

STATEMENT OF FLYERSRIGHTS.ORG

AND

AVIATION CONSUMER ACTION PROJECT

RE

PROPOSED USAIRWAYS-AMERICAN AIRLINES MERGER

TO

**U.S. HOUSE OF REPRESENTATIVES & SENATE
JUDICIARY COMMITTEES, U.S. DEPARTMENT
OF TRANSPORTATION, U.S. DEPARTMENT OF
JUSTICE ANTITRUST DIVISION**

BY

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The proposed merger between American Airlines and USAirways should only be approved with regulation establishing national and international standards for enforceable airline passenger rights.

Legislation that would block anti-competitive practices that are rapidly eroding price competition in the airline industry, eliminate anti-competitive airport practices, and empower airline passenger interests to balance the interests of the air transportation industry that now completely dominate national air transportation policy is now essential if the era of price competition and consumer choice in air travel is to continue.

In June 2012, we submitted testimony to the US Dept. of Transportation (DOT) which set forth much needed reforms to enhance airline passenger rights. Copy enclosed.

However, the Advisory Committee for Aviation Consumer Protection appointed by Secretary LaHood (consisting of an airline representative, an airport representative, a state official and a travel writer) failed to support any of the 15+ proposals, and to date the DOT has failed to recommend any aviation consumer protection legislation although mandated to do so by Congress by February 2013.

It has also delayed issuing regulation requiring that ancillary fees be disclosed in real time to third party airline ticket sellers and web sites.

There have been recent efforts by airlines as noted in the recent testimony to the House Subcommittee on Regulatory Reform, Commercial & Antitrust Law of the Business Travel Coalition and the American Antitrust Institute to defeat price competition.

The 2011 acquisition of Airtran by Southwest Airlines is instructive. It discontinued service to Sarasota Florida (and five other medium size cities) in favor of Southwest service at Tampa (65 miles away) thereby reducing Sarasota enplanements by over 300,000 per year and raising airfares, travel time and expenses for passengers.

No other low cost carrier has come in to replace Airtran which provided real price competition for Southwest and other carriers and no other one really exists except on very limited routes (Southwest is no longer a low cost carrier by most

definitions but competes largely on service, lack of baggage fees and more liberal cancelation policies). The USAirways-American merger will certainly reduce competition further.

The record of prior airline mergers is clear that fares generally increase and service is reduced to smaller and medium size cities and concentrated at fortress hubs. See Table 1 at White Paper at American Antitrust Institute web site, 2013.

Unless stopped, the airline penchant for mergers (USAir-America West 2005, Delta-Northwest 2008, Republic-Midwest 2009, Republic-Frontier 2009, United-Continental 2010, Southwest-Airtran 2011) coupled with the lack of new entrants and the loss of most US low cost air carriers, will soon result in oligopoly or to re-regulated monopolies, with US air transportation operating more like AMTRAK.

Airline mergers also mean thousands of jobs lost, contractors often replace union workers, retirement plans are reduced or wiped out, airplanes are sold, routes are eliminated, quality of service typically plummets during costly airline merger transitions for two years or more, safety margins may be reduced, and passengers will pay more while departing executives take golden parachutes and remaining ones cash in with higher pay. American Airlines plans to cut at least 14,200 jobs and void union contracts -- the perks of Chapter 11.

Competition and even Chapter 11 bankruptcy can be great mechanisms for fostering efficient low cost air travel and are not necessarily unprofitable. USAirways is already quite profitable and seeks to be more so, while its CEO seeks to realize his dream of leading the largest US airline in history. There is little doubt American which has a very large cash reserve would also be profitable if it emerged from bankruptcy as a stand-alone company after shedding unaffordable union contracts, with creditors as its new shareholders, with a new more passenger and labor friendly management dedicated to better customer service, and perhaps with even some passenger representation on its board of directors.

Other Anti-Competitive Trends

Price competition was greatly enhanced by web sites that allowed consumers to comparison shop and make reservations and buy tickets. But now most airlines have taken away the ability to buy tickets or even make reservations by redirecting consumers to their web site and requiring re-entering of customer information,

thereby bombarding the customer with ancillary fees and pitches for additional services or products.

The cost of a ticket can increase by \$25 to over \$100 or more, when coupled with hidden fees that are not disclosed in transparent ways on either third party or airline web sites (especially checked baggage fees).

The US DOT has the sole authority to issue and enforce regulations to prohibit “unfair or deceptive” airline practices, but it has rarely done so without the approval of the airlines.

And its record of enforcement by fines is dismal, with fines regularly reduced by 50% or more and nearly all violations settled by consent orders or findings in favor of the airline with zero fines.

Its handling of consumer complaints is even worse. It rejects 90% of complaints as not within its jurisdiction as allegedly not violating any DOT rule and merely asks the airline to respond.

It does not prohibit unfair terms in airline drafted contracts of carriage that make such contracts illusory with misleading words and that provide no practical means of enforcement for the consumer in case of violation.

It uses passenger complaints largely for statistical purposes and deceptively refers consumers to small claims courts that lack jurisdiction over airlines.

(See DOT web site, “Tell It to the Judge” publication. Airlines can at will and regularly do remove any lawsuit filed in state or local courts to US District Court where the litigation costs far exceed any potential consumer recovery, see Paul S. Hudson, Airline Passenger Tarmac Confinements and Delays, ABA Air & Space Lawyer, vol. 23, No. 2, 2010)

Tort cases against airlines are regularly dismissed by the courts under federal preemption doctrine, and if not dismissed outright, passengers generally are barred from recovery for damages unless they are physically injured or killed.

(See New York Courts to Passenger Victims of 11 Hour Tarmac Confinement: It’s an Airline “Service”, No Recovery Allowed Except for Physical Injury or Death,

Aviation Consumer Action Project, Jan. 2013, enclosed; Air & Space Lawyer article above.)

The International Air Transport Association (IATA) and its members have recently approved a new business model requesting personal information from passengers not presently required in order to provide passengers with a “customized” price quote. This system if approved by the DOT could make price competition a thing of the past for international flights, and also raises serious new privacy concerns. Eventually such systems would allow for price fixing and setting based on how big your wallet is and how desperate or motivated you are to travel, completely contrary to the fixed, transparent pricing that replaced individually negotiated prices for most consumer goods in the early 20th Century America.

Due to the lack of low cost airlines in the US, we now support allowing selected foreign low cost carriers to fly domestic routes.

In sum, we believe this proposed merger of American and USAirways should be restructured or disapproved by the Justice Department, unless competition is clearly not reduced and passenger rights are well protected by new legislation and rulemaking.

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FlyersRights.org (fka the Coalition for an Airline Passengers' Bill of Rights) was founded in 2007 as non-profit corporation to advocate for the rights and interests of airline passengers by Kate Hanni after she was stranded on the tarmac for many hours with 10,000 others. It organized a coalition that successfully advocated for the adoption of the 3 Hour Rule adopted by the DOT in 2009 that prohibits airlines from confining passengers on the tarmac for extended periods without returning to the terminal. In 2012, a passenger rights section it supported was included in the FAA Reauthorization Act that encouraged the DOT to issue further aviation consumer protections. With over 25,000 member-supporters it is the largest airline passenger organization in the U.S. It publishes a weekly newsletter, maintains a free emergency telephone hotline 1-877-FLYERS-6 to assist airline passengers and an anonymous tips hotline. It relies on individual donations and receives no funding from government or the airline industry.

The Aviation Consumer Action Project (ACAP) was founded in 1971 as a 501 (c) (3) nonprofit corporation to act a voice for air travelers on national aviation issues, especially safety and airline passenger consumer rights. It is funded by contributions from individuals and foundation grants. It receives no funding and has no business relationships with the airline industry or any government agency.

ACAP has been a principal advocate for truth in scheduling, lost baggage and bumping compensation, medical kits on airliners, realistic emergency evacuation testing, passenger cabin air standards, smoking ban, and airline competition. It organized a coalition after 9/11 to advocate for the establishment of the TSA and much stronger aviation security.

Its activities include public education, publication of consumer guides and research reports, serving on national advisory committees (FAA Aviation Rulemaking Advisory Committee, TSA Aviation Security Advisory Committee, American Society of Heating, Refrigeration & Air Conditioning Engineers (ASHRAE) Committee on Aviation Cabin Air Quality), representation of aviation consumer and the public interest in rulemaking and litigation activities, testifying before legislative bodies and national and international commissions.

Paul Hudson has been executive director of ACAP since 1997 and president of FlyersRights.org since 2012. He is a New York attorney who has advocated for airline passenger rights and interests in the Courts, before Congress, the Executive Branch and in the public and professional media since 1989.