer welfare.

The first action in the airlines' campaign began in 1995, when the major airlines, with the exception of Southwest Airlines, capped travel agency domestic commissions at \$50 per roundtrip ticket. This was followed in September 1997, with across-the-board reduction in the domestic base commission rate from 10 percent to 8 percent, retaining the caps on maximum commissions that could be earned. In 1998, international fares were subjected to caps. In dollar terms, the total compensation reduction to agents from these actions was more than 30 percent.[1] This "revenue squeeze" had already made entire segments of airline ticketing activity non-remunerative for agents.

In 1999, United Airlines announced a further reduction in its base domestic commission level from eight percent to five percent, continuing the caps previously established. August 2001 American Airlines cut domestic and international caps to $10 and $20 respectively. Finally, on March 14, 2002 at 2:00 p.m., Delta Airlines, the initiator of the 1995 commission caps, announced that, effective immediately that day, it would pay no base commissions to travel agencies for any U.S. originating air transportation sold by them. Within weeks after Delta's March 14 announcement, all the other major airlines, except Southwest, matched Delta's zero commission policy. This policy was put into effect for only travel agencies in the United States and Canada. If, however, you were a travel agent in Yemen or Turkey for example, you would still receive 9% commission for selling the tickets of our U.S. airlines. The road to zero-based travel agency commissions has been a major factor in the exit of 25 percent of travel agencies locations, a 45 percent decrease of U.S. travel agency firms and a 46 percent loss of independent travel agencies (single, brick and mortar locations) from the industry from 1995-02, as well as a shifting of resources by many of the remaining agencies to non-air sales. These numbers are even more dramatic when counted in the hundreds of thousands of jobs lost during this same period.

The major airlines' elimination of the commission traditionally paid to travel agents on the sale of domestic airline tickets is anti-consumer and anti-competitive. It

[1] The commission rate for January, 1999, domestic air transactions was 6.71 percent according to official Airlines Reporting Corporation reports. In January, 1995, before the commission caps, the rate was 10.01 percent.

threatens to deprive consumers of access to their preferred source of travel information and tickets. It threatens to deprive the public of their only source for neutral and objective comparative information and advice. It relegates consumers to the airlines' controlled distribution channels where they will inevitably be directed to choices serving the airlines own bottom lines at the expense of the consumer's wallet and convenience.

As of March 2002, there were 26,929 retail travel agency locations, distributed throughout all 50 States. Their average number of employees is five, with a median of three employees. Approximately 82 percent of all their employees are women and women own approximately 52% of all agencies. Agencies are predominately small businesses with 68 percent with annual revenues of $3 million or less, while 20 percent have annual revenues between $3 million to $5 million and the remaining 12% have annual revenues of over $5 million. Travel agencies continue to sell 75 percent of airline tickets.

This has been a difficult decade to be a travel agent. Yet, we have always been there for the consumer. Time and time again we have arrived at our offices ready to face an airline crash, a union strike, a bankruptcy or a weather catastrophe. We worked as hard as possible to calm our clients and help them through the situation they faced. We helped them arrive home safely. We helped them safeguard their financial investment. We reassured them that air travel is safe.

In the aftermath of September 11th, our job became even more difficult. We worked 18-hour days immediately following the terrorist attack to ensure that every person traveling had access to up-to-the-minute information about the status of his or her travel arrangements. We secured hundreds of thousands of dollars in refunds for clients whose plans were either directly or even indirectly affected by the tragedy. We counseled countless numbers of travelers, some of whom made their plans over the Internet or directly with the airlines. We did this for no compensation whatsoever. In other industries, this type of loyalty would have been rewarded or at the very least acknowledged, but in the case of our industry the airlines took 5 billion of our tax dollars and while enjoying the recovery we helped facilitate basically told us to see the consumer for our compensation. We cannot do this job for free!

Congress has already expressed its concern for the continued availability of travel agency services with passage in 2000 of AIR21. That legislation directs the establishment of a National Commission to Ensure Consumer Information and Choice in the Airline Industry. The Commission is to examine whether airline practices have created obstacles to the flow of information regarding airline services and the likely effects those obstacles will have on consumers and travel agents, including those using the Internet. The Commission's funding was authorized in the Department of Transportation 2001 budget. Nevertheless, organization of the Commission has not yet been completed and it has yet to meet. Its mission is now more urgent then ever.

Our industry has always believed in striving to find the most efficient and accurate means of selling airline tickets. In 1981, barely five years old, our company invested in airline reservation computers. It was extremely costly, but we felt that in order to give our clients the best service possible we needed to be automated. At that time, the computers we had were identical to those of the airlines own reservations departments and the information we received was also the same. But as the airlines became deregulated, they found ways to bias the systems. This led to anti-bias rules and eventually airlines being forced to divest themselves of travel agency automation. From the consumers' side, this was a tremendous victory. Years later, however, the airlines have found a new way to impose bias in their sales outlets through unregulated web sites on the Internet.

One means of eliminating travel agencies from the marketplace has been to deny us access to the full range of airlines deep discount fares. The continued viability of travel agencies in the zero commission environment makes access to these fares more critical than ever. With the overwhelming majority of the public preferring to make travel arrangements through agents, and not all consumers having easy Internet access or credit cards, a level playing field for fare access is essential. H.R.1734, the Airline Passengers Bill of Rights Act, co-sponsored by 49 House members, guarantees equal access to all airline fares regardless of the distribution channel the consumer chooses in making a purchase. Passage of this legislation is imperative.

In 2000, ASTA filed a request with the Department of Justice (DOJ), seeking an investigation and enforcement action with respect to the major United States and foreign airlines plan to create a joint Internet Web-site, known as Orbitz. On March 28, 2002 ASTA filed a formal complaint with the Department of Transportation (DOT) against the major airlines and their jointly owned web site, Orbitz. The complaint asks DOT to use its existing authority to stop the airlines from withholding discount fares from travel agencies.

More recently, 24 members of Congress co-signed a letter to the Department of Justice requesting that the Department "intensify its ongoing investigation of the antitrust implications of Orbitz, including its formation and its business practices."

Immediately following Delta's action of eliminating base commissions, ASTA asked DOT to use its authority to ban enforcement of productivity pricing provisions in travel agent's computer reservation system (CRS) agreements, which penalize them for making bookings through the Internet. Finally, ASTA is asking that the sale to airlines of travel agent transaction data, currently required by DOT regulation, be stopped.

In light of the challenges that transpired over the last seven months, the nation's small business travel agencies found support and relief from the House Small Business Committee. Chairman Pence's hearing on October 11, 2001 entitled, "September 11, 2001 Plus 30: Are America's Small Businesses Still Grounded?" helped paved the way in opening up, nationwide, the Small Business Administration's (SBA) Economic Injury Disaster Loan program on October 22, 2001. Through the leadership efforts of Chairman Manzullo, ranking minority member, Rep. Velazquez, and the committee members, additional relief was provided as a result of the February 27, 2002 House Small Business hearing that reviewed and recommended an increase in the size standard for the travel agency industry. Within weeks, the SBA announced the new proposed size standard increase for the travel agency industry from $1 million to $3 million in revenue. An Interim Final Rule was released by the SBA which immediately opened up the Economic Injury Disaster Loan program to travel agencies meeting the new $3 million size standard. The SBA also extended the filing deadline for the disaster loan program to May 22, 2002.

As of April 25, 2002, the SBA approved 376 loans totaling $19.1 million to the travel agency industry. The average loan amount is $50,900. The nation's travel agents are grateful to House Small Business Committee as well as the SBA for working together to help small business travel agencies with the financial assistance needed to grow and prosper in the months ahead. However, we still need your assistance.

In light of the actions taken by the airlines since being granted federal aid, we respectfully request that Congress take the following actions: Pass H.R. 1734, giving travel agents access to all fares; urge the DOT to aggressively investigate Orbitz; press the DOT to complete the appointments to the National Commission to Ensure Consumer Choice and Information in the Airline Industry; and finally to launch an investigation to review the actions of the airline industry specifically relating to the appearance of collusion in the imposition of zero commissions and their concerted effort to eliminate the travel agency distribution system.

ASSOCIATION OF RETAIL TRAVEL AGENTS
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U.S. HOUSE OF REPRESENTATIVES
Committee on Small Business
Subcommittee on Regulatory Reform & Oversight

"ISSUES IN THE TRAVEL AGENCY BUSINESS"
10 a.m.
Thursday, May 2, 2002
2360 Rayburn House Office Building

Testimony

Submitted by:
Celeste Siemsen
Owner
Empress Travel
Coram, N.Y.

STATEMENT OF CELESTE SIEMSEN,

OWNER OF EMPRESS TRAVEL IN CORAM, N.Y.,

BEFORE THE COMMITTEE ON SMALL BUSINESS,

SUBCOMMITTEE ON REGULATORY REFORM AND OVERSIGHT,

MAY 2, 2002

Chairman Manzullo and Members of the Subcommittee:

Good morning, and thank you very much for inviting me to speak at this hearing. My name is Celeste Siemsen, and I'm very proud to appear today as a small business owner in New York's First Congressional District. I make my living as the owner of Empress Travel, a full-service, neighborhood, "mom and pop" travel agency located in Coram, New York. In what little spare time I have, I volunteer as president of the New York state chapter of ARTA -- the Association of Retail Travel Agents. Founded in 1963, ARTA is the largest nonprofit trade association in North America that represents travel agents exclusively. We speak for 4,200 professional travel agents across the United States and Canada.

Today, I've closed my agency and traveled at my own expense to Washington for one reason:

Thousands of other small business owners around the country like me need your help to defend our businesses against the unfair competitive practices of the major U.S. airlines. We're facing these threats in two key areas: (a) unfair commission policies and (b) unfair restrictions on selling airline tickets over the Internet.

First, let me speak about the airlines' commission policies.

After September 11, Congress was hit immediately by the powerful, multi-million-dollar airline lobby for a bailout package: $5 billion in direct cash gifts and $10 billion in guaranteed federal loans. Less than 72 hours after the first plane hit its target in New York City, the airlines' lobbyists had drafted this legislation and started lining up support in Congress.

On September 22, President Bush signed the Air Transportation Safety and Stabilization Act, guaranteeing this money for the airlines. Throughout the hearings and discussions on Capitol Hill from September 11 through September 22, the message was the same: Congress wanted to help the airlines, and the airlines promised in turn that helping them would naturally assist other travel-related industries.

That's not true in the case of travel agencies. What happened is that the airlines took the $5 billion in taxpayer dollars -- and, six months later, they steamrolled over small businesses like mine in a direct attempt to put us out of business.

Here's what they did: With these taxpayer dollars in hand, they cut the commissions paid to travel agencies like mine for selling airline tickets to zero. That's correct: Zero. In other words, the airlines want travel agents to work for free in serving our customers who want to buy airline tickets.

What makes this situation worse is that the airlines have attacked only American agents. As this chart shows, the major carriers like Delta Air Lines continue to pay full commissions to travel agencies in the Bahamas, Egypt, the Caymans, and other overseas countries, while U.S. agents get paid zero.

What does it say about the trust Congress placed in the airlines after September 11 -- when travel agencies in Korea, the Persian Gulf, and even Afghanistan get paid in full by the U.S. airlines, while hard-working American agents get paid zero?

This zero-pay policy has hit our industry hard. Four out of five travel agents are women, and we own more than half of all U.S. travel agencies. Most U.S. agencies post less than $2 million in annual sales, yielding average salaries of $28,000 for front-line agents and $35,000 for owners and managers.

Unlike the airlines last fall, I'm not here this morning to ask for a bailout. What I'm asking for is fairness. Why should these airlines receive federal bailout dollars, or guaranteed loans, or antitrust immunity, or any other taxpayer-funded benefits, when they're competing unfairly in the marketplace? In other words, we're asking you to level the playing field. If Delta Air Lines, American Airlines, United Airlines, and other carriers want to pay overseas agents while they try to put U.S. agents out of business, that's their right -- but they should not receive any additional help from you in Congress if that's their plan.

Second, I'd like to share my concerns about Orbitz – the new Internet travel site that is owned by the major U.S. airlines.

This past week, twenty-four Members of Congress signed a letter to the Justice Department asking for an intensified investigation into the antitrust implications of Orbitz. ARTA, my trade association, shares their concerns.

Orbitz requires its owner airlines to provide all of the published fares available on their airlines' own Web sites, as well as all fares provided to competing travel agencies. Competitors like my small agency will never have the same opportunity to offer these exclusive fares. The airlines are using Orbitz to restrict these fares to Orbitz itself.

I want to ask you today to support the Justice Department investigation into Orbitz. I'm attaching a copy of the Congressional letter as part of my testimony, and I'd like to ask each of you to consider signing onto this letter to push for a very thorough review of the ways in which Orbitz and its airline owners compete unfairly against small-business-size travel agencies.

Thank you again, Chairman Manzullo and Members of the Committee, for your time and attention this morning.

ATTACHMENT #1:	Delta Air Lines Overseas Commissions Chart
ATTACHMENT #2:	Letter to U.S. Justice Department from 24 Members of Congress (April 23, 2002)

DELTA AIR LINES

Travel Agency Commission Rates

Abu Dhabi	9 percent
Bahamas	9 percent
Czech Republic	9 percent
Egypt	7 percent
Fiji	9 percent
Grand Cayman	10 percent
Indonesia	9 percent
Korea	9 percent
Persian Gulf	9 percent
Singapore	9 percent
Turkey	9 percent
Zimbabwe	9 percent

U.S.A. 0 percent!

Congress of the United States

Washington, DC 20515

April 23, 2002

The Honorable R. Hewitt Pate
Deputy Assistant Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530

Dear Mr. Pate:

We are writing to express our concern about potential anti-competitive effects of Orbitz, the online travel venture jointly owned by the five largest U.S. airlines, on the travel industry, e-commerce and consumers. We respectfully request that the Justice Department intensify its ongoing investigation of the antitrust implications of Orbitz, including its formation and its business practices.

Since the launch of the first on-line travel sites in 1996, online travel has become the largest e-commerce sector, with $20 billion of sales in 2001. The growth of independent websites has brought considerable benefits to consumers, giving them access to innovative technology and more choice in travel options.

In response to the growth of the independent websites, the five largest U.S. airlines formed the Orbitz online travel joint venture, which launched in June 2001. Prior to the launch of Orbitz, concerns were raised regarding the possible anti-competitive nature of the venture. Today, Orbitz is no longer a theoretical threat. Market experience over the last several months indicates that the contract terms and incentives contained in the Orbitz agreement raise significant antitrust concerns.

In just six months, the airline-owned Orbitz venture became the second largest online seller of travel and remains among the top three. While a fully competitive online travel marketplace offers consumers many benefits, we are concerned that Orbitz has accomplished this remarkable growth through the use of exclusivity incentives and most favored nations clauses which, in practice, have given Orbitz access to lower fares and inventory from its airline owners which have not been made available to other independent online and offline travel services.

The major airline owners of Orbitz appear to be using this joint venture to restrict output of critical travel information, to shift the costs of online travel distribution to consumers, and to steer traffic away from smaller carriers. We are concerned that these developments are evidence of consumer harm that will inevitably worsen without appropriate action.

Specifically, our concerns relate to the following areas of Orbitz's structure and the potential negative effects of this structure on competition in the online and offline travel industry:

- Most-favored nation clauses: The Orbitz agreement requires that participating airlines provide to Orbitz all published fares available on the airlines' own websites and reservation systems and all fares provided to any competing travel agencies. The most-favored nation clauses ensure that Orbitz consistently has access to the best available fares and that competing travel ventures, both online and offline, do not have any opportunity to engage in exclusive promotional ventures with the major airline carriers. In effect, the airline owners of Orbitz are discouraged from ever offering to other travel ventures access to fares which will not also be made available on the Orbitz site.

- In-kind promotion: The in-kind promotion clause in the Orbitz agreement induces carriers to fulfill their in-kind promotion obligation by giving web fares to Orbitz and denying the full array of web fares to Orbitz's competitors. As part of the Orbitz agreement, the major carriers must meet certain in-kind promotion requirements. According to the agreement, one manner in which the airlines may fulfill this obligation is to provide web-only fares exclusively to Orbitz and to deny access to these web fares to competing online and offline agencies. This portion of the Orbitz structure encourages long term exclusivity for Orbitz and may be facilitating an agreement by which independent agencies are denied comprehensive access to low fare inventory that consumers most want. When Orbitz's Chief Financial Officer was recently asked at an industry conference whether Orbitz could count on exclusivity on the airline web fares even if it took on board non-airline owners, he responded by touting Orbitz's "10-year agreements with most of the major carriers, and those agreements are one (s) that will stand the test of time because they're mutually beneficial, and they're always designed to be highly motivational from both sides, regardless of ownership interests."

We urge you to renew the ongoing investigation of Orbitz and competition in the travel sector, including an examination of all relevant agreements and understandings between the airlines and Orbitz, and all relevant market data related to the Orbitz venture.

Thank you for your expeditious consideration of this matter.

Sincerely,

Bob Goodlatte
Member of Congress

Rick Boucher
Member of Congress

Bobby Scott
Member of Congress

John Dingell
Member of Congress

John Baldacci
Member of Congress

Jerrold Nadler
Member of Congress

Barney Frank
Member of Congress

Lee Terry
Member of Congress

Maxine Waters
Member of Congress

Sue Kelly
Member of Congress

Peter DeFazio
Member of Congress

Steve Israel
Member of Congress

Dennis Moore
Member of Congress

Paul Kanjorski
Member of Congress

John Tierney
Member of Congress

Jo Ann Emerson
Member of Congress

James Walsh
Member of Congress

John Boozman
Member of Congress

Sherwood Boehlert
Member of Congress

Dennis Rehberg
Member of Congress

John Sweeney
Member of Congress

Spencer Bachus
Member of Congress

Lindsey Graham
Member of Congress

Ed Towns
Member of Congress

TESTIMONY OF THE

HUDSON VALLEY CHAPTER OF THE

AMERICAN SOCIETY OF TRAVEL AGENTS

BEFORE THE

UNITED STATES HOUSE OF REPRESENTATIVES

HOUSE SMALL BUSINESS SUBCOMMITTEE

ON

REGULATORY REFORM AND OVERSIGHT

Presented by:

Stanley C. Morse
President, Hudson Valley
Chapter (ASTA) &
Co-Owner, Marstan Travel of Millbrook, LTD.
P.O. Box 1182
Millbrook, New York 12545
1-845-677-6901

May 2, 2002

Chairman Pence, Congressman Grucci, Congresswoman Kelly and Members of the Subcommittee, my name is Stanley C. Morse. Thank you sincerely for allowing me to speak at this hearing today.

I am co-owner of Marstan Travel of Millbrook, LTD., a small leisure travel agency in New York State. I am also President of the Hudson Valley Chapter of the American Society of Travel Agents (ASTA), with 200 members.

The purpose for appearing here today is to provide some factual data on travel agencies in the United States. For reference, the data are from the ten-year period 1991 to year 2000. The year 2001 was a unique year for the travel industry, and for the most part, deserves special attention, due to the events of September.

During the ten year period from 1991 to the year 2000, sales of airline tickets in the United States rose from $48 billion dollars to a whopping $83 billion dollars, an increase of 73%. For this same ten-year period, the number of air tickets rose from 150 million to 200 million, an increase of 33%. These data show America likes air travel, and has cultivated that liking.

Travel agents were critical to this increase in air travel, for they produced over 80% of the airline tickets run for the traveling public from 1991 to 2000. Despite the introduction of Internet air tickets in the late '90s, agents still produce about 75% of all airline tickets in the U.S. today. Approximately 15% of air tickets are done on line today. It's apparent the great majority of American travelers still want to use a travel agent over the alternatives of ticketing on the Internet, or calling the airlines directly.

From the travel agent's perspective, however, the U.S. based airlines have done nearly everything they could to push us out of air ticketing.

During the period 1991 to year 2000, especially as a fallout of five successive commission caps and cuts starting in 1995, the number of U.S. travel agencies dropped from 23,000 (23,454) to 18,000 (18,489), a decrease of over 21%.

Just one year later, at year-end 2001, the number of travel agencies had dropped to the 16,000 range (16,708), a drop of nearly 30% since 1991.

On March 14 this year, all commissions were eliminated for the small U.S. based travel agency. I believe everyone in this room today understands the words "zero commissions".

And where there are zero dollars coming in, over 95% of small travel agencies nationwide now charge service fees. The average service fee for a small travel agency today is $20 - $25. My agency, for example, has been forced to charge an average service fee of $40 per airline ticket. We have seen a sharp drop in airline ticketing since instituting fees five years ago. With fewer tickets, our computer contracts are in question, since we are required to produce a minimum number of tickets to avoid severe penalties for shortfalls.

On top of all this is ORBITZ, the consortium of five of the six major airlines, which offers low fare tickets on line. The only major U.S. carrier not signed onto ORBITZ is Southwest Airlines. The five airlines behind ORBITZ (American, Delta, United, Northwest and Continental) carry over 75% of all U.S. air passengers today. Since small travel agencies are out of the commission picture, the major airlines, through ORBITZ , have set their sights on eliminating TRAVELOCITY and EXPEDIA, their two biggest competitors. At first blush, the low fares offered by ORBITZ appear to benefit the traveling public. Once EXPEDIA and TRAVELOCITY are gone, the sky may be the limit for what airlines can charge for air tickets. And, with drastically low airfares available on line, fares that are not available to travel agents, the airlines have delivered the second blow to travel agency.

First it was commission elimination. Now it's low fares not available to travel agents, and on line only.

One year ago there were seven major airlines. Now there are six, five of which have banded together in ORBITZ. Travel agents feel we have passed through oligopoly into the early stages of airline monopoly. Clearly it's a bad position, both for travel agents and the traveling public in general.

What we both need is a level playing field in air ticketing.

Thank you very much.

TESTIMONY OF THE

AMERICAN SOCIETY OF TRAVEL AGENTS

INTERAMERICAN TRAVEL AGENTS SOCIETY

and

SOCIETY OF GOVERNMENT TRAVEL PROFESSIONALS

Before the

UNITED STATES HOUSE OF REPRESENTATIVES

HOUSE SMALL BUSINESS COMMITTEE

SUBCOMMITTEE ON REGULATORY REFORM AND OVERSIGHT

ON

ISSUES IN THE TRAVEL AGENCY BUSINESS

Presented by:

Jacquelyn Alton, CTC
CWT/Almeda Travel, Inc.
450 Meyerland Plaza
Houston, TX 77096
713/592-8000

May 2, 2002

Mr. Chairman, members of the Subcommittee, my name is Jackye Alton. I am the owner of CWT/Almeda Travel, Inc. in Houston, Texas. I thank you for this opportunity to speak to you today regarding issues in the travel agency business, especially on the ability of small businesses to bid on federal government contracts. As a member of the American Society of Travel Agents (ASTA), the InterAmerican Travel Agents Society (ITAS) and the Society Of Government Travel Professionals (SGTP), I am honored to present this joint statement on their behalf.

ASTA, established in 1931, is the world's largest and most influential travel trade association with over 26,000 members in more than 170 countries. Its mission is to enhance the professionalism and profitability of members worldwide through effective representation in industry and government affairs, education and training, and by identifying and meeting the needs of the traveling public.

ITAS, established in 1953, is the largest and oldest association of African-American owned and operated travel agencies in the world.

SGTP is the national, non-profit education forum for all components of the $20 billion government travel market. Since 1984, SGTP has been an all-encompassing and inclusive association of government travel/finance managers, suppliers and travel agents whose primary objective is to facilitate and promote best practices and a spirit of innovation in government travel.

The travel agency community is very grateful to you, Mr. Chairman, and this Subcommittee for the time and effort spent to assist small businesses in meeting the federal government's small business procurement goals, and to ensure this engine of economic growth fair and reasonable profits. Although there are some positive signs of improvement in the $20 billion government travel market, much will depend on a win-win relationship of government contracting officers and the travel industry, in the months ahead.

Role of Travel Agents

Travel agents serve as the only one-stop, neutral source of comprehensive information and counseling about an incredibly complex, constantly changing array of fares and services that confronts the general public. Air travel represents 54 percent of the travel agency product mix and agencies account for about 75 percent of the air travel sold in the United States.

Ninety-five percent of all travel industry firms are small businesses that are local and family owned. Eighty-five percent of travel agency jobs are held by women, many of whom are flextime mothers and single. The vast majority of travel agencies are independently-owned. Seventy percent of owners and managers are women.

Recent Changes In Availability of Travel Agencies

The travel agency industry began to experience significant changes involving size as well as numbers since the airlines began cutting commission levels unilaterally, as we discussed at the Committee Hearing, February 27th. According to a 1998 Lou Harris survey of travel agencies, since 1995 the number with revenue under $1 million had decreased 35 percent and number of travel agencies with revenues over $2 million had increased 46 percent. Travel agencies are getting larger, better managed, with a more diverse revenue base. That's the reality of today's competitive environment.

The Airlines Reporting Corporation (ARC), as of March, 2002, reported 16,142 home office and independent/single entity retail travel agency locations throughout the United States—

a loss of 1,948 (-10.8%) locations the past 12 months. Another hard fact is that ARC had only 38 new approvals or changes of home offices/independent locations the first three months of 2002. Thus, for every new travel agency location, on an annualized basis, we estimate thirteen close their doors.

Regrettably, one of these casualties appears to be one of our members in Anderson, Indiana, who had great hopes to serve as a federal government subcontractor and CRC travel agent. The public suffers from this loss of choice and convenience and professionalism.

Four Major Government Hurdles To Small Travel Agencies

Small businesses have insufficient opportunity to bid on and to retain federal government contracts. Looking at the sequence of events in a typical travel management relationship, we see four major hurdles faced by these small businesses, according to a survey of travel agencies with current federal contracts.

1. The RFP and Contracting Phase

a. Small business set-asides are few. DoD, through its Defense Travel System, plans to bid out approximately 28 travel management contracts as small business set-asides. In measuring the value of fifteen current small business set-asides, averaging $6 to 13 million of air volume, the maximum potential for small business set-asides would be $172 million of air, 8.6 percent of DoD's estimated total air volume. That's a long way before the 23 percent federal small business goal is reached.

b. Subcontracting requirements should be mandatory—not just a best effort type or response.

c. Bundling of travel management into IT and other contracts. DoD/Defense Travel System has TRW as its prime, subcontracting to American Express. Department of Transportation uses Gelco as its prime, we understand.

d. A-76 studies have been brushed aside as costly or unnecessary. Meanwhile, the United States Marine Corps has taken some of its travel management in-house—not its mission objective.

e. Incomplete RFPs—Some have no definitions of work. Others refuse to set out the specific requirements of each required report before award of the bid. RFP writers should be required to respond to their own work.

f. Unrealistic or inappropriate requirements as to how the job should be done, by micromanaging space, equipment, staffing levels, etc.

g. Requiring past performance in similar work areas. It's hard for a small travel agency to gather that experience.

h. GSA and DoD propose that the government procure the travel management technology, in many cases from a single global distribution system (GDS) vendor, and that all travel agencies would be required to use this single system. This effectively would put a brake to competition for technology, services and prices. And, small businesses would be less competitive outside the federal marketplace as GDS vendor negotiations disappear.

i. Unreasonable contract length of time. The Defense Travel System is requiring 60 days or no notice to cancel contracts that roll into its new round of reprocurements—at no cost to government.

j. Implementation delays due to protest, etc. encroach on basic contract time periods, with less time to amortize high front end investments in technology.

k. Zero Commissions and the continuance of preferred vendor agreements have made small travel agents less competitive in RFP financial evaluations.

l. Improper use of size standard codes. A DoD travel management RFP at Peterson Air Force Base closing in two weeks is using NAICS 561599 of $5 million income to define small business, not 561510. Similarly, another DoD contracting officer at Wright-Patterson Air Force Base recently published a Commerce Business Daily (CBD) notice at the $5 million level. Many disaster relief loans are being made at the $3 million level. But basic services contracting remains at $1 million.

2. Operations

a. How we get the job done, and the vendors we work with, are being increasingly micromanaged.

b. Defense Travel System, as part of its lodging controls, plans to interface with DoD lodging systems. These are much more than government-owned, on-base facilities. Recent changes in Washington and other per diems, as part of government-operated programs, don't necessarily provide best value to federal agencies and the taxpayer. The travel industry has experience in negotiating and operating best value programs.

c. Wage determinations by the United States Department of Labor negatively impact the cost structure of smaller travel agencies where personnel must be cross-utilized, with corporate and personal travel accounts.

d. End-to-end travel solutions currently being developed by DoD and others have placed much of the responsibility for trip planning and sorting out of options on the traveler. These solutions would create a high investment cost for small travel agencies, with no apparent service advantages. Some of our members observed that the taxpayer would be better served if government employees could concentrate on the job they were hired to do, and leave the travel arrangement to those with training, proficiency, and knowledge of government travel and industry regulations.

e. Ombudsmen have been designated as the point to resolve disputes. A recent SGTP survey could identify only one functioning Ombudsmen Office in the United States Department of Justice. Thus, the smaller travel agencies are at a disadvantage in conflict resolution.

3. **Financials**

a. Equity value of travel agency ownership has plummeted the past several years, with a parallel cut in available levels of bank lines of credit.

b. The large, multi-national travel agencies, with hotels, charge cards, and other diversified interests, are better able to support their travel agency businesses.

c. Many government receivables are in the 90 day column, versus the Federal Prompt Payment Act, due to outdated procedures. National Finance Center New Orleans seems to function on a reactive basis. Small travel agencies don't have bank lines of credit to survive carrying the government.

d. Small travel agency owners and managers basically worked without compensation in the months following September 11. To preserve cash flow, layoffs of long term and family employees have been particularly painful.

e. Value of the $2.25 GSA Industrial Funding Fee per ticket issued is being questioned by small travel agents, who manage relatively low-yielding task orders, and then pay GSA this Industrial Funding Fee for indefinite services.

4. Renegotiation/Rebid

a. While the renegotiation process has improved with the advent of fee-based contracts, there is still a delay in waiting for "policy directives," especially at DoD, then various command decisions, as commissions keep falling. Meanwhile, the small travel agency is forced to further cut back services and risk poor performance ratings.

b. Failure to provide equitable adjustment on an objective and timely basis remains an issue. The government's "standard procedure" appears to penalize the well-run travel agency.

c. For rebids, the large size of some small business set aside contracts, and the low size standard, can force an incumbent into the position of not being able to rebid. This situation eliminates the major incentive to maintain excellent performance.

5. Other Findings

a. As essentially local businesses, who support the local community, small travel agencies make for a better quality of life. Their agents understand traveler needs, and can be more responsive.

b. Change is important. Too often, there appears to be inadequate opportunity for input from businesses being affected, to the government agencies experimenting with change. Small travel agencies and other suppliers are least able to adjust to changes which may or may not be well-conceived.

c. On the positive side, smaller travel agencies, given the opportunity, can lead the efforts for innovation and best business practices. Both of this year's awards for SGTP's Best Government Travel Agency Program went to small business: to Lawton's Travel for developing the "Subcontracting Guide for Small Business," and the Alamo Travel Group for a timely and thorough use of web technology to keep government travelers informed after September 11.

Conclusions

Mr. Chairman, the answer to your basic question is that small travel agencies remain at a disadvantage in bidding on and operating government travel contracts—at a reasonable profit. That disadvantage is growing, as government priorities favor technological investment for the basic service of travel management—and lessen its commitment to small business and free enterprise. A balance needs to be maintained.

Basic steps to restore small travel agency viability are:

1. Build a more open operating and innovation partnership between government and industry—with adequate small business representation.
2. Closely monitor federal agency compliance with small business subcontracting goals—in the same type of business as the prime.
3. Change or eliminate federal requirements and procedures that unfairly penalize small business practices.
4. Revitalize the Ombudsmen structure, or other adequate oversight process, and appropriate Government Accounting Office evaluations.

Thank you, Mr. Chairman, for this opportunity to present ASTA, ITAS and SGTP views on government contracting. I would be delighted to answer any Subcommittee questions.

TESTIMONY OF

GARY R. DOERNHOEFER
Vice President and General Counsel
Orbitz, LLC

Before the Subcommittee on
Regulatory Reform and Oversight
of the House Small Business Committee

May 2, 2002

Introduction

It is well known that there is a wave of change sweeping across travel distribution systems, and change is always a frightening thing. Orbitz believes however, that while these changes bring new challenges to travel agents, many industry observers underestimate the skills and value of professional travel agents and their ability to adapt to new business conditions. Most importantly, the changes in the industry are bringing about needed relief to a distribution system that is broken; a system that for years has boasted leading edge technology – Computer Reservation Systems or CRSs – deployed in a tragically inefficient, unnecessarily costly structure.

The Flawed Structure.

Textbook economics state that any marketplace operates best when the consumer pays directly for the service or good they buy. An educated consumer can weigh a product's benefits and costs and make reasonable decisions. Over time, in a competitive market, this simple structure will force all sellers of the service or good to compete to offer superior quality at a reasonable price.

Travel distribution is not so simple. Historically, airlines sold most of their seats through a distribution chain with many steps. A consumer calls a travel agent, the travel agent uses a CRS to find fare and schedule information, the CRS taps into the individual airlines' systems to determine whether there are seats still available and to place the booking. This distribution chain has not followed the simple market I just described, because at two points in the chain, the party receiving the service isn't the one who pays for it. Travel agents provide a service to the consumer, but they were paid a commission by the airline. Likewise, the CRS provided information and booking services to the travel agent, but again the CRS was paid a booking fee by the airline, not the travel agent. These distribution costs, travel agent commissions and CRS booking fees, became part of the airline's marginal costs for selling each ticket. As these costs went up, fares had to go up as well. The consumer was ultimately paying for these distribution services indirectly through hidden costs driving higher airfares. Eventually, this inefficient structure led to distribution costs becoming the third highest cost category for the airline industry, behind labor and fuel.

Not surprisingly, this system could not last. As airlines faced pressure to reduce costs, they lowered what they could – travel agency commissions – starting in 1995. But the overall system adjusted, just as you would expect. To make up for the lost commission revenue, travel agents began charging their customers directly for the knowledge, expertise and professional service they provided. And where the agents earn the fee with good service, customers have been willing to pay it. The latest round of commission cuts is nothing more than the logical conclusion of this process. Finally, the cost of the professional service offered by the travel agent to the consumer is now transparent to the customer, because it has been removed as a buried element of airline marginal costs and put squarely on the table for the consumer to see and evaluate.

The Travel Agent Paradox

The travel agents' concerns are still legitimate however, and should not be minimized. Travel agents are still unfairly caught in a paradox. Although the small travel agent may now collect nothing from the airline, they nevertheless appear to the airline to be an expensive means of distribution. Ending commission payments eliminates only one of the two costs borne by the airlines when a travel agent sells a ticket. The airline must still pay a CRS booking fee for every travel agent transaction. Although the airlines have unbundled the cost of travel agent commissions from their other marginal costs, the CRS booking fee incurred on every travel agency transaction remains obscenely high and obscured from competitive pressures.

The CRS Cost Problem

The CRSs, originally built and owned by the airlines, are now largely independent. Each of them has thousands of travel agents locked in to using their system and thereby generate booking fees that the airlines must pay. For years, nearly every airline has had to keep paying spiraling CRS costs or risk losing sales through thousands of travel agents if the CRS removed the airline from the computer displays. And the travel agents that contracted for CRS service had no incentive to bargain for lower booking fees, because they didn't have to pay them – they were charged directly to the airlines. Only Southwest Airlines, and more recently and to a lesser degree JetBlue, have successfully avoided this trap, largely shunning travel agency distribution while conditioning its customers to book directly with the carrier.

The Internet Solution

Unable to subject the CRS booking fee to competitive pricing pressures, the airlines seized on the Internet as a lower cost alternative. Each developed their own website and for the last 5 years encouraged customers to book there by making some of their lowest fares available exclusively on their own sites. Then in June, 2001, Orbitz was launched as a lower cost alternative to the two dominant online travel agents, Travelocity and Expedia. Just as the airlines had reserved their web fares for their own, low cost websites, Orbitz earned access to the webfares by offering the airlines much lower distribution costs than any of its competitors.

Orbitz' Earns Access to Webfares by Offering Lower Costs

The key to understanding Orbitz' business model is to understand that it offered the airlines – all airlines – a deal; lower distribution costs, including a rebate of a portion of the CRS booking fee, in return for a promise to let Orbitz sell all of their fares, including webfares. It is not an exclusive offer, and competitors have finally begun to lower their costs and gain access to webfares as well. But it's a trade, lower costs for access to inventory, and if the government were to require the airlines to give everyone the same access to fares, regardless of costs, there would be no point in Orbitz, or anyone else, offering lower costs for its distribution service. We would quickly return to the same broken system that existed before Orbitz launched.

Orbitz is no more threatening to traditional travel agents than Travelocity or Expedia. Today, only about 10 to 12 percent of total travel is purchased via the Internet. Of that, roughly half is sold by individual supplier websites like AA.com or Hilton.com. The rest, only 5 to 6 percent of total sales, is split among third party sites like Expedia, Travelocity and Orbitz. Orbitz is still the smallest of the three in total travel sales. Thus, Orbitz' market share is less than 2 percent. Hardly a dominant position.

A Way Out of the Paradox for Travel Agents

There is a way out of the travel agents' paradox. Given time, there is little doubt that the Internet will develop into a direct substitute for the high cost CRSs. Many travel agents already make bookings directly on airline websites and other Internet agencies, thus accessing webfares for their customers. To do so today is admittedly cumbersome and inefficient because the websites were designed for consumer use. However, many companies, including Orbitz, are working on technology to improve the travel agent's ability to abandon the high cost CRSs and to use the Internet, with its access to webfares and lower costs. Once the market has the time and opportunity to work, the combination of customer fees instead of commissions and a lower cost booking channel, will offer the travel agent every opportunity to compete fairly, so long as they continue to provide a valuable service to the consumer. In the meantime, we should avoid rushing into government regulation that may cut off the market's first healthy response in ten years to mend a broken distribution system.

National Airlines

Las Vegas' Hometown Airline

Michael J. Conway
Chairman of the Board
President
Chief Executive Officer

April 16, 2002

The Honorable Norman Y. Mineta
Secretary of Transportation
U.S. Department of Transportation
400 Seventh Street, SW, Room 10200
Washington, D.C. 20590

Dear Secretary Mineta:

On behalf of National Airlines' employees and customers, I applaud your continuing efforts to promote competition and consumer choice in the airline industry. In this context, I am writing you to express our strong support for the growth and development of Orbitz, an Internet start-up company that is providing air travelers--for the first time ever--a comprehensive, unbiased listing of all their flight options. Recently, Time magazine put out their list of 50 best websites. Of all the online travel agency websites, only Orbitz made the top 50. According to Time, "Travelocity and Expedia were until recently the duopoly that ruled the online travel business. Orbitz is making it a three-way fight."

In essence, there is a "bottleneck" in the sale of airfares through traditional and online travel agents. Each sale is processed by one of a handful of independent CRSs. The Internet website Orbitz, of which we are a charter associate member, provides a solution to two problems long identified by DOT, the Department of Justice, and the U.S. General Accounting Office (GAO) arising out of this bottleneck: (1) ever-escalating booking fees airlines paid to the CRSs and then passed on to consumers each time they book a flight and (2) the biased display of flight information by CRSs that favor some airlines over others.

As you know, next to labor and fuel, distribution costs represent the third largest expense for airlines. A key component of those costs is the per ticket booking fee that airlines pay to a handful of computer reservation systems (CRS). Since 1983, when the Department of Justice and others first asserted that CRS booking fees were excessive, the booking fee expense paid by airlines to the CRSs has risen by seven percent per year, while computing costs generally in our economy have gone down over 99 percent in the same period. We currently pay about $3.70 for each segment booked on us through a CRS. Since these fees are fixed on a segment basis, they hit the smaller, low-fare airlines the hardest. When we offer a $78 round-trip fare to customers between Los Angeles and Las Vegas, the customer must actually pay $94.50 after adding in segment taxes, security fees and PFC's. National actually only nets $65.16 after excise taxes and booking fees are paid. We simply do not have the resources relative to the larger carriers to absorb these fees. The lack of competition in this area has come about because the CRS industry is not open to competitive entry—in short, the CRS industry has its users, the travel agents, under

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The Honorable Norman Y. Mineta
April 16, 2002
Page 2

highly restrictive, long-term contracts that effectively deny most of them any possibility of switching to another CRS or using an additional CRS.

In our view, Orbitz has changed the dynamics of airline ticket sales and is greatly increasing competition. Currently, the $20 billion Internet travel business is dominated by two CRS-based Internet sites. As a new entrant, Orbitz is the all-important third competitor. As you know, studies by the General Accounting Office and others have documented that increasing the number of competitors from two to three in a given market, regardless of the industry involved, leads to increased competition, lower rates, and greater consumer benefits. In this particular case, the lower booking fees associated with Orbitz are beginning to force the existing duopoly to compete and lower their booking fees. In short, Orbitz is creating a downward pressure on booking fees that has never existed before, pressure that is resulting in savings for big and small airlines alike and that will be, to a certain extent, passed on to air travelers. I view this as a significant breakthrough.

Likewise, Orbitz represents a significant breakthrough on the CRS screen display bias issue. DOT and GAO long ago identified the anti-competitive effects of biased CRS display listings of flights. Despite government efforts over the years to correct this problem, too often flights offered by small airlines still end up being listed by CRS' and the two CRS-based Internet sites several screens behind the flights of larger carriers even though they offer a reasonable if not better flight schedule and/or lower-cost alternative for the air traveler. Such biased displays simply do not give smaller airlines a fair chance to compete, and quite simply put, harm consumers. In contrast, by providing an unbiased display of all airline flights and fares, Orbitz allows us for the first time to have a fair shot and gives consumers what they want: a comprehensive and unbiased listing of their travel options.

* * * *

In summary, we at National believe that Orbitz represents a solution to problems that the Departments of Transportation and Justice, and others have long been concerned about. Indeed, it is precisely because of the positive benefits that Orbitz holds for smaller carriers that over 40 other airlines and we are charter associate members of Orbitz.

Thank you for considering the views of National.

Sincerely,

Michael J. Conway
Chairman, President & CE

Orbitz Revisited: The Orbitz Perspective

by Gary Doernhoefer[1]

Orbitz, LLC is one of the first examples of a successful collaboration among horizontal competitors on the Internet. Orbitz was founded and is owned by the five largest US airlines; American, United, Delta, Northwest and Continental. It is a full-service, online travel agency, supporting consumers who shop online for airline tickets on domestic airlines and many foreign carriers, as well as for hotel rooms, rental cars and travel and tour packages. Orbitz enters the travel distribution market as a partial remedy to existing serious anticompetitive conditions. This fact, coupled with close adherence to the guidelines issued jointly by the Department of Justice and Federal Trade Commission, allowed Orbitz to withstand unprecedented scrutiny and successfully launch without regulatory intervention on June 4, 2001. In the six months since, Orbitz has demonstrated that the efficiencies of such a collaboration in the online distribution of a service, such as transportation, are compelling, and there will undoubtedly be additional similar ventures.

Throughout its development and launch, Orbitz was subject to regulatory scrutiny by government agencies ranging from the Senate Commerce Committee to two separate branches of the Department of Transportation, the Antitrust Division of the Justice Department, and a working group of the State Attorneys General. Some of these studies, such as the DOT and DOJ, have lasted well over a year, but none have resulted in compulsory changes to the business plan, ownership or commercial agreements that make up Orbitz' operating strategy.

The FTC/DOJ Joint Guidelines are the obvious place to start when creating or analyzing a venture involving horizontal competitors. The Guidelines recognize that such collaborations may be procompetitive, echoing many economists and the courts. "Consumers may benefit from these collaborations as the participants are able to lower prices, improve quality, or bring new products to market faster." Guidelines, at page 4. See also, *NCAA v. Board of Regents,* 468 U.S. 85, 113 (1984) ("[A] joint selling agreement may mak[e] possible a new product by reaping otherwise unattainable efficiencies.")

The Guidelines recommend a rule of reason analysis that "focus[es] on the state of competition with, as compared to without, the relevant agreement." This was important in the case of Orbitz, because the existing market for travel distribution, without the "relevant agreement," was characterized by market power held by the computerized reservation systems – middlemen in the traditional distribution chain for travel – and the developing concentration and potential market power in the downstream distribution of travel on the Internet. Despite the opportunity to increase competition and lower costs, Orbitz had to be carefully crafted in deference to the Guidelines, which identify three aspects of potential concern in the creation of any horizontal collaboration: (1) exclusion of certain competitors, in this case non-owner airlines, from participation in the joint

[1] Gary Doernhoefer is General Counsel of Orbitz, L.L.C.

venture, where the venture may have market power or exclusive access to an element necessary to compete, (2) improper exchange of information that might facilitate price or output coordination, and (3) conditioning participation in the venture to limit independent decision making or competition, either among the airline participants or in the relationships between the airline participants and competitors of the venture, such as Travelocity or Expedia. The structure and operation of Orbitz is a balance, crafted by a team of in-house lawyers from the airline founders to preserve the procompetitive purposes and avoid the potential anticompetitive harms.

To undertake a rule of reason analysis, a short description of travel distribution services is necessary. In the typical transaction, a consumer calls a travel agent (or uses an online service) to get information about flight schedules and fares. This information is made available to the agent, who subscribes to one of four computerized reservation systems (CRSs) in the United States. Each CRS consolidates data on flights and fares, has connections to hundreds of internal airline inventory systems, searches the data in response to a request and presents the information on fares, schedules and availability to the agent. If the consumer purchases the ticket, the airline pays a booking fee to the CRS used by that agent, in addition to a commission to the agent. Commissions and booking fees become part of the airline's marginal costs.

The CRS business is highly concentrated, and each company has thousands of travel agents subscribers. CRSs strive to sign up more travel agents to their system to increase their share of bookings, and thus increase their revenue. Since very few airlines would survive without distribution through travel agents, in the distribution chain CRSs have upstream market power.[2] In a Department of Transportation regulatory proceeding, the Justice Department described the CRS market segment:

> The CRSs do not engage in price competition in order to induce carriers to participate at higher levels. Not coincidentally, the booking fees that CRSs charge are widely believed to be at supracompetitive levels and appear to have little relation to costs. While the costs of computing power have dropped dramatically over the last decade, the price of CRS services has risen substantially. Indeed, the price has now risen to the point that even airlines that own CRSs have publicly complained about the level of the fees. Moreover, we learned from our investigation that more than three-quarters of CRS revenue is earned from airlines which see little price competition among the CRSs, while approximately ten percent comes from travel agents which see intense price competition. DOT Docket No. OST-96-1145, Department of Justice Comments, September 19, 1996.

The situation has worsened since 1996 as booking fee expenses continued to increase. In June, 2001, America West filed supplemental pleadings with the DOT stating:

[2] See, Mark Patterson, The Role of Power in the Rule of Reason, Antitrust Law Journal, Vol. 68, 2000, p. 429 for a discussion of distributor market power.

> Despite CRS vendor claims to the contrary, increases in CRS fees are not reasonably related to CRS costs attributable to booking transactions. The experience of America West and other carriers confirm that CRS vendors are charging excessive fees and thereby greatly distort airline competition.

In addition to the CRS bottleneck, prior to Orbitz' entry, two dominant online competitors, Travelocity and Expedia, controlled 60 percent of all online travel agency bookings[3] and pursued a vertical foreclosure strategy that attempted to ensure that no competitor, including Orbitz, could achieve the minimum efficient scale necessary to survive in the low margin, high volume marketplace for travel distribution.[4] Prior to Orbitz' entry, the competitors had a history of tacit collusion often found in duopoly markets. Their pricing, in terms of commissions charged the airlines, was identical, and there was little competition between them. For instance, neither aggressively pursued access to airline web fares, which were available only on individual airline websites, because so long as neither had them, there was no competitive reason to do so. Until Orbitz entered the market, neither company demonstrated significant innovation either with respect to consumers or in terms of lowered costs and improved efficiency with suppliers. During this period, both were growing rapidly due to the general shift toward online purchasing of travel, and their margins were improving steadily. They have every incentive to maintain this environment.

Online travel distribution is a small margin business dependent upon high volumes. Stated differently, it is a business with high minimum efficient scale. Travelocity and Expedia are first movers with large installed bases of customers. Each has grown in part by acquisition of rivals, and they use extensive, exclusive agreements with all of the largest Internet portals, such as AOL and Yahoo! to reach consumers at the earliest possible point in the shopping process. At a minimum, these portal arrangements raise the barriers to entry and increase rivals' costs. For the airlines, the rapid growth and consolidation of only two online travel agents risked developing a second layer in the distribution channel with market power, similar to that suffered by the toy manufacturers in the Toys 'R' Us case.[5]

Orbitz was crafted to inject competition in both the CRS and Internet levels of the distribution chain. At the CRS level, Orbitz negotiated a substantial rebate of a portion of the CRS booking fees paid by travel suppliers to the CRS it uses to place its bookings, based on its projected volumes. Orbitz offers to return most of the rebate it receives to the supplier in return for access to the supplier's lowest fares or rates. Further, Orbitz is developing direct connect technology that will link its website directly with individual travel suppliers, drastically reducing the need for the CRS, developing an alternative to the current CRS oligopoly and lowering travel distribution costs still further.

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[3] The Online Travel Marketplace 2001-2003, PhoCusWright, Inc.

[4] For an excellent discussion of vertical foreclosure strategies, see Dan Rubinfeld and Hal Singer, Open Access to Broadband Networks, Berkeley Technology Law Journal 16:631, 2001.

[5] *In the Matter of TOYS "R" US, INC.*, 1998 FTC LEXIS 119, October 13, 1998.

At the online travel agent level, Orbitz offers to lower the cost of commissions paid by airlines to online travel agencies. Its new technology and the dramatically lower cost of computing power allows Orbitz to achieve lower unit costs. Suppliers that agree to certain terms receive a commitment to a long-term, declining commission schedule.

The consumer benefits indirectly as the lower cost of distribution lowers the marginal cost for travel services. The consumer benefits directly as well because Orbitz uses its lower costs to help ensure better search capability and more comprehensive inventory than its competitors. Lower consumer search costs increase price transparency and reduce information asymmetry. *See, California Dental Association v. Federal Trade Commission,* 224 F.3d 942, 953 (9th Cir. 2000).

So in the rule of reason analysis, Orbitz has much on the procompetitive side of the ledger. But what about the potential risks cited in the Guidelines? In the formation of, and operating plan for, Orbitz, each of the risks identified by the Guidelines was kept clearly in mind.

First, participation in Orbitz is open to all airlines; no airline is excluded. Orbitz is a full service travel agent, selling the services of any airline, hotel, car rental company, cruise line or other travel service provider that chooses to make its product available to Orbitz. In contrast to its rivals, Orbitz does so with an express commitment to an unbiased display in both its founding corporate documents and its agreements with travel service suppliers. Orbitz also offers each supplier the same economic terms and conditions. Thus, although owned by five major airlines, Orbitz also sells the services of smaller domestic airlines that compete with the founders, such as Midwest Express, National and Alaska Airlines, free of bias, on identical terms. Indeed, the services of over 450 airlines can be found on Orbitz, all searched and displayed without bias of any kind. The same is true for rental cars and hotels.

The risk of an improper exchange of information between horizontal competitors via Orbitz is also carefully managed. Orbitz receives all of its fare and schedule data from the same centralized standard industry sources that support all travel agents. The collaboration carefully followed existing travel industry methods for acquiring and handling fare and schedule data, and nothing is disclosed or available to the competitors until it is a published price broadly available to the public. Further, Orbitz has conducted multiple compliance programs to ensure that its employees who work with the airlines are sensitive to the prohibition against exchanging future price or capacity decisions among the competitors. As a consequence, the Inspector General of the Department of Transportation has stated before Congress, "We do not see anything unique to the structure of Orbitz that would encourage or facilitate collusion on pricing. The airlines will have no greater access to each others' fares than they currently have through browsing their competitors' websites and purchasing CRS data.... [Orbitz] will not offer a substantially greater platform upon which the airlines can communicate about pricing." [6]

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[6] Ken Mead, written response to the Senate Commerce, Science, and Transportation Committee, August 2000

The third potential risk is that Orbitz may condition participation in its website upon agreements that limit competition is some way. Again, this risk was carefully avoided by ensuring that identical terms were offered among the travel service providers, and that participation in Orbitz was expressly not exclusive. Each supplier, big or small, stands on equal ground in the Orbitz distribution model. Nevertheless, Orbitz' competitors complain that Orbitz' Charter Associate Agreement restricts competition by interfering with the relationship between service providers and other online travel agents. This complaint reflects more the desire to preserve their march toward a pricing duopoly than any real risk to competition.

In its Charter Associate Agreements, Orbitz makes travel service providers a simple offer; it will lower the service provider's cost of selling all of the service provider's services via Orbitz now and in the future, will commit to developing direct connect technology to further lower the costs, and promises unbiased display and consistent economic terms. In return, the service provider, called a Charter Associate, agrees to allow Orbitz to distribute all of the Charter Associate's publicly available inventory. For instance, in return for the bundle of lower costs and unbiased display, an airline Charter Associate agrees to allow Orbitz to sell its webfares that were previously available only on the carrier's website. Further, if the carrier strikes a bargain to distribute some fares exclusively on another website, Orbitz gets an opportunity to match the terms on a 'most favored nation' basis and also sell those fares. As a result, Orbitz' display is as comprehensive as possible, and often has fares not currently available on its online competitors. Orbitz earns the non-exclusive right to carry a Charter Associates' full inventory by offering long-term lower cost distribution and unbiased displays, but any supplier is free to negotiate a deal to place the same inventory on another online travel agency website.

Orbitz' competitors have focused their attack on the terms that grant Orbitz access to supplier inventory for which they have failed to successfully negotiate. However, most courts analyzing 'most favored nation' clauses where the beneficiary does not have market power have found them benign or even procompetitive. *See, Ocean State Physicians Health Plan v. Blue Cross & Blue Shield of Rhode Island*, 883 F.2d 1101 (1st Cir. 1989). Many other decisions reach similar results.[7]

For all of the complaints, the MFN clause has had little real impact. Airlines and other travel service suppliers have continued to compete vigorously for customers booking online with their own, independent websites because these represent their lowest cost means of selling their services. If a Charter Associate makes a fare or rate available to the general public on its own site, it has agreed to allow Orbitz access to same fare or rate without reference to the MFN, in return for Orbitz' low cost and unbiased display commitment. Generally, suppliers have resisted the kind of agreements that place

[7] *See, also Blue Cross and Blue Shield of Wisconsin v. Marshfield Clinic*, 65 F.3d 1406, 1415 (7th Cir. 1995)(MFN minimized the cost of an input for the buyer thus enhancing efficiency.); *E.I. du Pont de Nemours and Co. v. Federal Trade Comm'n*, 729 F.2d 128, 139-40 (2d Cir. 1984)(MFN did not facilitate collusion, was adopted for legitimate business reasons, including protecting the pricing of smaller competitors.)

discount inventory exclusively on a third party website, which would trigger the MFN, because doing so would also disadvantage their own independent website. As a result, the complaints have been largely academic, a screen for the competitors' real concern that Orbitz puts downward pressure on prices for their service and forces innovation.

Thus, in the rule of reason balance called for by the Joint Guidelines, before Orbitz entry there is a CRS market that is highly concentrated and pricing with upstream market power, as well as the online segment of travel distribution that seems destined for a similar fate. After Orbitz' entry, there is pricing and innovation pressure in both concentrated markets, with no discernable anticompetitive harm. Careful planning and the right environment have led to a successful, procompetitive collaboration among horizontal competitors that benefits suppliers and consumers alike, and is fully consistent with the goals and objectives of the antitrust laws.

Statement of

MICHAEL THOMAS

President and Chief Executive Officer

OneTravel.com

Before the

Committee on Small Business
Subcommittee on Regulatory Reform and Oversight

United States House of Representatives

May 2, 2002

Mr. Chairman, I am Michael Thomas, President and Chief Executive Officer of OneTravel.com ("OneTravel"), an online travel agency based in East Greenville, Pennsylvania, in Representative Pat Toomey's district. I appreciate the opportunity to appear before the Committee this morning to discuss critical issues relating to online travel distribution systems, and our inability to access and sell the best fares.

OneTravel is a value-oriented travel website dedicated to offering consumers low prices and expert advice on travel. OneTravel is a member of the Interactive Travel Services Association ("ITSA"), a trade group representing companies in the travel distribution industry. At OneTravel consumers can purchase airfares, receive instant confirmation on reservations at over 54,000 hotels worldwide, rent cars from all major agencies, and save on vacation packages. I founded OneTravel in September 1995, in a barn on a sheep farm in rural Pennsylvania, just as the online travel industry was developing. I wanted to build a viable business before investing in office space. The barn reinforced the culture I wanted to create for OneTravel—one of thrift and creativity. After launching in January 1996, OneTravel quickly earned a position as a leading travel site for budget-oriented consumers. In 1997 the company acquired Advantage Travel, a travel agency in Texas, which provided OneTravel with sophisticated online booking engines. Because we own our site's technology we can create a technologically superior platform that allows us to be very flexible in addressing changing consumer needs.

In 2000 we began partnerships with Amadeus, a computer reservation service ("CRS"), and Terra Lycos, an international Internet Service Provider and interactive content supplier. Today, these entities are OneTravel's primary shareholders. We currently issue about 230,000 airline tickets per year, but as I will discuss below, the collective market power of the major airlines exerted through Orbitz poses a major threat to our business, and to other travel agencies as well.

As a matter of background regarding the mechanics of the travel industry, for many years airlines sold their tickets directly to the public, and through traditional brick and mortar travel agencies not owned by the airlines. These travel agencies use one of four computer reservations systems, or CRSs, to identify available flights and fares, and to book tickets for customers. Starting in or about 1995, a number of websites appeared that were devoted to the retail sale of airline tickets. These websites were not owned or affiliated with the airlines, which also maintain their own websites.

The launch of Orbitz in June 2001 marked a major turning point in the distribution of travel services. That is because Orbitz was formed by, and is wholly owned by, the five largest U.S. airlines -- American, United, Continental, Delta and Northwest. These airlines collectively control about 75-80 percent of the domestic air travel market. Each has long maintained, and still maintains, its own website, but they nonetheless choose to pool their resources to create a website designed to appear as a neutral agency and compete with non-airline-owned travel distribution outlets. It is as if GM, Ford, and Chrysler decided to form a super-dealership that would compete head-on with independently owned car dealers, and would withhold certain automobiles from the independents—the cars the public most desired.

And more than that, Orbitz was structured by its airline owners so that it would inevitably dominate the distribution of air travel. It benefits from two provisions in the contract that airlines must sign in order to distribute through Orbitz. These are, first, a most-favored-nation or MFN provision under which an airline must offer to Orbitz any "published" fare that it offers anywhere else, including webfares on its own site. This MFN provision has the effect of eliminating the incentive for airlines to negotiate special deals with other travel distribution outlets, and it has done just that, ensuring that Orbitz alone receives the best fares. The MFN provision has a ten year term. Second, the Orbitz agreement provides that airlines must fulfill annual in-kind promotional support for the benefit of Orbitz, and that one of the means of meeting that promotional obligation is to provide fares exclusively to Orbitz. Indeed, I understand that there are additional incentives in the agreement that are designed to result in exclusive fares. In fact, Orbitz has now come to be dominated by Orbitz-only webfares. Orbitz repeatedly claimed at the time of its launch that it would find more lower fares than other travel websites by virtue of its use of ITA low fare search technology, and it continues to make such claims. The reality, however, is that its lower fares derive from these anticompetitive contractual provisions.

The combined market power of the major airlines, coupled with an MFN provision and the exclusivity incentives, have created a giant sucking sound in our business – Orbitz has sucked up virtually all of the best fare deals for domestic airline travel from its owners and other airlines, and left only the crumbs for the truly independent agencies, such as OneTravel. Our experience has shown that a difference of only a few dollars between competitive air fares is frequently sufficient to determine a consumer's choice of websites for purchasing tickets. It is no surprise that in the period since its launch in June 2001, Orbitz is now as large or larger than Travelocity and Expedia, and on a course to dominate on-line distribution of airfares. It has already attained booking revenue in excess of $1 billion.

The online travel market in which OneTravel participates is one of the fastest growing e-commerce industries. It appears that the public has embraced the notion of booking their travel online. The existence of independent websites like OneTravel has brought considerable benefits to consumers, giving them access to innovative technology, and more choice in travel options. While I believe that our online sector of the travel industry holds great promise for consumers in the future, the launch of Orbitz has caused a serious and adverse impact on travel distribution competition, and has rendered OneTravel and other travel distributors noncompetitive in the sale of domestic air travel. As a result of Orbitz's dominance in the offering of discounted webfares for domestic airline travel, we find ourselves unable to effectively compete against Orbitz. Competition has succumbed to the consolidated power of the Orbitz airline owners to jointly control distribution, and through that control, to skew the market to favor those owner airlines over other airlines. Ironically, while the number of users of on-line services is growing, we and other agencies are effectively being foreclosed from the sale of domestic airline tickets and being forced to do as best as we can in refocusing on tours, cruises and other travel services.

Smaller airlines and consumers will eventually pay the price if competitors such as OneTravel are forced out of the competitive mix for the sale of domestic air travel. OneTravel thus urges Congress, and federal transportation and antitrust enforcers, to restrict or eliminate the ability of airlines to jointly, through an entity such as Orbitz, enforce anticompetitive MFN or exclusivity provisions.

I. Orbitz's Contractual Arrangements Are Fundamentally Anticompetitive

Given its ownership by the five major U.S. airlines, the so-called Big Five, Orbitz represents a paradigm shift in the market, warranting scrutiny by the Department of Transportation and Department of Justice for antitrust and other fair competition concerns. Both DOT and DOJ continue to investigate Orbitz. However, Orbitz received a "yellow light" to launch from DOT in a April 13, 2001 letter to Orbitz President Jeffrey Katz. While not blocking its launch, DOT raised several concerns about Orbitz in that letter, and stated that it would monitor Orbitz. The facts that have developed in the marketplace since its launch underscore that DOT's concerns were warranted, as I will discuss below.

DOT recognized in its letter that exclusive fares, which appear frequently on Orbitz, pose a threat to competition, stating that, "we have serious concerns about incentives toward exclusivity, however limited." Jeff Katz testified to the Senate Commerce Committee prior to Orbitz's launch that its exclusive web fares would constitute less than one percent of its lower fares compared to online competitors: "at least 99% of the time Orbitz shows the consumer a lower fare than other sites do, it will not be because Orbitz had access to a fare that they did not have access to. It will be because Orbitz did a better, more thorough and unbiased search of the fares that were available to everybody." The facts have proven that Orbitz vastly understated the percentage of exclusive webfares displayed on its site. According to a recent Sabre filing with DOT, on any given day up to 75 percent or more of the first ten options displayed on Orbitz, in response to a specific city pair request, are webfares that are *not* distributed to independent travel agencies like OneTravel.

To demonstrate the importance of webfares to the success of Orbitz, we have reviewed the fares that are available on Orbitz in certain major city-pairs with the fares that are found using the ITA technology, which is available on ITA's own website. We have also compared these same Orbitz fares with those that are available on OneTravel. The comparison, a copy of which is submitted with this testimony, demonstrates that Orbitz nearly always has a lower fare as a result of the special discounts made available exclusively to it, not as a result of technological superiority resulting from Orbitz's use of the ITA software. While we have not conducted an exhaustive search, based upon our experience our sampling of comparative fares is representative and underscores the central role that exclusive webfares play in Orbitz's competitive advantage. Orbitz's rapid growth is in fact tied directly to its exclusive access to preferential pricing—low price webfares. DOT recognized this possible result in its April 13 letter, which stated "the question remains whether Orbitz substantially reduces charter associate carriers' incentives to make their lowest fares (including webfares) available through other online travel agencies, even if these agencies match the terms offered by Orbitz." OneTravel submits that the MFN clause in Orbitz's contract, and the contract provisions that offer incentives for exclusive fare arrangements, seriously and significantly reduce competition. Special negotiated deals between the Big Five airlines and certain online travel agents were commonplace before the formation of Orbitz. Now, they are virtually nonexistent because of the MFN and exclusivity arrangements.

The impact of the Orbitz-only webfares on our business is clear -- while the total number of unique site visitors to OneTravel has increased from 3.3 million to 4.4 million per month during this same twelve month period from March 2001-2002, the "look to book" ratio has *declined 45 percent* to a mere 0.63 percent of all unique visitors in March 2002. This means that while OneTravel is experiencing some of the same general increase in interest by the public that the large online travel agencies are now experiencing, fewer customers are actually booking on OneTravel because it does not offer competitive pricing in many markets, due to its lack of webfares and special deals with the Orbitz owner airlines.

Beyond Orbitz's dominance of the low fares, OneTravel has been stymied by Orbitz owners in its ability to attain access to their best fares. We were able for a time to procure access to low American Airlines fares through a consolidator, but American Airlines quickly moved to prevent such access, effectively prohibiting OneTravel from competing with Orbitz. Similarly, two weeks ago we were advised that we could not sell Continental Airlines' negotiated fares that we had obtained through a consolidator. Again, our competitiveness has suffered, and that is because the playing field has become uneven since Orbitz has entered the picture.

OneTravel's total monthly revenue from domestic air bookings has declined from about $5.6 million in March 2001, to $2.8 million in March 2002. I attribute this loss of revenue, in large measure, to Orbitz's ability to use the joint power of its owners to restrict fare access and thus competition. In fact, this marks the first year since the launch of the company that we experienced a significant reduction of revenue in one of our key business segments. Naturally, this loss in domestic airline booking revenue has also made it more difficult for us to diversify our business into other travel areas. Lost airline bookings lead to lost hotel and car rental bookings, and a reduced opportunity to grow our business in other areas.

Some other online agencies have succumbed already, or are struggling, while traditional, off-line travel agencies, many of them small businesses, are also suffering as a result of the concerted action of the airlines to distribute their best fares only through Orbitz, as you will undoubtedly hear today. I am convinced that Orbitz's anticompetitive advantages, flowing from its MFN and exclusivity provisions, will ultimately lead to its complete dominance of the online travel distribution business, to the detriment of consumers and airline competition.

II. Orbitz's Bias in Favor of its Owner Airlines Undermines Airline Competition

DOT also recognized in its April 13 letter that "[c]ritics argue that the MFN clause undermines the ability of individual airlines to make clandestine deals with other Internet travel sites—deals that they rightly contend have a pro-competitive effect on airline pricing." In fact, experience in recent months has shown that the Orbitz MFN clause has led to reduced price competition among the *airlines*, as the MFN discourages them from providing webfares, or negotiating lower price special deals with OneTravel, and other online travel agencies, because such deals and webfares must also appear on Orbitz. Orbitz certainly does not stimulate price competition among airlines, as it claims.

Orbitz claims that it is "unbiased," and that it is the only "neutral" web travel site. However, the truth is that Orbitz is *heavily biased* in favor of its owner airlines, which reserve their best fares for Orbitz alone. This not only disadvantages other online travel agencies, it also disadvantages small airlines. According to Sabre's recent filing with DOT, from the period of July 1, 2001, to February 28, 2002, 71.6% of the airline bookings made on Orbitz were for flights on *Orbitz owner* airlines. This compares to 51.3% percent Big Five bookings on OneTravel, down from 55.3% before the launch of Orbitz. And these figures actually understate the decline since the latter figure includes bookings from TWA, which was merged into American Airlines after June 2001. According to Sabre, 61.4% of the bookings on Travelocity, and 62.7% on Expedia, are for flights operated by the Big Five airlines, again much lower than the percentage of such bookings on Orbitz. Orbitz's significantly disproportionate number of bookings on its owner airlines can be attributed, in my view, to the MFN clause, and Orbitz's exclusive access to deeply discounted web fares.

Indeed, the over 40 percent difference in bookings for the Big Five airlines on Orbitz compared to OneTravel (71.6% to 51.3%) is striking, and should be of considerable concern to this Committee given its interest in small business and in ensuring that companies compete on a level field. To the extent that Orbitz is steering passengers to its owner airlines, it is clear that the smaller carriers are losing market share as a result.

Further, the airline owners of Orbitz have a significant incentive to attach a higher service fee to the fares of smaller carriers. This is currently occurring to America West on Orbitz, which has a higher Orbitz service fee attached to its fares ($10) compared to competitor airlines ($5).

The inevitable development and expansion of disparate treatment between owners and non-owners will soon present the smaller carriers with a Hobson's choice: either suffer the discrimination, or not be listed on Orbitz, the dominant online travel agent. Either choice could have severe adverse consequences on the competitiveness of the smaller airlines against the Orbitz owners.

III. Orbitz's Alleged Lower Cost Does Not Explain its Success

The airline owners of Orbitz claim that they formed Orbitz in response to the alleged high cost of distributing airline travel through CRSs. It is now more *expensive* for airlines to sell tickets through Orbitz than through OneTravel. The major airlines have eliminated commissions to all travel agents, including OneTravel. However, Orbitz requires its airline participants to pay "transaction fees" of about $7.50 per ticket to Orbitz. The Orbitz owner airlines are apparently continuing to pay Orbitz this fee even while they have chosen not to pay any base commission to us or to any other travel agency. The airlines also pay booking fees to Worldspan, a CRS utilized by Orbitz, for reservations made through Orbitz, averaging roughly $6.50 per ticket (based on an average of 2.5 flight segments and factoring in a 33 percent rebate). Even with this booking fee rebate from Orbitz, the total cost to an airline of an Orbitz issued ticket is about $14. By contrast, on OneTravel, which uses Amadeus as its CRS, there is no commission, and Amadeus charges about $3 per segment. For the same average 2.5 flight segment example, OneTravel would cost $7.50, while Orbitz would charge $14, almost twice as much. The data establish that Orbitz's claim that it would provide a lower cost alternative to travel distribution by other outlets is not well grounded in the facts.

The Orbitz airline owners are in fact subsidizing Orbitz by providing it with fares that are significantly lower in many cases than fares made available through any competitor of Orbitz. It is reasonable to conclude that the airlines have been subsidizing Orbitz in order to drive business away from Orbitz competitors, and thereby reduce competition and consumer choice in travel distribution. I find it equally troubling that all of the major carriers would utilize so much of their prized collateral (i.e., the back of their ticket jackets, a premium advertising space) to set aside their own competitive agenda in favor of advertising for Orbitz. This fact underscores the commitment the Orbitz owners have made to the site, apparently viewing it as a means of eventually obtaining total control of travel distribution in the United States.

IV. To Preserve Competition, Orbitz's Unfair Practices Must be Addressed

As I have explained, the already meteoric growth of Orbitz will eventually lead to its dominance in airline travel distribution and force other agencies, on-line and otherwise, into a second tier role focused on the distribution of other than domestic airline travel. The loss of revenue from domestic airline ticketing will likely cause a large number of the online, as well as traditional travel agencies out of business. With Orbitz's growing share of the online domestic airfare market, the benefits Orbitz offers to its owner airline will make competition increasingly problematic for the smaller carriers, even if today some of them view Orbitz as a valuable distribution outlet. Consumers are, of course, the ultimate losers in this situation, as they will eventually have fewer travel choices at higher prices. To the extent that Orbitz alone would be in a position to offer deeply discounted fares for its airline owners, Orbitz and its owners will then have little incentive to compete, and will be positioned to drive airfares and service fees ever higher.

To address these consumer harm and competition concerns, this Committee should urge the Department to prohibit Orbitz, by virtue of its joint airline ownership, from enforcing its MFN clause, and from entering into arrangements that allow it exclusive access to webfares.

The Department is empowered to do so by its broad statutory authority to prevent anticompetitive practices. The Department in fact has long maintained rules that require that airlines affiliated with a CRS distribute their fares on a non-discriminatory basis to other CRSs. However, despite a pending proceeding, those rules have not been modernized in many years and as a result do not apply to Orbitz since it is an on-line distributor. Given the experience of the last ten months since the launch and unprecedented growth of Orbitz, the Department should hold that a group of airlines cannot withhold the fares that consumers find most attractive from other distribution channels in favor of the channel they own, especially if other channels are willing to offer similar, or better, terms and conditions. This was precisely the anti-consumer practice that caused DOT to adopt the CRS rules.

Further, OneTravel urges the Committee to indicate its strong support for the ongoing DOJ investigation into Orbitz. It can do so by way of a letter to Deputy Assistant Attorney General Hew Pate, the DOJ official in charge of the investigation, urging a thorough, prompt, and vigorous review. I understand that twenty-four of your colleagues recently sent such a letter to Mr. Pate.

Thank you for your consideration of my testimony. OneTravel has not received any federal grant, contract, or subcontract in the current year or the preceding two years. I would be more than happy at this time to answer any questions you may have.

Michael Thomas

President and CEO of OneTravel

DOMESTIC AIR ANALYSIS (ORBITZ VS ONETRAVEL)

Analysis Performed April 29, 2002

TRAVEL DATE	CITY PAIR	ORBITZ	AIRLINE	ITA	AIRLINE	ONETRAVEL	AIRLINE
6/1/02 - 6/6/02	DFW-LGA	$249	DL	$255	DL	$255	DL
6/1/02 - 6/6/02	JFK-DFW	$249	DL	$255	DL	$255	DL
6/1/02 - 6/6/02	ATL-IAD	$192	DL	$198	DL	$198	DL
6/1/02 - 6/6/02	ATL-LGA	$211	DL	$216	DL	$216	DL
6/1/02 - 6/6/02	PDX-LAS	$191	AL	$212	AL	$212	AL
6/1/02 - 6/6/02	ATL-EWR	$211	DL	$216	DL	$216	DL
6/1/02 - 6/6/02	DFW-LAS	$180	N7	$255	N7	$255	N7
6/1/02 - 6/6/02	JFK-IAH	$275	NW	$280	NW	$977	NW
6/1/02 - 6/6/02	JFK-ORD	$270	NW	$280	NW	$669	NW
6/1/02 - 6/6/02	JFK-MIA	$189	UA	$194	UA	$385	UA
6/1/02 - 6/6/02	DFW-PHL	$257	AA	$262	AA	$262	AA
6/1/02 - 6/6/02	LAS-ORD	$218	N7	$268	N7	$292	N7
6/1/02 - 6/6/02	EWR-MIA	$160	US	$186	US	$191	US

Comments: Travel dates include a Saturday night stay which enhances discounting.
Excludes all opaque fares for all companies.
***Includes $5 Orbitz service fee, when applicable.**

AA = American
AL = Alaska
DL = Delta
N7 = National
NW = NorthWest
US = US Airways
UA = United

AQUA SOFTWARE®
products, inc.
A Navigant International Company
Nasdaq: FLYR

May 1, 2002

The Honorable Mike Pence, *Chairman*
Subcommittee on Regulatory Reform and Oversight
Committee on Small Business
2361 Rayburn House Office Building
US House of Representatives
Washington, DC 20515

By Mail and Facsimile [202-225-3587]
Re: Orbitz, Internet Fares and Travel Agents

Dear Mr. Chairman,

We understand that the Subcommittee on Regulatory Reform and Oversight will be holding hearings later this week that will focus on issues of interest to travel agents and the travel industry. We would like to provide some information on the issues before the Subcommittee and hope that our comments would be included in the formal record of the Subcommittee's proceedings.

AQUA® Software Products provides software to travel agencies. Our software is used by more than one-half of the top 50 agencies in the United States and by many prominent international agencies. AQUA Software Products enjoys an industrywide reputation as one of the leaders in providing technology solutions to travel agencies worldwide. Our software helps travel agents automate many of their routine tasks. It also interfaces with all existing Global Distribution Systems (GDS) and with many major financial application systems, like GlobalMax, used by travel agents for their bookkeeping needs. Thus, AQUA's products are uniquely positioned: Many travel agents rely on them every day for every transaction regardless of which GDS they use.

As you and the members of the Subcommittee are aware, travel agents today must rely on one of the four GDSs for flight and fare information. This was acceptable when each GDS could provide all fares an airline provided to its customers. With the advent of the Internet, however, airlines have begun bypassing the GDSs and found ways to offer low-cost fares directly to consumers. These Internet fares, though, are not in the GDS. This puts travel agents at a competitive disadvantage in that they no longer have access to all potentially relevant fares and information. (Collecting information and helping their clients make informed choices are the services from which travel agents earn their money. If significant information is beyond a travel agent's reach, the agent's services are less valuable.)

The reason airlines have moved to Internet distributors, like Orbitz, is to decrease their distribution costs and create alternatives to the four GDSs. Current economic conditions in the airline industry make it clear that airlines must restructure their costs to survive.

The best way to alleviate the competitive disadvantage facing travel agents, while preserving the cost savings that airlines can achieve in reducing their distribution costs, is to allow travel agents access to Internet-only fares.

At AQUA, we believe that the technology solution to this problem is at hand, and that we are positioned – in partnership with Orbitz and other Internet distributors – to deliver this solution to travel agents. The solution is to allow travel agents direct access to Internet fares. This access would allow Internet fares to be compared instantaneously with the fares available in the GDS. The travel agent then books a reservation in the Orbitz system without requiring the agent or the customer to log on to the Orbitz Web site. Orbitz has been working with us to offer this very solution to our customers, and they have expressed a strong interest in seeing this solution through to implementation in the very near term. **We believe that this solution provides the best choices for the traveling public, travel agents and the airlines.** It also creates competition in the highly concentrated distribution channel controlled by the four GDSs. We are pleased that Orbitz is taking this path and working with us to offer this solution to the travel industry.

Thank you for considering our views.

Sincerely yours,

Mark Ferguson
President

cc: The Honorable Robert A. Brady, *Ranking Democratic Member*

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Issues in the Travel Agency Business
Hearing before the Subcommittee on Regulatory Reform and Oversight
Committee on Small Business
United States House of Representatives
May 2, 2002

Testimony for the Record
Nancy Budget Travel

Travel agents used to make 10% commission of the base fare of all domestic airline tickets and 8% of the base fare of international tickets. First Delta cut agent's commission from 10% to 8% then United followed by cutting the commission to 5% with a cap of $50.00. In August American cut the cap from $50.00 to $20.00.

At that time I started faxing John McCain (since he worked on the passenger bill of rights), Vice President Cheney, Norman Mineta, Barbara Boxer, Dianne Feinstein, Elton Gallegly and Brad Sherman (the last four because I live in California). To date the only person who has gotten back to me is Vice President Cheney.

The airlines are systematically trying to put travel agents out of business even though travel agents still ticket the majority of the ticketed passengers. In other words they are biting the hand that is feeding them.

After 9/11 the government subsidized the airlines. There should have been stipulations on those awards that the airlines in turn would reestablish travel agents 10% commissions.

Airlines should have to publish the top 50 salaries, perks (financial and otherwise) and list ALL political contributions for the last 10 years. Like Enron, it's those at the top that can cause companies to crumble financially.

Since Tom Daschle's wife works for the company that lobbies for American Air Lines ALL politicians should also have to publish what airlines or airline parent companies and how much each company has contributed to their political careers. This tells me that any decision that Tom Daschle would make - for the airline or for the travel agent - he would vote in favor of the airlines. I come to this conclusion specifically about Dashle because of the South Dakota scandal in the mid 90's regarding the deaths of those doctors in the private air crash.

I believe if this sub-committee begins by looking at the top of the individual airlines and at all contributions each airline has made to politicians I think we will see why the senators and house members are not paying any attention to we individual travel agents throughout the United States. Since 9/11 many agencies have closed so many Americans are out of work. How many more will need to be out of work, on unemployment or welfare before this crisis is looked at. The travel industry is primarily made up of American women so perhaps it would be a different scenario if it were primarily men.

One analogy I can make is if Century 21 decided they didn't want to pay millions of dollars of commissions to the individual real real estate agents so they hired minimum wage people to answer phones and minimum wage people to show the properties. Who is going to get hurt - the individual American will no longer have any kind of service and there will be nobody to help them fight any battles in buying their home. This is what has happened in the travel industry. The airlines do not give the service that I give to my corporate clients or to my leisure clients. Service is sadly missing in todays business. This is America - WHAT HAPPENED?

It doesn't stop with just the airlines either. American SABRE (the computer system used in the office I work out of) also is somehow part owner of Travelocity which offers air fares at a lower price than I as a travel agent using the SABRE computer can offer my clients. This clearly is a conflict of interest. The airline computer system was first implemented so that everyone would have access to the same fares. So why now is it allowed that airlines offer no commission to travel agents, offer lower fares if booked on their individual web sites and offer no individual service to the American traveler like I offer my clients.

Washington needs to look into unfair trade practices of the airlines of the United States, look at the individual senate and house members and at the individual airline's top executives over the past 10 years and to their contributions to politicians. When will Washington help we individuals who love our work and want to work in our industry.

Issues in the Travel Agency Business
Hearing before the Subcommittee on Regulatory Reform and Oversight
Committee on Small Business
United States House of Representatives
May 2, 2002

Testimony for the Record
Bernadette Cairns
Budget Travel

Washington needs to look into unfair trade practices of the airlines of the U.S. By cutting our commissions to zero, the consumer is hit as hard as the travel agent. We perform a great service to the public. For example when 9-11 hit we gave alot of comfort and service to people who were not even our clients.

We save our business clients time and money, therefore helping the economy. I could go on but I am sure you have heard this time and time again and it is true. Please do all you can to help the Travel Agent Profession as too many people are out of a profession.

Thank You,
Still hanging in there as an Agent
Bernadette Cairns
Budget Travel

Issues in the Travel Agency Business
Hearing before the Subcommittee on Regulatory Reform and Oversight
Committee on Small Business
United States House of Representatives
May 2, 2002

Testimony for the Record
Ellen Knapp
Business Travel Specialists Inc.

We are a small business owner in Westlake Village, Ca. We want our voice heard, we are a travel agency that has been in business for 16 years in the same location. We handle mostly corporate travel.

Since the airlines have taken away all of our commissions and yet they still want us to sell their product, we will be put out of business . However, the taxpayer along with the government has been duped by the airlines. A business man average ticket is 1700.00 from the west coast to the east coast, when we sold the ticket we were making 20.00. They have reduced the 1700.00 airline ticket to consolidators at the price of 1200.00 which is a 500.00 loss to them. When we sold the 1700.00 ticket to our corporate customer they only had to pay 20.00 less.

No wonder they say they are going bankrupt and need the government to bail them out. So all travel agencies are now buying the 1200.00 tickets from consolidators for our clients when before we were gladly selling the higher airfare which had no restrictions for the traveler. Poor management on the behalf of the airlines. The internet is too time consuming for corporations to use and they want instant service that only a travel agency can give them,

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TESTIMONY OF

MARIANNE MCINERNEY

EXECUTIVE DIRECTOR OF THE

NATIONAL BUSINESS TRAVEL ASSOCIATION

BEFORE THE

HOUSE SMALL BUSINESS COMMITTEE

SUBCOMMITTEE ON REGULATORY REFORM AND

OVERSIGHT

MAY 2, 2002

NBTA

Connecting the Business Travel World

Thank you for allowing me to present the views and concerns of the customer at today's very important hearing. My name is Marianne McInerney, and I am Executive Director of the National Business Travel Association (NBTA). NBTA represents over 1,900 corporate travel managers for the Fortune 1000 companies, who are in charge of over $80 billion dollars in business travel expenditures domestically.

Before I begin my remarks, I want to take a moment to thank you for this important forum. It is good to hear from travel agents and leaders from the aviation and travel agent community, because the contributors to this candid forum can move the travel industry towards a more competitive and consumer friendly environment.

Current Conditions

In the turbulent six-month period following the September 11th attacks, many aspects of business and personal lives changed. Issues such as safety concerns, and economic instability have forced companies to re-strategize their corporate travel policies. Corporate travel managers agree that the industry can only recover once the economy recovers.

In a NBTA survey conducted March 8-11, 73% of NBTA members answered that a "stable economy" must happen before travel expenditures will return to their normal levels, with 53% predicting it would take a year for travel to return to normal levels. Travel is increasing rapidly. Just in the last two months, travel managers have seen an increase in demand for travel within their companies. A majority (65.4%) has seen demand for travel rise up or above 10% since January 2002. While it appears that business travel is returning to normal levels, the industry has now been subjected to an additional roadblock.

NBTA members have been preparing for the last five years for elimination in travel agency commissions. The current commission cut results in a reduction in approximately $37,000 per $1 million of commissionable airfare. In a NBTA survey conducted March 8-11, 30% of the survey respondents identified reductions in commissions as the second most important single event, behind a reversal in the economy, which would dramatically increase their travel costs in 2002.

Below illustrates how travel managers were preparing for zero commissions:

- 26% were developing relationships with untried travel suppliers
- 25% were strengthening preexisting relationships with travel suppliers
- 37% were examining new pricing and costs models
- 30% were renegotiating with travel suppliers
- 17% were increasing traveler and corporate awareness of security and safety issues

While commission cuts do not directly impact the current Department of Transportation (DOT) rules that cover travel distribution, they do directly impact the current industry conditions that will require additional massaging of the DOT regulations.

Practice Impacts Consumers

The DOT is charged with protecting consumers from deceptive airline practices. The DOT created the travel distribution regulations assuming that the participating airlines had created a single system so that the potential airline consumer could determine the price, availability and fare rules on any given airline flight. These assumptions also carried an informal guarantee that travel agents would provide impartiality in determining fare and travel options. As noted in the DOT 1999 Inspector General report on Commission Overrides, "Deregulation allowed the development of complex and frequently changing fare structures. In response, travelers have increasingly relied on travel agents, with access to broad-based flight and fare information, for travel information and ticketing." In 2001, travel agents booked 80% of travel and less than 7% was booked on the Internet.

As of March 15, the current industry environment has now changed. The elimination of travel agent commission, which will undoubtedly diminish this impartial agent, and the emergence of airline owned and operated sites like Orbitz that caters to a select group of individuals (7% of the booking population), have created an environment that has blocked consumers from looking at all available fares.

The impartial agent has now been officially locked out of the system because the travel distribution rules do not require the airlines to make Internet web fares available on the all distribution channels and agents are forbidden to book Internet fares because of distribution channel booking performance thresholds. In an effort to return the partial agent, the DOT should make Internet fares available for sale by regular travel agencies or even the online agencies that are Orbitz' main competition.

Zero Commissions and Travel Distribution Rules

Air carriers, unlike firms in other industries, have access not only to their own sales data but also to data of their airline competitors. Further, they have access to the sales by their corporate clients and each of their distributors (travel agents and online agencies) for not only their airline, but also sales for those of their competitors as well. This data, which can be purchased by the airlines, provide carriers with the means to develop detailed information concerning all facilitated ticket sales and ticket prices.

In modern business practices, marketing strategies of most businesses are based on their own proprietary data plus estimates and assumptions concerning their competition, however airlines can obtain specific data about their competitors, clients and distributors and can alter their strategies to maximize their results. While on the surface this practice seems to enhance and not alter the competitive environment, technology has accelerated to the point where it has become more expensive to facilitate, and instead of providing a "free" flow of information, the cost of this service has provided little utility and savings for the "major" airlines' competitors.

The rules set forth in 14 CFR Section 255.10 allows a dominant hub carrier, through purchase of transaction tapes, to obtain information about other carriers' transactions including the class of services, price paid, date of purchase and route selected. The current rules allows carriers to monitor the ticketing activities of travel agencies and major corporations, which not only damages corporate negotiations, but also creates privacy issues between the corporation, carrier and the travel agency. Under these rules, the corporation will have no control over how an airline uses ***their*** data and the proprietary nature of the data. The current rule unmasks the travel patterns and tendencies of corporations and travel agencies, allowing airlines, including ones a corporation is not contracted with, to sell and purchase a company's travel data.

NBTA has maintained that airlines should not have the right to purchase the sales data of individual travel agencies or corporations because such information contains proprietary data. Now, it is obvious that this data raises competition issues because of the airlines policy to eliminate travel agent commissions and move towards a "pay-for-performance" model. If other airlines adopt the "pay-for-performance" model, then this proprietary data could be used against agents and corporations through deterring agents from selling airlines other than those carriers that provide overrides.

In the wake of the airlines announcement to eliminate commissions, NBTA urges the DOT and Congress to investigate the anti-competitive impact of airlines having access to extensive marketing information available from distribution channels. As the American Society of Travel Agents (ASTA) noted, "the Delta action increases that risk exponentially."

Practice Opens The Door for Abuse of Overrides (Pay-for-Performance Model)

As noted in the DOT Inspector General Report, "Commission Override Agreements provide clear incentives to favor the flights of carriers paying the higher commission." In this report, the DOT did not attempt to quantify the effects of overrides on airline competition, however the DOT did acknowledge receiving information from small carriers, small and medium size travel agencies, and other interested parties regarding how overrides are used to influence market share.

The DOT noted, "One small carrier indicated it recently announced new service to begin in a specific market. On the same day, the competing major carrier dropped its fares to match those of the announced new service and issued an "on the spot" override offer for that market." The DOT also noted, "An industry publication reported that one carrier used marketing information data to track agency bookings on competing carriers and offered incentives and upgrades to at least one agency to rebook passengers on its own flights." NBTA has already indicated that there now exists sophisticated data mining applications that allow airlines to track corporate market share movements, even if that carrier does not have a contract with the corporation. Actions like these are thriving in the market place and clearly illustrate the anti-competitive use of proprietary transactional data.

More importantly, if the tracking of this data creates a set of relationships with certain travel agencies to the detriment of other airlines, as noted by ASTA, "agencies in Delta strongholds such as Atlanta, Salt Lake City and New York, will be forced to work with Delta to the exclusion of other carriers or run the risk of being put of business by Delta." "Delta's "pay-for-performance" system may prevent many agents from selling airlines other than Delta."

Conclusion

These descriptions are not anomalies in the aviation industry, but are system-wide and entrenched strategies and practices to unveil the marketing policies of competitors, and to trace corporate and travel agency market commitments, even if the former are not clients of a carrier.

I would urge Congress to call on the General Accounting Office to investigate the impact of the elimination of commissions and regulation of travel distribution channels on impartial consumer information and airline competition. NBTA would urge the DOT to immediately suspend Section 255.10, "Marketing and Booking Information"; because it clearly violates data ownership and privacy concerns and further damages the competitive balance of the U.S. aviation system. More importantly, NBTA would urge the DOT to give consumers, corporations, and travel agencies full access to all fares.

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Changes in Agency Commissions to Increase Cost of Corporate Travel

NBTA calls for immediate focus on airfare structure

Alexandria, VA (March 14, 2002) --- The National Business Travel Association (NBTA) today reacted to the announcement by Delta Airlines that it is eliminating travel agency commissions. This decision changes the entire structure of travel purchasing as well as the roles and relationships of corporations with travel management companies and carriers. NBTA will be conducting town hall meetings with travel mangers nationwide March 19-25 to further discuss this issue and determine the positions of all parties involved.

The decision of Delta to eliminate travel agency commissions changes the foundation of all travel purchasing. Delta's announcement will require corporations to revisit agency agreements and renegotiate with carriers. Moreover, the decision will have an immediate financial impact to corporations. Many corporations may have to reevaluate their revenue sharing arrangements or agency operations as a result. This action has prompted an extensive dialogue within the industry and much speculation about the long-term outlook of the distribution system.

While Delta's action may be justified as a business decision, many travel managers view the elimination of commissions as an increase in direct travel costs to their companies, dramatically affecting the budgets of many companies' travel programs. "Our members and their travelers must live within the travel budgets set by their corporations and cannot simply increase spending as air fares and other travel costs rise," stated Marianne McInerney, Executive Director of NBTA. "Ideally, by eliminating the cost of paying agency commissions, airlines like Delta will be able to offer reductions in business fares to American corporations, as well as expanded access to reduced webfares."

As demonstrated by last year's reduction in business travel, high business fares will prompt countermeasures from corporations. In a NBTA survey conducted March 8-11, 30% of the survey respondents identified reductions in commissions as the second most important single event, behind a reversal in the economy, which would dramatically increase their travel costs in 2002.

Over time, corporate travel cutbacks could prove to be deleterious to the airlines as well as other entities that rely on revenue generated by business travel. "The airlines will need to reevaluate their entire fare structure in order to retain customers in the important business travel segment," said McInerney. "Today's changes underscore the importance of travel managers and the need to have well-managed corporate travel programs in order to protect corporate interests and navigate today's environment."

NBTA is also concerned about the impact this action might have on airline competition. Carriers may begin to offer travel agent commission overrides, incentives that induce agents to book a disproportionate number of passengers on a particularly airline, to travel agents who book a large volume of business with the airline offering the incentive. "This kind of incentive could adversely affect the entrance of new airlines in the market because they may be less able to bear these costs than a well-established incumbent airline," concluded McInerney.

The National Business Travel Association, established in 1968, represents over 2,400 corporate travel managers and travel service providers. NBTA members manage and direct more than 70% of expenditures within the business travel industry. NBTA is committed to the professional development of its members and offers educational and training opportunities. It is the source for critical information on the business travel industry.

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NBTA Urges DOT to address Corporate Access to Web Airfares

Surveys indicate corporations want full access to Internet airfares

Alexandria, VA (February 13, 2002) --- The National Business Travel Association (NBTA) today urged the U.S. Department of Transportation (DOT) to address discounted airfares offered over the Internet, and whether corporations and travel agents should be given full access to these fares.

Currently, many of the web fares found on the airlines' sites and on websites like Orbitz are not found in the Customer Reservation Systems (CRS), the traditional method of reservation acceptable for corporations and travel agents.

When corporate travelers locate and book cheaper fares online that are unavailable through their designated corporate travel office, the corporations cannot track the employee, help them if something happens on the trip or arrange last minute changes, upgrades or refunds. "Web fares are misleading to business travelers and almost impossible for corporations to track," said Marianne McInerney, Executive Director of NBTA. "This confusion increases corporations' distribution costs and wastes employee time and resources."

In a survey completed this month by NBTA, 99% of corporate travel managers stated that giving corporations equal access to web fares or distressed inventory contained on the airline websites and Orbitz, would best address the issue of Web fares. When asked what corporations could offer airlines in exchange for this equal access, the top responses were consideration of additional business (53%) and ability to track volume (46%). In addition, some corporate travel managers expressed that access to these Internet fares would increase corporate-airline loyalty and clean up the disparity between business and leisure fares.

In a follow-up survey, corporate travel managers said web fares have affected their company's ability to manage its corporate travel program (49%), influence traveler choices (45%), or reach volume thresholds or contractual commitments with airlines (27%). Currently, when an employee purchases an airline ticket over the Internet, whether through an airline's own website or through an online distribution site like Orbitz, the purchase will not be counted towards a corporations' negotiated contract in most cases. As a result, many corporations (51%) forbid their employees from booking travel on the Internet, even if they find a cheaper fare.

"The disparities between airfares offered over the CRSs and those offered over the Internet lead to major problems for American corporations," said Marianne McInerney, Executive Director of NBTA. "If the airlines do not give their corporate clients first and full access to fares, they are impeding progress towards a free and fair market."

NBTA is calling for the DOT to address the fares contained on the airline websites and Orbitz in its March Rulemaking. The DOT should ensure that the airlines do not use their sites or Orbitz to unfairly prejudice the competitive position of other airlines or to provide misleading or inaccurate information to travel agents and their customers.

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TESTIMONY OF

MRS. DALE COLSON

OWNER OF TRAVELSTAR, INC.

ON BEHALF OF

WIPP: WOMEN IMPACTING PUBLIC POLICY

SUBMITTED TO THE

U.S. HOUSE OF REPRESENTATIVES

SUBCOMMITTEE ON REGULATORY REFORM AND OVERSIGHT

"ISSUES IN THE TRAVEL AGENCY BUSINESS" HEARING

Thursday, May 2, 2002

Hello, my name is Dale Colson. Together with my mother and my husband, I own Travelstar, Inc., a small, 32-year old, family-owned travel agency in Westport, CT. I have been in the travel business for 27 years, and, with the exception of a short time during 1980s when a tour company owned Travelstar, my family and I have owned my agency since my mother founded it in 1970. This testimony is presented from my own perspective as a travel agency owner and entrepreneur, and I speak with the consent of many of my colleagues in the travel business. In addition, I am a member of Women Impacting Public Policy, Inc. (WIPP) and present this testimony also in behalf of WIPP's more than 250,000 members, a great number of whom are travel agency owners, and the employers of women. WIPP is a national bi-partisan public policy organization that advocates for and on behalf of women in business on business issues, strengthening their sphere of influence in the legislative process of our nation, creating economic opportunities and building bridges and alliances to other small business organizations.

Business Impact

"As of 2002, there are an estimated 6.2 million majority-owned, privately-held women-owned businesses. These firms employ nearly 9.2 million workers in 2002, up 30% from 1997, a growth rate that is 1.5 times the national average, and generate $1.15 trillion in 2002, up by 40% nationwide from 1997.* It is important to note that a major portion of travel agencies are owned by women and the majority of their employees are women. Because travel agencies are going out of business at an alarming rate, this will have a negative impact on the nation's business growth and economy.

Although, on the surface, it may appear that the airlines' move to totally eliminate compensation to travel agencies affects only travel agencies, the actual negative impact of their decision will be felt far beyond the retail travel agency community.

The travel industry is a huge force in our economy and travel and tourism creates hundreds of thousands of jobs. Travel agencies, in their capacity as the person-to-person marketers and sellers of travel products, are the "little engine that could" that stimulates demand for travel and creates sales and revenues for the entire industry. Travel agents fill that function efficiently and cost effectively for travel and tourism companies of all kinds. Without them, it would be far more difficult and far more costly for such companies to create the demand for and sales of their products to potential travelers. It is quite realistic to anticipate the probable result of lost sales and income for suppliers of travel products and lost jobs for their employees. Many travel companies might even be forced to close their doors if travel agencies cannot afford to remain in business and are not there to create demand for and stimulate sales of their products for them in a highly cost effective way.

Many small businesses not normally considered to be a part of the travel industry derive much of their income from travel and tourism. Local restaurants, suppliers of food to restaurants, the laundries that wash sheets for hotels, shops selling all sorts of merchandise, taxi cab companies and the like are often dependant upon tourist dollars and business travelers' dollars to survive. Without travel agencies to drive travel and tourism, all such other small businesses will suffer.

Consumers will also suffer. They will lose the only truly convenient and unbiased source of information about all the alternatives available to them for their travels. Competition between airlines will diminish when consumers cannot easily obtain such information, which will undoubtedly lead to higher fares and decreasing levels of already sadly lacking customer service. Consumers who do not have credit cards and/or do not have access to a computer may find it difficult to obtain airline tickets at all if travel agencies are not there to sell them those tickets. If travel agencies are forced to close their doors, consumers will lose the skilled facilitators of their travel plans and their staunch advocates in their dealings with travel suppliers.

There appears to be a deliberate and concerted effort by some of the major airlines to remove the basic consumer protection mechanism that travel agencies provide. Because travel agencies give consumers accurate, unbiased information about the flights and the fares offered by all airlines, agencies help to stimulate healthy competition between the airlines that protects and benefits consumers. Without travel agencies to assist travelers in finding the flights and fares that best meet their needs from among all the alternatives available, competition between the airlines would diminish and it is reasonable to predict that airfares would rise ~ perhaps dramatically.

The rules and regulations governing airfares are often convoluted and confusing. Without the assistance of a skilled professional travel agent to help them decipher those rules, travelers who make reservations and purchase tickets directly from the airlines on their websites often do not fully understand the actual terms and conditions that apply to the tickets they purchase. Travel agents protect consumers by helping them to understand what they are buying and avoid what might be costly mistakes.

Most airlines have chosen to directly and unfairly compete with the retail agency distribution by offering special "web only" fares on their websites that they do not make available to travel agencies to sell. This practices makes it immediately more expense to purchase a ticket from a travel than from the airline directly and it puts agencies at an immediate competitive disadvantage. The potential loss of customers in combination with the elimination of commission income from airline tickets is a grave threat to the retail travel agency community.

The ultimate losers in the airlines' game will be consumers who will inevitably pay higher prices for airline tickets, travel agencies that may be forced to close their doors and no longer be available to assist travelers and the employees of those travel agencies who will lose their jobs. Only the airlines can win this game ~ everyone else will lose.

Issues

Commissions

For decades, the traditional travel agency has derived the vast majority of its income from commissions paid by the actual providers of the travel products that it markets and sells to consumers. For virtually all travel agencies, airline tickets are a "core product," because travel by air is usually essential for either business or leisure travel. Commissions earned on airline ticket sales, traditionally been the bedrock of the financial business plan for the vast majority of retail travel agencies.

It must be noted that, while commissions are paid when an airline ticket is sold, should the customer decide not to travel and the ticket is refunded, the airline will take back the commission the travel agency earned on the sale. In the aftermath of September 11th, many travelers could not or chose not to use the tickets that they had previously purchased and the airlines took back many thousands of dollars from travel agencies when those were refunded.

A strong, vibrant, financially healthy retail travel agency distribution system benefits consumers, is essential to the travel industry as a whole and benefits the countless other small businesses all over the country that rely on the travel industry and/or on tourism for their income. The grave issues facing travel agencies today place the retail travel industry and other businesses that directly or indirectly rely on travel and tourism in jeopardy

Among the commission issues at work within the retail travel agency industry today are the following:

1. The tremendous financial impact of the aftermath of September 11th, from which many agencies are still reeling.

When all travel came to an abrupt halt in September 11th, travelers either could not use airline tickets that they had previously purchased or were subsequently afraid to travel. When agencies refunded those tickets, the airline recalled the commissions the agencies earned when the tickets were originally sold. For these largely small businesses, the loss of previously earned income was truly staggering for many agencies.

Travelers who became fearful of travel cancelled their plans for cruises, tours and other future vacations already planned and under deposit. The loss of this business already "on the books" and the loss of the commissions that would have been earned was a blow to agency bottom lines.

New demand for future travel totally disappeared for many, many months. Agencies were faced with both the loss of income already received and few prospects of commission income in the foreseeable future.

While the airlines were granted a taxpayer-funded $5 billion + immediate bailout, with an additional $10 billion + earmarked for government guaranteed loans for the airlines, there was no such assistance offered to travel agencies, which sell approximately 70% of all airline tickets. Many travel agencies that could qualify put their owner's homes on the line to obtain SBA loans just to try to keep their doors open. How many of the executives at America's leading airlines were required to mortgage their personal financial futures to keep their companies alive and operating?

It is important to note that there are two groups of airlines: Group 1 (American Airlines, Delta Airlines, Continental Airlines, Northwest Airlines, United Airlines, US Airways) all lost millions of dollars in the first quarter of 2002. Group 2 (Southwest Airlines, Jet Blue, Airtran Airways, Frontier Airlines) all made money in the first quarter of 2002.

The airlines that are making money offer more reasonably priced airfares with rules that consumers find understandable and fair and most continue to pay travel agents base commissions. Thus, the argument that airlines must eliminate agency commissions to make a profit must be viewed with considerable suspicion.

2. The steady and unrelenting erosion of commission income derived from airline ticket sales

Beginning in 1995, the airlines have acted in concert to cut and/or cap the commission paid to the very travel agencies who create demand for their products, who market and sell their seats, who interface with consumers on their behalf, and who resolve consumers' problems so often created by the airlines themselves.

While the cost of doing business and the costs involved in offering and providing air travel related services to the public have steadily increased, the income that could be derived from the sale of airline tickets has consistently decreased.

Led by Delta Airlines on March 14, 2002, virtually all the major American airlines have totally eliminated commission payments to the vast majority of retail travel agencies.

The airlines' self-proclaimed rationale for this arbitrary move is that travel agencies can charge consumers whatever they choose to charge for the agency's air travel reservations and reservations management related services. However, each agency is bound by what the local market will realistically bear. With the fees most agencies were already forced to charge for airline tickets, the financial necessity to increase those fees to compensate for lost commission income may put using the valuable services of a professional travel agency out of the reach of most consumers.

What the market will bear may or may not be sufficient for a given travel agency to cover its costs involved in offering airline tickets to the public and producing the profit that is necessary for any business to survive.

Predatory and unfair price competition by the very providers of the travel products that agencies invest their own time and money to market and sell.

Individually, and in consort via Orbitz, the airlines are consistently underselling the base price at which agencies can sell airline tickets. Those seemingly appealing but predatory and highly discriminatory "web-only" fares are usually not available to travel agencies.

Why are "web only" fares discriminatory in terms of consumers? In order to be able to take advantage of a "web-only" fare, a consumer must have access to and proficiency with a computer AND use a credit card to purchase a ticket. Thus, consumers who have no access to a computer and/or who simply choose to spend their time in other ways cannot take advantage of the airlines' predatory, "web only" fares. Because purchasing on line (or, purchasing by phone directly with an airline) requires the use of a credit card number unless the traveler is willing to rush to an airport or city ticket office to pay for the ticket in cash, consumers who do not have a credit card or simply choose not to incur credit card debt cannot easily and conveniently deal directly with the airlines either on line or by telephone.

When the service fees that agencies have no choice but to charge in order to keep their doors open in a "commission-less world" are factored into the equation, buying a ticket from a travel agency can be significantly more expensive than purchasing directly on line via either an airline's own website or Orbitz.

The economy

Travel agencies have traditionally derived most of their income from percentage-based commissions, with the commission amount determined by the cost of the travel product purchased. The higher the cost of the product, the higher the commission income that results

As has been the case for the last year, when the actual providers of travel products reduce prices in an effort to stimulate demand and increase sales, agency commission compensation that is based on the gross sales price of the product has correspondingly been reduced.

Reality-based agency owners have learned to see the gala announcement, " Second person travels free!" as actually meaning, "Oh, goodie ~ the same amount of time and work invested for ½ the income.

Stimulating incremental demand and sales to replace lost commission income is often a difficult to impossible task for a small travel agency. Dolly the Sheep not withstanding, cloning clients in order to produce twice the demand, twice the sales and twice the commission income has not yet been proven to be viable.

The role of seemingly non-profit organizations

Retail travel agencies are subject to taxes on whatever "profit" they make from any transaction.

But, non-profit organizations ~ Alumni Associations, The Audubon Society, The Smithsonian, etc ~ are NOT subject to taxes on the income that they derive from travel related income.

Immediately, the non-profit has a pricing advantage because the tax implications do not apply.

Further, when such worthy, non-profit organizations can make the claim that the price paid for their travel offerings can be taken as a tax deduction, how can retail travel agencies compete with similar vacation experiences in terms of price, "warm fuzzy feelings" or value for dollar?

Quite simply put, they can't.

Consumer Protection

The cost of travel to consumers who use travel agencies' services will rise as agencies are forced to charge fees for their professional services

As agencies must raise their fees, it may come to pass that only the rich be able to afford the services of a skilled and knowledgeable professional travel agent. Other consumers will lose the only unbiased source of information about flight schedules and fares offered by all airlines ~ information that allows consumers to make well informed purchase decisions

When the airlines succeed in completely capturing the distribution channel, airfares will rise because there will be few, if any, sources for comprehensive, comparative information about alternatives available.

Consumers who do not have access to a computer and/or a credit card will find it difficult to impossible to purchase airline tickets directly from the airlines. The airlines require that tickets either be purchased with a credit card or at an airport or city ticket office if the consumer must or chooses to pay by check or with cash.

Without travel agent "advocates" to deal with the airlines on behalf of consumers, customer service and successful problem resolution will decline sharply as consumers become "captives" of the airlines.

Consumers will lose access to knowledgeable, experienced professional travel counselors to help them with every aspect of their travel plans and ensure that they receive true value for the dollar.

SUMMARY

The retail travel agency distribution system is the "little engine that could" in terms of creating demand and sales for travel and travel products

The retail travel agency offers consumers significant benefits and value in terms of accurate, non-biased information about available alternatives and knowledgeable, professional assistance in planning and arranging their travel.

Travel agencies keep the providers of travel products "honest" by informing consumers of available, appropriate alternatives,

The retail travel agency distribution networks is under pressure from tremendously unfair competition from the very suppliers whose products agents market and sell so successfully.

The arbitrary decision of America's airlines to no longer fairly compensate travel agencies for the value of the time and work that agencies invest on behalf of the airlines bodes ill for all concerned.

A strong, vibrant and financially healthy travel agency community offers great benefit and significant value to the travel industry, the US economy, state and local economies, all sorts of other small businesses that derive income from travel and tourism and to consumers.

Obviously, if travel agencies are to be able to remain in business, someone must compensate those travel agencies for their services and their work.

Travel agencies realistically have two distinct groups of "customers" - the suppliers whose travel products they market and sell and the consumers to whom they sell those products. The professional services that they perform for each group of customers have a unique value to those customers in terms of their specific and different needs and expectations.

As the services that they offer to each group provide direct benefit and value to those particular customers, it is quite reasonable to expect that both customer groups will provide some compensation to travel agencies for their work on the customers' behalf.

In essence, the airlines now seem to expect that consumers will totally absorb what should be the airlines' own costs involved in distributing and selling their seats. Yes, travel agencies can and do charge consumers fees for airline tickets but such fees can realistically be no more than the market will bear. It is totally unrealistic to think that agencies can charge fees high enough to recoup lost commission income.

The airlines' decision to no longer fairly compensate travel agents for their time and work invested on the airlines' behalf is a grave threat to the survival of travel agencies because the loss of commission income from airline ticket sales may force many to close.

The retail travel agency community sells approximately 70% of all airline tickets. It is unrealistic to think that the airlines can financial absorb all the costs that would be involved in trying to duplicate for themselves what travel agencies do for them. Outsourcing the tasks that agencies do for them while paying commission only when a sale is actually made is a far more cost effective alternative for airlines than supporting the infrastructure and costs of doing those same tasks for themselves. In order to keep the airline industry itself financially healthy, it is imperative that airlines fairly compensate travel agencies.

It is important to note that, unlike salaries and benefits paid to employees, commissions paid to travel agencies are <u>not</u> a fixed cost to the airlines. When agencies are compensated with fair commissions, the airlines' money only goes out <u>after</u> money from ticket sales has first come in.

In order to protect consumers from the actions of what could easily become an airline oligopoly without travel agents to safeguard the interests and needs of America's travel consumers and to serve them well, it is imperative that airlines fairly compensate travel agencies.

It is quite reasonable to expect and to demand that travel agencies be compensated for the work that they do on behalf of the airlines by the airlines themselves. Ours is not a society that expects and demands that businesses and people provide their valuable services without fair and equitable compensation for their time, work and expertise.

**Statistics provided by Center for Women's Business Research, Washington, DC.*

Dale Colson Biography

Dale Eyerly Colson is President and, together with her mother and her husband, is a co-owner Travelstar, Inc. in Westport, CT. The agency was founded by Colson's mother, Marion Eyerly, in 1970. The agency caters to leisure travelers and has a large and loyal clientele.

During her 27 years with this small, family-owned and operated travel agency, Colson has been responsible for every aspect of the agency's operations and management. During those years, the agency has successfully adapted again and again to changes imposed by the decisions of the suppliers, such as the airlines, of the travel products that the agency sells, over which it has no control.

As the case for most travel agencies, airline tickets have been a "core product" for Travelstar because air travel is necessary for most vacations. Beginning in February of 1995, the arbitrary decisions of the airlines, whose actions were beyond the agency's ability to control, to continually either cut or cap commissions has made subsequently adapting to ever increasing losses of commission income more and more challenging. As all entrepreneurial small businesses must do, under Colson's leadership, Travelstar adapted to what it had no choice but to accept and went on meeting the needs and expectations of the travel consumers who used its services to the best extent possible.

Although she holds a Bachelor of Art degree in Sociology and Economics from Salem College, Dale Eyerly Colson has worked for the family's small travel agency for most of her adult life. A the age of 57, constantly bobbing and weaving in response to the arbitrary decisions of others over whom she can exert no control is difficult. At the age of 57, the prospect of trying to launch a new career in a field other than the one in which she has spent her entire working live is daunting.

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SUBMITTED TESTIMONY OF

KEVIN IWAMOTO

PRESIDENT OF THE

NATIONAL BUSINESS TRAVEL ASSOCIATION

BEFORE THE

HOUSE SMALL BUSINESS COMMITTEE

SUBCOMMITTEE ON REGULATORY REFORM AND

OVERSIGHT

"ISSUES IN THE TRAVEL AGENT BUSINESS"

MAY 2, 2002

NBTA

Connecting the Business Travel World

Thank you for allowing me to present the views and concerns of the customer at today's very important hearing. My name is Kevin Iwamoto, and I am the President of the National Business Travel Association (NBTA). NBTA represents over 1,900 corporate travel managers for the Fortune 1000 companies, who are in charge of over $135 billion dollars in business travel expenditures domestically.

Before I begin my remarks, I want to take a moment to thank you for this important hearing. It is good to hear from travel agents and leaders from the aviation community because the contributors to this candid forum have the power to move the travel industry towards a more competitive and consumer friendly environment.

Current Conditions

In the turbulent six-month period following the September 11th attacks, many aspects of business and personal lives changed. Issues such as safety concerns, and economic instability have forced companies to revamp their corporate travel policies. Corporate travel managers agree that the industry can only recover once the economy recovers.

In a NBTA survey conducted March 8-11, 73% of NBTA members answered that a "stable economy" must happen before travel expenditures will return to their normal levels, with 53% predicting it would take a year for travel to return to normal levels. Travel is increasing rapidly. Just in the last two months, travel managers have seen an increase in demand for travel within their companies. A majority (65.4%) has seen demand for travel rise up or above 10% since January 2002. While it appears that business travel is returning to normal levels, the industry has now been subjected to an additional roadblock.

NBTA members have been preparing for the last five years for the elimination in travel agency commissions. The current commission cut results in a reduction in approximately $37,000 per $1 million of commissionable airfare. In a NBTA survey conducted March 8-11, 30% of the survey respondents identified reductions in commissions as the second most important single event, behind a reversal in the economy, which would dramatically increase their travel costs in 2002.

Below illustrates how travel managers were preparing for zero commissions:

- 26% were developing relationships with untried travel suppliers
- 25% were strengthening preexisting relationships with travel suppliers
- 37% were examining new pricing and costs models
- 30% were renegotiating with travel suppliers
- 17% were increasing traveler and corporate awareness of security and safety issues

While commission cuts do not directly impact the current Department of Transportation (DOT) rules that cover travel distribution, they do directly impact the current industry conditions that will require additional massaging of the DOT regulations.

Practice Impacts Consumers

The DOT is charged with protecting consumers from deceptive airline practices. The DOT created the travel distribution regulations assuming that the participating airlines had created a single system so that the potential airline consumer could determine the price, availability and fare rules on any given airline flight. These assumptions also carried an informal guarantee that travel agents would provide impartiality in determining fare and travel options. As noted in the DOT 1999 Inspector General report on Commission Overrides, "Deregulation allowed the development of complex and frequently changing fare structures. In response, travelers have increasingly relied on travel agents, with access to broad-based flight and fare information, for travel information and ticketing." In 2001, travel agents booked 80% of travel and less than 7% was booked on the Internet.

As of March 15, the current industry environment has now changed. The elimination of travel agent commission, which will undoubtedly diminish this impartial agent, and the emergence of airline owned and operated sites like Orbitz that caters to a select group of individuals (7% of the booking population), have created an environment that has blocked consumers from looking at all available fares.

The impartial agent has now been officially locked out of the system because the travel distribution rules do not require the airlines to make Internet web fares available on the all distribution channels and agents are forbidden to book Internet fares because of distribution channel booking performance thresholds. In an effort to return the partial agent, the DOT should make Internet fares available for sale by regular travel agencies or even the online agencies that are Orbitz' main competition.

Zero Commissions and Travel Distribution Rules

Air carriers, unlike firms in other industries, have access not only to their own sales data but also to data of their airline competitors. Further, they have access to the sales by their corporate clients and each of their distributors (travel agents and online agencies) for not only their airline, but also sales for those of their competitors as well. This data, which can be purchased by the airlines, provide carriers with the means to develop detailed information concerning all facilitated ticket sales and ticket prices.

In modern business practices, marketing strategies of most businesses are based on their own proprietary data plus estimates and assumptions concerning their competition, however airlines can obtain specific data about their competitors, clients and distributors and can alter their strategies to maximize their results. While on the surface this practice seems to enhance and not alter the competitive environment, technology has accelerated to the point where it has become more expensive to facilitate, and instead of providing a "free" flow of information, the cost of this service has provided little utility and savings for the "major" airlines' competitors.

The rules set forth in 14 CFR Section 255.10 allows a dominant hub carrier, through purchase of transaction tapes, to obtain information about other carriers' transactions including the class of services, price paid, date of purchase and route selected. The current rules allows carriers to monitor the ticketing activities of travel agencies and major corporations, which not only damages corporate negotiations, but also creates privacy issues between the corporation, carrier and the travel agency. Under these rules, the corporation will have no control over how an airline uses ***their*** data and the proprietary nature of the data. The current rule unmasks the travel patterns and tendencies of corporations and travel agencies, allowing airlines, including ones a corporation is not contracted with, to sell and purchase a company's travel data.

NBTA has maintained that airlines should not have the right to purchase the sales data of individual travel agencies or corporations because such information contains proprietary data. Now, it is obvious that this data raises competition issues because of the airlines' policy to eliminate travel agent commissions, and move towards a "pay-for-performance" model. If other airlines adopt the "pay-for-performance" model, then this proprietary data could be used against agents and corporations through deterring agents from selling airlines other than those carriers that provide overrides.

In the wake of the airlines announcement to eliminate commissions, NBTA urges the DOT and Congress to investigate the anti-competitive impact of airlines having access to extensive marketing information available from distribution channels. As the American Society of Travel Agents (ASTA) noted, "the Delta action increases that risk exponentially."

Practice Opens The Door for Abuse of Overrides (Pay-for-Performance Model)

As noted in the DOT Inspector General Report, "Commission Override Agreements provide clear incentives to favor the flights of carriers paying the higher commission." In this report, the DOT did not attempt to quantify the effects of overrides on airline competition, however the DOT did acknowledge receiving information from small carriers, small and medium size travel agencies, and other interested parties regarding how overrides are used to influence market share.

The DOT noted, "One small carrier indicated it recently announced new service to begin in a specific market. On the same day, the competing major carrier dropped its fares to match those of the announced new service and issued an "on the spot" override offer for that market." The DOT also noted, "An industry publication reported that one carrier used marketing information data to track agency bookings on competing carriers and offered incentives and upgrades to at least one agency to rebook passengers on its own flights." NBTA has already indicated that there now exists sophisticated data mining applications that allow airlines to track corporate market share movements, even if that carrier does not have a contract with the corporation. Actions like these are thriving in the market place and clearly illustrate the anti-competitive use of proprietary transactional data.

More importantly, if the tracking of this data creates a set of relationships with certain travel agencies to the detriment of other airlines, as noted by ASTA, "agencies in airline hubs such as Atlanta, Dallas, Chicago, Salt Lake City and New York, will be forced to work with hub carriers to the exclusion of other carriers or run the risk of being put of business by the dominant carriers."

Conclusion

These descriptions are not anomalies in the aviation industry, but are system-wide and entrenched strategies and practices to unveil the marketing policies of competitors, and to trace corporate and travel agency market commitments, even if the former are not clients of a carrier.

I would urge Congress to call on the General Accounting Office to investigate the impact of the elimination of commissions and regulation of travel distribution channels on impartial consumer information and airline competition. NBTA would urge the DOT to immediately suspend Section 255.10, "Marketing and Booking Information"; because it clearly violates data ownership and privacy concerns and further damages the competitive balance of the U.S. aviation system. More importantly, NBTA would urge the DOT to give consumers, corporations, and travel agencies full access to all fares.

05/01/02 09:52 ☎716 662 4333 Buffalo Travel →→→ Committee on Sma 001

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May 1, 2002

Mr. Barry Pineles
House Small Business Committee
2361 Rayburn House Office Building
Washington, DC 20515

Re: "Issues in the Travel Agency Business"
Subcommittee Hearing (May 2, 2002)

Dear Mr.Pineles:

In light of tomorrow's hearing in which the Subcommittee on Regulatory Reform and Oversight plans to address issues in the travel agency business, I am forwarding this correspondence- along with the two (2) pages that follow- to enlighten you concerning the complete lack of consideration that American Airlines has shown in managing circumstances that have surfaced from the 9/11 tragedies.

The issue involves American's cancellation of flights, inability to re-accommodate paid passengers, and unwillingness to allow prompt handling of corresponding refunds. The attached letter, addressed and sent to American Airlines, comprehensively outlines this serious matter. You will notice that I have also forwarded copies to several key individuals in an effort to unveil the airline's inexcusable mistreatment of a struggling sector of the travel industry. Buffalo Travel & Tours is not the only agency to encounter such absurd actions, and American Airlines is not alone in such poor conduct; I am sure you have heard from many other travel professionals who have endured similar measures.

When we processed such refunds as described in the documentation that follows, we did so in a sincere manner to help our clients- the traveling public- at a time when the airlines were extremely busy and short-staffed. In fact, they requested that we, as their travel industry partners, help expedite situations to the satisfaction of the traveling public. Yet instead of expressing any notion of gratitude for our assistance, the major U.S. airlines have proceeded to eliminate travel agency commissions and have imposed these invalid debit memos (financial penalties) in an unreasonable attempt to recoup their own financial losses.

I kindly request that this issue be included among the items discussed in tomorrow's hearing agenda. What is identified here is merely an indication- albeit a grave one- of the airlines' efforts to eliminate the small business community of travel professionals in a poor attempt to rectify their own mismanagement. It is imperative that we rid such malicious behavior from the travel industry so that the travel agency community may survive with fair compensation and consumers may regain the opportunity to seek the advice of knowledgeable professionals.

Thank you for your time and consideration.

Sincerely,

Anne Morseon

Anne Morseon
BUFFALO TRAVEL & TOURS, INC.
Managing Partner

Asha Herle

Asha Herle
BUFFALO TRAVEL & TOURS, INC.
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April 22, 2002

American Airlines
Agency Receivables
P.O. Box 582838 – MD780
Tulsa, OK 74158-2838

Re: Memo #8962500048-5/ Mansell
Memo #8962500049-6/ McCarthy
Memo #8962500104-5/ Whiteman

Dear Sir or Madam:

We are sending this correspondence to dispute the debit memos referenced above.

In each of these cases, the ticket identified in the corresponding memo was undeniably refundable to the passenger due to Rule 240 schedule change. Specifically, in the wake of the 9/11 tragedies, American Airlines had eliminated its American Eagle direct, non-stop service between Buffalo and New York City/JFK. Our clients in each instance were forced to purchase entirely new tickets on another carrier because American could not and would not re-accommodate the passenger for a similarly scheduled itinerary, even using another carrier. As instructed, we processed refunds on the American tickets.

Legally these passengers were entitled to a *timely* refund. This timeliness is just one purpose of having an established clearinghouse like the Airlines Reporting Corporation (ARC) of which American Airlines is a participating carrier. Accordingly, we processed the refunds through our weekly ARC reports. In light of the hectic environment of the travel industry shortly after the events of 9/11 and in response to pleas made by American Airlines- namely our representative Traci Miller- that we help passengers in any way possible to expedite basic matters, we insist that our handling of this matter was appropriate and valid. In fact, we handled the more costly and taxing portion of the work here, saving your airline *time and human effort*- valuable resources that the airlines, including American, admittedly could not afford because they were stretched to the limit at that time. Surely you cannot deny that. And if you agree that the refunds are indeed valid (*which, by law, they are*), then the process by which they were refunded is rather irrelevant. After all, ARC is a valid processing option, and as a participating carrier, American must honor this option.

As we report our weekly transactions through ARC's Interactive Agent Reporting (IAR) program, we store the unused, refunded flight coupons in our office, per ARC procedure. Upon request, we will gladly forward them to you if you require them to clear our account. We hope to resolve this matter satisfactorily so that we may remain partners in travel. Your prompt action and attention in removing these memos from our account is appreciated.

Thank you.

Sincerely,

Anne Morseon

Anne Morseon
BUFFALO TRAVEL & TOURS, INC.
Managing Partner

Asha Herle

Asha Herle
BUFFALO TRAVEL & TOURS, INC.
Independent Vacation Consultant

enc.

cc: The Honorable John Ashcroft, U.S. Attorney General
The Honorable Fritz Hollings, U.S. Senate Committee on Commerce, Science and Transportation
The Honorable Don Young, U.S. House Committee on Transportation and Infrastructure
The Honorable Charles E. Schumer, U.S. Senate
The Honorable Hillary Rodham Clinton, U.S. Senate
The Honorable Jack Quinn, U.S. House of Representatives
David Collins, President, Airlines Reporting Corporation

Association for
Competitive Technology

May 1, 2002

Honorable Mike Pence
Chairman
House Small Business Committee, Subcommittee on Regulatory Reform and Oversight
United States House of Representatives
Washington, DC 20515

Dear Chairman Pence:

The Association for Competitive Technology (ACT) has always supported the creation of innovative e-commerce business models such as the one developed by its member company Orbitz. In the online travel space, Orbitz has created a new, lower-cost technology platform that provides consumers with easy access to a broader selection of low fares in a guaranteed unbiased display. ACT represents over 3,000 technology companies and professionals. The bulk of our membership is comprised of small and mid-size companies and their executives.

Orbitz uses superior server-based technology to provide consumers with lower fares. The technology is more comprehensive than first generation search engines, thus it can search billions of flight-options to find better fares. Moreover, the server technology can handle the huge volume needed to search billions of airline routings at a much lower cost, allowing Orbitz to charge the airlines less to distribute their tickets.

Since the launch of Orbitz, consumers have been given a much larger set of choices when searching for fares. In addition, there has been significant distribution cost savings for airlines and other travel suppliers at a most critical time for them. Orbitz is providing the first real downward pressure on one element of distribution costs in particular: booking fees charged by the oligopoly of computer reservation systems that average nearly $14.00 per ticket.

On the other hand Orbitz competitors, both online and offline, have been very successful at increasing their revenues at the expense of the customer, by accepting additional payments from airlines by achieving market share targets. Competing travel web sites reach market share goals through a combination of biased displays, advertising and marketing deals which creates an undisclosed bias in the fares consumers see. The net result is that consumers are not shown the best prices, most convenient flight schedules and connections or even all of the airlines serving the request.

Unfortunately, rather than developing new technology and letting consumers decide if Orbitz's technology will indeed make for a superior on-line travel agent, some of Orbitz's protectionist competitors continue to insist that the Departments of Transportation and Justice pursue investigations without demonstrating in any way the competition would be hindered or that consumers would not benefit. Indeed, these same competitors continue to complain about their lack of access to special deals and fares while making public announcements about airline fare deals they have negotiated, including deals for web-only fares, and exclusive specially negotiated fares that give those two sites exclusive fares that Orbitz does not have.

ACT vigorously supports any competitor that invests in information technology to serve consumers better, faster, and cheaper. And ACT is just as vigorous in opposing the use of government regulation to prohibit competition on the merits of investment and innovation. As you contemplate the issue of Internet-based distribution, I urge to focus on promoting robust competition and meeting the needs of consumers, not the protection of staid business models. I request that you make this letter a part of the hearing record.

Sincerely,

Jonathan Zuck

Jonathan Zuck,
President

Helping Washington Get IT.

1413 K Street, NW * 12th Floor * Washington, DC * Tel: 202-331-2130 * Fax: 202-331-2139 * email: info@ACTonline.org *
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CEI

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May 1, 2002

Honorable Mike Pence
Chairman
House Small Business Committee, Subcommittee on Regulatory Reform and Oversight
United States House of Representatives
Washington, DC 20515

Dear Chairman Pence:

Attached is a recent op-ed that addresses Orbitz and the current regulatory debate that is being discussed before your subcommittee. The op-ed was published in the *Chicago Sun-Times* on April 23, 2002, and in the *Washington Times* on April 28, 2002. Please include this letter and the op-ed in the record of the hearing on "Issues in the Travel Agency Business".

Even though I've included the op-ed in its entirety, I wanted to specifically highlight a few issues that will be probably be discussed in tomorrow's hearing.

- The real story is that Orbitz is a major impetus behind a revamping of an antiquated airline ticket distribution system that now absorbs a whopping 20 percent of airline industry revenues. Industry incumbents that profit from the inefficiencies are following a path blazed in the Microsoft case – trying to goad antitrust enforcers into suppressing innovation and stop new competition.

- Orbitz is also increasing the honesty with which information is presented. Its charter requires it to display information according to price, number of stops, length of flights, or other quality-of-service criteria. It is forbidden to favor particular airlines, such as those who own it or who advertise on Orbitz, or to bias the display in any other way.

- The rise in availability of unbiased information helps consumers directly. It is also triggering another saving. Major airlines recently ended the practice of paying per-ticket commissions to travel agents. While commission payments had declined from a peak of about 11 percent of the ticket price a decade ago to about 5 percent, they still represented a large cost, paid, ultimately, by travelers. The saving is possible because the Internet is providing information that used to be provided by agents.

- These developments are good for the airlines, which benefit greatly from the existence of good public information and the consequent savings in distribution costs. They are good for travelers, whose interest in eliminating unnecessary costs is at one with the airlines. Innovative travel agents are also happy because they are establishing new niches by creating airline/hotel/car/recreation packages to sell to the public.

- There are also some losers, such as existing computer reservation system companies, travel agents who would prefer to be passive order takers, other online companies that dislike the additional competition, and some low-fare airlines with an interest in forcing competitors to incur high distribution costs.

Thank you. If you have questions, please feel free to contact me at 202-331-1010.

Sincerely,

James V. DeLong
Senior Fellow, Project on Technology and Innovation
Competitive Enterprise Institute

Orbitz Foes Trying To Stifle Competition
Op-Ed in *The Chicago Sun-Times* (April 23, 2002); *Washington Times* (April 28, 2002)
by James V. DeLong

The Department of Transportation has launched still another investigation into Chicago-based Orbitz, the online source of travel information and reservations started up last June by a consortium of airlines. DOT wants to be sure that Orbitz is not "anticompetitive," and thus violating antitrust laws.

The new investigation succeeds the inquiry that was completed last spring, before Orbitz commenced business, and the follow-up inquiry conducted last fall, when the department wanted to be sure the company's actual operations were OK.

The real story is that industry incumbents are following the path blazed in the Microsoft case--trying to goad antitrust enforcers into suppressing innovation.

How Orbitz Innovation Reduces Costs

A good example of the potential savings from Orbitz's innovation is that existing computer reservation systems (CRSs), which are used by travel agents to contact airline computers and actually book seats, charge roughly $3.50 per flight segment--or $14 for a typical round trip--for each reservation. In the near future, Orbitz will do the same chore with new technology, at far less cost.

Another example: The U.S. has 429 commercial airports, with 91,806 possible origin-destination pairs. Add in connecting flights, and the number of possible trips reaches the billions. Existing flight-search engines are based on 1970s mainframe technology. Their capacity is limited, and they must eliminate large numbers of possibilities at the outset. For example, they might search only for flights through a few specific intermediate stops.

The restrictions can miss some attractive fares. Orbitz, based on new technology developed by MIT alumni, need not impose any such arbitrary limits. The result is broader searches, more options, more competition among airlines and lower fares.

Orbitz is also increasing the honesty with which information is presented. Its charter requires it to display information according to price, number of stops, length of flights or other quality-of-service criteria. It is forbidden to favor particular airlines, such as those that own it or who advertise on Orbitz, or to bias the display in any other way.

The rise in availability of unbiased information helps consumers directly. It is also triggering another saving. Major airlines recently ended the practice of paying per-ticket commissions to travel agents. While commission payments had declined from a peak of about 11 percent of the ticket price a decade ago to about 5 percent, they still represented a large cost, paid, ultimately, by travelers. The saving is possible because the Internet is providing information that used to be provided by agents.

Good For Airlines, Good For Travelers

These developments are good for the airlines, which benefit greatly from the existence of good public information and the consequent savings in distribution costs. They are good for travelers, whose interest in eliminating unnecessary costs is at one with the airlines. Innovative travel agents are also happy because they are establishing new niches by creating airline/hotel/car/recreation packages to sell to the public.

There are also some losers, such as existing computer reservation system companies, travel agents who would prefer to be passive order takers, other online companies that dislike the additional competition and some low-fare airlines with an interest in forcing competitors to incur high distribution costs.

All these would like to use the club of antitrust to beat Orbitz to death. If they cannot kill Orbitz's innovations, they can at least raise Orbitz's costs and thus reduce its efficiency, and delay its growth by creating uncertainty and interfering with its access to capital markets.

It is time to return to common sense. Any innovation that improves information and reduces transaction costs is good for consumers. This is, or at least should be, the very definition of "pro-competitive." So DOT should end its investigation, and Orbitz's opponents should be told to compete in the market, not in the corridors of the bureaucracy.

Then we can all go find a bargain fare and take a trip.

VANGUARD AIRLINES

Robert M. Rowen
Vice President and General Counsel

Representative Mike Pence
Chairman
Subcommittee on Regulatory Reform
and Oversight
House Committee on Small Business
2361 Rayburn Office Building
Washington, DC 20515

April 30, 2002

Dear Mr. Chairman:

We are writing to express our concern regarding Orbitz, the Internet travel site dominated by the industry's five largest carriers, on Vanguard and other low-cost, low-fare carriers. We understand that the Subcommittee has scheduled a hearing to examine issues in the travel agency business, including those relating to Orbitz. Although we cannot be there to testify, we would like to commend the Subcommittee for examining this important issue.

During the period we were a charter associate, Orbitz displayed inaccurate fare information about Vanguard flights, and blamed such inaccuracies on fabricated deficiencies in Vanguard's system, in short, evidencing a hostility toward us that seemed to reflect the attitude of its large-airline owners.

Moreover, Orbitz has strong-armed its interpretation of a most-favored nation and in-kind promotion/exclusivity provision in a manner that we believe is not justified by our contractual agreement and is clearly anti-competitive. The cost and burden of litigation has precluded us from pursuing these claims against Orbitz, as well as the fact that Orbitz, through these provisions, may in fact become dominant in the interline ticket agency industry and thereby a critical vendor.

We also find it peculiar that Orbitz has denied us the economic benefit of Charter Membership but nevertheless continues to take credit on its website for having Vanguard as a Charter Member.

By way of background, Vanguard Airlines is based in Kansas City, and began service in December 1994 as a value-priced passenger airline. We currently provide convenient, all-jet service to 18 cities — Atlanta, Austin, Buffalo/Niagara Falls, Chicago-Midway, Colorado Springs, Dallas/Ft. Worth, Denver, Ft. Lauderdale, Kansas City, Las Vegas, Los Angeles, Myrtle Beach, New Orleans, New York-LaGuardia, Orlando, Pittsburgh, Seattle, and San Francisco — using six Boeing 737-200s and eight MD-80s. A substantial portion of our sales are now generated through Vanguard's own Web site (http://www.flyvanguard.com).

Vanguard continues to believe that the provisions of the Orbitz charter associate agreement that purport to require airlines to provide Orbitz with all published fares (including Web fares) and to prevent airlines from dealing exclusively with other online agents (commonly referred to as the "MFN clause") are anti-competitive. These two provisions attempt to prevent participating airlines from running special promotions on their own Web sites and on independent Web sites, which make it very difficult for smaller airlines like Vanguard to engage in promotions that could attract attention and sales to themselves.

We are also increasingly concerned that, with the increasing domination of Orbitz, consumers are lured away from independent agencies, where smaller carriers have greater opportunities to establish name recognition and gain passengers from the larger airlines. With these provisions, the dominant Orbitz owners can control how critical travel information is distributed and steer consumers away from smaller carriers.

We have found from firsthand experience that it is hard for a low-fare carrier to do business with Orbitz, but if the federal government continues to do nothing, it may become impossible to do business without Orbitz. We urge the Subcommittee to continue being vigilant in reviewing this important matter.

Thank you for your consideration of Vanguard's views.

Sincerely,

Robert M. Rowen

cc: The Honorable R. Hewitt Pate
Deputy Assistant Attorney General
Antitrust Division, U.S. Department of Justice

The Honorable Jeffrey N. Shane
Associate Deputy Secretary of Transportation
U.S. Department of Transportation

Docket Management Facility
Docket Nos. OST-97-2881, OST-97-3014, OST-98-4775, and OST-01-9054
U.S. Department of Transportation