Statement of

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Mr. Chairman, I am Michael Thomas, President and Chief Executive Officer of OneTravel.com ("OneTravel"), an online travel agency based in East Greenville, Pennsylvania. I appreciate the opportunity to appear before the Commission today 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 system ("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 the Commission is well aware, airlines have historically 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 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 receive benefits from 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. 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 about as large as Travelocity and Expedia, and appears set on a course to dominate on-line distribution of airfares. It has already attained booking revenue in excess of $1 billion, with $542 million in revenue earned in the first quarter of this year.

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 in the sale of domestic airline services. 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 the Commission, Congress, and federal transportation regulators 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. And Orbitz touts in its registration statement filed with the SEC in connection with its planned initial public offering that its primary strength derives from the fact that it has the largest selection of discounted Web-only fares.

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. This is because we cannot offer competitive pricing in many markets, due to our lack of webfares and our inability to make 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, some 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.

Orbitz has recently announced that it has entered into an arrangement with Aqua Software, a division of Navigant, under which the latter is developing software that will allow travel agencies to access Orbitz webfares, and book travel through Orbitz. Orbitz is likely to tout this as a full response to the concerns that we and others have raised about the exclusivity arrangements that Orbitz maintains with airlines. However, not only has this software not yet been developed, but Orbitz has acknowledged that if it pursues business plans designed to encourage travel agents to use an Orbitz booking engine, Orbitz may become (and we believe it would become) a regulated CRS under current DOT rules. That, in our view, would be a positive, pro-competitive result. As a regulated CRS, Orbitz and its airline owners could not maintain exclusivity arrangements, but would have to play by the same rules that govern CRSs and the airlines that own them or market their services. Under those DOT rules, such airlines would have to provide the same fares to Amadeus, Sabre and other CRSs that they provide to Orbitz on a non-discriminatory basis. Thus, a broader range of consumers would have access to webfares that are today found only on Orbitz.

## 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 Commission. 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. However, with the elimination of most airline commissions on domestic tickets, the claims of Orbitz and its owners that Orbitz is needed to reduce distribution costs ring hollow. OneTravel is willing and able to meet or beat the distribution costs airlines incur when they use Orbitz. The disinterest of the airlines in using our outlet and others that can provide broad ticket distribution at a cost comparable to Orbitz, or lower, speaks to the fact that the airlines are using Orbitz to attain control of distribution, not to reduce costs. The airlines would rather distribute through their own outlet than negotiate special arrangements with independent distributors. Again, it is the consumer who loses here.

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 Commission should recommend to Congress and to the Department of Transportation that legislative and/or regulatory steps be taken 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 of Transportation 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, and I understand the Department will shortly issue a rulemaking notice that will identify proposed changes to those rules. Given the experience of the past year, 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 in the first place.

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

Michael Thomas

President and CEO of OneTravel