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DYNAMIC PRICING AND MINIMUM LENGTH OF STAY CONTROLS AS A HOTEL MANAGEMENT PRACTICE: ARE THERE CUSTOMER PERCEPTION, ETHICAL, AND LEGAL QUESTIONS?

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Dynamic Pricing and Minimum Length of Stay Controls as a Hotel Management Practice: Are There Customer Perception, Ethical, and Legal Questions?

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ABSTRACT. Length of stay controls and dynamic pricing are components of revenue management tools widely used in the lodging industry. Length of stay controls require guests to stay for a minimum number of nights, even if they might wish to stay for only one night. Dynamic pricing characterized by high room rates and length of stay controls are common when hotel demand is strong for a specific event, such as a college graduation, natural disasters and emergencies, New Year's Eve festivities, July 4 fireworks and concerts, or a major sporting event. While implemented to boost revenue, the combination of dynamic pricing and length of stay controls can raise ethical, legal, and fairness questions that can lead to adverse impacts on hotels. Dynamic pricing may be legal or illegal, depending on state law and the circumstances. Length of stay controls may also be legal or prohibited depending on the state. The authors suggest some alternatives that will allow hoteliers to comply with existing statutes and case law and navigate ethical, legal, and fairness questions.

INTRODUCTION

Hotel revenue management systems have become increasingly more sophisticated in recent years as hotel operators strive to increase occupancy rates, revenues, and profits. Rate and length of stay continue to be key factors in revenue management (Choi & Kimes, 2002). In the hospitality industry, revenue management has been a key operational strategy to maximize revenues by utilizing both pricing (e.g., dynamic pricing, rate fences) and non-pricing (e.g., overbookings, minimum length of stay control) revenue management system tools (Ivanov, 2014; Kimes, 2002).

Length of stay controls (minimum length of stay requirements) require guests to stay for a minimum number of nights, even if they might wish to stay for only one night (Wilson, 2001). Length of stay controls and significant rate increases are common when hotel demand is strong for a specific event, for example, a college graduation, New Year's Eve festivities, July 4 fireworks and concerts, or a major sporting event. Guests are required to book two or more nights even if they may only wish to stay for one night, while also paying substantially increased rates for the room.

Consumers and news outlets continue to express dissatisfaction at the apparent unfairness of some hotel rate setting and length of stay practices. In this article, we will examine the reservation practices of the top 5 U.S. hotel companies for some of their hotels in New York, San Francisco, and Orlando during the busy New Year's Eve time period to examine whether they have chosen to implement length of stay controls. We will then discuss whether those practices comply with existing state and federal case law and state statutes. We then study existing state price gouging statutes and investigate whether the current rate setting practices by hotel companies during periods of high demand are

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Color versions of one or more of the figures in the article can be found online at www.tandfonline.com/uhfm.

TABLE 1. Top U.S. Hotel Companies by U.S. Market Share

Major Hotel Companies	
Company	**Market Share**
Hilton Hotels Corporation	14.00%
Marriott International Inc.	13.30%
InterContinental Hotels	8.80%
Starwood Hotels & Resorts Worldwide Inc.	4.90%
Wyndham Worldwide Corporation	4.10%
Ramada	–
RCI	–
Fairfield Communities	–
Super 8 Motels	–
Travelodge	–

Source: IBISWORLD.COM.

legal, involve ethical questions, and/or result in negative customer perception. Possible alternatives to the existing use of length of stay controls and fairness perceptions are suggested.

Length of Stay Controls as Part of a Revenue Management System and Practice

Length of stay controls are now commonly used in the lodging industry and are identified as one of the unique features of hotel revenue management systems (Chiang, Chen, & Xu, 2007). Length of stay controls refers to setting limits on the minimum and, rarely, maximum number of nights in customer bookings depending upon demand (Ivanov & Zhechev, 2012). Past studies emphasized that length of stay controls are a key non-pricing revenue management system tool for hotels to maximize their revenue and build effective revenue management systems (Choi & Kimes, 2002; Walls, 2013). Weatherford (1995) suggested that incorporating a length of stay control policy into hotel revenue management systems allowed hotels to obtain an additional 2.94% in revenues.

Paralee Walls, in her hospitality blog, states that the "use of length of stay controls during high-demand periods enables you to control customer demand, plan for the future, and maximize revenue. Minimum length of stay (controls) can be used at any hotel where there will be a period of high demand (a string of busy nights) followed by a period of low demand. By implementing a rule to accept longer-duration reservations and reject shorter-duration reservations for arrival during a hot period, you can fine-tune demand during hot times to increase occupancy during the slow period that follows" (Walls, 2013).

Our Length of Stay Controls Survey

While length of stay controls and their use are widely discussed among industry consultants, academics, and guests, we were not able to locate any academic studies that actually document their use. We wanted to conduct a brief survey to determine whether some of the top hotel chains were using length of stay controls in some of their hotels, along with high rates, during peak demand time periods in major cities. After determining whether length of stay controls and high dynamic pricing models are being used, we will discuss their legality, perceived fairness, and ethics.

Study Components

During the New Year's Eve period in 2012, we studied five top hotel companies in the three top U.S. tourism states, a time period characterized by high price and strong demand.

Choice of New Year's Eve. We chose one common time period of peak hotel demand and rates, New Year's Eve: December 30 and 31, 2012, and January 1 and 2, 2013. We chose a common time period of peak demand and peak rates in order to be able to compare the practices.

Top U. S. Tourism States. We chose to limit our study to the three top tourism states in the United States: California, New York, and Florida, according to IBISWorld industry report written by Brennan (2013) (Table 1).

Choice of Cities. We then studied three cities listed as the top 10 domestic destinations that also hosted major celebrations during New Year's Eve during 2013 and were located within the top three tourism states. The cities chosen were New York City, Orlando, and San Francisco (Table 2).

Top U. S. Hotel Companies. The top hotel chains in the United States based on market share revenues are Hilton Hotel Corporation, Marriott International Inc., InterContinental

TABLE 2. Top 10 States for Tourism

Top 10 Lists			
By Spending	**By Tax**	**By Employment**	**By Travelers (IBISWORLD.COM 2103 Report)**
California	California	California	California
Florida	New York	Florida	Florida
New York	Florida	Texas	New York
Texas	Texas	New York	Texas
Illinois	Illinois	Nevada	Illinois
Nevada	Georgia	Illinois	Nevada
Pennsylvania	Nevada	Virginia	New Jersey
Virginia	New Jersey	Pennsylvania	Pennsylvania
New Jersey	Pennsylvania	New Jersey	Hawaii
Hawaii	Minnesota	Ohio	Georgia

Note. **Original Source:** U.S. Travel Association (2011). Summarized and reproduced based on an industry report made by TravelEffect.com.

Hotels, Starwood Hotels & Resorts Worldwide Inc., and Wyndham Worldwide (Table 1). Together the four accounted for an estimated 45.1% of U.S. industry revenue. We were trying to determine whether any of the brands of the major companies might be using length of stay controls (Table 3).

We went to the websites for different properties within the five top hotel companies and did a separate search for rooms available during the New Year's Eve time period by city for in New York City, Orlando, and San Francisco. The study was somewhat random in that we did not include all brands for each company. The study was not meant to determine whether specific brands did or did not implement length of stay controls, simply to get information to determine whether length of stay controls were being used by some hotel companies in some of their hotels in the cities chosen.

TABLE 3. Top Domestic Destinations

Rank	City	State
1	Las Vegas	NV
2	New York City	NY
3	Orlando	FL
4	San Diego	CA
5	Los Angeles	CA
6	Chicago	IL
7	San Francisco	CA
8	Washington	DC
9	Houston	TX
10	San Antonio	TX

Results of Hotel Survey

A review of Table 4 indicates that length of stay controls are used in each of the three cities studied by some, but not all, of the brands of the major companies that we studied. A more detailed study would be necessary to show exactly which hotels within each brand were/were not using length of stay controls.

New York City. New York City is known around the world as one of the best (and most expensive) places to celebrate New Year's Eve, drawing millions of people, either in person and watching on TV, to celebrate the new year by watching the dropping of the ball at midnight in Times Square. And hotel demand and rates soar during that time period. Our study examined Hilton, Marriott, InterContinental, Starwood (Sheraton), and Wyndham (Ramada) hotel properties located near Times Square to see whether those hotels implemented length of stay controls.

During October 2013, we attempted to make a hotel reservation at each of these hotels for the evening of December 31, 2013, New Year's Eve, with a departure date of January 1, 2014. We wanted to see whether we could make a reservation for just one night on New Year's Eve during a time of heavy demand.

All of the hotel websites we searched indicated that no rooms were available for a one-night visit, except for one Ramada hotel. We wanted to then determine whether the

TABLE 4. Hotel Use of Length of Stay Controls

City	State	Hotel Company	Hotel	Availability	Rate	Availability	Rate[1]	Availability	Rate[1]
San Francisco	CA	Hilton	Hilton San Francisco Union Square	No	–	Yes	199	Yes	199
			Hilton San Francisco Financial District	Yes	274	Yes	255	Yes	227
			Hilton San Francisco Fisherman's Wharf	No	–	No	–	No	–
		Marriott	JW Marriott San Francisco Union Square	No	–	Yes	329	Yes	349
			The Ritz-Carlton, San Francisco	No	–	Yes	369	Yes	369
			The Ritz-Carlton, Half Moon Bay	Yes	545	Yes	495	Yes	465
		InterContinental	Intercontinental: San Francisco	Yes	351	Yes	248	Yes	219
			Intercontinental: Mark Hopkins San Francisco	Yes	333	Yes	243	Yes	216
		Sheraton	Sheraton Fisherman's Wharf Hotel	Yes	299	Yes	179	Yes	226
			Sheraton Palo Alto Hotel	Yes	119	Yes	119	Yes	119
			Sheraton Pleasanton Hotel	Yes	99	Yes	96	Yes	100
		Ramada	Ramada Limited San Francisco Airport North	Yes	102	Yes	93	Yes	92
			Ramada Limited San Bruno/San Francisco Airport West	Yes	99	Yes	109	Yes	109
Orlando	FL	Hilton	Hilton Orlando Bonnet Creek	No	–	Yes	219	Yes	219
			Hilton Orlando Lake Buena Vista	Yes	229	Yes	229	Yes	229
			Parc Soleil Suites by Hilton Grand Vacations	Yes	151	Yes	249	No	–
			Hilton Orlando/Altamonte Springs	Yes	118	Yes	118	Yes	118
			Hilton Orlando	Yes	139	Yes	139	Yes	144
		Marriott	The Ritz-Carlton Orlando, Grande Lakes	No	–	Yes	469	Yes	439
			JW Marriott Orlando Grande Lakes	No	–	Yes	269	Yes	269
		InterContinental	Crowne Plaza: Orland Downtown	No		Yes	173	Yes	172.3
		Sheraton	Walt Disney World Dolphin	No		No		No	
			Sheraton Lake Buena Vista Resort	No		No		Yes	143
			Sheraton Vistana Resort Villas, Lake Buena Vista/Orlando	Yes	359	No	–	No	No
		Ramada	Ramada Kissimmee Maingate West	Yes	91.2	Yes	91.2	Yes	121.7
			Ramada Kissimmee Gateway	Yes	99	Yes	99	Yes	99
			Ramada Orlando Near Convention Center	Yes	119	Yes	119	Yes	119
			Ramada Plaza Resort and Suites Orlando International Drive	Yes	849.15	Yes	849.2	Yes	585.9
New York City	NY	Hilton	Hilton Times Square	No	–	Yes	719	Yes	854
			New York Hilton Midtown	No	–	Yes	529	Yes	429
			Hilton Club New York	No	–	No	–	No	–
			West 57th Street by Hilton Club	No	–	No	–	Yes	1099
		Marriott	JW Marriott Essex House New York	No	–	No	–	Yes	269
			The Ritz-Carlton New York, Central Park	No	–	Yes	1345	Yes	945
			The Ritz-Carlton New York, Battery Park	No	–	Yes	745	Yes	525
		InterContinental	Intercontinental: New York Times Square	No	–	No	–	No	–
			Intercontinental: New York Barclay	No	–	No	–	No	–
		Sheraton	Sheraton New York Times Square Hotel	No	–	Yes	587	Yes	484
			Sheraton Lincoln Harbor Hotel	No	–	No	–	Yes	329
			Sheraton Tribeca New York Hotel	No	–	Yes	359	Yes	317

(*continued*)

TABLE 4. (*Continued*)

City	State	Hotel Company	Hotel	Availability	Rate	Availability	Rate[1]	Availability	Rate[1]
		Ramada	Ramada Plaza New Yorker Hotel	Yes	629	Yes	539	Yes	407
			Ramada New York/Eastside	No	–	No	–	No	–
			Ramada Long Island City	No	–	No	–	No	–
San Antonio	TX	Hilton	Hilton Palacio del Rio	No	–	No	–	No	–
			Hilton San Antonio Airport	Yes	129	Yes	99	Yes	99
		Marriott	JW Marriott San Antonio Hill Country Resort & Spa	Yes	209	Yes	209	Yes	209
		InterContinental	Staybridge Suites: San Antonio Downtown Conv CTR	No	–	No	–	No	–
			Staybridge Suites: San Antonio-Airport	Yes	118.15	Yes	118.2	Yes	118.2
		Sheraton	Sheraton Gunter Hotel San Antonio	Yes	219	Yes	219	Yes	235
			The Westin Riverwalk, San Antonio	Yes	295	Yes	248	Yes	275
		Ramada	Wyndham San Antonio Riverwalk	Yes	123.67	Yes	140.3	Yes	132.3
			The St Anthony Riverwalk Wyndham Hotel	No	–	Yes	143.7	Yes	143.7
			Wyndham Garden San Antonio Riverwalk/Museum Reach	No	–	No	–	No	–
Las Vegas	NV	Hilton	Hilton Grand Vacations Suites at the Flamingo	No	–	No	–	No	–
			Elara, a Hilton Grand Vacations Hotel-Center Strip	No	–	No	–	Yes	269
			Hilton Grand Vacations Suites on the Las Vegas Strip	No	–	No	–	No	–
			Hilton Grand Vacations Suites – Las Vegas	No	–	No	–	No	–
		Marriott	JW Marriott Las Vegas Resort & Spa	No	–	Yes	229	Yes	194
		InterContinental	INTERCONTINENTAL ALLIANCE RESORTS: THE PALAZZO	Yes	529	Yes	399	Yes	319
			INTERCONTINENTAL ALLIANCE RESORTS: THE VENETIAN	Yes	579	Yes	399	Yes	319
		Sheraton	The Westin Las Vegas Hotel, Casino & Spa[2]	No	–	Yes	289	Yes	229
			Element Las Vegas Summerlin[2]	Yes	119	Yes	119	Yes	136
			The Westin Lake Las Vegas Resort & Spa[2]	No	–	Yes	139	Yes	135
Boston	MA	Ramada	No Hotels in Las Vegas	NA				NA	
		Hilton	Hilton Boston Downtown/Faneuil Hall	Yes	309	Yes	143	Yes	143
			Quick Look Hilton Boston Back Bay	Yes	249	Yes	159	Yes	159
			Hilton Boston Logan Airport	Yes	219	Yes	139	Yes	179
		Marriott	The Ritz-Carlton, Boston Common	Yes	495	Yes	475	Yes	475
		InterContinental	InterContinental, Boston	Yes	451	Yes	328.5	Yes	306
		Sheraton	Sheraton Boston Hotel	Yes	177	Yes	162	Yes	158
			Sheraton Commander Hotel	Yes	199	Yes	159	Yes	179
			Sheraton Needham Hotel	Yes	161	Yes	134	Yes	144
		Ramada	Ramada Boston	Yes	101.15	Yes	101.2	Yes	95.2

[1] *Note.* Average Rate.
[2] We added the Westin Hotel instead of the Sheraton Hotel since there is no Sheraton property in NV and thus the Sheraton official website showed the Westin as the Starwood brand hotel when we tried to book a room.

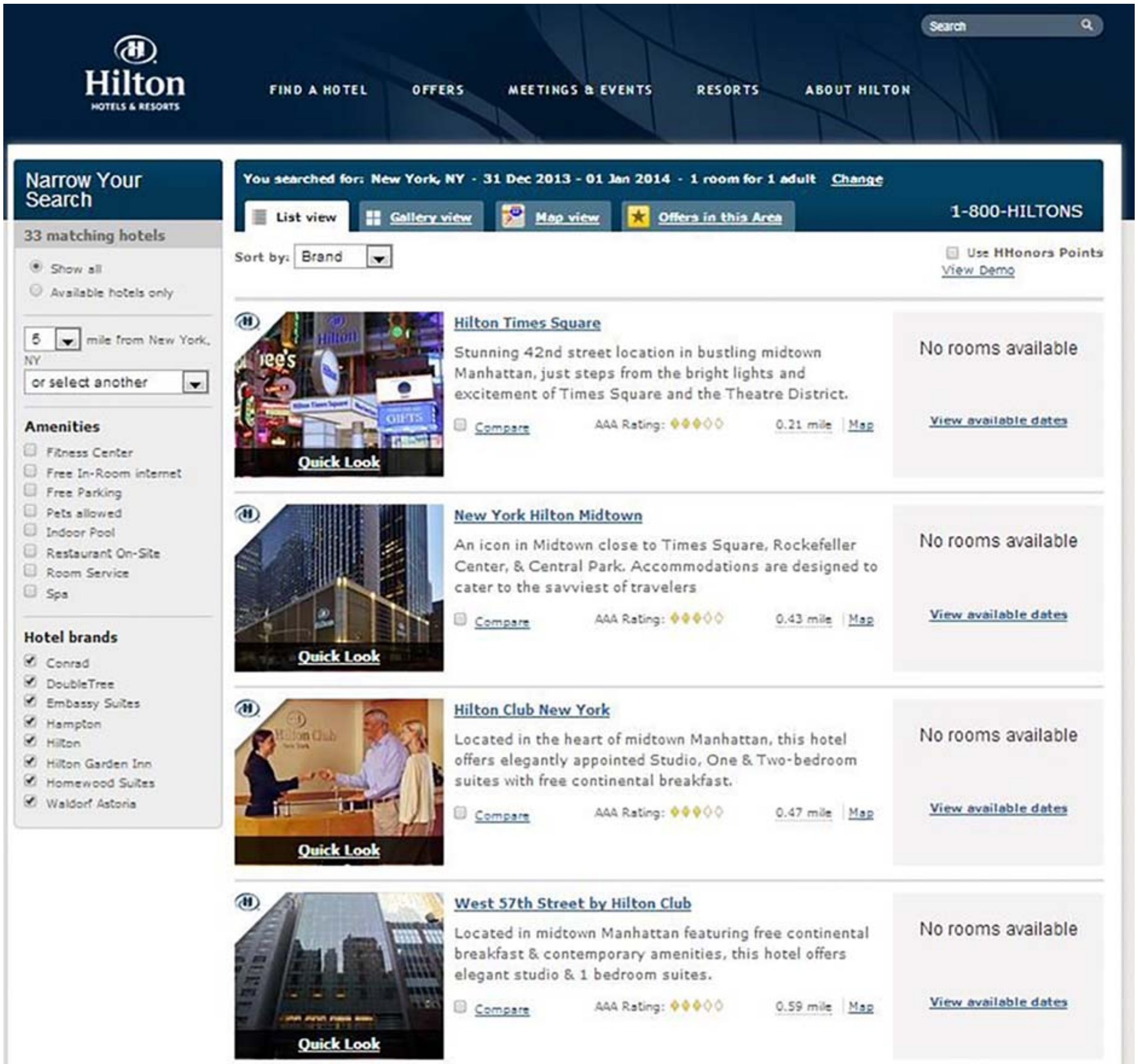

FIGURE 1. 1 Screen shot of Hilton Reservation Page December 31, 2013, January 1 and 2, 2014. 1-night stay from December 31, 2013 to January 1, 2014.

hotels that indicated that there were no rooms available were really sold out or if they had rooms available on December 31, but only if we were willing to book for two or three nights. We then tried to make a reservation arriving on December 30 and departing on either January 1 or January 2, a stay of two or three nights. Some had rooms available for the evening of December 31 if we were willing to book for two nights, and more had rooms available if we were willing to book for three nights, a clear indication that these hotels had implemented length of stay controls.

Table 4 reflects that some of the hotels had implemented length of stay controls that prevented a guest from reserving a room for just one night on December 31, but did allow the guest to stay on December 31 if they booked for a total of at least two nights.

In order to verify and preserve our results and because the controls and rates constantly change, we obtained screen shots of all of the

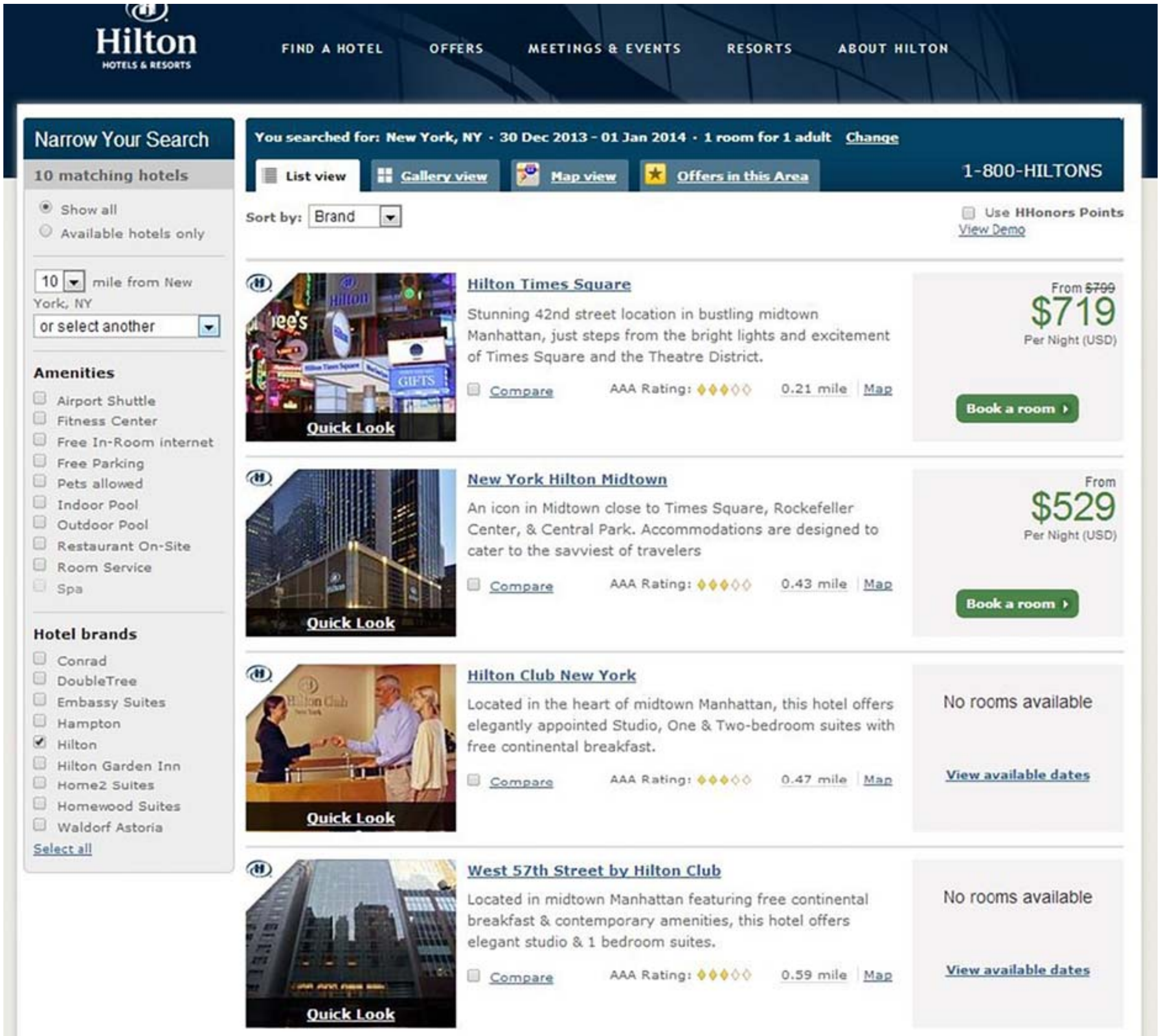

FIGURE 2. 2-night stay from December 30, 2013 to January 1, 2014.

hotel website reservation page results for the dates, cities, and hotels studied. As an example, the screen shots at the Hilton Times Square, New York, shows no rooms available for the one night of December 31, 2013 (New Year's Eve), but shows rooms being available at the same hotel if we booked for two or three nights (Figures 1, 2, and 3).

Orlando. In Orlando, we did exactly as we did in New York, attempting to make a reservation just for the evening of December 31, a one-night stay, at the same hotel chains and properties. And our results were similar to what we found in New York.

No rooms were available for a stay on just December 31 at some of the Hilton, Marriott, InterContinental, and Sheraton hotels we surveyed. We were able to make reservations at most of the same hotels for the evening of December 31 if we booked for a stay of at least two nights that included January 1 and/or January 2, 2014, indicating that length of stay controls were in place. Ramada hotels in Orlando did not have length of stay controls

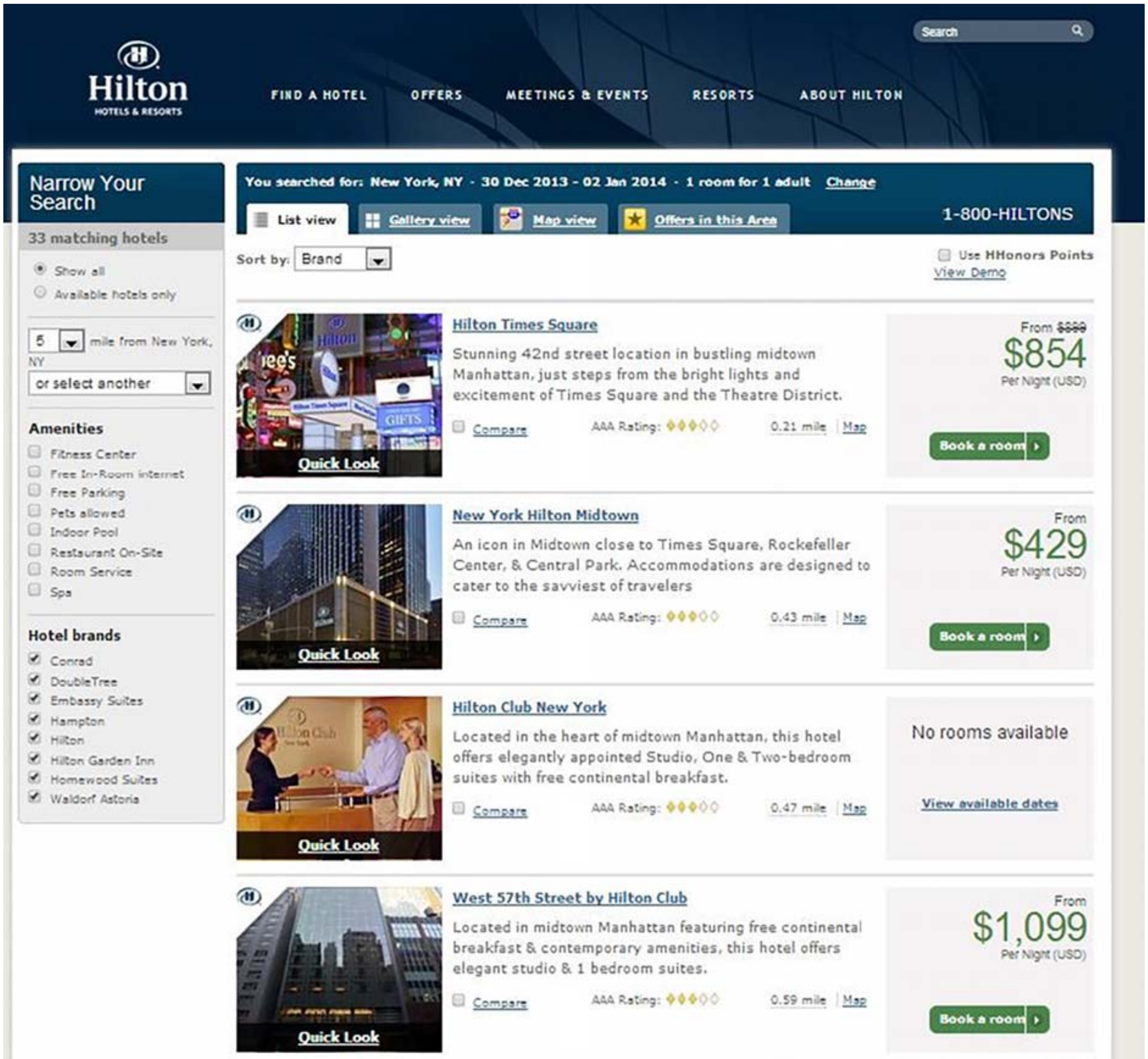

FIGURE 3. 3-night stay from December 30, 2013 to January 2, 2014.

in place and allowed reservations for the desired one night of December 31.

San Francisco. In San Francisco, a similar pattern was evident. At the hotels studied, Marriott and Hilton had length of stay controls that prevented a guest from making a reservation for just December 31, but both allowed the guest to make a reservation for December 31 if the guest was willing to arrive on December 30 for a two-day length of stay. The InterContinental, Sheraton, and Ramada hotels that we studied did not have length of stay controls in San Francisco for the evening of December 31, allowing for a one-night stay.

Discussion of Survey Results

Most travelers are aware that hotels, airlines, and transportation companies make use of different forms of dynamic pricing models during high-demand periods. Each hotel company forecasts demand for their properties that differs from one property to another and from one brand to another, even within the same city, resulting in the use of dynamic pricing to set rates and decisions to implement or not implement length of stay controls.

As expected, some hotel companies maintained length of stay controls, while others did not, even for the same time period, within the same city. Some hotel companies maintained length of stay controls in some cities, but not others. Our review was not meant to be exhaustive and did not attempt to determine whether specific hotel companies, brands, or properties did or did not engage in length of stay controls, but generally, to determine whether length of stay controls are used at certain times by some hotel companies at some properties. These results allow us to frame our discussion of customer perceptions and legal issues relating to rates and length of stay controls and dynamic pricing.

The Legal Obligation to Provide a Room

The duty of innkeepers to serve the public established in the English common law included a range of "duties" innkeepers owed the public generally and guests in particular. Included in these duties are both the "duty to admit the public" and the "duty to refrain from discrimination" (Sherry, 1993, p. 39, p. 43). The famous 1701 English case *Lane v. Cotton*, cited in many United States Supreme Court cases, includes the widely quoted language of Lord Holt:

> If an innkeeper refuses to entertain a guest where his house is not full, an action will lie against him. (Lane v. Cotton, 1701, p. 1464).

The English common law duty to provide a room is followed today in many of our state and federal courts. The United States Supreme Court continues to state that innkeepers have a duty to serve the general public and are subject to state regulation. The 1876 case of *Munn v. Illinois* relied on *Lane v. Cotton* when it recognized the duty of innkeepers (among other types of businesses serving the public) to serve all guests, while also determining that that:

> … it has been customary in England from time immemorial, and in this country from its first colonization, to regulate ferries, common carriers, hackmen, bakers, millers, wharfingers, innkeepers… (*Munn v. Illinois*, 1876, p. 26).

In the 1962 United States Supreme Court case, Justice William Douglas stated, in a concurring opinion:

> As stated by Holt, C. J., in *Lane* v. *Cotton*, 12 Mod. 472, 484 (1701): "If an innkeeper refuse to entertain a guest where his house is not full, an action will lie against him …" (*Lombard v. Louisiana*, 1962, p. 277).

State Case Law and Statutes: California, Florida, and New York

California Case Law and Statutes. California classifies innkeepers as common carriers with a duty to serve all who request service, subject to reasonable regulations, as established under California's criminal law, dating back to 1872, but still valid today.

Innkeepers and carriers refusing to receive guests and passengers. Every person, and every agent or officer of any corporation carrying on business as an innkeeper, or as a common carrier of passengers, who refuses, without just cause or excuse, to receive and entertain any guest, or to receive and carry any passenger, is guilty of a misdemeanor (California Penal Code §365, 1872).

Under California law, misdemeanors carry a possible sentence of up to six months in a county jail or a fine of up to $1000 dollars or both (California Penal Code §19, 2013).

California courts have continued to uphold and enforce the duty of innkeepers to provide a room. In an older case, *Willis v. McMahon*, the California Supreme Court found that an innkeeper who refuses accommodations without just cause is not only liable in damages but is guilty of a misdemeanor (*Willis v. McMahon*, 1891, p. 650). In a more recent 1950 California Court of Appeals case, the court stated, "At common law innkeepers were under a duty to furnish accommodations to all persons in the absence of some reasonable grounds" (*Perrine v. Paulos*, 1950, p. 656). In a 1977 California Court of Appeals ruling, the court again confirms the innkeeper's obligation: "In fact, an innkeeper who refuses accommodations without just cause (such as inability to pay, infectious disease, or the like) is not only civilly liable but is guilty of a misdemeanor" (Archibald v. Cinerama Hawaiian Hotels, Inc., 1977, p. 599).

While there are no reported cases involving guests suing hotel companies because of length of stay controls, the statutory and case law continues to be the law of the land in California and would apply if such a suit were brought.

New York Case Law and Statutes. New York statutory and case law follows the English common law doctrine of including innkeepers as common carriers who owe a duty to provide accommodations to travelers in the absence of a reasonable basis for refusing lodging. Like California, New York treats an innkeeper's unlawful refusal of accommodations to a guest as a criminal misdemeanor. The New York criminal code provides as follows:

Innkeepers and carriers refusing to receive guests and passengers. A person, who, either on his own account or as agent or officer of a corporation, carries on business as innkeeper, or as common carrier of passengers, and refuses, without just cause or excuse, to receive and entertain any guest, or to receive and carry any passenger, is guilty of a misdemeanor NY CLS Civ R §40-e (2013)

New York courts continue to follow the common law and statutes: "At common law, a person engaged in a public calling, such as innkeeper or common carrier, was held to be under a duty to the general public and was obliged to serve … all who sought service" (*Madden v. Queens County Jockey Club, Inc.*, 1947, p. 253) In a more recent case involving this question, a 1988 New York Supreme Court reiterated its support for the common law rule when it cited the 1908 case of *De Wolf v. Ford*, stating that for "centuries it has been settled in all jurisdictions where the common law prevails, the business of an innkeeper is of a quasi public character. [He] impliedly invites the public to his establishment [and] is bound * * * to accept as guests all proper persons so long as he has room for them" (*Ness v. Pan American World Airways et al.*, 1988, p. 374). While there are no reported cases involving guests being denied a room because of length of stay controls, the statutory and case law continues to be the law of the land in New York and would apply if such a suit were brought today.

Florida Case Law and Statutes. Of the top three states for tourism included in our study, Florida does not follow the common law duty requiring an innkeeper to admit all guests requesting a room. In 1957, Florida abrogated the innkeepers' common law duty to receive guests (Peirsol, 1962).

Florida has enacted Florida Statutes Section 509.092 classifying the the owners of public lodging establishments as private enterprises giving them the prerogative to deny a room to a guest as long as the denial is not discriminatory in nature (Florida Statutes Section 509.092 n.d.).

Public lodging establishments and public food service establishments; rights as private enterprises. Public lodging establishments and public food service establishments are private enterprises, and the operator has the right to refuse accommodations or service to any person who is objectionable or undesirable to the operator, but such refusal may not be based upon race, creed, color, sex, physical disability, or national origin. A person aggrieved by a violation of this section or a violation of a rule adopted under this section has a right of action pursuant to s. 760.11.

The Florida statute does allow length of stay controls.

Conclusions as to the Legality of Length of Stay Controls in California, New York, and Florida

Based on case and statutory law, length of stay controls are illegal in California and New York, but legal in Florida.

Limitations and Additional Questions Needing Further Study

There are no reported cases involving questions regarding the duty to admit a guest or involving length of stay controls. The lack of litigation should not be taken to mean that the practice is lawful or unlawful or whether it is considered ethical or fair by guests. Cases of first impression are frequently filed, and the court must decide based on prior case law, common law, and statutes. Existing statutes in California and New York are still valid; they are old and there is no case law on them, but on their face they appear to outlaw length of stay controls.

Almost all guest visits at hotels occur without a problem and almost all guests have no reason to contemplate legal actions. Guests are reluctant to sue hotels in cases that do not involve personal injury, as they are very costly and difficult to pursue. The guest is likely to live a great distance from the hotel and litigation would normally need to be filed in the state where the hotel is located. The amount of damages recoverable is usually relatively small. When the guest discovers the significant up-front cost of legal fees and the fact that legal fees cannot be recovered from the hotel, most practical people will decide not to pursue a legal claim. While most states do have small claims courts available to handle suits of small amounts (usually between $1,000 and $10,000), the guest would still have take the time and expense to travel to the small claims court in the city or county where the hotel is located. The result is that even though the hotel may have violated the law, most individual guests will choose not to pursue any legal action against the hotel for what appears to be a relatively small amount of damages.

The statutes and case law also do not answer the question of whether the duty to provide a room is met when a guest who wishes to book for one night only is told by the hotel that a room is available for that night but only with a minimum length of stay. The authors believe that the duty to provide a room is not met by offering a room but requiring a miniumum length of stay.

It should be noted that each state may choose to regulate or not regulate hotels and their duty to admit guests. As a result, hoteliers should consult local counsel to determine the specific law in each state where they conduct business.

Dynamic Pricing

In a recent MIT technology review article (Surowiecki, 2014) discussing the Uber transportation company's pricing model, James Surowiecki states that "dynamic pricing is a way for companies to maximize profits by exploiting demand—charging higher prices to people who can and will pay more." As MIT professor Yossi Sheffi has put it, it's the "science of squeezing every possible dollar from customers." That's because most industries that use dynamic pricing have a limited inventory (an airline flight has a set number of seats, a hotel a set number of rooms) and are trying to make as much money from selling that inventory as possible.

"At the heart of revenue management systems is changing rates and price based upon demand. When unconstrained demand exists, a hotel can choose the customers willing to pay the most" (Kimes, 2010). "Dynamic pricing involves changing prices over time in response to demand uncertainty (usually, you decrease your price in an attempt to stimulate demand, or increase prices in response to strong demand)" (Kimes & Anderson, 2011).

Using dynamic pricing results in significant price changes over a range of time periods. In an article by Carter Wilson, director of STR analytics, price ranges for a set of Times Square New York hotels during an 18-month period leading up to (and shortly after) New Year's Eve 2011, "the average daily rate (ADR) performance of the Times Square hotel sample ranged from a low of $169 (February 5, 2012) to a high of $443 (New Year's Eve 2011)" (Wilson, 2012).

When Dynamic Pricing Becomes Price Gouging

Hotel guests and government agencies sometimes question the legality and ethical practices of dynamic pricing models used by hotels when they drastically increase their nightly rates during times of natural disasters and popular events and at other times of high room demand. In a 2012 study, 34 states were found to have anti–price gouging statutes that prohibit certain types of pricing during, and immediately after, certain types of events (Giberson, 2012). A review of these statutes indicates some similarities within the statutes. Most carry a monetary penalty per violation and most are enforceable by state attorneys general. Some allow for private individual suits. While the definition of price gouging differs among the state statutes, all of the statutes limit price gouging violations to periods of declared states of emergency or during periods of natural disasters. The types of business that are regulated by these statutes include "consumer goods and services," "essential commodities," "petroleum products," "services needed by victims of disasters," etc. Many of the statutes apply to hotels, while some clearly do not. (See http://apps.americanbar.org/antitrust/at-committees/at-fe/pdf/programs/spring-06/price-gouging-statutes.pdf)

Examples of Illegal Hotel Price Gouging

During and immediately after Hurricane Sandy in 2012, public outrage was directed at some businesses and hotels for the high rates that were charged. Several hotels and businesses were sued and paid fines pursuant to violations of state price gouging statutes (See Beekman, 2013; O'Neill, 2013; Cassi, 2014; Booth, 2012).

While the existing price gouging statutes are enforceable during the defined types of natural disasters and emergencies discussed above, revenue management dynamic pricing models are not currently regulated if there is no natural disaster or declared state of emergency falling within the definitions created by the statutes.

When Dynamic Pricing Is Legal

Consumer Outrage and Perceptions of Unfairness at High Hotel Prices. Notwithstanding the definition of illegal price gouging, consumers and news outlets are sometimes outraged by what they consider to be excessive pricing and minimum length of stay requirements by hotels during non-natural disaster periods of high demand for hotel rooms. They question the unfairness, ethics, and legality of the high prices. The hotels and others claim that their rates and minimum lengths of stay are legal and ethical and are based on simple supply and demand and dynamic pricing models. They further argue that their hotel rooms are a perishable product and that they lower prices during low demand and raise prices during high demand. But to many consumers, a perception of unfairness and "price gouging" is evident. It should be noted that consumer outrage over high hotel prices is often combined with similar outrage over minimum length of stay controls:

> "Hotels near race tracks often jack their prices up three to four times the normal rate on race weekends—and many require three-night minimum stays, turning fans away who only want to spend one night and see the race" (RacingWin, 2012).

> "The three-night minimum prompted an email to Buffett from shareholder Christopher Bloomstran of St. Louis, whose stay at the Old Market Embassy Suites, one of the most popular hotels for the meeting, will cost $1,414.38, including taxes, even though he can stay only two nights because he's squeezing the trip between a business meeting and a child's sports event" (Jordon & Epley, 2014).

> "The Boar's Head Inn, for example, charges $411 per night with a three-night minimum stay during graduation weekend. The rate, which includes breakfast for two, is between 50% and 80% higher than its normal weekend rate (McNeill, 2010).

> "Because some hotel rooms in downtown Indianapolis, if you can find them on the black market, are renting for more than $4,000 a night, with a four-night minimum stay" (Manahan, 2012).

The dynamic pricing model of setting of rates based on demand is a basic and critical element of most revenue management systems, and the practices do appear to be legal and do not appear to violate the price gouging statutes.

Questions of Perceived Customer Fairness

Because consumers and news organizations appear to be so concerned regarding pricing and length of stay controls and they tend to be used simultaneously by hotels, questions of perceived customer fairness and ethical questions are raised, and these perceptions may affect future business. While the statutes define price gouging only during the specified periods of natural disaster and declared emergency, consumers and others often define price gouging in a more subjective way. While making the argument that there was no price gouging after Hurricane Sandy in the group of hotels studied, Carter Wilson (supra) also mentions that "Price gouging is generally used to describe pricing above what is considered fair." (Wilson, 2012)

Unfairness and Ethical Considerations

Viewed from the traditional economic model of supply and demand, length of stay controls and other revenue management techniques are legitimate strategies for maximizing revenue by increasing or decreasing prices as hotels experience commensurate increases or decreases in demand for rooms. As a matter of social policy, laws prohibiting price gouging during natural disasters and other declared emergencies are one limitation imposed on the hotel industry (and others) to prevent businesses from unfairly capitalizing on such tragedies. However, while the law places such limitations on hotels under these kinds of limited circumstances, customers see a wider range of pricing practices as unfair and therefore unethical.

In 2002, Kimes noted that most customers accept the economic "principle of dual entitlement." That is, they accept the proposition that as customers they are entitled to pay a fair price and businesses are entitled to earn a fair profit. On its face, that sounds straightforward enough. In reality, garnering consensus on what is fair can be quite difficult. As Kimes (2002) noted: "Customers generally view justified price differences (or differences they perceive to be justified) as fair, but they view unjustified price increases to be unfair." To move from such general propositions to a greater degree of specificity, Kimes examined which types of practices customers found to be acceptable (i.e., fair) as opposed to unacceptable (i.e., unfair) when employing revenue management strategies for the sale of hotel rooms.

- Acceptable revenue management practices
  - Pricing information (including different pricing options) is made available to customers
  - Customers receive substantial discounts in exchange for restrictions or limitations to the terms of their reservation
  - Different products or packages are sold at different price points, such as different weekday and weekend prices or packages that include some meals, spa treatments, or other amenities
- Unacceptable revenue management practices
  - Discounts that are insufficient in light of the restrictions or limitations placed on the terms of the reservation
  - Changing the terms and conditions of the booking process or reservation without appropriately informing the customer

Consequences of Perceived Customer Fairness/Unfairness

Negative reactions by customers who feel that they have been treated unfairly and therefore unethically do have consequences for the business. Kimes (2010) suggested that customers believe that if a company behaves in an unfair fashion, they are not likely to patronize that company in the future. On the other hand, when customers consider hotel revenue management practices as fair, they are more likely to be satisfied with the hotel and tend to return to that hotel in the future (Taylor & Kimes, 2010).

Many studies have been completed dealing with the perception by customers of unfair treatment by businesses and the negative consequences that result. If customers view a firm's practices as unfair, negative consumer responses are likely. Immediate attitudinal and affective responses include dissatisfaction

(Oliver & Swan, 1989), lower purchase intentions (Campbell, 1999), and negative word-of-mouth intentions (Blodgett, Granbois, & Walters, 1993; Blodgett, Hill, & Tax, 1997; Noone, 2012). Short-term gains through revenue management may be offset by a negative impact on longer-term profitability (Wirtz & Kimes, 2007). More recently, Lee and Jeong (2015) demonstrated that customers consider hotel length of stay control practices as unfair, such perceived unfairness leading to an increase in negative word-of-mouth intentions and a decrease in willingness to book.

Suggestions to Stay Within the Law, Avoid Lawsuits, and Improve Customer Perception

Eliminate Length of Stay Controls in the States Where Length of Stay Controls Are Determined to Be a Possible Legal Issue. The choice would be unpopular for hotels, as they would probably lose revenue. They would, however, be complying with the laws of their particular state. The management decisision would be based on a state-by-state analysis to determine whether the state stautues allow or do not allow length of stay controls. If the practice is lawful in a particular state, transparency and explanations to customers would improve negative perceptions of unfairness.

Combine the Elimination a Required Length of Stay Controls With Sizeable Increase in the Rates for the Specific Nights of High Demand. If a guest chooses to stay for just one night, they would pay an extremely high rate, but they would be able to stay for just one night. The hotel would be complying with existing statutory and case law and might be able to realize a similar amount of revenue. While the guest might be upset by paying a very high rate for that one night, they would be able to stay for only the time desired.

Give Guests a Choice Between High Rates for a One-Night Stay or Lower Rates That Also Include a Voluntary Minimum Length of Stay by Implementing Full Pattern Length of Stay Controls. Airline companies have, in the past, given flyers a choice between paying a high price or offering a lower price if they choose to stay in a city for a Saturday and Sunday. Let the guest decide whether they wish to increase the duration of their stay (and pay less per night) or pay a high rate to stay just during the desired time. "Full pattern length of stay controls allow a hotel to accept a discount rate up to a peak period, say one- and two-night lengths of stay, not allowing stays at this discount rate for the peak, but then again open up this discount rate for longer lengths of stay, thus improving occupancy on the shoulder days and increasing overall revenues. In addition, hotels incur incremental variable costs that cause a multiple-night reservation to generate more profits than single-night reservations at the same rate (Wilson, 2015).

a. Table 4 indicates that some hotel companies may already be following this suggestion and giving their guests a choice: paying a high rate for a stay on just December 31 or having a lower rate for a two- or three-night minimum stay.
b. Increase the length of stay time requirements even further to give the guests an additional option to bring down the average nightly cost. A longer length of stay might provide the hotel with the additional revenue while lowering the average nightly cost.

Disclose on Marketing and Online Sites That the Hotel Has a Minimum Length of Stay Requirement and Attempt to Explain to the Consumer the Rationale for the Policy. Consumers' perceptions usually show that consumers react more positively when information is transparent and provided.

Disclose in the Terms and Conditions (Part of All Online Hotel Reservations) That the Hotel Has Minimum Length of Stay Requirements So That the Guest Is Aware of the Policy and Agrees to the Length of Stay Controls. Assent by the guest to a practice will tend to minimize the chances that a guest will later complain, litigate, or be successful in litigation.

Require the Guest to Agree to a Choice of Forum Provision and a Choice of Law Provision in Guest Terms and Conditions. Require that all suits be filed in and use the state law of a state that allows length of stay controls.

Increase Hotel and Industry Disclosure and Transparency on the Subject of Pricing and Length of Stay Controls as a Way to Provide More Transparency and Improve Customer Perceptions. Have professional associations attempt to influence the change of state legislation to allow the use of length of stay controls.

Conclusion and Implications for Lodging Companies

Based on our survey of the most popular cities and states for tourism and lodging, it is clear that the use of length of stay controls and dynamic pricing are implemented by some, but not all, companies during periods of high demand. These length of stay controls require a minimum stay of at least two nights and prevent a potential guest from booking a stay for only one night. Of the three states studied, California and New York follow the common law and each have statutes that require a hotel to provide a room to a guest who requests one if there is a room available. The authors conclude that hotel companies in these states violate the law by imposing length of stay controls. The third state studied, Florida, does not follow the common law and has passed a legislation that allows a hotel to implement length of stay controls.

Thirty-four states have legislation outlawing price gouging during defined periods of natural disaster or declared emergency. Hotels are not restricted in their pricing power during times other than those defined natural disasters and declared emergencies.

Evidence of consumer dissatisfaction and perceived unfairness continues to exist against the use of high dyanmic pricing and minimum length of stay requirements during periods of high room demand and may result in negative consequences for the hotels.

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