



December 20, 1994

**THIS LETTER WAS SENT TO MAJOR AND NATIONAL U.S. AIR CARRIERS
AND TO AIR TRAVEL INDUSTRY ASSOCIATIONS AND LABOR UNIONS**

Mr. Robert L. Crandall
Chairman, President & CEO
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Dear Bob:

As we approach the holiday travel season, I want to take this opportunity to write to you on a subject in which I know you share my interest: fair treatment and quality service for air travelers. This letter is also being sent to all the other U.S. scheduled airlines, as well as other parties who share my concerns. The Department currently receives consumer complaints about air services in substantial numbers. In addition, certain recent advertising campaigns, such as "two-for-one" promotions, have created problems when consumers encountered unanticipated obstacles in purchasing tickets at the fares they expected.

I want to create a more effective working relationship with air carriers to promote airline consumer protection. This is a serious responsibility, and I have taken a number of steps over the last two years that underscore my commitment to consumer protection. So far this year the Department has taken steps to ensure that consumers are provided more information about code-share flights, bring the baggage liability limit up to date, and protect passengers on tours to special events. In addition, we have taken enforcement action against a number of air carriers and tour operators in consumer protection cases and we will be taking additional action in the future.

We appreciate the value that you place on passenger service. However, I would like to review with you the Department's position on a number of significant consumer issues that are of particular concern and where I believe there is room for improvement. These issues are discussed in the enclosure to this letter.

It is my intention to refocus the activities of our aviation consumer staff. The consumer unit will be renamed the Office of Consumer Protection and will transfer to the Office of the General Counsel, becoming a unit in the Office of Aviation Enforcement and Proceedings. As a result of this reorganization, our Consumer Protection and Aviation Enforcement and Proceedings Offices will heighten their surveillance of airline consumer practices to ensure compliance with our consumer protection requirements and to detect and correct any practices by carriers that are inimical to the consumer interest. The topics in the enclosure cover some of the areas that we believe are important; these and other issues will be areas of on-site inquiry to be conducted by the staff of the new Office of Consumer Protection.

As part of this new focus, we intend to work more closely with air carriers, both established companies and new entrants, to ensure that they understand and are able to carry out their responsibilities in the area of consumer protection. We will also look to see how our Office of Consumer Protection can better serve the traveling public. To that end, my staff has met with various groups concerning this effort, including the Air Transport Association, the Regional Airline Association, representatives of several airline labor groups and several consumer interest groups, and we are taking into consideration the suggestions and recommendations we received.

I believe that it is extremely important that we continue to work together to assure that necessary attention is given to each of the issues described in the enclosure, as well as to the quality of air transportation service in general. With that in mind, I encourage you to designate your Customer Relations administrator as liaison to our Consumer staff. We will be contacting your representative in the near future to provide further details of our plans, to exchange ideas and discuss how we might work together most effectively.

If there are any questions, please call me or, if you prefer, have a member of your staff contact Mr. Hoyte B. Decker, Jr., at (202) 366-5957. Thank you for your cooperation.

Sincerely,

Federico Peña

Enclosure

Significant Consumer Issues

Advertising

“Two-for-one” fares

Several carriers have recently conducted promotions, matched by other airlines, in which a consumer could purchase one ticket and receive a second one free. However, prospective travelers discovered that the price of the ticket purchased to qualify for the free ticket was—in some cases—substantially higher than the most popular low discount fare offered by the carrier in the market. In certain circumstances, paying for one ticket and getting the other one free would cost more than simply buying two low discount fare tickets.

It is the Department’s position that two-for-one type promotions are deceptive if the fare that must be purchased to take advantage of the promotion is higher than other fares of that carrier in the same market, unless this fact is prominently and clearly disclosed in advertisements for the two-for-one fare. Mentioning this in fine print at the bottom of an ad does not constitute prominent disclosure. Furthermore, a general statement that the promotion is limited to specified fares is not clear disclosure that the promotion is not available at the lowest discount fares.

“50% off” fares

Advertisements sometimes promote air fares in terms of a percentage savings (e.g. “Save up to 50%”). However, many such ads make it impossible to determine what the advertised fare is being compared to and how the percentage savings are calculated.

Consumers are entitled to real savings to match what the promotions promise. It is thus the Department’s position that “percentage off” ads are deceptive unless (1) the “benchmark” fare (the fare to which the advertised fare is being compared) was offered for sale in reasonable quantities for a reasonable period immediately prior to the ad for the new fare, and (2) either the ad clearly identifies and describes the “benchmark” fare, or the “benchmark” fare is a discount fare comparable to the advertised fare, with similar restrictions.

Other fare advertising issues

If the number of seats that are made available at an advertised discount fare is limited and/or they are not available on every flight, the ad should specifically state either or both restrictions, as applicable.

Seats for advertised fares must be made available in reasonable numbers for each market that has a fare listed in the ad.

If an ad for a fare is run more than once, a reasonable number of seats must be available at the advertised price whenever the ad is run.

Where there are lengthy blackout periods or certain days of the week when seats at an advertised fare will not be available, the ad must specifically disclose that information in detail.

Charters

Because in the vast majority of charter flights and tours, arrangements are not organized and controlled by air carriers that have been found financially fit by DOT, we impose strict consumer protection conditions on their promotion and sale. However, airlines that provide service for charter operators play a special role in this process. In the first instance, airlines must determine that the organizer of the charter flight is accurately identifying the type of trip being operated.

The flight could be a single entity, affinity, or public charter; each type involves compliance with different requirements. Since the degree of carrier responsibility is different for each type of charter, the airline must play an active role to establish whether it bears the responsibility, it shares responsibility with the operator, or the operator is responsible to consumers for the service promised and/or refunds. In any event, airlines have a duty to consumers to take reasonable steps to ensure that the tour operators are properly safeguarding consumer monies and are meeting their relevant contractual obligations to consumers.

Overscheduling and Overbooking

Carriers with few backup aircraft or crews should be conservative in scheduling their flights in order to limit inconvenience to consumers. Routine lengthy flight delays or frequent flight cancellations that result from unavailability of aircraft or crew will be considered unrealistic scheduling, which is actionable under 49 U.S.C. 41712 (formerly Section 411 of the Federal Aviation Act) and 14 CFR 399.81. Also, to the extent that such airlines have a limited ability to accommodate overbooked passengers, they must be especially cautious in applying their overbooking procedures.

Frequent Flyer Programs

The Department's deceptive practices prohibitions preclude airlines from imposing unreasonable capacity restrictions and/or unannounced blackout dates for the use of frequent flyer awards. To the extent airlines offer their frequent flyer awards for service to destinations, that traditionally are subject to high consumer demand, they must include in their promotional materials adequate disclosure that seats are limited—at times severely—and may not be available on every flight, if in fact that is the case.

Travelers with Disabilities

All U.S. air carriers are subject to 14 CFR Part 382, a detailed regulation that specifies airline responsibilities to passengers with disabilities. We expect strict compliance with this rule. Currently, the Department is investigating a number of cases where the rule may have been violated. Leading the list of alleged problems are the failure to provide wheelchairs and the failure to adequately care for a passenger's own wheelchair. Particular attention to Part 382 provisions on wheelchairs is necessary.

Underlying most of the problems brought to our attention are complaints about lack of sensitivity and a failure to generally provide passengers with disabilities adequate assistance. We encourage you to treat all passengers, especially those with disabilities, with courtesy and respect, and with sensitivity toward any problems they may experience.