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AMERICAN AIRLINES, INC.,

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IN THE JUDICIAL DISTRICT OF

Plaintiff,

v.

TARRANT COUNTY, TEXAS

GOGO LLC, f/k/a AIRCELL LLC,

Defendant.

_____ JUDICIAL DISTRICT

PLAINTIFF’S ORIGINAL PETITION

Plaintiff American Airlines, Inc., by and through its counsel, files this Original Petition against defendant Gogo LLC, and respectfully alleges as follows:

Nature of the Action

1. This is an action to declare the parties’ rights and obligations under a contract for the provision of in-flight WiFi services on certain American aircraft.

2. Defendant is the largest supplier of in-flight WiFi services, controlling about 80% of the market and providing internet connectivity to passengers on more than 9,000 aircraft. To preserve its legacy system of “air-to-ground” WiFi services, which use ground-based cellular towers to connect airline passengers to the internet, Gogo is refusing to honor a 2012 agreement that authorizes American to notify Gogo of competitors that offer connectivity services that materially improve on Gogo’s air-to-ground system. Under the contract, once notified, Gogo may match or exceed the competitor’s offering by submitting a new proposal to American. If it chooses not to do so, or if American reasonably determines that Gogo’s proposal is less favorable than the competitor’s, American may terminate the agreement.

3. In accordance with the contract, American has notified Gogo of the changed technology and competitive landscape. Alternative service providers are offering faster, more reliable, and less expensive satellite-based WiFi services to airlines like United, Southwest,

JetBlue, and Virgin America. Providing superior WiFi options to passengers is critical, as American competes for travelers who increasingly demand a WiFi experience in the air that is on par with their wired internet connections at home or work, including the ability to stream music and movies on smartphones, tablets, and a host of other WiFi-enabled devices.

4. Regrettably, Gogo refuses to acknowledge American's rights. Gogo refuses to acknowledge or accept American's notice letter under the Agreement. American has no choice but to seek a declaration under the contract that the conditions required for it to provide notice as to certain American aircraft have been satisfied.

Discovery Level

5. Discovery should be done under a Level 2 plan, pursuant to Tex. R. Civ. P. 190.3.

Parties

6. American is a Delaware corporation with its worldwide headquarters in this County, at 4333 Amon Carter Boulevard, Fort Worth, Texas 76155.

7. Defendant Gogo LLC, f/k/a Aircell LLC is a Delaware limited liability company with offices located at 111 N. Canal St., Chicago, Illinois 60606. Its ultimate owner, Gogo Inc., is a Delaware corporation based in Illinois.

Jurisdiction and Venue

8. The Court has subject matter jurisdiction over the case. The amount in controversy is within the jurisdictional limits of the Court and exceeds \$1 million.

9. The Court has personal jurisdiction over defendant. Gogo conducts substantial business in this County and State, including its performance of contracts between the parties.

10. Venue is proper here, pursuant to Tex. Civ. Prac. & Rem. Code §15.002. All or a substantial part of the events or omissions giving rise to American's claim occurred here.

Facts Giving Rise to this Action

11. American is one of the world's leading airlines, serving 273 cities in 51 countries and territories, with more than 3,500 daily departures in over 950 aircraft.

12. In the past almost 80 years, American has developed global brand and goodwill. To preserve and enhance its reputation as a world-class provider of safe, modern, comfortable, and connected flight services to business and leisure travelers, American is continually investing in its business to meet and exceed its customers' needs and to compete with other airlines. As part of this effort, American is making a \$2 billion investment in its customer experience, with renovated airport terminals and lounges, fast and efficient ticketing kiosks, improved in-flight entertainment, and 500 new planes equipped with WiFi, power outlets, and more spacious and comfortable interiors.

13. In recent years, airlines like American have sought to improve the passenger experience and stand out from competitors by providing in-flight WiFi services. Originally, passengers on commercial aircraft had few, if any, in-flight entertainment and connectivity options. By 2008, Gogo developed a propriety network of ground-based cellular towers and plane-mounted antenna systems enabling aircraft to offer in-flight connectivity to passengers using their own WiFi-enabled devices, such as laptops or Blackberry cellphones.

14. Gogo's "air-to-ground" system was and remains limited. Access to WiFi is not available to passengers below 10,000 feet or over oceans, and only 3Mbps of bandwidth (or 10Mbps for its second-generation air-to-ground system) is available. This limited capacity is shared by all passengers using the service on a given flight, so the more passengers using the service, the slower and less reliable it becomes. With few passengers carrying WiFi-enabled devices at the time, and with typical internet activities limited to email, light web browsing, and

other activities requiring minimal bandwidth, Gogo's air-to-ground service was adopted by American and other airlines operating domestic routes in the U.S.

15. American partnered with Gogo (then known as Aircell) to provide in-flight internet connectivity services to passengers, using Gogo's existing air-to-ground system. Under the In Flight Connectivity Services Agreement, as amended and restated in 2012 ("Agreement"), Gogo agreed to provide the necessary equipment and offer internet connectivity on specific American aircraft.

16. As set forth in the Agreement, the services were designed to enable customers to perform certain low-bandwidth internet activities. Gogo provided a bandwidth guarantee, along with other service commitments as to connection performance and availability. Gogo generates revenues by charging passengers directly for internet access, which can vary from \$10 to nearly \$30 per trip, depending on the route, demand, and other factors. It sets the price for its services and shares a portion of its connectivity revenues with American.

17. The Agreement expires after a set term, unless terminated earlier according to its terms. The parties recognized that changes in technology and the competitive landscape for in-flight connectivity services required that American have the option to renegotiate the Agreement, and terminate it prior to the expiration of its term, if an in-flight connectivity provider other than Gogo began offering a better service.

18. Accordingly, the parties agreed that, after a certain number of years, American has the right to notify Gogo that another provider is offering connectivity services that materially improve upon Gogo's air-to-ground system. Following receipt of this notice, Gogo has the chance to submit a new proposal to American, to match or exceed the competitor's offering. The Agreement also sets forth the parties' rights and obligations concerning its potential amendment

or termination. In short, if American reasonably determines that Gogo's new proposal is the same or better as the competitor's offering, the Agreement would be amended on agreed upon terms. If American reasonably determines that Gogo's proposal is not as favorable, American may elect to terminate the agreement.

19. These terms allow American to be competitive in a rapidly changing marketplace. It faces constant pressure from competitors to implement and improve its customer amenities, on the ground and in the air. Indeed, over the decades, American has itself driven key innovations in air travel. Now, in just a few short years, advances in travel-related technology and services have resulted in more comfortable and fuel-efficient airplanes, improved cabin hardware, and more varied in-flight dining options. Passengers have a wealth of travel options. An airline's focus on customer-facing technologies and services can mean the difference between a ticket sold or not. This is especially true for in-flight WiFi, where the speed of network technology innovations results in multiple technology cycles and necessary upgrades over the life of an aircraft.

20. Changes to in-flight WiFi technology and customer preferences have been swift. A decade ago, few airline passengers carried WiFi-enabled devices or engaged in bandwidth-intensive activities. After Apple's release of the iPhone in 2007, over 70% of U.S. consumers now own a WiFi-enabled smartphone – some 170 million people – including the vast majority of airline passengers. Portable, WiFi-enabled tablet devices also have become commonplace on aircraft. At the same time, U.S. households are switching from slow, dial-up home internet service to faster, broadband internet from providers.

21. These technology changes occurred in parallel with profound changes in how customers experience the internet. In 2007, Netflix offered its video streaming service, allowing customers to watch television and movies instantly. Today, video content can be streamed from

countless websites. As a result, it is projected that by 2017 internet users will consume more than 50,000 petabytes of video per month, or four times as much streaming data as was used in 2012.

22. This has profoundly impacted the airline industry, where customers increasingly demand an in-flight WiFi experience with speeds and reliability comparable to what they get at home. A recent survey by Honeywell revealed that in-flight WiFi availability is crucial to airline customers, affecting the flight-selection decisions of 66% of passengers. The survey found that nearly one in five customers have switched from a preferred airline to another carrier because of better WiFi offerings. And a study by the Airline Passenger Experience Association found that improved in-flight passenger connectivity is second only to upgraded seating in terms of most-desired improvements by airline customers. As digital data usage has soared in recent years, customers are demanding a quality broadband experience in the sky. As a result of this surging demand and limited capacity, more and more competitors to Gogo are entering the market, like Panasonic, Thales, ViaSat, and Global Eagle.

23. In contrast with Gogo's legacy air-to-ground system that uses cell towers, many of these new competitors offer faster and cheaper in-flight connectivity services using satellite-based technology. Whereas Gogo's system provides 3 Mbps (or at most, 10 Mbps) of bandwidth shared among all users on a flight, and blocks most video content, these new satellite-based services offer 12 Mbps per device—more than enough for passengers to stream music, movies, and television. Also, with antennas facing up to satellites, instead of down to cell towers, these competitors can offer gate-to-gate WiFi access for customers, even over oceans.

24. Gogo's top executive recognizes that an "air-to-ground solution by itself is no longer competitive," going forward "a high percentage of planes will be satellite," and "getting more bandwidth to planes is transformative." In promoting its second-generation satellite system,

called 2Ku, he says that Gogo's legacy air-to-ground system is "congested" and "not going to produce enough capacity to really help the leisure traveler." He agrees that competitive WiFi services are critical to airlines like American, in terms of attracting and retaining travelers: "as soon as another airline is stealing your best business customers because they have the connectivity and you don't, then everybody has to react."

25. Gogo's new competitors offer much more favorable pricing and business models for airline customers. Whereas Gogo sets the price of its services for passengers and shares revenue with airlines, competitors like ViaSat and Global Eagle are paid by airlines, the same way that airlines pay other vendors, for fuel, catering, and other services. This means that airlines can decide how much in-flight connectivity services will cost for passengers, if anything. At present, ViaSat is installed and in commercial operation on aircraft operated by United, Jet Blue, and Virgin America. Global Eagle's "Row44" satellite-based WiFi service is installed on more than 75% of Southwest Airlines' fleet.

26. After carefully evaluating the new technology and services in the marketplace, American has decided to exercise its rights under the Agreement and recently notified Gogo that ViaSat offers an in-flight connectivity system that materially improves on Gogo's air-to-ground system. Contrary to the Agreement and the facts, however, Gogo has rejected American's technology notice and disputes American's contractual rights.

27. A real and substantial controversy now exists between the parties over whether American's notice to Gogo under the Agreement, that ViaSat offers a service that materially improves upon Gogo's air-to-ground system, is consistent with the Agreement.

**Cause of Action
(Declaratory Judgment)**

28. The material facts alleged above are incorporated here by reference.

29. This action is brought pursuant to Tex. Civ. Prac. & Rem. Code §37.004, which states that a person “interested under a [written contract] or whose rights, status or other legal relations are affected by a [contract] may have determined any question of construction or validity arising under the [contract] and obtain a declaration of rights, status or other legal relations thereunder.”

30. There is a real and substantial judicable controversy between the parties over their respective rights and obligations under the Agreement.

31. Accordingly, American seeks a judicial determination declaring that the conditions set forth in §13.5.2 of the Agreement for American to provide notice to Gogo of a competitor offering a materially improved service are present and have occurred; and Gogo’s rejection of American’s notice is without basis under the Agreement.

32. American is entitled to recover its costs and reasonable and necessary attorney fees, pursuant to Tex. Civ. Prac. & Rem. Code §37.009 and Tex. R. Civ. P. 131.

Conditions Precedent

33. All conditions precedent to this claim have been fully performed, have occurred, or been waived.

Prayer for Relief

For these reasons, plaintiff American Airlines, Inc. respectfully requests judgment against defendant, after trial or final hearing, as follows:

- a. a declaration that the conditions set forth in §13.5.2 of the Third Amended and Restated In Flight Connectivity Services Agreement for American to provide notice to Gogo of a competitor offering a materially improved service are present or have occurred; and Gogo's rejection of American's notice is without basis under the Agreement;
- b. plaintiff's reasonable and necessary attorney fees;
- c. plaintiff's costs and expenses; and
- d. all other and additional relief to which plaintiff may show itself to be justly entitled, whether at law or in equity.

Respectfully submitted,

YETTER COLEMAN LLP

By:  _____

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