

**BEFORE THE  
U.S. DEPARTMENT OF JUSTICE AND THE  
U.S. DEPARTMENT OF TRANSPORTATION  
DISTRICT OF COLUMBIA**

---

**Request for Information**

**Docket No. ATR 103**

---

**COMMENTS OF THE AMERICAN ECONOMIC LIBERTIES PROJECT, CONSUMER  
ACTION, CONSUMER FEDERATION OF AMERICA, FLYERSRIGHTS, THE  
NATIONAL CONSUMERS LEAGUE, AND TRAVELERS UNITED**

**REGARDING**

**THE STATUS OF COMPETITION IN THE AIR TRANSPORTATION INDUSTRY**

**JANUARY 7, 2025**

## Contents

<b>I. Summary.....</b>	<b>1</b>
<b>II. Background .....</b>	<b>1</b>
<b>III. Consolidation, Anticompetitive Practices, and Non-Competition in Air Travel .....</b>	<b>3</b>
<b>IV. Consolidation and Anticompetitive Practices Harm Consumers.....</b>	<b>7</b>
<b>V. Consolidation and Anticompetitive Practices Threaten the Availability of Air Travel</b>	<b>12</b>
<b>VI. Consolidation and Anticompetitive Practices Harm Workers .....</b>	<b>15</b>
<b>VII. Actions the U.S. Government Has Taken to Improve Competition and the Air Travel Industry.....</b>	<b>16</b>
<b>VIII. Actions the U.S. Government Should Take to Improve Competition and the Air Travel Industry .....</b>	<b>17</b>
<b>IX. Conclusion .....</b>	<b>24</b>
<b>Appendix.....</b>	<b>25</b>

## I. Summary

The undersigned consumer and passenger rights advocacy organizations (“consumer advocates” or “consumer commenters”)<sup>1</sup> support the U.S. Department of Justice (“DOJ”) and U.S. Department of Transportation’s (“DOT”) statutory mandate of ensuring healthy marketplace competition in the air transportation industry. Unfortunately, marketplace participants have consolidated significantly over the past several decades and employed numerous anti-competitive practices, to the detriment of passengers and workers.

The resulting consumer harms affect price, safety, and data privacy. Similar harms affect employees who receive less-than-competitive compensation and unsafe working environments. Anticompetitive conduct has also harmed the availability of air travel and stunted infrastructure investments.

There are several actions the DOJ and DOT should take to reinvigorate competition in the aviation industry, such as implementing delay compensation requirements, mandating rebooking reciprocity, protecting existing price-transparency measures, establishing a floor for basic services included in airfares, closing the excise tax loophole, and limiting data collection. However, there are significant issues plaguing the industry that competition alone cannot fix.

Maintaining a healthy air transportation sector that works for the flying public will require additional reforms, like empowering state attorneys general to enforce consumer protection law, implementing restrictions on the use of public funds, staffing oversight positions with dedicated public servants, enacting a universal service obligation for aviation, implementing better geographic access programs, and requiring worker, consumer, and regional representation on carrier governance boards.

## II. Background

When President Jimmy Carter signed the Airline Deregulation Act of 1978 (“ADA”), he stated that the law will facilitate further competition in the industry, ultimately benefiting consumers.<sup>2</sup> The ADA itself declares that the government shall place “maximum reliance on competitive market forces and on actual and potential competition” in addition to avoiding “unreasonable industry concentration, excessive market domination, and monopoly power.”<sup>3</sup> The Deregulation Act sought to prohibit conditions “that would tend to allow one or more air carriers unreasonably to increase prices, reduce services, or exclude competition in air transportation.” Despite these

---

<sup>1</sup> See appendix on page 25 for more information.

<sup>2</sup> “Remarks on Signing Into Law the Airline Deregulation Act of 1978,” *The American Presidency Project*. <https://www.presidency.ucsb.edu/documents/remarks-signing-into-law-the-airline-deregulation-act-1978>

<sup>3</sup> “Airline Deregulation Act of 1978,” *Library of Congress*, October 24, 1978. <https://www.congress.gov/bill/95th-congress/senate-bill/2493/text>

laudable goals, the air travel industry has consolidated dramatically, with fewer major firms competing today than before the ADA became law.<sup>4</sup>

Airlines have touted deregulation as necessary to deliver benefits to consumers. They have claimed that these benefits are not possible without the robust competition that deregulation was supposed to facilitate. However, in the four decades since deregulation, carriers have taken innumerable opportunities to *reduce* competition with each other, consolidating control over routes and regions, facing lawsuits over price fixing agreements, and making comparison shopping extremely difficult for the average consumer.

Almost immediately after the ADA became law, the DOJ identified over 50 separate price fixing agreements among six domestic carriers covering hundreds of airline routes, with the ability to increase fares for consumers by billions of dollars.<sup>5</sup> In the early 2000's, 21 international airlines were involved in a price-fixing scheme resulting in billions of dollars in fines and criminal charges against corporate executives.<sup>6</sup> In 2015, the DOJ investigated price fixing and capacity discipline among American carriers. Soon after, class action lawsuits on the same issue resulted in settlements with American Airlines and Southwest Airlines, and ongoing litigation with Delta Air Lines and United Airlines.<sup>7</sup>

And in just the past two years, carriers were found to be in violation of competition law in two different court cases. A U.S. district court, affirmed by an appellate court, found that the illegal Northeast Alliance “led to decreased capacity, lower frequencies, or reduced consumer choices on multiple routes, including some that are heavily traveled.”<sup>8</sup> Another U.S. district court found that a proposed merger between JetBlue Airways and Spirit Airlines was illegal, citing that the deal would “likely result in less competition to both discipline the prices and spur the innovation of JetBlue.”<sup>9</sup>

---

<sup>4</sup> “How the ‘big five’ airlines came to dominate the skies,” *Axios*, December 8, 2023.

<https://www.axios.com/2023/12/08/airline-mergers-us-airline-industry>

<sup>5</sup> “Justice Department Settles Airlines Price Fixing Suit, May Save Consumers Hundreds of Millions of Dollars,” *U.S. Department of Justice*, March 17, 1994.

[https://www.justice.gov/archive/atr/public/press\\_releases/1994/211786.htm](https://www.justice.gov/archive/atr/public/press_releases/1994/211786.htm)

<sup>6</sup> “21 airlines fined in price-fixing scheme,” *NBC News*, March 5, 2011.

<https://www.nbcnews.com/id/wbna41926712>

<sup>7</sup> “Delta, United must face class action over US airfares,” *Reuters*, September 13, 2023.

<https://www.reuters.com/legal/delta-united-must-face-class-action-over-us-airfares-2023-09-13/>

<sup>8</sup> “US, et al v. American Airlines Group Inc.” *U.S. Government Publishing Office*, November 8, 2024.

<https://www.govinfo.gov/app/details/USCOURTS-ca1-23-01802/summary>

<sup>9</sup> “United States of America et al v. JetBlue Airways Corporation et al,” *U.S. Government Publishing Office*, January 16, 2024. [https://www.govinfo.gov/app/details/USCOURTS-mad-1\\_23-cv-10511/USCOURTS-mad-1\\_23-cv-10511-0/summary](https://www.govinfo.gov/app/details/USCOURTS-mad-1_23-cv-10511/USCOURTS-mad-1_23-cv-10511-0/summary)

### III. Consolidation, Anticompetitive Practices, and Non-Competition in Air Travel

Only four major carriers—American Airlines, Delta Air Lines, Southwest Airlines, and United Airlines—today control 80% of the U.S. domestic air travel market.<sup>10</sup> As a result, consumers frequently only have one or two choices when making travel plans.<sup>11</sup> Of 4,300 domestic routes, the three largest legacy carriers—American, Delta, and United—directly compete with each other on just 22 city-pairs.<sup>12</sup>

#### Pricing

Carriers have made pricing more opaque, inhibiting accurate comparison shopping and reducing competitive forces in the marketplace. Unbundling has created too many confusing variables for consumers to easily track prices across competitors, especially for “ancillary” services that the overwhelming majority of travelers know they will need on their flights (like a carry-on bag or adjacent seating for families). Similarly, carriers increasingly partition what used to be two or three fare classes into several subfare types, further frustrating efforts to compare tickets across competitors. The average flyer cannot easily or intuitively find an equivalent of “Go Savvy” or “Premium Select” among competitors without a significant time investment. The expansion of rewards points, and their frequent devaluation, makes price comparison even more difficult.

At the same time, airlines are disregarding the ADA by resisting measures to increase competition and make pricing more transparent. The industry has brought a lawsuit in the Fifth Circuit Court of Appeals challenging DOT’s Ancillary Fee Transparency Rule, with airlines seeking to protect their anticompetitive practices.<sup>13</sup> The legal challenge also threatens the statutory authority for other critical safeguards, such as the Full Fare Advertising Rule<sup>14</sup>—another pro-competitive rule enabling price transparency that airlines have resisted.

---

<sup>10</sup> The four largest carriers directly make up 69% of the market but control roughly 80% of the industry when accounting for their regional partners. See “Airline Domestic Market Share July 2023 - June 2024,” Bureau of Transportation Statistics. <https://www.transtats.bts.gov>; “Airlines & Monopoly,” Open Markets, <https://www.openmarketsinstitute.org/learn/airlinesmonopoly#:~:text=Today%2C%20a%20series%20of%20mega%2Dmergers%20have%20left%20the%20four%20largest%20U.S.%20airlines%E2%80%94American%2C%20Delta%2C%20United%2C%20and%20Southwest%E2%80%94controlling%20about%2080%20percent%20of%20total%20domestic%20passenger%20traffic>; “Findings of Fact and Conclusions of Law; United States v. American Airlines Group Inc and Jetblue Airways Corporation,” *U.S. Government Publishing Office*, May 19, 2023. [https://www.govinfo.gov/app/details/USCOURTS-mad-1\\_21-cv-11558/USCOURTS-mad-1\\_21-cv-11558-2/context](https://www.govinfo.gov/app/details/USCOURTS-mad-1_21-cv-11558/USCOURTS-mad-1_21-cv-11558-2/context)

<sup>11</sup> “U.S. airports increasingly dominated by 1 or 2 carriers,” *USA Today*, July 15, 2015. <https://www.usatoday.com/story/todayinthesky/2015/07/15/us-airports-increasingly-dominated-by-1-or-2-carriers/30152927/>

<sup>12</sup> “Just 22 Domestic Routes: Where American Airlines Delta & United Compete Directly,” *Simple Flying*, September 3, 2024. <https://simpleflying.com/domestic-routes-where-american-airlines-delta-united-compete-directly/>

<sup>13</sup> “Airlines For America, et al v. U.S. Department of Transportation,” *United States Court of Appeals for the Fifth Circuit*, July 29, 2024. <https://www.ca5.uscourts.gov/opinions/pub/24/24-60231-CV0.pdf>

<sup>14</sup> *Airlines for America, et al v. U.S. Department of Transportation* focuses on DOT’s rulemaking authority to implement 49 USC 41712 (prohibiting unfair and deceptive practices), the same statute that is the basis for several

Carriers have resisted, and successfully lobbied Congress to limit, DOT initiatives to increase competition, even when these initiatives do not require carriers to change any of their practices. DOT established publicly accessible dashboards for travelers to easily compare airlines' handling of family seating fees, controllable cancellations and delays, and service member accommodations.<sup>15</sup> These dashboards have been a lifeline for consumers to easily compare the carriers' customer service offerings, a task that is otherwise nearly impossible due to airlines' opaque pricing and service schemes. However, following lobbying efforts by the industry,<sup>16</sup> Congress included a provision within the 2024 Federal Aviation Administration ("FAA") Reauthorization prohibiting DOT from creating any additional transparency dashboards.<sup>17</sup>

It is also unclear how airlines determine the amount they charge to consumers in many cases. Algorithmic pricing models set fares non-transparently. Rather than competing to offer the lowest prices possible, carriers invest significant resources into developing complex pricing algorithms.<sup>18</sup> The opaque pricing processes carriers employ have led to allegations of price gouging<sup>19</sup> and price fixing.<sup>20</sup>

A recent report from the American Economic Liberties Project ("AELP") found strong evidence of predatory pricing by Southwest Airlines, which likely led to the loss of a competitor.<sup>21</sup> AELP showed that between 2019 and 2024, Southwest appeared to have priced at a loss on at least half of its six inter-island routes, with one-way fares as low as \$38 more than four years after entering the market. This had a disastrous effect on Hawaiian Airlines, which has served the state since 1929 and is one of the oldest carriers in the country; Hawaiian posted a profit of \$233 million in

---

consumer protection regulations, including the Full Fare Advertising Rule. See "Airlines For America, et al v. U.S. Department of Transportation," *United States Court of Appeals for the Fifth Circuit*, July 29, 2024. <https://www.ca5.uscourts.gov/opinions/pub/24/24-60231-CV0.pdf>; "§399.84 Price advertising and opt-out provisions." *Code of Federal Regulations*, April 30, 2024. <https://www.ecfr.gov/current/title-14/chapter-II/subchapter-F/part-399/subpart-G/section-399.84>

<sup>15</sup> "Airline Customer Service Dashboard," *U.S. Department of Transportation*.

<https://www.transportation.gov/airconsumer/airline-customer-service-dashboard>

<sup>16</sup> "FAA reauthorization lifts airline lobbying totals," *Roll Call*, January 29, 2024.

<https://rollcall.com/2024/01/29/faa-reauthorization-lifts-airline-lobbying-totals/>

<sup>17</sup> "FAA Reauthorization Act of 2024," Sec. 506, *Library of Congress*, May 16, 2024.

<https://www.congress.gov/118/plaws/publ63/PLAW-118publ63.pdf>

<sup>18</sup> "The Story of Airline Pricing Strategies," *OAG*, May 2, 2024. <https://www.oag.com/blog/the-story-of-airline-pricing-strategies>

<sup>19</sup> "United Airlines accused of price gouging at Florida airports as travelers try to flee monster Hurricane Milton landfall," *New York Post*, October 8, 2024. <https://nypost.com/2024/10/08/business/united-airlines-accused-of-price-gouging-as-floridians-flee-hurricane-milton/>

<sup>20</sup> "Delta, United must face class action over US airfares," *Reuters*, September 13, 2023.

<https://www.reuters.com/legal/delta-united-must-face-class-action-over-us-airfares-2023-09-13/>

<sup>21</sup> "Southwest Airlines' Below-Cost Fares in Hawaii Highlight Need for Federal Action on Predatory Pricing, New Report Reveals," *American Economic Liberties Project*, December 17, 2024.

<https://www.economicliberties.us/press-release/southwest-airlines-below-cost-fares-in-hawaii-highlight-need-for-federal-action-on-predatory-pricing-new-report-reveals/>

2018, but by 2023 it lost \$261 million. This left the airline with a dire choice of filing for bankruptcy or merging with another carrier, which led to Alaska Airlines acquiring Hawaiian.

Regarding certain ancillary fees, major airlines set prices at nearly the exact same amount, raise them at the same time, and increase fee amounts by the same level. For example, following a wave of recent announcements of fee increases from four “competing” airlines, travelers will now pay a \$35-\$40 baggage fee for their first checked bag regardless if they travel on Alaska Airlines, American Airlines, Delta Air Lines, or United Airlines.<sup>22</sup> This same phenomenon occurred in 2018 when American Airlines, Delta Air Lines, JetBlue Airways, and United Airlines announced baggage fee increases within three weeks of each other.<sup>23</sup>

### **Airport Dominance**

The use of "fortress hubs" by major airlines significantly stifles competition in the U.S. airline industry. At these dominant hubs, a single airline controls a disproportionate share of flights, gates, and facilities, giving it substantial market power. 15 of the largest airports have one carrier providing more than 50% of the share of flights, including some of the nation’s busiest hubs like Atlanta Hartsfield-Jackson (75%), Newark Liberty (74%), Dallas/Fort Worth (85%), and Washington Dulles (80%).<sup>24</sup> Contending firms often face insurmountable barriers to access gates or secure competitive scheduling at these airports. Single-carrier dominance enables an airline to implement complex pricing schemes, limit choices for travelers, and discourage new competitors from entering the market. Regulatory policies enabling these hubs further exacerbate the problem, as airlines use their control to maintain their dominance, reinforcing anti-competitive practices.<sup>25</sup>

Exclusive airline access to airport gates is another major barrier to competition in the U.S. airline industry. Dominant carriers often secure long-term leases or exert control over a disproportionate number of gates at key airports, preventing rival airlines from obtaining access. This gate control restricts the entry of low-cost carriers and limits the ability of competitors to expand operations, resulting in reduced flight options and higher ticket prices for consumers. Competitors have

---

<sup>22</sup> “U.S. Airlines Say ‘Me, Too!’ to Higher Baggage Fees,” *MeetingsNet*, February 26, 2024. <https://www.meetingsnet.com/meeting-planning-toolbox/us-airlines-say-me-too-higher-baggage-fees#menu>; “Baggage & Travel Fees,” *Delta Airlines*. <https://www.delta.com/us/en/baggage/overview>

<sup>23</sup> “Airlines Are Raising the Cost of Checked Bags,” *The New York Times*, September 20, 2018. <https://www.nytimes.com/2018/09/20/business/airlines-raising-bag-fees.html>

<sup>24</sup> “Top 25 US Domestic Airport Megahubs,” OAG, 2024. <https://www.oag.com/megahubs-airports-2024>

<sup>25</sup> “How to Fix Flying: A New Approach to Regulating the Airline Industry,” *American Economic Liberties Project* and *Vanderbilt Policy Accelerator*, January, 2024. <https://www.economicliberties.us/wp-content/uploads/2024/01/20240124-AELP-airlines-v5.pdf>

claimed that gates, in many cases under exclusive control of network airlines, are not utilized for nearly half the day at 75% of the top 40 U.S. airports.<sup>26</sup>

The lack of gate access consolidates market power among incumbent airlines, fostering monopolistic or oligopolistic conditions. Smaller carriers are often forced to operate from less desirable locations or abandon efforts to compete entirely. This practice stifles innovation and consumer choice while enabling entrenched airlines to maintain elevated fare structures.<sup>27</sup>

Effective regulatory intervention to ensure fair gate allocation and promote competition is critical to countering these anti-competitive practices.<sup>28</sup>

## **Alliances**

The consumer and competitive harms stemming from industry consolidation among domestic carriers has been exacerbated by the takeover of international air travel by three multi-airline alliances: oneworld, SkyTeam, and Star Alliance. While these alliances may offer certain efficiencies for the corporations, they also limit competition by creating monopolistic or oligopolistic market structures. The result of these alliances is simple and inherent in their nature—fewer options for consumers to choose from.

There are multi-carrier agreements that are pro-competitive and consumer advocates strongly support those types of alliances. For example, interline agreements that provide rebooking reciprocity for passengers to reach their destinations (should their original carrier be unavailable due to delays or cancellations) incentivize airline performance. Policies promoting such beneficial interline agreements would enhance competition, while reducing the impact of flight disruptions on passengers.

## **Loyalty Rewards**

The growth of airline rewards programs has created additional barriers to entry for competitors to the four largest domestic airlines and their international alliances. These programs disincentivize rewards program participants from flying with a competitor, even if that competitor offers cheaper flights or better services.<sup>29</sup> The pricing of flights in an airline's rewards points or rewards miles also hinders competition as consumers cannot easily compare the value of a ticket across carriers. The value of an airline's rewards currency fluctuates from route-to-route and

---

<sup>26</sup> "NACA applauds 'Airport Gate Competition Act,'" *National Air Carrier Association*, accessed December 30, 2024. <https://naca.aero/naca-applauds-airport-gate-competition-act/>

<sup>27</sup> "How to Fix Flying: A New Approach to Regulating the Airline Industry," pgs. 7-8. <https://www.economicliberties.us/wp-content/uploads/2024/01/20240124-AELP-airlines-v5.pdf>

<sup>28</sup> "How to Fix Flying: A New Approach to Regulating the Airline Industry," pgs. 5-10. <https://www.economicliberties.us/wp-content/uploads/2024/01/20240124-AELP-airlines-v5.pdf>

<sup>29</sup> Duque, Omar Vasquez. "The Costs of Loyalty. On Loyalty Rewards and Consumer Welfare," December 30, 2017. <https://portalrevistas.ucb.br/index.php/EALR/article/view/8593>

over time.<sup>30</sup> These inconsistent valuations and outright devaluations further frustrates attempts at discerning the value of airfare, especially compared with another carrier's offerings.

#### **IV. Consolidation and Anticompetitive Practices Harm Consumers**

Consolidation and anticompetitive practices in the air transportation industry have significantly harmed passengers by reducing competition, transparency, and service quality. Consolidation has decreased competition in the industry, leaving consumers with fewer choices and higher prices.

##### **Price**

Unbundling the most commonly needed services from the base airfare has resulted in an anticompetitive and anti-consumer drip pricing regime. Carriers often defend this practice by claiming that they want to give consumers greater choice and the ability to only pay for necessary amenities. Airlines could achieve this goal, without deceiving consumers, by displaying fares inclusive of the most commonly used services—like a carry-on baggage allowance—and providing travelers with the ability to remove potentially unwanted amenities from their ticket to save money.

Unfortunately, carriers do not utilize an opt-out model, resulting in harms from the implemented drip pricing scheme that are well documented. With drip pricing making price comparison between airlines more difficult, consumers experience decreased price sensitivity.<sup>31</sup> Increased search times lead to higher prices for consumers.<sup>32</sup> Consumers are less satisfied with their choice and are more likely to make a mistake when dealing with drip pricing.<sup>33</sup> One survey found that 28% of respondents end up paying more than initially quoted for their online flight tickets always or most of the time, while another 16% sometimes pay more than the initial price.<sup>34</sup>

---

<sup>30</sup> “Why points and miles are a bad long-term investment,” *The Points Guy*, May 15, 2024.

<https://web.archive.org/web/20240924184210/https://thepointsguy.com/guide/points-and-miles-bad-investment/>

<sup>31</sup> Scotti and Dresner. “The impact of baggage fees on passenger demand on US air routes,” *Transport Policy*, October, 2015. <https://www.sciencedirect.com/science/article/abs/pii/S0967070X15000736>; Ellison and Ellison. “Search, Obfuscation, and Price Elasticities on the Internet,” *Econometrica*, March, 2009.

<https://economics.mit.edu/sites/default/files/publications/Search%2C%20Obfuscation%20and%20Price%20Elasticities%20on%20the.pdf>

<sup>32</sup> Ellison and Wolitzky. “A search cost model of obfuscation,” *RAND Journal of Economic*, Fall 2012.

<https://economics.mit.edu/sites/default/files/publications/A%20Search%20Cost%20Model%20of%20Obfuscation.final.pdf>

<sup>33</sup> Santana, Dallas, and Morwitz. “Consumer Reactions to Drip Pricing,” *Marketing Science*, October 22, 2019.

[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3924320](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3924320)

<sup>34</sup> “How do Americans feel about ticket-price transparency for airline flights?” *YouGov*, October 17, 2023.

<https://today.yougov.com/consumer/articles/47641-how-americans-feel-ticket-prices-transparency-airline-flights-poll>

Airfares have also surged in recent years, consistently outpacing inflation generally, another sign that an uncompetitive marketplace is failing to benefit consumers.<sup>35</sup> One study published earlier this year found consolidated carrier control through airport hubs raises airfares for consumers.<sup>36</sup>

Industry associations often cite statistics showing decreases in average airfares, yet these figures do not account for unbundling and the degradation of bundled services. To air carriers' benefit, DOT's Bureau of Transportation Statistics reports average airfare data in this same, confusing manner. There is a lack of reliable data that directly compares identical airfares with the same exact services included. For example, the average airfare in 2024 that provides a checked and carry-on baggage allowance, an opportunity to select a seat in the cabin, a 35-inch seat pitch, a printed boarding pass, and in-flight drinking water is unlikely to be substantially cheaper than the average inflation-adjusted airfare from two or three decades prior (which, by default, included those same amenities).

Like many harms from consolidation, budget-conscious flyers face the brunt of the consequences. The average traveler flies about once per year,<sup>37</sup> with lower-income consumers flying more infrequently.<sup>38</sup> Opaque pricing systems reliant on complicated subfare classifications present a difficult information barrier for any consumer, but especially one who does not have much experience with air travel. Rather than investing significant time to discern which option might have the best value, travelers facing airlines' complex offerings often make decisions that do not provide maximal benefits or savings.<sup>39</sup>

## Rewards

Pricing a carriers' airfare in rewards currency obfuscates the true dollar value of a ticket as the value of airlines' rewards varies from route to route and devalues over time. Loyalty programs also incentivize consumers to ignore competitors' offerings as they may not generate points or be able to redeem rewards for those flights. Both of these factors can contribute to loyal flyers overpaying for flights.

---

<sup>35</sup> "Airline ticket prices are up 25%, outpacing inflation – here are the ways you can still save," *CNBC*, November 22, 2024. <https://www.cnbc.com/select/airline-ticket-prices-are-up-25-percent-why-and-how-to-save/>; "Why Airfares Have Risen Five Times Faster Than The Overall Inflation Rate," *Forbes*, October 14, 2022.

<https://www.forbes.com/sites/suzannerowankelleher/2022/10/14/airfare-inflation-five-times-higher-than-overall-inflation/>; "Airfares are going up faster than rent now," *Quartz*, December 11, 2024. <https://qz.com/airline-tickets-getting-more-expensive-faster-than-rent-1851718515>

<sup>36</sup> "The Effect of Airport Hub Dominance on Average Airfares: A Systematic Review," *Dean&Francis*, June 6, 2024. <https://www.deanfrancispress.com/index.php/fe/article/view/726>

<sup>37</sup> "Airlines," *Gallup*, accessed December 30, 2024. <https://news.gallup.com/poll/1579/airlines.aspx>

<sup>38</sup> "Air travel frequency in the United States as of June 2015, by income," *YouGov*, June, 2015. <https://www.statista.com/statistics/316376/air-travel-frequency-us-by-income/>

<sup>39</sup> Rupp, Nicholas G. "Drip Pricing and Costly Search: Evidence from the Airline Industry," December 15, 2023. [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=4666048](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4666048); Santana, Dallas, and Morwitz. "Consumer Reactions to Drip Pricing," *Marketing Science*, October 22, 2019. [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3924320](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3924320)

Airlines typically reserve certain rewards—like waived ancillary fees or priority boarding—for the credit card issuers with whom airlines enter exclusive contracts. Traditionally (and currently), these have been the three largest credit card issuers—Chase, American Express, and Citi.<sup>40</sup> As it is difficult for competing credit card issuers to offer comparable or better rewards programs than the exclusively co-branded issuers provide, loyal travelers have few alternatives should they suffer devaluations, increased fees, or other degradations when enrolled in co-branded programs. One analysis found an average annual devaluation of airline rewards points by 15%.<sup>41</sup> Another found devaluations ranging from 33% to 122% across airlines within the past two years.<sup>42</sup>

## Safety

While all consumers appreciate affordable fares, they cannot come at the expense of safety. Airlines have created unacceptable risks to passenger health and safety, with few alternatives in the consolidated marketplace. On many routes with only one carrier as an option—including those subsidized by the federal government through the Essential Air Service program (“EAS”)—the flying public has no alternative but to accept unsafe conditions.

Carriers’ junk fees charged to families trying to secure adjacent seating results in increased chances of children experiencing sexual violence, harm during a medical emergency, and injury during a flight-related emergency. These fees also jeopardize the safety of others in the cabin, including a minor’s separated family member who will likely lose time during an emergency evacuation searching for the child. More detailed comments outlining these harms, alongside numerous passenger complaints recounting their experiences resulting from these fees, can be found in consumer advocates’ submission supporting DOT’s proposal to ban family seating fees.<sup>43</sup>

Despite family seating fees’ harm to passengers—both economic and bodily—and their violative nature in regard to federal law prohibiting unfair practices,<sup>44</sup> unsafe and inadequate air

---

<sup>40</sup> “8 biggest U.S. Credit Card Companies This Year,” *U.S. News & World Report*, February 21, 2024.

<https://money.usnews.com/credit-cards/articles/biggest-us-credit-card-companies-this-year>

<sup>41</sup> “Airline Miles Devaluation: A Hidden Inflation and What the Biden Investigation Means for You,” *The Miles Market*, September 8, 2024. <https://www.themilesmarket.com/post/airline-miles-devaluation-a-hidden-inflation-and-what-the-biden-investigation-means-for-you>

<sup>42</sup> “Why points and miles are a bad long-term investment,” *The Points Guy*, May 15, 2024.

<https://web.archive.org/web/20240924184210/https://thepointsguy.com/guide/points-and-miles-bad-investment/>

<sup>43</sup> “Comments of the National Consumers League et al. Regarding Family Seating In Air Transportation” *National Consumers League*, November 7, 2024. <https://nclnet.org/wp-content/uploads/2024/11/Consumer-Coalition-Family-Seating-Comments.pdf>

<sup>44</sup> “49 U.S. Code § 41712. Unfair and deceptive practices and unfair methods of competition,” *U.S. Government Publishing Office*. <https://www.govinfo.gov/content/pkg/USCODE-2023-title49/pdf/USCODE-2023-title49-subtitleVII-partA-subpartii-chap417-subchapI-sec41712.pdf>

transportation,<sup>45</sup> and even family seating fees explicitly,<sup>46</sup> carriers do not face competitive pressures to eliminate the practice.<sup>47</sup> In fact, the airlines comprising Airlines for America appear poised to sue DOT in order to continue charging junk fees for family seating.<sup>48</sup> Out of the four largest airlines in the nation—which together control approximately 80% of the market<sup>49</sup>—only one has committed to DOT that families will be seated together at no additional cost.<sup>50</sup>

Airlines’ diminishing seat sizes are another symptom of an uncompetitive marketplace, to the detriment of the most budget-conscious passengers. FAA safety guidance recommends a minimum of 35-inch clearance between a passenger’s seat and the hard surface in front of them.<sup>51</sup> On the majority of flights operated by the ten largest U.S. airlines’, passenger seating found in basic economy sections (or an equivalent, most affordable ticketing tier) fails to meet the 35-inch clearance minimum recognized by the FAA as critical to aircraft passenger safety.<sup>52</sup> Basic economy seating conditions (with seat pitches typically ranging from 28 inches to 32 inches) are likely to cause substantial injury to passengers as they lack the head-strike clearance minimum recognized by the FAA, impede emergency evacuations, and exacerbate passenger health risks—all of which can lead to substantial injury or death. More detailed comments outlining these harms can be found in consumer advocates’ submission urging the FAA to act on Congressional directives for minimum seat sizes.<sup>53</sup>

---

<sup>45</sup> “49 U.S. Code § 41702. Interstate air transportation,” *U.S. Government Publishing Office*. <https://www.govinfo.gov/content/pkg/USCODE-2023-title49/pdf/USCODE-2023-title49-subtitleVII-partA-subpartii-chap417-subchapI-sec41702.pdf>

<sup>46</sup> “FAA Reauthorization Act of 2024; Sec. 516. Family Seating” *Library of Congress*, May 15, 2024. <https://www.congress.gov/118/bills/hr3935/BILLS-118hr3935enr.pdf>

<sup>47</sup> A fulsome analysis of how family seating fees violate federal law can be found in consumer advocates’ comments submitted to DOT. See “Comments of the National Consumers League et al. Regarding Family Seating In Air Transportation,” *National Consumers League*, November 7, 2024. <https://nclnet.org/wp-content/uploads/2024/11/Consumer-Coalition-Family-Seating-Comments.pdf>

<sup>48</sup> Airlines for America’s response to DOT’s Family Seating rulemaking claims that the adjacent seating proposal is “illegal” and that “[t]he Department also violates the law by proposing to re-regulate fares.” See “Comments of Airlines for America,” *Airlines for America*, November 7, 2024. <https://www.regulations.gov/comment/DOT-OST-2024-0091-0258>

<sup>49</sup> See footnote 10

<sup>50</sup> “Airline Family Seating Dashboard,” U.S. Department of Transportation, accessed on December 12, 2024. <https://www.transportation.gov/airconsumer/airline-family-seating-dashboard>

<sup>51</sup> “Flight Attendant Seat and Torso Restraint System Installations,” Federal Aviation Administration, “The current criteria for seat placement is to assure that an occupant’s head will not swing forward and strike an unpadding bulkhead or other hard surface. Thirty-five inches from the seat reference point has been used for a number of years as a minimum acceptable head strike radius.” May 11, 2010. [https://www.faa.gov/documentLibrary/media/Advisory\\_Circular/AC\\_25\\_785-1B.pdf](https://www.faa.gov/documentLibrary/media/Advisory_Circular/AC_25_785-1B.pdf)

<sup>52</sup> “U.S. court hears challenge to lack of rules on airplane seat size,” *Reuters*, “[t]he average for other mainline economy seats is around 30 to 31 inches.” September 12, 2022. <https://www.reuters.com/legal/us-court-hears-challenge-lack-rules-airplane-seat-size-2022-09-12/>; “Short-haul Economy Class Comparison Chart,” SeatGuru. [https://www.seatguru.com/charts/shorthaul\\_economy.php](https://www.seatguru.com/charts/shorthaul_economy.php)

<sup>53</sup> “Comments of the National Consumers League et al. Regarding Minimum Seat Dimensions Necessary For Safety of Air Passengers (Emergency Evacuation),” *National Consumers League*, November 1, 2022. <https://nclnet.org/wp-content/uploads/2022/11/NCL-et-al-SS-RFC-Comments-FINAL-AS-FILED.pdf>

Although shrunken seat sizes present numerous harms for passengers, contribute to an alarming trend of delayed emergency evacuations greatly exceeding the 90-second standard,<sup>54</sup> constitute an unfair practice prohibited by 49 U.S.C. 41712, and fail to meet the safe and adequate requirements under 49 U.S.C. 41702, the marketplace has consolidated so greatly that firms face little pressure to implement safe and legal seating.<sup>55</sup>

The industry's anticompetitive move toward drip pricing results in further safety harms, in addition to the economic harms highlighted previously. Fees for checked bags have multiplied the amount of baggage passengers carry on to the plane. Fees for carry-on baggage have incentivized travelers to bring personal bags for placement on the ground (and push against the size constraints for personal bags). The result is a significantly more cluttered cabin environment, which has likely contributed to the dangerous pattern of real-world emergency evacuations exceeding 90 seconds. Passengers lose evacuation time by grabbing their bags and navigating around baggage left in the cabin. As evacuation standards have not changed in 19 years, carriers are operating under significantly outdated guidelines that do not reflect the contemporary flying environment.

Overall, the effect of the consolidated aviation industry is an unsafe flying experience, particularly for the most budget-conscious travelers. The distressing consistency in emergency evacuations exceeding 90 seconds forewarns a catastrophe that regulators should not wait to occur before rectifying our air travel standards.

## **Privacy**

Air carriers collect massive amounts of passenger data, including governmental identification numbers and biometric data associated with facial recognition, iris scanning, and fingerprint scanning.<sup>56</sup> Some of this data collection is required under federal transportation security law, but much of it is not. Beyond the invasive privacy measures increasingly appearing at boarding gates, airlines also use massive commercial surveillance networks through first-party software (like their websites and mobile apps) and third-party tools (like cookies and other advertising-focused trackers).

The full extent of the air travel industry's data collection practices are unknown. A DOT review of airlines' privacy practices is underway and should bring greater transparency to the

---

<sup>54</sup> "Chaotic evacuation of American Airlines Flight 2045 shows urgent need for updated evacuation standards and minimum seat sizes," National Consumers League, July 17, 2024. <https://nclnet.org/chaotic-evacuation-of-american-airlines-flight-2045-shows-urgent-need-for-updated-evacuation-standards-and-minimum-seat-sizes/>

<sup>55</sup> Greater analysis on how unsafe seat sizes violate federal law can be found beginning on page 14 of consumer advocates' comments on DOT's family seating rulemaking, which responded to DOT requests for information on basic standards for flying. See "Comments of the National Consumers League et al. Regarding Family Seating In Air Transportation" *National Consumers League*, November 7, 2024. <https://nclnet.org/wp-content/uploads/2024/11/Consumer-Coalition-Family-Seating-Comments.pdf>

<sup>56</sup> "How Biometric Boarding is Transforming Airports?" *Aratek*, June 27, 2024. <https://www.aratek.co/news/how-biometric-boarding-is-transforming-airports>

surveillance network employed. Assuming that these corporations act like any other technologically-capable corporation, they are likely able to compile, create, access, buy, and sell sophisticated profiles of individual consumers. The consolidated nature of the air travel industry means that there is no competitive pressure for carriers to cease or minimize these practices.

## **Travel Experience**

Airlines now operate at consistently high passenger load factors.<sup>57</sup> While this maximizes profitability, it also exacerbates travel disruptions, such as delays and cancellations, as there is little capacity to absorb irregularities. Airlines have increasingly shifted their focus toward premium products and services, often at the expense of basic economy customers.<sup>58</sup> Instead of competing to provide a better experience for the majority of travelers, airlines prioritize their profit margins, undermining safe and reliable travel for cost-conscious passengers.

Carriers have largely rejected rebooking reciprocity, decreasing competitive pressure with each other while degrading the passenger experience, often tremendously. During this summer's CrowdStrike outage, Delta passengers were stranded for days despite competitors' normal operations.<sup>59</sup> During Southwest's operational failures at the start of 2023, thousands of travelers were forced to watch dozens of flights take off each day while they themselves were stuck.<sup>60</sup>

## **V. Consolidation and Anticompetitive Practices Threaten the Availability of Air Travel**

### **Availability and Infrastructure**

Industry consolidation has resulted in fewer carriers serving small and medium-sized airports, harming the regions that depend on them. Many of these airports, once served by multiple airlines, now rely on just one or two carriers. This reduction in competition has constrained consumer choice, particularly in regional markets, and likely contributes to higher fares and less

---

<sup>57</sup> "Load Factor for U.S. Air Carrier Domestic, Scheduled Passenger Flights," *Federal Reserve Bank of St. Louis*, August, 2024. <https://fred.stlouisfed.org/series/LOADFACTOR>

<sup>58</sup> "The Airline Industry's Biggest Winners Are Betting You'll Pay to Fly in Style," *Wall Street Journal*, November 23, 2024. <https://www.wsj.com/business/airlines/the-airline-industrys-biggest-winners-are-betting-youll-pay-to-fly-in-style>

<sup>59</sup> "Hundreds of US flights are canceled for the 4th straight day. Here's the latest on the global tech outage," *CNN*, July 22, 2024. <https://www.cnn.com/2024/07/22/us/microsoft-power-outage-crowdstrike-it/index.html>

<sup>60</sup> "DOT Penalizes Southwest Airlines \$140 Million for 2022 Holiday Meltdown," *U.S. Department of Transportation*, December 18, 2023. <https://www.transportation.gov/briefing-room/dot-penalizes-southwest-airlines-140-million-2022-holiday-meltdown>

reliable service. Following airline consolidation, Cincinnati/Northern Kentucky Airport lost 44,480 flights, or 78% of its service.<sup>61</sup> Memphis lost 73%.<sup>62</sup> Cleveland lost 60%.<sup>63</sup>

In 2022, 75% of US airports had less air service than before the pandemic, despite elevated passenger demand.<sup>64</sup> That is, 324 airports had experienced reduced service, with an average of a 31% reduction in flights. The three largest legacy carriers have cut service to 74 airports since 2020.<sup>65</sup> Some amount of reduced service was likely due to carriers' actions to avoid potentially unrealistic scheduling—a goal that consumer advocates generally support.<sup>66</sup> However, the extent of route-cutting is symptomatic of greater industry-wide issues.

The anticompetitive reliance on fees also hinders efforts to relieve infrastructure issues. Ancillary fees are not subject to the excise tax which contributes to the U.S. Airport and Airway Trust Fund.<sup>67</sup> As a result, there has been an estimated 4%-4.6% decrease in revenue to the Airport and Airway Trust fund due to the lack of excise tax on baggage and seat reservation fees alone.<sup>68</sup> At the same time, there has not been new major airport construction in decades, with no new major airport built so far in the 21st Century.

## Public Oversight

Consolidation enables considerable industry influence on policymakers who are tasked with oversight and regulation of the air travel industry. Monopolized regions, routes, and airports give just one carrier immense leverage over a Member of Congress who represents or relies on the monopolized area. A single carrier's decisions can impact thousands of jobs in a Member's

---

<sup>61</sup> "CVG loses ground as peers gain," *Cincinnati.com*, April 22, 2014.

<https://www.cincinnati.com/story/money/2014/04/22/cvg-airport-allegiant-delta-usair/8029901/>

<sup>62</sup> "Airlines Are Terrible. Small Cities Are Still Paying Them Millions of Dollars to Stick Around," *Time*, January 17, 2023. <https://time.com/6247052/airlines-deregulation-american-inequality/>

<sup>63</sup> "United Airlines axing its hub in Cleveland," *USA Today*, February 2, 2014.

<https://www.usatoday.com/story/todayinthesky/2014/02/01/united-airlines-axing-its-hub-in-cleveland/5139385/>

<sup>64</sup> Rally for Air Service, accessed December 29, 2024. <https://rallyforairservice.org/>

<sup>65</sup> "American, Delta, and United have collectively dropped 74 US airports since the pandemic – see the full list," *Business Insider*, April 5, 2023. <https://www.businessinsider.com/see-full-list-of-airports-us-airlines-dropped-since-2020-2022-9>

<sup>66</sup> Following airlines' repeated service disruptions over the past few years, DOT investigated many carriers for unrealistic scheduling. See "Air Travel Consumer Report: March 2023 and 1st Quarter 2023 Numbers," *U.S. Department of Transportation*, May 23, 2023. <https://www.transportation.gov/briefing-room/air-travel-consumer-report-march-2023-and-1st-quarter-2023-numbers>

<sup>67</sup> "Enhancing Transparency of Airline Ancillary Service Fees," *Federal Register*, "Ancillary service fees are not subject to the 7.5% airline ticket tax that is used to support the Aviation Trust Fund." April 30, 2024. <https://www.federalregister.gov/documents/2024/04/30/2024-08609/enhancing-transparency-of-airline-ancillary-service-fees>

<sup>68</sup> Mumbower, Hotel, and Garrow. "Highly debated but still unbundled: The evolution of U.S. airline ancillary products and pricing strategies," *Journal of Revenue and Pricing Management*, May 18, 2022. <https://link.springer.com/article/10.1057/s41272-022-00388-5>

district,<sup>69</sup> the regional economy,<sup>70</sup> and a legislator’s weekly commute to D.C. and back.<sup>71</sup> Without any meaningful competition, these factors incentivize Members to placate a dominant corporation’s interests.

A concentrated marketplace also allows entrenched firms to spend significant amounts of money to influence governmental policy, often in defense of their dominant market positions. In 2023, airlines spent \$33.61 million in lobbying expenditures.<sup>72</sup> With incomplete data for 2024, airlines have spent \$32.1 million in lobbying costs and campaign donations, with the total expected to increase as end-of-year figures become public.<sup>73</sup> For the air transportation industry as a whole—including manufacturers like Boeing and non-passenger carriers like FedEx—an incomplete count of lobbying expenditures in 2024 alone reached \$101 million.<sup>74</sup> Notably, these numbers do not include “dark money” spending—lobbying expenditures and campaign donations that are not publicly disclosed.

The aviation industry also benefits from a revolving door of former government employees. 60% of registered lobbyists for the air transportation industry were formerly public servants.<sup>75</sup> At the FAA, eight of the 11 acting and Senate-confirmed administrators who led the agency in this century were former aviation lobbyists or executives, or went on to become aviation lobbyists or executives after leaving the FAA.<sup>76</sup> At the same time, consumer protection policies continue to

---

<sup>69</sup> “The Role of Aviation in Supporting Local Economic Activity,” Airport Cooperative Research Program, accessed December 31, 2024. <https://crp.trb.org/acrpwebresource12/understanding-air-service-and-regional-economic-activity/the-role-of-aviation-in-supporting-local-economic-activity/>

<sup>70</sup> Florida, Mellander, and Holgersson. “Up in the air: the role of airports for regional economic development,” *The Annals of Regional Science*, December 16, 2014. <https://link.springer.com/article/10.1007/s00168-014-0651-z>

<sup>71</sup> “Scrap over expanded flights at Reagan National bedevils big aviation bill,” *Politico*, “The notion of adding more long-haul flights to Reagan National appeals to members of Congress from far-flung states and districts who want more convenient travel options back home,” April 30, 2024. <https://www.politico.com/news/2024/04/30/expanded-flights-reagan-national-airport-00155212>

<sup>72</sup> “Airlines Lobbying,” *Open Secrets*, accessed December 19, 2024. <https://www.opensecrets.org/industries/lobbying?ind=T1100>

<sup>73</sup> “Airlines Lobbying,” *Open Secrets*, accessed December 19, 2024. <https://www.opensecrets.org/industries/lobbying?ind=T1100>; “Airlines Top Contributors,” *Open Secrets*, accessed December 19, 2024. <https://www.opensecrets.org/industries/contrib?cycle=2024&ind=T1100>

<sup>74</sup> “Industry Profile: Air Transport,” *Open Secrets*, accessed December 19, 2024. <https://www.opensecrets.org/federal-lobbying/industries/summary?id=M01>

<sup>75</sup> “Industry Profile: Air Transport. Lobbyists,” *Open Secrets*, accessed December 19, 2024. <https://www.opensecrets.org/federal-lobbying/industries/lobbyists?cycle=2024&id=M01>

<sup>76</sup> Michael Whitaker (administrator, 2023-2025) was formerly the Group CEO of InterGlobe Enterprises and COO of Supernal. See “FAA Administrators,” *FAA*. <https://www.faa.gov/media/75296>; Billy Nolen (acting administrator, 2022-2023), formerly held high-ranking safety and operations roles at WestJet, Qantas, Airlines for America, and American Airlines. Since resigning from the FAA, he has become the chief regulatory affairs officer at Archer Aviation. See “Billy J. Nolen (2023),” *AAR*. <https://www.aarcorp.com/en/about/board-of-directors/billy-nolen/>;

Stephen Dickson (administrator, 2019-2022), formerly senior vice president of flight operations for Delta Air Lines. See “FAA Administrators,” *FAA*. <https://www.faa.gov/media/75296>;

Daniel Elwell (acting administrator, 2018-2019), formerly held high-ranking operations and lobbying positions at Airlines for America, the Aerospace Industries Association, and American Airlines. See “Dan Elwell,” *LinkedIn*, accessed December 19, 2024. <https://www.linkedin.com/in/danielwell/>;

face roadblocks in Congress and at federal agencies. At just the FAA, the agency has ignored two directives from Congress to establish minimum seat sizes, failed to update evacuation standards, and overseen disastrous safety incidents related to Boeing aircraft.

## VI. Consolidation and Anticompetitive Practices Harm Workers

As airlines have obtained significant marketplace concentration, flight attendants are stuck with weaker compensation packages. Flight attendants at some carriers have been paid near-poverty wages<sup>77</sup> while others must work overtime or take on debt as they face homelessness.<sup>78</sup> Airline workers also face a lack of options for better data protection and cybersecurity practices, even as carriers have suffered a string of data breaches compromising employee information.<sup>79</sup>

Unsafe conditions that contribute to improper and dangerously long evacuations and unhealthy cabin environments impact airline staff and passengers alike.<sup>80</sup> In the consolidated marketplace, workers have few alternatives as the airlines face little competitive pressure to maintain a safe flying space. While carriers fail to compensate staff competitively and ensure healthy traveling

---

Randy Babbitt (administrator, 2009-2011), became Southwest Airlines' senior vice president of labor relations after leaving the FAA. See "FAA Administrators," *FAA*. <https://www.faa.gov/media/75296>;

Robert Sturgell (acting administrator, 2007-2009), became Rockwell Collins' senior vice president of Washington operations after leaving the FAA. See "Robert A. Sturgell," *Collins Aerospace*, accessed December 19, 2024.

<https://rockwellcollinsthoughtleadership.wordpress.com/leadership-pages/robert-a-sturgell/>;

Marion Blakey (administrator, 2002-2007), became president and chief executive officer of the Aerospace Industries Association after leaving the FAA. See "Speaker Details, The Honorable Marion C. Blakey," *U.S. Chamber of Commerce*. <https://events.uschamber.com/globalaerospacesummit/speaker/529643/the-honorable-marion-c.-blakey>

Jane Garvey (administrator, 1997-2002), became chair of United Continental Holdings' board of directors, which she had been a member of for a decade before becoming chair. See "United names Jane Garvey board of directors chair," *bizwomen*, May 25, 2018. <https://www.bizjournals.com/louisville/bizwomen/news/latest-news/2018/05/united-names-jane-garvey-board-of-directors-chair.html>

<https://www.bizjournals.com/louisville/bizwomen/news/latest-news/2018/05/united-names-jane-garvey-board-of-directors-chair.html>

<sup>77</sup> "Viral 'courtesy' letter American Airlines gives flight attendants shows how little they make," *CNN Business*, May 17, 2024. <https://www.cnn.com/2024/05/17/business/american-airlines-flight-attendants-wages/index.html>

<sup>78</sup> "Barely surviving': Some flight attendants are facing homelessness and hunger," *The Washington Post*, August 26, 2024. <https://www.washingtonpost.com/travel/2024/08/26/flight-attendant-pay-flying-hours-homelessness/>;

"United Airlines flight attendant with two side gigs filed for bankruptcy," *TheStreet*, October 28, 2024.

<https://www.thestreet.com/travel/flight-attendant-files-bankruptcy-low-salary>

<sup>79</sup> "Delta, Amazon confirm vendor breach as dark web posts revive MOVEit leak concerns," *The Record*, November 12, 2024. <https://therecord.media/delta-amazon-vendor-breach-confirmed>;

"American Airlines, Southwest Airlines Impacted by Data Breach at Third-Party Provider," *SecurityWeek*, June 26, 2023.

<https://www.securityweek.com/american-airlines-southwest-airlines-impacted-by-data-breach-at-third-party-provider/>;

"American Airlines says data breach affected some customers, employees," *Reuters*, September 20, 2022. <https://www.reuters.com/business/aerospace-defense/american-airlines-says-data-breach-affected-small-number-customers-employees-2022-09-20/>

<sup>80</sup> "How Toxic Fumes Seep Into the Air You Breathe On Planes," *Los Angeles Times*, December 17, 2020. <https://www.latimes.com/projects/toxic-chemicals-planes-covid-19-travel-woes/>

conditions, they spend billions of dollars buying their own stock<sup>81</sup> and millions of dollars lobbying against basic consumer protections, as identified in the previous section.

## **VII. Actions the U.S. Government Has Taken to Improve Competition and the Air Travel Industry**

The DOJ and DOT have taken many actions recently to improve competition and the air travel industry as a whole. Consumer advocates appreciate regulators' efforts in this area and look forward to continued initiatives to ensure a healthy air transportation market. The following is not intended to be an exhaustive list of every pro-competitive action.

DOT undertook two significant initiatives to improve competition via better price transparency. The Ancillary Fee Transparency Rule, should the Fifth Circuit Court of Appeals uphold DOT's rulemaking authority, would enhance price-comparison and marketplace pressures on carriers by allowing consumers to view the true cost of flying upfront. DOT's four customer service dashboards also increase transparency by clearly displaying airlines' policy commitments on common issues passengers encounter when traveling. DOT's actions were to the benefit of consumers and competing airlines, without requiring any corporation to change its policies.

Antitrust enforcement blocked further industry consolidation through the unlawful Northeast Alliance<sup>82</sup> and the proposed JetBlue-Spirit merger.<sup>83</sup> Bipartisan partnership between DOT and 22 state attorneys general facilitates enforcement of the federal prohibition on unfair and deceptive practices, better ensuring an even playing-field for competitors and helping to prevent firms from taking advantage of enforcement constraints.<sup>84</sup> A recently announced action against JetBlue for unrealistic scheduling marked a welcome exercise of DOT's statutory authority to protect the marketplace, centered around a trailblazing penalty that includes delay compensation for travelers.<sup>85</sup>

---

<sup>81</sup> From 2014 through 2020, American Airlines and Southwest Airlines spent \$12.4 billion and \$10.7 billion, respectively, on stock buybacks. See "American Airlines spent \$12 billion on stock buybacks during flush times. Now it says it needs a bailout," *The Dallas Morning News*, March 18, 2020. <https://www.dallasnews.com/business/airlines/2020/03/18/american-airlines-spent-12-billion-on-stock-buybacks-during-flush-times-now-it-says-it-needs-a-bailout/>

<sup>82</sup> "U.S. Court of Appeals Affirms Justice Department's Victory Protecting Airline Competition," *U.S. Department of Justice*, November 8, 2024. <https://www.justice.gov/opa/pr/us-court-appeals-affirms-justice-departments-victory-protecting-airline-competition>

<sup>83</sup> "Justice Department Statements on JetBlue Terminating Acquisition of Spirit Airlines," *U.S. Department of Justice*, March 4, 2024. <https://www.justice.gov/opa/pr/justice-department-statements-jetblue-terminating-acquisition-spirit-airlines>

<sup>84</sup> "Bipartisan Partnership Between Secretary Buttigieg and State Attorneys General to Protect Airline Passengers," October 18, 2024. [https://www.transportation.gov/airconsumer/State\\_AG\\_Partnership](https://www.transportation.gov/airconsumer/State_AG_Partnership)

<sup>85</sup> "DOT Penalizes JetBlue for Chronic Flight Delays," *U.S. Department of Transportation*, January 3, 2025. <https://www.transportation.gov/briefing-room/dot-penalizes-jetblue-chronic-flight-delays>

DOT's advanced notice of proposed rulemaking on delay compensation is a commendable move in the right direction. While delay compensation requirements provide critical consumer protections when travelers experience flight disruptions, they also provide a competitive benefit to the marketplace as well. A mandatory and automatic delay compensation rule would incentivize carriers to deliver service as advertised and as promised, likely spurring new investment in airline operations. An analysis of delay compensation requirements overseas found a positive benefit to carrier performance.<sup>86</sup>

## **VIII. Actions the U.S. Government Should Take to Improve Competition and the Air Travel Industry**

The federal government has a public interest obligation to ensure that our airways service the American public rather than corporate profits. The DOJ and DOT should consider implementing the following policies to the fullest extent they can. For areas where the DOJ and DOT may lack existing authority to administer these safeguards, agency leaders should work with Congress to enact new laws that protect the public interest.

### **Prevent Further Consolidation**

The aviation industry, from commercial passenger transport to aerospace manufacturing, is concentrated to an extent not seen in the modern era of air travel. The DOJ and DOT should be extremely wary of further attempts at consolidation, carefully scrutinizing proposed mergers, alliances, and other anticompetitive behavior to ensure they are consistent with the public interest—a statutorily mandated condition for such transactions.<sup>87</sup>

### **Implement Delay Compensation Requirements**

DOT should complete its advanced notice of proposed rulemaking on cash compensation for significant delays and cancellations and ensure a final rule compensates passengers automatically for controllable disruptions.<sup>88</sup> An industry-wide delay compensation standard will have pro-competitive effects as carriers would face higher penalties for poor performance. DOT enactment

---

<sup>86</sup> “Can Regulation Improve Service Quality? Evidence from European Air Passenger Rights,” *Robert Schuman Centre for Advanced Studies*, September, 2018.

[https://cadmus.eui.eu/bitstream/handle/1814/58304/RSCAS\\_2018\\_44.docx.pdf?sequence=1&isAllowed=y](https://cadmus.eui.eu/bitstream/handle/1814/58304/RSCAS_2018_44.docx.pdf?sequence=1&isAllowed=y)

<sup>87</sup> “49 U.S.C. § 41105. Transfers of certificates,” *U.S. Government Publishing Office*, October 11, 1996. [USCODE-2023-title49-subtitleVII-partA-subpartii-chap411-sec41105.pdf](https://www.ecfr.gov/current/title-49--air-transportation-and-air-couriers/chapter-I--general-aviation/subchapter-VII--part-A--subpart-II--chapters-411-419/subsection-411.05); For greater discussion on DOT's public interest mandate for certificate transfers, see Letter from U.S. Senator Elizabeth Warren, *United States Senate*, September 15, 2022.

<https://www.warren.senate.gov/imo/media/doc/2022.09.15%20Letter%20to%20DOT%20re%20merger%20authorit%20and%20Spirit-JetBlue.pdf>

<sup>88</sup> “Airline Passenger Rights,” *Federal Register*, December 11, 2024.

<https://www.federalregister.gov/documents/2024/12/11/2024-28930/airline-passenger-rights>

of such a rule would bring U.S. passenger rights in line with delay compensation requirements that have been in place for decades in the European Union, Canada, and other regions.

### **Enact Safeguards Around Credit Card Reward Programs**

Recent guidance from the Consumer Financial Protection Bureau warned that companies may violate federal law when they devalue earned rewards.<sup>89</sup> This is a positive step forward and DOT should ensure that this becomes a permanent policy in air travel. Reward devaluation should be prohibited, regardless of how much notice the companies may provide to consumers.

### **Mandate Rebooking Reciprocity**

Allowing passengers of significantly delayed or canceled flights to board the next available flight (space permitting), regardless of the operating carrier, will create a better passenger experience and more competitive marketplace as carriers are strongly incentivized to maintain smooth operations.

### **Require Transparent Pricing**

The DOJ and DOT should continue defending the Ancillary Fee Transparency Rule in court and ensure that future ancillary fee types that grow to become dominant revenue sources are disclosed at the beginning of the flight-search process. DOT should also work with Congress to secure explicit statutory codification of the Ancillary Fee Transparency Rule and Full Fare Advertising Rule to deter future attacks from industry. Lastly, DOT's Bureau of Transportation Services should make publicly available the data for all fee-types airlines charge to passengers, not just baggage and change fees.

### **Investigate Predatory Pricing**

Predatory pricing was neither desirable nor feasible during the airline industry's regulated era before the ADA. However, AELP documented how since 1978 major carriers have used all means at their disposal to eliminate new-entrant and low fare competition, including predation.<sup>90</sup> In the 1990s, the DOJ and DOT both sought to eliminate such behavior, but since the early 2000s there has been little action against airline predatory pricing. Both departments should renew such initiatives.

---

<sup>89</sup> "CFPB Takes Action on Bait-and-Switch Credit Card Rewards Tactics," *Consumer Financial Protection Bureau*, December 18, 2024. <https://www.consumerfinance.gov/about-us/newsroom/cfpb-takes-action-on-bait-and-switch-credit-card-rewards-tactics/>

<sup>90</sup> "Southwest Airlines' Below-Cost Fares in Hawaii Highlight Need for Federal Action on Predatory Pricing, New Report Reveals," *American Economic Liberties Project*, December 17, 2024. <https://www.economicliberties.us/press-release/southwest-airlines-below-cost-fares-in-hawaii-highlight-need-for-federal-action-on-predatory-pricing-new-report-reveals/>

## **Establish a Floor of Basic Services To Be Included in All Airfares**

In addition to fee transparency rules, requiring all carriers to provide a minimum standard of basic services would set a baseline for all airlines to compete from. This would alleviate the competitive and consumer harms that stem from carriers' implementation of drip pricing.

Specifically, all carriers should include with base airfare:

- The availability of human assistance at the airport, including for check-in processes, post-flight customer service, and rebooking in the event of a flight disruption;
- The ability to obtain a physical boarding pass;
- The ability to obtain a paper receipt;
- The provision of a safe, adequate, and fair seat on the aircraft;
- The provision of family seating;
- The allowance of a personal item on the aircraft;
- The allowance of a carry-on item on the aircraft;
- The provision of water on the aircraft;
- The availability of an accessible lavatory on the aircraft; and
- The availability of human-employed 24/7 customer service.

See consumer advocates' public comments in response to DOT's family seating rulemaking docket for greater detail on the necessity of establishing these basic standards and the legal authority for DOT to enact these changes.<sup>91</sup>

## **Fund Our Nation's Infrastructure and Eliminate the Excise Tax Loophole**

Ancillary fees for baggage, seat selection, and other services have grown to be an enormous source of revenue for carriers. However, these charges are not subject to the excise tax for airfares.<sup>92</sup> This incentivizes carriers to levy greater ancillary fees, frustrating free market competition, while simultaneously depriving the Aviation Trust Fund of revenue that it normally receives through excise tax. The DOJ and DOT should work with the Internal Revenue Service to clarify that ancillary fees are subject to excise taxation.

## **Limit Data Collection**

In addition to being a consumer protection issue, the lack of safeguards around carriers' data collection practices makes it difficult for an airline to compete on privacy protections. Even if

---

<sup>91</sup> "Comments of the National Consumers League et al. Regarding Family Seating in Air Transportation," *National Consumers League*, November 7, 2024. <https://nclnet.org/wp-content/uploads/2024/11/Consumer-Coalition-Family-Seating-Comments.pdf>

<sup>92</sup> "Enhancing Transparency of Airline Ancillary Service Fees," *Federal Register*, "Ancillary service fees are not subject to the 7.5% airline ticket tax that is used to support the Aviation Trust Fund." April 30, 2024. <https://www.federalregister.gov/documents/2024/04/30/2024-08609/enhancing-transparency-of-airline-ancillary-service-fees>

one wanted to, their competitors will have an unfair advantage by continuing to use extensive personal data for commercial purposes. The use of personal data in relation to the New Distribution Capability system also has competitive implications. Additional information can be found in consumer advocates' letter to DOT on privacy issues.<sup>93</sup>

Setting a standard of privacy across the industry will ensure a fair playing-field for all market participants. DOT should implement consumer data safeguards, including data minimization requirements, through its 49 U.S.C. 41712 authority.

### **Loosen the Consumer Protection Enforcement Bottleneck**

Currently, only one agency is responsible for enforcing consumer protection law affecting hundreds of millions of annual passengers. With just a few dozen hard-working public servants in the Office of Aviation Consumer Protection, DOT is woefully under-resourced for the immense mandate Congress has provided the agency. A recent effort to coordinate with 22 bipartisan state attorneys general works to alleviate this issue, but industry-friendly regulators can reverse these memoranda of understanding.

Federal law should formally empower state attorneys general to enforce consumer protection law to better protect the rules of the marketplace. 38 bipartisan state attorneys general previously requested Congress to grant this authority.<sup>94</sup>

### **Minimize Waste and Inefficiencies**

Carriers have cut costs and degraded services at the expense of consumers and workers. At the same time, airlines have spent billions of dollars buying their own stock and millions of dollars lobbying against consumer protection safeguards.

If corporations are to continue receiving federal funds and tax breaks, including three multi-billion-dollar bailout packages in a 20-year period, there must be greater stipulations that public money is administered efficiently and without waste. One analysis found that over a 10-year period, major airlines spent roughly 96% of their free cash flow on stock buybacks.<sup>95</sup> This amounts to billions of dollars wasted, unrelated to the needs of air transportation.<sup>96</sup> Banning

---

<sup>93</sup> Consumer advocates' letter to DOT regarding its privacy review, *National Consumers League*, April 29, 2024. <https://nclnet.org/wp-content/uploads/2024/04/Advocates-DOT-Privacy-Letter.pdf>

<sup>94</sup> "Bipartisan Coalition of Attorneys General Fight to Protect Airline Customers," *National Association of Attorneys General*, August 31, 2022. <https://www.naag.org/press-releases/bipartisan-coalition-of-attorneys-general-fight-to-protect-airline-customers/>

<sup>95</sup> "Airlines are begging for a bailout, but they've used 96% of their cash flow on buybacks over the past 10 years. It highlights an ongoing controversy over how companies have been spending their money." *Markets Insider*, March 20, 2020. <https://markets.businessinsider.com/news/stocks/airline-bailout-coronavirus-share-buyback-debate-trump-economy-aoc-2020-3-1029006175>

<sup>96</sup> From 2014 through 2020, American Airlines and Southwest Airlines spent \$12.4 billion and \$10.7 billion, respectively, on stock buybacks. See "American Airlines spent \$12 billion on stock buybacks during flush times. Now it says it needs a bailout," *The Dallas Morning News*, March 18, 2020.

stock buybacks and prohibiting excessive lobbying and campaign expenditures would better protect the responsible use of public funds.

On routes and services dependent on public subsidies to remain operational, like flights under EAS, carriers should be required to establish the basic services outlined above and prohibited from utilizing unfair profit-making practices like change and cancellation fees or loyalty rewards-related surcharges.

### **Prioritize Public Servants in Oversight Roles**

At the FAA, eight of the 11 acting and Senate-confirmed administrators who led the agency in this century were former aviation lobbyists or executives, or went on to become aviation lobbyists or executives after leaving the FAA. Congress had previously worked to limit the influence of corporations on oversight roles at the FAA in late 2020 by disqualifying individuals who worked for a regulated entity within the past year (and a similar restriction on employers from hiring former FAA supervisors within two years of their departure from the agency).<sup>97</sup>

The statutory restrictions are limited, however, and regulators can and should adopt longer disqualification periods. Generally, DOT, the DOJ, and the FAA should prioritize the appointment and staffing of individuals with a demonstrated record in advancing the public interest, without a history of industry lobbying or serving as a corporate officer.

### **Explore Alternative Models for Transportation Governance and Administration**

While improvements to air travel can and should be made through greater enforcement of existing law governing marketplace competition and unfair and deceptive practices (and implementing strict restrictions on the use of public funds), there are certain realities of the aviation industry that require permanent public support, regardless of corporate lawfulness or competitive pressure.

For example, certain routes are unprofitable for carriers to fly. Without federal support through a program like EAS or the Alternate EAS program, many communities would suffer. Unforeseeable incidents may strain the marketplace to such a degree that federal intervention may be necessary to ensure the existence of an air travel industry (although airlines' lack of preparedness for economic downturns remains an area deserving of greater scrutiny).<sup>98</sup> However,

---

<https://www.dallasnews.com/business/airlines/2020/03/18/american-airlines-spent-12-billion-on-stock-buybacks-during-flush-times-now-it-says-it-needs-a-bailout/>

<sup>97</sup> “Consolidated Appropriations Act, 2021,” Division V, Title 1, Sec. 111. “Employment Restrictions,” *Library of Congress*, December 27, 2020. <https://www.congress.gov/116/plaws/publ260/PLAW-116publ260.pdf>

<sup>98</sup> “Don’t Feel Sorry for the Airlines,” *The New York Times*, March 16, 2020. <https://www.nytimes.com/2020/03/16/opinion/airlines-bailout.html>

the status quo of recurring bailouts and permanent subsidies is unsustainable without significant reform to the administration of air travel.

*A universal service obligation for aviation.* The federal government has made strides toward what might be considered a type of universal service obligation for aviation with programs like EAS and a recent inquiry into standards for basic services. However, this is a roundabout, piecemeal approach and DOT's continued interest in establishing standards for basic services is uncertain. Other industries, like telecommunications and the postal service, have more explicit universal service obligations.

For example, federal statute outlines the following universal service principles for telecommunications: quality service available at just, reasonable, and affordable rates; access to advanced services in all regions of the nation, access to service in rural and high cost areas comparable to services and rates provided elsewhere; equitable and nondiscriminatory universal service; specific and predictable support mechanisms by federal and state governments; and access to advanced services for schools, healthcare, and libraries.<sup>99</sup> While some of these are not applicable or perfectly analogous to air travel, the basic goals should be the same: access to safe and quality air service in every state at just, reasonable, and affordable rates.

*Worker, consumer, and regional representation on carrier governance boards.* Substantive input from the public—employees, travelers, and local representatives—combined with a degree of authority in airline decision-making would help to center the needs of those who rely on air travel, not shareholders. Many developed countries around the world have implemented similar requirements for large corporations, including Austria, Denmark, Finland, Germany, Norway, and Sweden.<sup>100</sup> The aviation industry's dependency on public funds alongside its transport-utility role makes public representation in carrier governance overdue.

*Ensure geographic access.* Two proposals, a “draft pick” system and a “regional conference” system, would ensure better air service nationwide than the coverage EAS currently provides. Under the first, the federal government, in coordination with local leadership, would identify certain cities and towns (based on factors like status as a state capital, minimum and maximum population, and distance from another city). The largest airlines would then participate in an “airline draft” where they choose which of the identified cities to service at just and reasonable prices and with daily frequency.

Under the second, the federal government would designate in each region of the U.S. a single carrier as the provider of scheduled service to smaller markets. Every major airline would be fully interoperable and could-share with the regional carrier. Prices on the regional flights would

---

<sup>99</sup> “47 U.S.C. 254 - Universal Service,” *United States Government Publishing Office*, January 3, 2024. <https://www.govinfo.gov/app/details/USCODE-2023-title47/USCODE-2023-title47-chap5-subchapII-partII-sec254>

<sup>100</sup> “Codetermination and power in the workplace,” *Economic Policy Institute*, March 23, 2022. <https://www.epi.org/unequalpower/publications/codetermination-and-power-in-the-workplace/>

be just and reasonable. It would also maximize the ability of passengers to get to their destinations via their preferred major carriers with the interoperability requirements. More detailed information on these two proposals can be found beginning on page 10 of the AELP and Vanderbilt Policy Accelerator report titled “How to Fix Flying: A New Approach to Regulating the Airline Industry.”<sup>101</sup>

---

<sup>101</sup> “How to Fix Flying: A New Approach to Regulating the Airline Industry,” *American Economic Liberties project and Vanderbilt Policy Accelerator*, January, 2024. <https://www.economicliberties.us/wp-content/uploads/2024/01/20240124-AELP-airlines-v5.pdf>

## **IX. Conclusion**

The undersigned public interest organizations appreciate the DOJ and DOT's attention to the issue of competition in air travel. Consumer advocates also look forward to working with the incoming administration to ensure a robust and healthy aviation industry that serves the needs of the country and the flying public.

Communications with respect to these comments may be addressed to:

John D. Breayult  
Vice President, Public Policy, Telecommunications, and Fraud  
National Consumers League  
Phone: (202) 835-3323 x819  
Email: [johnb@nclnet.org](mailto:johnb@nclnet.org)

or

Eden Iscil  
Senior Public Policy Manager  
National Consumers League  
Phone: (202) 835-3323 x821  
Email: [edeni@nclnet.org](mailto:edeni@nclnet.org)

## Appendix

The **American Economic Liberties Project (“AELP”)** is an independent nonprofit research and advocacy organization dedicated to addressing the problem of concentrated economic power in the United States. It advocates for policies that address today’s crisis of concentration through legislative efforts and public policy debates. AELP is nonprofit and nonpartisan and does not accept any funding from corporations.

**Consumer Federation of America (“CFA”)** is a national association of over 250 nonprofit organizations that advances the consumer interest through research, advocacy, education, and service. CFA investigates consumer issues and publishes research that assists policymakers and individuals, and it advances pro-consumer legislation at the national and state levels.

**Consumer Action** has been a champion of underrepresented consumers since 1971. A national, nonprofit 501(c)3 organization, Consumer Action focuses on financial education that empowers low to moderate income and limited-English-speaking consumers to financially prosper. It also advocates for consumers in the media and before lawmakers and regulators to advance consumer rights and promote industry-wide change particularly in the fields of credit, banking, housing, privacy, insurance, aviation and telecommunications.

**FlyersRights** is a nonprofit organization that advocates on behalf of airline passengers and aviation safety in court, in federal agencies, in Congress, and in the media. Established in 2007, it operates a free hotline for airline passengers, 877- FLYERS-6. FlyersRights represents passengers and the general public in air safety matters on the FAA Aviation Rulemaking Advisory Committee.

The **National Consumers League (“NCL”)** is a nonprofit, nonpartisan consumer advocacy organization representing consumers and workers on marketplace and workplace issues since its founding in 1899. Headquartered in the District of Columbia, NCL provides government, businesses, and other organizations with the consumer’s perspective on concerns including aviation, child labor, food safety, healthcare, privacy, and telecommunications. Since 2021, NCL has served as the consumer representative on DOT’s Aviation Consumer Protection Advisory Committee.

The mission of **Travelers United** is to identify and promote ways to improve and enhance travel for consumers across all modes of travel. Travelers United deals with all types of vacations and business travel—air travel, lodging, rental cars, driving, dining, and hidden fees.