

BEFORE THE  
DEPARTMENT OF TRANSPORTATION  
WASHINGTON, D.C.

275262

In the Matter of )  
)

NORTHWEST AIRLINES, INC. )  
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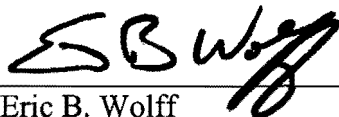
Docket OST-04-16939 -9

Dated: April 5, 2004

**MOTION OF NORTHWEST AIRLINES, INC.**  
**FOR LEAVE TO FILE SUPPLEMENTAL RESPONSE**

The Department requested that Northwest Airlines, Inc. respond to certain allegations and arguments in the complaint and reply of the Electronic Privacy Information Center ("EPIC"). In particular, the Department requested that Northwest Airlines address the reported statements by Northwest Airlines officials in newspaper stories in September 2003. See EPIC ¶¶ 26-27. To respond to the Department's request, Northwest Airlines' hereby moves for leave to file a supplemental response to EPIC's complaint and reply.

Respectfully submitted,



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*Counsel for Northwest Airlines, Inc.*

Dated: April 5, 2004

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**SUPPLEMENTAL RESPONSE OF NORTHWEST AIRLINES, INC.**

EPIC's reply of March 9, 2004, fixates upon reported statements by Northwest Airlines officials from September 2003 news accounts ("September newspaper stories"). See EPIC Reply at 2, 10-11. EPIC now asserts (unlike in its complaint, see EPIC ¶¶ 26-27) that the September newspaper stories contained "false statements" that in some manner harmed "reasonable consumers." EPIC Reply at 10-11. EPIC's contentions plainly do not state a violation of 49 U.S.C. § 41712(a) and are misleading.

**EPIC'S NEW ALLEGATIONS**

In its complaint, EPIC quoted portions of a New York Times story and a St. Paul Pioneer Press story from September 2003, both of which focused upon the disclosure of passenger information by JetBlue Airways and contained statements from Northwest Airlines officials who were asked for comment. See EPIC ¶¶ 26-27. Days before the stories in question, the New York Times on September 19, 2003, had reported that "JetBlue Airways acknowledged publicly today that it had provided a Pentagon contractor with information on more than one million of its passengers ... that data, which was turned over in violation of the airline's own privacy policies, was then used to identify the passengers' Social Security numbers, financial histories and occupations."

Philip Shenon, *Airline Gave Defense Firm Passenger Files*, N.Y. Times, Sept. 19, 2003, at A1. This press account went on to state that the research was not related to aviation security and that the private contractor had “matched the passenger names against a variety of databases that it had purchased from Acxiom, a large consumer research company.” *Id.*

The statements cited in EPIC’s complaint were as follows: “the New York Times published a story regarding JetBlue’s disclosure of passenger data ... [i]n that context, Kurt Ebenhoch, a spokesman for NWA, was quoted as stating ‘We do not provide that type of information to anyone.’” EPIC ¶ 26. In the next paragraph, EPIC alleged that “[o]n September 24, 2003, the St. Paul Pioneer Press published a news brief ... stating that ‘Northwest Airlines will not share customer information as JetBlue Airways has, Northwest CEO Richard Anderson said Tuesday in brief remarks after addressing the St. Paul Rotary.’” EPIC ¶ 27.

In its reply of March 9, 2004, EPIC asserts that the statements in these September newspaper stories were “explicit representations to the public that passenger information would not be (and had not been) disclosed to the government.” EPIC Reply at 10. EPIC further contends that these “public assurances” were “false” because “it was, indeed, NWA’s policy and practice to share passenger information with the government.” *Id.*

## **RESPONSE**

### **I. EPIC Identifies No Consumer Injury From The Statements In The September Newspaper Stories.**

With respect to the passengers in 2001 whose data was shared with NASA, who are the only consumers whom EPIC claims have been injured, the statements reported in the September newspaper stories are completely irrelevant because those statements were

made two years after the fact. Northwest Airlines cooperated with the Ames Research Center starting in December 2001, and the only passenger data transferred to Ames was from 2001. Statements made in September 2003 cannot affect travel decisions in 2001. As explained in its Answer, Northwest Airlines does not believe that any reasonable passenger traveling in the first months after September 11, 2001, would have had the type of privacy expectations EPIC derives from Northwest Airlines' Internet privacy policy. But whatever expectations existed, statements two years later played no part in anyone's expectations in 2001.

The September newspaper stories are likewise irrelevant going forward given that there is no allegation of disclosure of passenger information after the stories appeared. If a reasonable Northwest Airlines' customer happened to read the regional portion of the business section of the September 24, 2003 St. Paul Pioneer Press, and thereby felt assured that Northwest Airlines would not be sharing his or her information with the Ames Research Center, that customer has not been harmed unless his or her passenger information is then disclosed contrary to his or her reasonable expectations. EPIC is not claiming that any such disclosure has occurred, and thus it is unclear how EPIC believes that the September newspaper stories have injured consumers.

**II. EPIC's Depiction Of The Statements In The September Newspaper Stories Is Misleading.**

EPIC's reply unfairly characterizes the statements in the September news accounts. First, EPIC attempts to portray the statements as if they were part of a Northwest Airlines public relations strategy to mislead the public. To the contrary, the statements as reported are simply responses to questions posed by the press regarding the conduct of another airline. The September newspaper stories were not quoting a

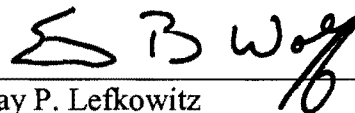
Northwest Airlines' press release, advertisement or any other kind of official statement, and no reasonable reader would consider Northwest Airlines the guarantor of the accuracy of everything reporters and editors place in the nation's newspapers. Moreover, Northwest Airlines acknowledged in a January 18, 2004 press release that the officials asked for comment were not aware of Northwest Airlines' cooperation with NASA when they responded to the press inquiries. A copy of the press release is attached.

Second, EPIC attempts to distort the import of the reported statements by grossly misrepresenting Northwest Airlines' cooperation with the Ames Research Center as part of a "policy or practice to share passenger information with the government." EPIC Reply at 10. The study by the Ames Research Center was not part of a "policy or practice" by Northwest Airlines. Rather, it was a prudent response in the wake of a terrorist attack that even EPIC belatedly concedes "fundamentally changed the way the airline industry operates." EPIC Reply at 2. EPIC does not allege any other disclosure of information or any basis for referring to the Ames study as part of a "policy or practice."

\* \* \* \*

As described above, EPIC's contentions do not state a violation of 49 U.S.C. § 41712(a), and Northwest's statements in 2003 clearly played no part in anyone's expectations in 2001. Accordingly, EPIC's complaint should be dismissed.

Respectfully submitted,



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**Answer of Northwest Airlines, Inc.  
Docket OST-04-16939**

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Dated: April 5, 2004



**NORTHWEST AIRLINES**

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**For Immediate Release**

**NORTHWEST AIRLINES STATEMENT ON MEDIA REPORTS REGARDING  
NASA AVIATION SECURITY RESEARCH STUDY**

ST. PAUL, MINN. – (January 18, 2004) – Various media outlets have reported on Northwest Airlines’ participation in a National Aeronautics and Space Administration (NASA) aviation security research study. In response to these reports, Northwest Airlines released the following statement:

“In the aftermath of the September 11, 2001 tragedy, NASA had discussions with Northwest Airlines’ Security Department regarding a NASA research study to improve aviation security. In December 2001, NASA requested that Northwest’s Security Department provide it with passenger name record data from the period July, August, and September 2001 for NASA’s exclusive use in its research study. Northwest Airlines agreed to provide that data.

On September 23, 2003, after a speech to the St. Paul (Minn.) Rotary Club, Richard Anderson, Northwest Airlines chief executive officer, responded to a reporter’s question regarding JetBlue Airway’s release of passenger data to a private contractor. He said, “Northwest Airlines will not share customer information, as JetBlue Airways has.”

At the time Mr. Anderson answered this question, he had no knowledge of the Northwest Security Department’s provision of passenger data for the NASA research study.

On the previous day, a Northwest spokesperson was asked questions on the same topic. When the spokesperson answered those questions, he also had no knowledge of the Security Department’s role in the NASA study.

On September 26 2003, Northwest Airlines CEO was advised of the Security Department’s provision of passenger data to NASA.

The NASA research study has been discontinued and the passenger data has been returned to Northwest Airlines.

Northwest believes that it was appropriate to provide data directly to NASA for a research study designed to improve aviation security. In the immediate aftermath of

September 11, 2001, the federal government was searching for technological solutions to improve aviation security and it was the responsibility of the airline industry to cooperate with these efforts.

By providing the passenger name record data directly to NASA, a federal agency with its own strict privacy protections, Northwest acted appropriately and consistent with its own privacy policy and all applicable federal laws.

Northwest Airlines' current policy is to not provide passenger name record data to private contractors or federal government agencies for use in aviation security research projects. While Northwest Airlines still believes it would be appropriate to provide such data to the U.S. Government to advance aviation security, in light of current privacy concerns, Northwest believes a data protection protocol addressing privacy concerns should be developed before any further aviation security research with passenger data is conducted."

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For more information pertaining to Northwest, media inquiries can be directed to Northwest Media Relations at (612) 726-2331 or to Northwest's Web site at [www.nwa.com](http://www.nwa.com).



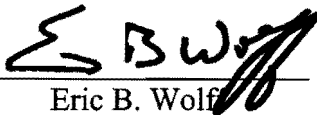
**CERTIFICATE OF SERVICE**

I hereby certify that on this day I served a copy of the foregoing Motion and Supplemental Response of Northwest Airlines, Inc. by Federal Express on the following persons:

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April 5, 2004