

BEFORE THE  
DEPARTMENT OF TRANSPORTATION

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APPLICATION OF THE,	)	
INTERNATIONAL AIR TRANSPORT	)	OBJECTIONS TO TENTATIVE
ASSOCIATION FOR APPROVAL OF	)	DECISION AND ORDER TO
AN AGREEMENT (RESOLUTION 787)	)	SHOW CAUSE
OF THE PASSENGER SERVICES	)	
CONFERENCE	)	OST-2013-0048
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1. I write to object to Order 2014-5-7 (Docket No. DOT-OST-2013-0048-0415) to the extent that the DOT permits, or purports to permit, airlines to sell tickets other than in accordance with published tariffs.

**I. The Longstanding Obligation to Have and Follow a Tariff**

2. Applicable law plainly requires that air carriers and ticket agents only sell air travel at the price specified in the applicable tariff. See 49 USC § 41510. § 41510 (a)(3) further grants the DOT authority to specify *additional* benefits that must be specified in tariffs. But § 41510 does not grant DOT the authority to waive the requirement that prices match what a tariff specifies.

3. Neither does subsequent regulation change the meaning of § 41510. At p.14, the DOT's Order to Show Cause claims that § 41510 “presumed filing of ... tariffs with the Department ... as part of a comprehensive economic regulatory regime.” In fact the plain language of § 41510 says no such thing. Rather, § 41510 lays out a first duty, to establish a tariff and to always charge the price specified in the tariff. The possible existence (no longer in effect) of a separate duty, to file that tariff with the Department, is logically distinct. To wit, carriers can be required—and have been required!—to *have* tariffs and to charge the prices provided by tariff, despite the lack of any requirement to *file* such tariffs with the Department.

**II. Benefits of a Tariff: Prior to Purchase**

4. Tariffs provide important benefits to passengers. Specifically, tariffs enumerate the fares and benefits a carrier offers in order to allow passengers to identify their rights, pursuant to the tickets they might purchase or have purchased.

5. I have personally availed myself of important benefits that were possible only thanks to the existence and availability of the tariff. For one, I have learned that a lower price, especially for a complex trip, can often be obtained by first consulting the tariff and then constructing an itinerary to satisfy the routing and other rules of a desired fare. In talking with professional travel agents, I have learned that experts typically follow the same process. For example, during April 2014 I needed to travel from Paris to London to Boston. I observed that London to Boston nonstop travel was expensive, on the date and class of service I sought. By booking travel from Paris to London to Boston, with a several-day stopover in London, I was able to reduce the cost of my ticket by more than 30%. Looking in the listings of published fares, I was also able to check for other possible routings (e.g. Brussels-London-Boston), see the price of each fare (regardless of availability on any given flight), and plan accordingly. More generally, I often have the flexibility to adjust the sequence of my stops. I therefore consider a large number of combinations. Only thanks to the published fare database is it feasible for me to check numerous options and plan accordingly.

6. I have also benefited from consulting tariffs and fare rules to learn the applicability of seasonal fares. Sometimes, the seasonality of a fare is determined by the date of the outbound segment. By shifting my outbound segment just a few days, I can obtain a low-season fare for the entire trip. I am able to learn the season cutoffs and the fare's season concept (pricing the entire journey based on the departure date, versus pricing each segment according to its date) only by reading fare rules. It would be exceptionally time-consuming to attempt to deduce these rules through experimentation in the fare quote system.

7. I have also benefited from consulting tariffs to select the specific fare that best suits my needs. For example, I sometimes choose a slightly more expensive fare in order to have a lower penalty in case of changes. Standard online fare search tools provide only “cheapest available” and “refundable” searches, whereas viewing the entire fare database lets me choose from all available fares. I also sometimes choose a slightly more expensive fare in order to obtain a frequent flier program bonus or to use an upgrade voucher valid only on certain fare classes. Most online fare search tools provide no mechanism to restrict a search in this way, or if they do, they provide quotes for individual fares rather than letting me see the full range of options on a single screen.

8. Furthermore, many allowable routings and applicable fares cannot be “autopriced.” Rather, these routings and fares must be constructed segment by segment and verified manually by an airline or travel agency “rate desk.” Without access to the tariff, I would have no way to know of the existence of these fares, or make use of them.

9. Sometimes space is not immediately available for a desired fare, but is available “on request” or can be confirmed by asking to be placed on a waiting list for a particular booking class on a particular flight. Without access to the tariff, I would have no way to know what the price would be for that space, if confirmed, or to know to request that space, since that fare does not show up in displays of flights and prices for which confirmation is immediately available.

### **III. Benefits of a Tariff: Changes after Purchase**

10. Tariffs are also crucial to me when considering making changes to a ticket. Prospective purchasers of a ticket are typically provided with the rules of that ticket, including rules for changes. But these rules almost always include a provision that

the fee for any change of itinerary includes the difference in the fare “applicable” to the new itinerary. The “applicable” fare for the new itinerary is determined by the published tariff, which effectively incorporates the entirety of the tariff (for all possible fares, for all possible changes) into the rules of every such fare. Only by reference to the tariff can the price of any change be determined. Only through access to the tariff can a consumer determine how much a particular change will cost. There are near-infinite possible changes and new itineraries, and it would be impractical to include in each offer a table of prices for every possible change.

11. Tariff provisions have repeatedly proven valuable to me when attempting to change travel. Selected examples:

- a. In winter 2012, I sought to change a restricted ticket to create an open jaw to a different city and to travel on a different day. Carrier staff initially rejected my request to make this change because they said the requested open jaw was impermissible under the rules of the fare that I had purchased and because they said the desired new fare required an advance purchase that was not satisfied at the time of initial ticket purchase. They proposed that I purchase a new ticket at many thousands of dollars of additional expense. By reading the tariff, I was able to determine that at least a portion of their arguments were incorrect. After I conveyed my reasoning to carrier staff, I was able to obtain the desired change for payment of the change fee and minimal incremental expense.
- b. In summer 2013, I sought to change a flexible ticket in order to add additional stopovers and flight segments. Carrier staff initially rejected my request to make these changes, saying that my requested routing was contrary to the rules of the

fare I had purchased. They proposed that I purchase a new ticket at many thousands of dollars of additional expense. By reading the tariff, I was able to identify relevant provisions for stopovers, online transfers, interline transfers, and routing, all of which allowed what I sought. After I conveyed these provisions to carrier staff, I was able to obtain the desired change at minimal incremental expense.

- c. In 2013, I spoke at length with a passenger who had suffered a flight cancellation, and who sought an involuntary refund for the remainder of his ticket. Carrier staff argued that an involuntary refund was not available in this circumstance. By reading the tariff, I identified provisions indicating that carrier staff were incorrect. When the passenger brought these provisions to the carrier's attention, the carrier provided the involuntary refund he sought.

12. Had it not been for the availability of tariff provisions, both in carriers' General Tariffs and in fare-specific rules, I believe I would have been unsuccessful in obtaining the specified benefits. I would have incurred thousands of dollars in additional expense to travel on the same flights. When carrier staff told me that a desired routing or itinerary was not possible with the fare I had purchased, I would have been unable to oppose or disprove that claim.

13. I credit that my reliance on tariff provisions may be somewhat unusual. But I am not alone. Other passengers have learned to read tariffs, aided in part through services such as ExpertFlyer which provides a full listing of fares including the rules for each. At online discussion forums (including the widely-read FlyerTalk), it has become common for passengers to discuss tariffs, fare rules, and their applicability in

considerable detail.<sup>1</sup> These concepts also permeate DOT proceedings. For example, the third-party complaints of Darren Martin (OST-2014-0029) and Robert Samstein (OST-2014-0033) are in large part grounded in interpretation of tariff provisions. Were it not for the existence and availability of the tariff (albeit availability in part contested in those proceedings), these passengers would struggle to obtain the benefits they seek.

#### **IV. Importance of a Tariff Under Personalized Pricing**

14. The benefits of tariffs are likely to grow in light of the prospect of personalized pricing. As pricing becomes more complicated, via personalization, it will become increasingly difficult for passengers to determine whether they have in fact been charged the correct fare, not to mention the correct additional collection for any desired change. A tariff will help passengers verify carriers' calculations and oppose any errors. Moreover, any invidious discrimination would ordinarily be difficult to detect as it could be written off to permissible factors or idiosyncratic coincidence. In contrast, continued use of a tariff would reveal the fares for each type of passenger and the circumstances in which each fare is available. This information would help the Department more easily check whether invidious discrimination is occurring.

15. In the absence of a published tariff, the price of any change would be as much as the airline decides to charge, at the time of the change. Indeed, IATA Resolution 787 specifically contemplates individualized change fee "offers" which, like the initial prices of tickets, could be based on any personal information which the airline has obtained from any source. Arbitrarily high new prices and arbitrarily high charges

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<sup>1</sup> See e.g. <http://www.flyertalk.com/forum/air-canada-aeroplan/13408-ac-hkg-int-air-tariff-not-valid-all-tickets-lie-truth.html> (passenger seeking an extended transit of <24 hours and relying on tariff provisions when airline ticketing staff tell him that he must take the first available connection), <http://www.flyertalk.com/forum/lufthansa-austrian-swiss-brussels-lot-other-partners-miles-more/793835-end-end-fare-rules-question.html> (passenger checking combination of various fare rules) and myriad others.

for changes differences, based on personal information about the traveler and her circumstances, are exactly the sort of exploitation of travelers that the tariff requirements in common carrier laws were adopted to prevent.

**V. Requested Revision to DOT Approval of Resolution 787**

16. I take no position on whether DOT should approve Resolution 787. But if the DOT does approve Resolution 787, I ask that DOT reaffirm carriers' longstanding obligation to have tariffs and to charge only the fares provided by tariff. Such a requirement could be embodied in an addition to the Tentative Conditions on Approval:

Tariff

Approval of Resolution 787 does not in any way modify any obligation for any air carrier, foreign air carrier, or ticket agent to have a tariff, publish the tariff, or adhere to the tariff.

Respectfully submitted,  
/s/  
Benjamin Edelman