NO. 12-656

In the
Supreme Court of the United States

SPIRIT AIRLINES, INC.; ALLEGIANT AIR, LLC;
and SOUTHWEST AIRLINES CO.,
Petitioners,

v.

UNITED STATES DEPARTMENT OF
TRANSPORTATION,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

BRIEF OF THE INTERNATIONAL AIR TRANSPORT ASSOCIATION AS *AMICUS CURIAE* IN SUPPORT OF THE PETITION FOR WRIT OF CERTIORARI

BERT W. REIN
Counsel of Record
EDWIN O. BAILEY
ROGER H. MIKSAD
WILEY REIN LLP
1776 K ST, NW
Washington, DC 20006
brein@wileyrein.com
(202) 719-7000

Counsel for Amicus Curiae

December 26, 2012

QUESTION PRESENTED

(1) Whether DOT exceeded its statutory mandate and acted arbitrarily and capriciously by re-regulating–down to the size of typeface and the length of mandatory refunds–an industry that Congress expressly chose to deregulate.

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STATEMENT OF INTEREST[1]

The International Air Transport Association ("IATA") represents the interests of 243 air carriers providing international scheduled air transportation. Under its Articles of Association, IATA's primary mission is to "promote safe, reliable and secure air services for the benefit of the peoples of the world." Art. IV(1). IATA's longstanding involvement in international air transport has highlighted the difficulties and impediments to air service growth and consumer welfare caused by overlapping and potentially conflicting government efforts to regulate international air transportation services. One of IATA's principal historic functions was to provide a forum in which airlines could cooperatively propose solutions to intergovernmental difficulties arising from conflicts in the regulation of fares, rates, and conditions of carriage. Based on its long experience and its observation of the benefits to consumers and carriers of deregulation, IATA has concluded that international air transportation services are best regulated by free market forces, and that limited government involvement maximizes consumer welfare.

IATA thus endorses the free market principles incorporated in the U.S. Airline Deregulation Act of 1978 ("ADA") and the International Air

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[1] No party or counsel for a party authored or contributed monetarily to the preparation or submission of any portion of this brief. Counsel of record for all parties received notice of IATA's intention to file this brief more than ten days before it was due, and all parties have consented to its filing.

Transportation Competition Act of 1979 ("IATCA") which eliminated the Department of Transportation's ("DOT") regulatory authority over fares, rates, and conditions of carriage domestically and internationally. IATA equally supports the incorporation of deregulation principles into the more than 100 "Open Skies" bilateral air transportation services agreements the U.S. has entered into with other nations and the contribution that such widely-emulated agreements have made to the growth and development of international aviation services by IATA members.

IATA filed comments at DOT opposing the international extension of the regulations that Petitioners now seek to have reviewed by this Court and IATA filed as *amicus curiae* on behalf of Petitioners in the D.C. Circuit proceeding. IATA believes that the regulations at issue wrongly cross the line between protecting consumers from specific deceptive or abusive practices and prescriptively regulating fares and fare-related conditions in derogation of the ADA, IATCA, and U.S. bilateral air transportation services commitments. IATA members are concerned that DOT's overbroad construction of its limited residual authority over unfair or deceptive practices could permit individual States to use similar consumer protection authority to evade the prohibition on State fares and rates regulation under the ADA and could also allow foreign governments that are party to Open Skies agreements to undertake their own, potentially conflicting, regulatory initiatives under a consumer protection rubric.

DOT's rulemaking notice acknowledges that the rules under review will result in "loss of sales and revenues by carriers," including IATA members. Enhancing Airline Passenger Protections, 76 Fed. Reg. 23,110, 23,129 (Apr. 25, 2011). If the sales and revenues lost were obtainable only by malpractice, that loss would be understandable. But where, as here, it arises from DOT's desire to revise the market balance struck between airlines and passengers, it is a departure from the principles of deregulation and the U.S. commitments in Open Skies agreements.

Accordingly, IATA and its members have a direct and substantial interest in the issues raised by Petitioners and urge that the Petition be granted.

SUMMARY OF ARGUMENT

In the Airline Deregulation Act of 1978 and the International Air Transportation Competition Act of 1979, Congress deregulated air transportation, putting the Civil Aeronautics Board out of business and permitting air carriers and foreign air carriers to establish fares, rates and the contractual conditions governing them without filing tariffs or obtaining prior approval from any agency of the U.S. Government.

This Court has consistently safeguarded this broad area of statutory foreclosure, establishing key precedents followed by many lower courts in succeeding years. These precedents establish that airline conditions of carriage, such as ticket refund and exchange rights, and fare disclosure practices are properly deemed elements of airline pricing, and are off-limits to federal or State regulation.

Unfortunately, despite Congressional policy and the holdings of this Court, the impulse to re-regulate the airline industry has not been entirely put to rest. This Court is now faced with a new initiative by DOT to exercise sweeping economic regulatory powers under the rubric of protecting consumers from "unfair or deceptive" practices. 76 Fed. Reg. at 23,128. Thus, rather than seeking Congressional sanction to re-introduce federal regulation of airline fares, rates, and conditions, DOT is relying on its limited statutory authority to adjudicate individual consumer grievances to promulgate a wide-ranging rulemaking that, *inter alia*, (i) dictates the manner and form in which air carriers may advertise the prices of their offerings by requiring carriers to display the tax-inclusive price as the most prominent figure and by requiring government taxes and fees be displayed, if at all, in a subordinate text size and position (the "Total Price Rule"), and (ii) requires all air carriers, as part of mandated customer service plans, to refund full ticket prices up to 24 hours after purchase and/or to allow consumers to reserve seats on flights in the U.S., to and from the U.S., and on connecting flights around the world, without any payment for up to 24 hours if a reservation is made seven or more days before flight departure (the "24-Hour Rule").

DOT is plainly out of bounds and this Court should remind it of its duty to respect the Congressional determination to deregulate the airline industry. This Court also must act because if DOT is allowed to use its "unfair or deceptive" authority to re-regulate airline fares, rates, and conditions, States around the country will see a clear

road forward to using their own unfairness authority to act as the "50 mini-CABs" that Congress expressly forbad. The previous decisions of this Court are thus clearly at risk if no action is taken on the pending Petition to set the DOT and the Court below back on the right track.

Furthermore, DOT's efforts will provide a troublesome example to other nations that may similarly desire to dismantle the deregulatory framework built during the past decades under the guise of preventing "unfair" practices. Failure to reverse the decision below could send a signal that the U.S. no longer fully adheres to or intends to honor the Congressionally-mandated deregulation tenets that it spent years attempting to persuade other nations to adopt.

ARGUMENT

I. REVIEW IS ESSENTIAL TO REAFFIRM THE BOUNDARY THIS COURT HAS DRAWN BETWEEN DOT'S AUTHORITY TO TERMINATE SPECIFIC UNFAIR OR DECEPTIVE AIRLINE PRACTICES AND STATUTORILY PROHIBITED PRESCRIPTIVE FARES AND RATES REGULATION

A. The two DOT rules at issue are regulatory prescriptions that DOT claims will enhance a consumer's ability to comparison shop between airline offerings rather than responses to specific, documented cases of airline misconduct.

***The Total Price Rule*:** DOT's reinterpretation of its Total Price Rule requires government taxes

and charges to be combined into a single displayed fare rather than separately and prominently displayed. DOT has developed no evidence that consumers currently misunderstand total trip costs or that a unitary price display is necessary to permit them to evaluate the cost of travel.[2]

The Total Price Rule reaches any website that is "accessible in the U.S." over the Internet. 76 Fed. Reg. at 23,143. Given the global nature of the Internet, this regulation potentially applies to all foreign airline websites worldwide that do not undertake technical measures to actively block access by U.S. consumers. Foreign carriers must either create separate U.S.-only websites at great expense or conform global websites to DOT's rules while simultaneously being required to comply with the potentially conflicting display rules of other nations.

DOT had no record in the rulemaking of widespread actual consumer confusion arising from the separate disclosure of the various cost elements of airfares. Rather, relying on a small number of anecdotal reports in various other forums, DOT acted on its own judgment that full fare price information was helpful to consumers when comparison shopping among air carriers. 76 Fed. Reg. at 23,142-43. This rationale clearly exceeds DOT's authority to prohibit unfair or deceptive

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[2] IATA supports the arguments of Petitioners with regard to the Total Price Rule, including those related to the First Amendment. IATA defers to Petitioners' arguments on those issues.

practices. It is, quite simply, old-fashioned economic regulation specifically foreclosed by the ADA.

***The 24-Hour Rule*:** The 24-Hour Rule is a DOT effort to regulate a an element of the contract of carriage DOT believes should be "bundled" into an airline's base price for travel.

The contract terms offered to a customer are an essential element of the airline's product definition and related pricing. Since deregulation, airlines have successfully used contract elements, such as the refund and exchange rights implicated by the 24-Hour Rule, to offer consumers a range of offerings which balance price and flexibility to meet each consumer's individual needs. This enables airlines to better manage their seat inventory to ensure full and profitable flights while also offering a range of competitive prices for seats on those flights.

Prior to deregulation, DOT's predecessor (the Civil Aeronautics Board ("CAB")) sought to harmonize contract terms and foreclose airlines from differentiating fares to reflect choices in contract provisions such as early purchase, length of stay, limitations on itinerary changes, and firm booking deadlines. Indeed, in its comprehensive Domestic Passenger Fare Investigation, the CAB sought to define a uniform product to be priced at uniform, distance-related, government-approved fare levels. U.S. Civil Aeronautics Board, Domestic Passenger Fare Investigation, January 1970 to December 1974 (1975).

Congress expressly eliminated the CAB's power to impose this regulatory concept in the ADA (and internationally in the IATCA). Under the ADA and

the IATCA, airlines have developed a broad range of price/contract rights options. Price variability based on, *inter alia*, cancellation, refund and itinerary change conditions, has led to major increases in airline load factors and enormous fare savings for consumers.

Airlines routinely offer fully refundable premium fares and variable cancellation and itinerary privileges priced to reflect this added flexibility. There was no evidence in the DOT record that consumers were unaware of these premium offers and the restrictions on refunds or changes included in lower-fare offerings. DOT's decision to require a 24 hour cancellation refund privilege to be a mandatory element of each ticketing contract thus flies in the face of the ADA/IATCA elimination of fares and rates regulation authority.

B. In three prior decisions, this Court has drawn a line between DOT's consumer protection authority and the fares and rates regulation Congress foreclosed. DOT clearly has crossed that line.

The ADA retained the historical statutory provisions which granted DOT the authority to police, through adjudicatory proceedings, certain airline malpractices. "[I]f the Secretary, after notice and an opportunity for a hearing, finds that an air carrier, foreign air carrier, or ticket agent is engaged in an unfair or deceptive practice or unfair method of competition, the Secretary shall order the air carrier, foreign air carrier, or ticket agent to stop the practice or method." 49 U.S.C. § 41712(a), *previously* Section 411 of the Federal Aviation Act of 1958.

Notably, DOT and its predecessors have never been specifically granted the power to engage in prescriptive rulemaking to prevent those same unfair or deceptive practices or unfair methods of competition. To promulgate the regulations at issue, including the 24-Hour Rule, DOT has relied on the general rulemaking authority of 49 U.S.C. § 40113(a). However, general rulemaking authority does not "permit an agency to expand its power in the face of a congressional limitation on its jurisdiction," to do so "would be to grant to the agency power to override Congress." *La. Pub. Serv. Comm'n v. F.C.C.*, 476 U.S. 355, 374-75 (1986). DOT may not rely on its general rulemaking authority to regulate those areas removed from its jurisdiction by the ADA.[3]

The outer limits of DOT's unfair or deceptive authority under Section 41712(a) have been established by three decisions of this Court. Whether DOT proceeds by adjudication or rule, these limits apply to the scope of its actions.

***Nader*:** In *Nader v. Allegheny Airlines, Inc.*, 426 U.S. 290 (1976), this Court, prior to the passage of

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[3] IATA does not concede that DOT may promulgate regulations pursuant to its general rulemaking powers in Section 40113(a) to address unfair or deceptive practices not related to fares. "[G]eneral language of a statute . . . will not be held to apply to a matter specifically dealt with in another part of the same enactment." *Fourco Glass Co. v. Transmirra Prods. Corp.*, 353 U.S. 222, 228 (1957) (citations omitted). However, if DOT does possess such authority, at the very least DOT must engage in a process that is as rigorous as that imposed by the specific language of Section 41712(a).

the ADA, refused to accord "primary jurisdiction" to DOT's predecessor, the CAB, in a tort suit arising from a wrongful passenger bumping which Allegheny argued should have been reviewed by the CAB pursuant to its primary jurisdiction under Section 411 (predecessor to Section 41712(a)) rather than evaluated by a court under state tort law. The *Nader* decision distinguished unfair or deceptive authority from broader economic regulatory authority holding the former to be directed only at specific instances of misconduct and thus not distrubted by parallel judicial evaluation while the latter was a vehicle for setting uniform industry-wide standards which could be disrupted by contrary judicial rulings and should be protected by primary jurisdiction. Thus, *Nader* established the fundamental principle that DOT's unfair or deceptive authority is not an authorized avenue for establishing uniform standards of airline conduct.

The *Nader* Court made clear that determinations made by the CAB in a Section 411 proceeding were not to be used as a means of prescriptive regulation. While the language of Section 411 was retained in the ADA, given the removal of DOT's power to regulate fares, it provides no basis for DOT's claim of authority to prescriptively regulate unfair or deceptive acts, let along fare conditions.

***Morales*:** Just over a decade after the passage of the ADA, this Court's decision in *Morales* rejected an attempt by the State of Texas to regulate airline marketing practices under the guise of preventing unfair or deceptive conduct as in derogation of the ADA's express prohibition on the regulation of rates,

routes and services by State authorities. *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374 (1992).

Specifically, the Court struck down Texas's efforts to impose restrictions on airline advertising and ticketing practices–including rules related to limitations on the ability of customers to obtain refunds for purchased tickets–under its State consumer protection statue's prohibition of "unfair acts and practices." These restrictions were imposed as "Guidance" from the State regulators on what types of acts would be considered unfair to customers. This Court found that the practices covered by the Guidance, while not prescribing fares as such, were so inextricably intertwined with the pricing and availability of airfares so as to be inseparable from fares. DOT has effectively ignored the holding of *Morales* by resorting to the same "unfairness" sleight-of-hand to engage in fare related regulation.

***Wolens*:** In *Wolens*, this Court re-emphasized the primacy of Congress's decision to foreclose regulation of airline rates, routes, or services. *Am. Airlines, Inc. v. Wolens*, 513 U.S. 219 (1995).

At issue was whether class-action plaintiffs could sue an airline for modifying its loyalty ("frequent flyer") awards program under the Illinois general consumer protection statute. Again, while recognizing that loyalty award conditions were not fares as such, the Court held that they were sufficiently fare-related to fall within the Congressional foreclosure on the regulation of fares. The primary "purpose [of the ADA is] to leave largely to the airlines themselves . . . the selection and

design of marketing mechanisms appropriate to the furnishing of air transportation services . . . ." *Id.* at 228.

Indeed, the Court was especially critical of efforts to re-regulate airline practices by attempting to avoid the strictures of the ADA through the misguided "separation of matters 'essential' from matters unessential to airline operations." *Id.* at 226. In short, this Court's rulings establish, as DOT has previously recognized, that DOT's residual consumer protection authority under Section 41712(a) is limited to terminating "anti-competitive" or deceptive practices that are likely to occur and would cause significant consumer harm if they did occur and that market forces are unlikely to remedy." Computer Reservations System Regulations, 69 Fed. Reg. 976, 977 (Jan. 7, 2004). Section 41712(a) authority does not provide a foundation for rebuilding prescriptive regulation of airline economic conduct.

C. DOT's rulemaking efforts and the D.C. Circuit's decision essentially ignore this Court's decisions in *Nader, Morales,* and *Wolens* in order to assert a virtually limitless power to prescriptively regulate airline practices under DOT's "unfair or deceptive practices" authority.

This Court's decisions, widely followed by lower courts,[4] teach that the ADA comprehensively curbed

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[4] *See, e.g., United Parcel Serv., Inc. v. Flores-Galarza*, 318 F.3d 323 (1st Cir. 2003) (state tax enforcement scheme preempted); *Air Transport Ass'n of America, Inc. v. Cuomo*, 520 F.3d 218 (2d Cir. 2008) (same for State "Passenger Bill of

the federal and State governments' power to regulate the rates and routes of airlines and mandated that market forces "decide on the variety and quality of, and determine prices for, air transportation services." 49 U.S.C. § 40101(a)(12)(B). Congress itself believed that the scope of activities encompassed by "fares" should be read broadly, finding that the "[b]road regulation of fares and rates ha[d] discouraged price competition at every turn"and should be avoided to the fullest extent possible. S. Rep. No. 95-631, at 2 (1978). The rules at issue must fail under the ADA as prohibited restrictions on air fares.

This Court has previously directed that "limitations on refund or exchange rights" are prohibited by Congress's mandate to defer to market forces as they "bear[] a reference to air fares." *Morales*, 504 U.S. at 387-88. Indeed, during the rulemaking, DOT acknowledged that airlines currently charge different prices based, in part, on the refund and exchange rights which apply to each ticket.

Yet somehow DOT now argues, and the D.C. Circuit has agreed, that the 24-Hour Rule "has nothing to do with airfares." *Spirit Airlines, Inc. v.*

Rights" statute); *Lyn-Lea Travel Corp. v. Am. Airlines, Inc.*, 283 F.3d 282 (5th Cir. 2002) (same for travel agent's state law claims regarding pricing contracts); *Botz v. Omni Air Int'l*, 286 F.3d 488 (8th Cir. 2002) (same for flight attendant's state law wrongful termination claims); *Sanchez v. Aerovias De Mexico, S.A. De C.V.*, 590 F.3d 1027 (9th Cir. 2010) (same for state unfair dealing claims).

DOT, 687 F.3d 403, 416 (D.C. Cir. 2012). The D.C. Circuit then asserted, without discussion, that DOT's regulations were "plainly allowed under 49 U.S.C. § 41712." *Id.* That result patently ignores the teachings of this Court and the D.C. Circuit's decision further requires review under Rule 10(c).

II. REVIEW IS NECESSARY TO FORECLOSE THE ADVERSE COLLATERAL CONSEQUENCES OF THE D.C. CIRCUIT'S DECISION

A. By permitting DOT to expand the area of "unfairness," and consequentially narrow the ADA/IATCA prohibition on fares and rates regulation, the D.C. Circuit's decision invites renewed intrusion by States into airline fares and rates.

The ADA/IATCA's foreclosures on fares and rates regulation are directly mirrored in the ADA's preemption section. This Court has previously held, as discussed above, that the ADA's preemption clause incorporates Congress's intent to prevent States from seeking to regulate the very aspects of air transportation which Congress had removed from federal regulation.[5] The "States [may] not undo federal deregulation with regulation of their own." *Morales*, 504 U.S. at 378. However, there can be no

[5] "No State . . . shall enact or enforce any law, rule, regulation, standard, or other provision having the force and effect of law relating to intrastate rates, intrastate routes, or intrastate services of any air carrier . . . ." 49 U.S.C. § 14501(b)(1).

principled basis on which State regulation of fares and rates under unfairness authority may be foreclosed more stringently than DOT regulation under identical authority.

DOT and the D.C. Circuit, if uncorrected, will have removed the refund and exchange rights imposed by the 24-Hour Rule from the broad category of fares under the ADA merely by labeling them as "unfair." Historically, DOT restrained its regulatory urges and only sought to regulate observed unfair or deceptive practices that are likely to cause "significant consumer harm." *See* 69 Fed. Reg. at 977. Now, however, DOT does not even claim that it is acting to correct *actual* unfair practices or *actual* consumer deception. Rather, the 24-Hour Rule imposes mandatory changes to carriers' Contracts of Carriage simply because DOT likes them. DOT explains the 24-Hour Rule as "strik[ing] [a] balance between a consumer's desire to make travel plans and shop for a fare that meets his or her needs, and the carrier's need for adequate time to sell seats on its flights." 76 Fed. Reg. at 23,129. That is the essence of prescriptive regulation aimed at a classic "just and reasonable" tariff objective and strips the airlines of their right to protect their inventory by requiring firm contractual commitments as part of the price bargain.

In doing so, DOT and the D.C. Circuit will have consequentially removed refund and exchange rights from the practices this Court has prohibited the States from regulating under their unfairness authority. To allow the States to enter this regulatory space would directly reverse the intended

goals of the ADA and threaten to subject the airlines to possibly differing State regulatory regimes.

State regulation of airline marketing practices would be particularly onerous for many of IATA's non-U.S. members who operate to airports in many U.S. States and market their services throughout the U.S., but have limited capability to track and respond to varying State regulatory actions.

B. The D.C. Circuit's decision also undercuts the international deregulation achieved by more than 100 U.S. Open Skies bilateral air services agreements and invites potentially conflicting regulation of international flights by U.S. bilateral partners.

All international flights are subject to the authority of at least two sovereigns, the origination nation and the destination nation. To eliminate historic frictions arising from conflicting economic regulation of international flights, the U.S. has negotiated Open Skies agreements to advance the deregulatory goals of the ADA and the IATCA. The U.S. currently has Open Skies agreements with over 100 foreign nations. These agreements establish the international regimes governing carrier operations between the territories of the contracting parties.

The vigorously negotiated Open Skies agreements by which the U.S. has advanced deregulation internationally now form the cornerstone of U.S. international aviation policy. The Open Skies agreement language tracks the preemption provision of the ADA and leaves fare determinations to the marketplace. "Each Party shall allow prices for air transportation to be

established by airlines of both Parties based upon commercial considerations in the marketplace." Model Open Skies Agreement, Art. 12(1) (Jan. 12, 2012).[6]

The DOT rules under review now establish a regime in which flights originating in, destined for, and conducted between foreign nations, will subject onboard passengers to disparate regulatory requirements under U.S. law, not to mention the distinct possibility of conflicting mandates from foreign governments. DOT itself acknowledges and explains this problem in the preamble to the final rule. 76 Fed. Reg. at 23,123.

To use DOT's own example, consider a hypothetical consumer wishing to fly from San Francisco to Singapore. The foreign air carrier from whom the consumer purchases his or her ticket provides the consumer with an itinerary that includes a short layover in Hong Kong prior to continuing on to Singapore. As DOT explains, how the carrier labels the stop in Hong Kong can lead to

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[6] Not only is it the policy of the U.S. to support the Open Skies agreements, Congress affirmatively requires DOT to act "consistently with obligations of the United States Government under an international agreement." 49 U.S.C. § 40105(b)(A). The 1944 International Civil Aviation Organization "Chicago" Convention, to which the U.S. is a party, similarly requires signatory nations to "collaborate in securing the highest practical degree of uniformity in regulations, standards, procedures and organization in relation to aircraft, personnel, airways and auxiliary services." Convention on International Civil Aviation, art. 37, Dec. 7, 1944, 15 U.N.T.S. 102.

dramatic differences in the treatment of that consumer.

***Single Flight Number*:** In one example, the air carrier operates the itinerary from San Francisco to Singapore, including a stop and change of planes in Hong Kong, under a single flight number, "Flight 100." By booking the entire trip under a single flight number, both legs of the journey are made subject to the DOT mandated customer service plans, including the 24-Hour Rule. However, this is true *only* for those passengers who begin their journey in San Francisco and not those joining in Hong Kong.

Passengers who purchased a ticket from the same air carrier, but depart from a different U.S. city (perhaps Seattle) with a different flight number, and who subsequently join Flight 100 in Hong Kong, will not have the benefit of the 24-Hour Rule with regard to the Hong Kong-Singapore booking and may experience a cancellation penalty. DOT never explained why it would be unfair to deny 24 hour hold rights to the Flight 100 through-passenger but not to deny them to the connecting, U.S. origin passenger.

***Two Flight Numbers*:** In a second example, the same air carrier operates the same itinerary from San Francisco to Singapore via Hong Kong but assigns the itinerary two flight numbers, "Flight 200" from San Francisco to Hong Kong, and then connecting to "Flight 201" from Hong Kong to Singapore. Simply by changing the flight number of the second leg of the journey, that second leg is no longer subject to the 24-Hour Rule regardless of passenger origin.

The disparate 24-Hour Rule rights DOT has accorded U.S.-originating consumers, not to mention foreign-originating consumers, highlights the burdens IATA members will now bear. When making reservations, passengers expect and are routinely given a single itinerary and reservation number and pay a single price for their entire trip. Under the 24-Hour Rule, should a consumer, within 24 hours, decide to cancel the first leg of the trip, that consumer would likely expect the carrier to cancel the entire reservation, and refund the entire ticket price. While DOT's 24-Hour Rule does not require that result in all cases, requiring international carriers to administer and explain these nuances hardly seems consistent with the letter and spirit of Open Skies bilateral agreements.

In addition, DOT itself acknowledged that the rule "could result in loss of sales and revenue by carriers and prevent other passengers from purchasing the seat." 76 Fed. Reg. at 23,129. While DOT may believe that the "hold and shop" benefit outweighs the costs the rule imposes on airlines, foreign governments may have a different view and exercise their own authority to protect the airlines serving their territories.

Unless this Court reverses the D.C. Circuit and restores the integrity of Congress's ADA/IATCA deregulation mandate, foreign governments may reasonably take the position that Open Skies bilateral agreements do not limit their ability to regulate those aspects of airline marketing and contracts that DOT now regulates. The result could be massive confusion and a counterproductive retreat from the deregulation movement IATA

endorses and the U.S., until now, has led. That risk alone warrants review by this Court.

CONCLUSION

For the reasons set forth above, *amicus* IATA urges this Court to grant *certiorari* and resolve this case on the merits.

Respectfully submitted,

BERT W. REIN
Counsel of Record
EDWIN O. BAILEY
ROGER H. MIKSAD
WILEY REIN LLP
1776 K ST, NW
Washington, DC 20006
brein@wileyrein.com
(202) 719-7000

Counsel for Amicus Curiae

December 26, 2012