



U.S. Department
of Transportation

Bureau of
Transportation Statistics

400 Seventh St., S.W.
Washington, D.C. 20590

May 25, 1999

CERTIFIED MAIL/RETURN RECEIPT

Ms. Judith Richards Hope
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U.S. DEPARTMENT OF TRANSPORTATION

Dear Ms. Hope:

Re: Docket BTS-99-5684

This letter is in response to Trans States Airlines' (TSA) petition for review of the May 3, 1999, staff action requesting copies of the ticket lift documents (and supporting information) for three cities on two days of March 1999. This petition for review was submitted on May 13, 1999, pursuant to 14 C.F.R. § 385.31.

BACKGROUND

On May 3, 1999, after prior telephone conversations with senior management of TSA, the Office of Airline Information (OAI) issued a letter requesting the carrier to provide "... a complete day's ticket coupon lifts and the lifted travel document for passengers traveling on electronic tickets (if the complete passenger itinerary is not available on the travel document for electronic tickets, please supply the electronic ticket record)." The request included three cities for two days in March 1999, from among the numerous cities (a total of fifty-one) and a total of ninety days of quarterly data. In addition, the passenger boarding counts for the corresponding cities and days were requested. This request was submitted in order to obtain information necessary to determine the state of TSA's compliance with its responsibility under the regulations in 14 CFR Part 241, Section 19-7, Attachment A, Paragraph VIII "Control of Sample Selection and Data Recording." The information request was made pursuant to 14 C.F.R. § 385.19(e) of the DOT regulations.

This written request followed an April 29, 1999, telephone conversation between Mr. Robert Wigmore of TSA and Mr. Stephen Smith of OAI, regarding TSA's fourth quarter 1998 O&D Survey and the apparent under-reporting of ticket coupons identifying TSA as the operating carrier compared to the carrier's T-100 market passengers.¹ Mr. Smith

¹ Mr. Robert Wigmore is a member of the board of directors of Trans States. All references to Mr. Wigmore in this response apply to Mr. Robert Wigmore and not to Mr. Gerald Wigmore, Vice President of Finance of Trans States.

reported that an analysis comparing all Survey coupons containing TSA as the operating carrier, reported by all airlines, indicated apparent under-reporting. Mr. Robert Wigmore was told that, when all TSA operated coupons (reported by all carriers) were compared to T-100 market passengers, a short-fall of up to 30 -40 percent was found in its East Coast and West Coast city-pairs and approximately 20 percent in its Mid-West city-pairs. Mr. Smith noted that the lack of comparability, contrary to previous quarterly comparisons, coincided with a reduction in the percentage of TSA reported coupons (relative to T-100 passengers) and the introduction of some new Survey preparation methods by the carrier. OAI did not know if the lack of industry-wide comprehensiveness might be due to a change in TSA reporting or due to under-reporting by its code-share partners. In order to evaluate the reporting responsibility relationships copies of all lifted tickets were necessary, and were requested. Mr. Robert Wigmore of TSA did state that the carrier did not retain copies of lifted ticket coupons and would have to acquire the copies from the issuing carriers.

PLEADINGS

In its petition for review, TSA offers several arguments why it believes the staff information request is deficient, arbitrary and contrary to DOT policy. Specifically, TSA asserts that:

1. The staff action should be reviewed because it is substantially deficient on its face, providing no reasonable explanation for its findings that *TSA* (emphasis added) under-reported passengers. It is the subject of entrapment in that "OAI's *refusal* (emphasis added) to divulge the basis for its purported findings smacks of an attempt to "catch" (original emphasis) TSA in a problem rather than work with TSA to rectify any concerns."
2. The request for first quarter 1999 ticket lift information does not fall within the quarter at issue and thus, the action arbitrarily imposes a measure that is not rationally designed to address any purported under-counting. "The Staff Action directive thus bears no relation to its finding and is unjustified according to 14 C.F.R. 385.19(e)." Previous information requests by OAI staff have not identified flaws in the TSA's reporting system.
3. The information request raises a substantial and important question of policy. TSA claims that the O&D Survey as implemented, the reporting requirement – and the unreasonable burdens imposed by directives such as the staff action – strain the resources of small carriers such as TSA and threatens their ability to compete and that this is contrary to the DOT's mandate to foster and encourage legitimate competition (63 Fed. Reg. 17919 (April 10, 1998) and the O&D Survey's original intended supporting purpose (49 Fed. Reg. 14298 (April 11, 1984)).
4. TSA responded to the Staff Action by providing certain relevant information as an attachment to the petition.

FINDINGS

1. OAI's May 3, 1999, letter requesting copies of the ticket lift documentation states that it noticed a 20 – 40% under-reporting in various TSA markets after it examined TSA's fourth quarter O&D Survey report. The written request was preceded with a telephone conversation to Mr. Robert Wigmore of TSA explaining that the 20 – 40% under-reporting also included the ticket coupons reported by all other O&D Survey carriers. The letter does not state that TSA was responsible for the under-reporting. However, the percentage of TSA' reported fourth quarter coupons compared to its T-100 passengers did fall to 40% system-wide compared to 60 and 80% in the third and second quarters, respectively, and was a source of concern. In the phone conversation preceding the request Mr. Robert Wigmore stated that other TSA's code-share partners were also responsible for some reporting of TSA operated coupons and that non-partners should be reporting TSA coupons, though without identifying it as the operating carrier. Fully aware of these facts, Mr. Smith told Mr. Wigmore that part of the reason of the request was to understand the complex code-share relationships and determine the relative reporting responsibilities of all the code-share partners and other carriers. The officer was told that the "general rule of thumb" used to evaluate regional carriers might not be applicable to TSA, especially to its East and West Coast operations. The letter requesting the ticket lift information did not request TSA to address or solve any issue or problem.

Information requests made by the Director under 14 C.F.R. § 385.19(e) are made routinely under an OAI determination that the requested information is needed for the performance of its responsibilities. TSA's suggestion that OAI is attempting to entrap the carrier is contrary to the voluminous record of TSA's continued inadequate O&D processing and editing, and the resultant inaccurate reporting by TSA. OAI has made continuous and repeated efforts to seek corrections and systematic remediation of the carrier's inaccurate reporting procedures over the last three years. Regarding TSA's assertion that there was a refusal on the part of OAI to divulge the basis for a finding, OAI notes that it has not received any communications from TSA, or from any agent of TSA acting on its behalf, that requested further clarification or substantiation of OAI's request, between the time of the request and the time of the filing of the Petition.

2. While the OAI staff continued to have reservations concerning the TSA O&D Survey report for the fourth quarter, OAI sought the requested information in an effort to better understand the reporting responsibilities between TSA and its code-share partners and other interline carriers. This was conveyed to Mr. Robert Wigmore in the phone conversation preceding the request. At the same time, Mr. Smith noted that OAI also may further evaluate the reporting of the carrier's partners.

OAI also sought information from the first quarter of 1999 to correspond with and evaluate the effectiveness of TSA first full quarterly filing using its newly implemented O&D procedures. Repeatedly, in letters, phone conversations, and in a meeting, the

TSA management mentioned problems with new information sources and TSA's replacement of the manual Survey data entry activity in the fourth quarter with its new Survey data system.

Prior to the phone conversation preceding the written information request, OAI knew of TSA's potential non-compliance with the statutory record retention requirements. During the preceding phone conversation the senior TSA officer stated to Mr. Smith that TSA did not retain copies of the lifted flight documents and would have to obtain them from the issuing carriers. For these reasons, OAI sought copies of ticket lift documents in limited markets from the most recent quarter (for soon to be delivered O&D data) and from the latest month of that quarter, in an attempt to minimize the burden and delay for both TSA and the issuing carriers.

In support of its assertion that OAI has not found reporting problems through previous information requests, TSA cites, as an example, the only information request in the last three years that has not assisted in the identification of a reporting problem.²

Prior OAI information requests have proved very helpful in identifying processing and editing problems at TSA. For instance, with specific information requested from TSA, and brought by the three TSA managers to the meeting with OAI, the source of some significant and repetitive reporting errors was identified within five minutes. An earlier information request that initially was declined by TSA, because TSA considered the request to be "unwarranted" and beyond their capability, once provided, enabled OAI to identify problems in missing data – as subsequently acknowledged by TSA.³ Similarly, verbal requests of the carrier to check problem areas throughout the last three years have always, though not necessarily immediately, identified a need for corrected reporting.

3. The Origin and Destination Survey has been collected and reported by the certificated carrier segment of the US scheduled airline industry for more that fifty years as required by statute as a condition of holding a Section 401 Certificate. Numerous carriers operating smaller aircraft and with less revenue than TSA have consistently and accurately reported the Survey over these years – well before the common availability of computers. TSA is far from the smallest and far from the least profitable of the O&D Survey reporting carriers. TSA hardly bears an unusual or disproportionate or unique reporting burden arising from the O&D reporting requirements, a burden that it undertook to assume as a condition for holding a 401 Certificate.

² Specifically, the March 10, 1999 request for additional Survey support data for the third quarter of 1998, as described in Exhibit C of the Petition.

³ A January 27, 1999, verbal request of the carrier to conduct its own analysis of a situation was determined by Trans States to be "unwarranted" and beyond their capability (TSA letter of February 10, 1999). Selected information was requested by OAI and once provided, OAI was able to identify a category of tickets that had been omitted from the Survey. Trans States acknowledged this in a letter of March 5, 1999.

The apparent non-compliance with DOT data retention requirements cannot be the basis upon which a claim of undue burden rests. TSA, in a letter conveying a copy of the Petition to the Director OAI, states that the search times for the tickets, if the carrier retained the documents, could have exceeded 20 person-hours. This estimate by TSA is not, in our view, unduly burdensome even if copying time is added, and OAI cannot understand how such a request may be considered a serious threat to TSA's financial health and business prospects. Further TSA's estimate of 20 person-hours for its response is an action that could be accomplished well within the ten days allotted by OAI. In its O&D Procedural Statement, TSA reports "Consequently, TSA retains copies of the e-tickets in its database for at least three years. TSA also enjoys rapid access upon request to all TWA paper tickets."⁴ The professed retention should account for nearly all of the requested Memphis ticket coupons and more than half of the requested Richmond ticket coupons. OAI, on its part, culled the potential selection to three airports out of 51 and two days out of 90. OAI selected only one city for each type of code-share relationship/geographic region in order to minimize the burden on TSA, although multiple cities for each code-share type and geographic cities would have been more ideal or more informative. Instead, OAI determined to obtain as much insight as possible into the TSA Survey data quality issues from the carefully limited request that was made. In addition, the OAI chose the three cities, because there would likely be a lower percentage of tickets that TSA would have to request from issuing carriers that were not their code-share partners.

TSA is correct in that the O&D Survey supports competition in scheduled airline service. As such, TSA's accurate and timely reporting of the O&D Survey is a contribution to the high level of competition. Inaccurate or missing data diminishes the competition within the industry and, inadequate resources or overdependence on the OAI for correction of reporting places TSA at an advantage over its competitors that fully assume their statutorily stipulated processing and data editing responsibility necessary to ensure accurate reporting, including compliance with special information requests.

4. Passenger coupon information included in its petition (Exhibit B) is purported by TSA to be a substitute for the requested information. The supplied information consists only of revenue data for the single coupon used for travel from Richmond to John F. Kennedy airport. The OAI requested copies of the actual passenger coupons (or electronic ticket equivalent) in order to acquire the entire booked itinerary and the advertised carrier identities on all coupons of the tickets. Only through analysis of this more detailed information will OAI be able to understand the code-share and O&D reporting relationships and responsibilities which TSA requests OAI to consider. The supplied information does not permit OAI the ability to conduct the necessary research to resolve reporting problems.

⁴ Origin and Destination Survey Revised Procedural Statement of Trans States conveyed under March 5, 1999, letter from the carrier's counsel.

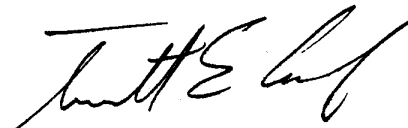
CONCLUSION

Upon consideration of the claims of TSA and the background surrounding the information request, I have determined that there is no basis for reversing my decision to issue the May 3, 1999, information request. The OAI request for data was pertinent and well within the scope of the authority that the Secretary has delegated to OAI to collect the data prescribed in 14 CFR Part 241, and it was clearly related to TSA's responsibility to report accurate Survey data as prescribed in 14 CFR Part 241, Section 19-7. Furthermore, the OAI request was necessary to determine, factually, whether TSA and its partners are fulfilling their data quality obligations under the cited regulation (Part 241.19-7) in a situation where OAI has ample reason to question the reliability of the Survey reporting.

While I agree that the request for information did not explain the intended uses of the ticket documents, you should be aware that TSA's Mr. Robert Wigmore did receive from Mr. Smith, in advance in a telephone conversation, an explanation as to the reasoning behind our request. Even though OAI did not provide an exhaustive rationale for its request, TSA obligation to promptly comply with the request is clear. Determination of the distribution of reporting responsibility through a sampling of ticket lift will assist OAI in understanding the complexities of TSA's code-share relationships and traffic flow and the air carriers in achieving accurate reporting. Further, I do not find the information supplied in a separate letter of May 13, 1999, to be responsive as to the type and scope of information requested.

Therefore, the staff's request for copies of the daily ticket documents (or e-ticket itineraries) of May 3, 1999, is affirmed. As a result, pursuant to 14 C.F.R. 385.53, I am submitting your petition to the Director, Bureau of Transportation Statistics, the Reviewing Official, for consideration. The Director may exercise, or decline, the right to review the affirmation of the staff action.

Sincerely,



Timothy E. Carmody
Director
Office of Airline Information