



May 5, 2023

The Honorable Pete Buttigieg
Secretary of Transportation
U.S. Department of Transportation
1200 New Jersey Ave., SE
Washington, DC 20590

The Honorable Julie Su
Acting Secretary of Labor
U.S. Department of Labor
200 Constitution Ave., NW
Washington, DC 20210

The Honorable Billy Nolen
Acting Administrator
Federal Aviation Administration
800 Independence Avenue, SW
Washington, DC 20591

The Honorable David P. Pekoske
Administrator
Transportation Security Administration
6595 Springfield Center Drive
Springfield, VA 22150

Dear Secretary of Transportation Buttigieg, Acting Secretary of Labor Su, Acting Administrator Nolen and Administrator Pekoske

We write to express concern that a previously rare and limited business model for air service, once confined to private jet charters, is expanding so rapidly that it threatens to take over a large part of the air services in the United States. Airlines selling passenger tickets on flights that are scheduled in all but name are operating under a combination of rules: the safety rules of 14 CFR Part 135, the economic rules of 14 CFR Part 298 for commuter air carriers, and 14 CFR Part 380 for public charters. Because of a loophole created by that combination of rules, these airlines are able to skirt safety and security regulations that your departments and agencies enforce. A pending application before DOT by a unit of SkyWest Airlines implicates this business model, as we will describe.

One such air carrier is branded as “JSX.” The operator is Delux Public Charter, LLC, d/b/a JSX Air, and the charterer and re-seller of seats is JetSuiteX, Inc. (collectively, JSX). Through this complex structure, JSX is providing scheduled passenger service between major airports available for purchase in a manner that -- to the ordinary consumer -- looks identical to buying a seat on a regular scheduled airline. This arrangement enables JSX to fly a self-described “hop-on jet service” with scheduled operations on aircraft limited to 30 passengers under Part 135, asserting a speedy path to the plane using “private terminals,” and “non-invasive security procedures.”

Catering only to premium customers, offering 30-seat business class jets for “hassle-free” and “crowd-free” flying, is a departure from aviation safety and creates a very real divide in aviation for who can afford access and who cannot. Air travel has become accessible for the average American, but this model threatens that access for many communities that cannot attract commercial service without a mix of business and leisure fares.

As a matter of safety, providing scheduled service under Part 135 skirts a host of scheduled-airline safety regulations contained in Part 121, including the 1,500-hour threshold for an Airline Transport Pilot certificate (a/k/a First Officer Qualifications), the age 65 retirement mandate, and minimum rest along with no interrupted rest. These and other Part 121 safety regulations have kept U.S. aviation as the safest mode of transportation in the world, but which do not apply to companies abusing the loophole in the regulatory regime. Operating scheduled flights in this way carries out an end-run around the FAA’s commitment since the mid-1990s to One Level of Safety, which required that Part 135 scheduled carriers move to the higher, more stringent Part 121 standard.

As a matter of security, passengers flying these flights are not subjected to traditional TSA magnetometer and X-ray airport security checkpoints. Instead, passengers are cross-checked against the TSA No Fly List, without more screening. Indeed, avoiding TSA “invasive security procedures” is the major source of the time savings and the exclusive “one percenter” experience JSX offers. Yet security requirements brought forward by TSA since the terrorist attacks of September 11, 2001 have been essential to maintaining the security of our nation’s aviation system and our homeland security.

We are also concerned about elevated emissions and increased airspace congestion. To fit into the regulatory gap it occupies, the aircraft are reconfigured to seat no more than 30 passengers, on regional jets designed originally to hold up to 50 passengers. This model generates more intensive emissions per passenger and in busy markets with congested airspace, the model further strains an already challenged and under-staffed air traffic control system.

We understand the vital role many Part 135 operators play in offering passenger and cargo service to remote areas and underserved markets, creating a linkage to the larger aviation system for U.S. citizens that otherwise would not be possible, including in the Alternative Essential Air Service pilot program that permits charter flights where regularly scheduled service under the long-established Essential Air Service program is not feasible.¹ It is quite another proposition, however, to run a massive number of regularly scheduled operations in the same markets already well-served by airlines, using lower safety and security standards as a competitive advantage: Contour operated approximately 16,000 flights in 2021, while JSX operated *three and a half times* as many -- 56,326 flights -- in the same period.

¹ Contour Airlines, Boutique Air, and Cape Air, among others, operate laudable service under this program.

JSX's evasion of these standards has inspired others to attempt a similar model, degrading the safety and security of air travel while also distorting competition, increasing aviation emissions, and worsening airspace congestion.

As we mentioned above, SkyWest has stood up a new unit, called SkyWest Charter, to mimic JSX's business model, but with a twist: it depends on a change in DOT practice to cater to government-subsidized small and rural communities. SkyWest proper is the largest Essential Air Service operator in the Continental U.S. and is withdrawing from those markets. It seeks approval from DOT and FAA to swap SkyWest Charter for itself, and operate that unit in the image of JSX (without the TSA security end-run) to link small communities to the national airline network, under a lesser standard of safety compared to Part 121. For SkyWest's plan to succeed, however, DOT will be forced to accede to the Alternative EAS charter program to swallow the rule that small communities deserve scheduled as Congress mandated.

The Department of Transportation (DOT), Department of Homeland Security (DHS), along with the Federal Aviation Administration (FAA) and Transportation Security Administration (TSA), should immediately review all of these efforts to skirt Part 121 regulatory protections and take any necessary actions to support safety, security, efficiency, sustainability, and competition in our nation's aviation system. In addition, we call on the DOT and FAA to review the pending DOT application by SkyWest Charter. Approval of this application will open the floodgates in aviation to compete in the same arena. With Congress currently considering FAA reauthorization, we also request your departments and agencies make recommendations to legislatively address this concerning development.

Thank you for your leadership and we look forward to your prompt response.

Sincerely,

Air Line Pilots Association
Allied Pilots Association
Association of Flight Attendants-CWA
Association of Professional Flight Attendants
Coalition of Airline Pilots Associations
International Association of Machinists and Aerospace Workers
National Air Traffic Controllers Association
Southwest Airlines Pilots Association
Transportation Trades Department, AFL-CIO
Transport Workers Union of America

cc: Docket DOT-OST-2022-0071

JSX approval background: The service as it exists today has transformed beyond what JSX previewed when it sought commuter air carrier authorization from DOT in 2015. At that time, JSX said it would “revitalize short-haul (less than 500 statute mile) air travel in the United States,” lamented that “more and more small airports have no service at all,” and charged that “many nonstop short-haul markets are now single carrier monopolies.”^[1] At that time, JSX proposed to operate service between Santa Ana, California (SNA) and North Las Vegas, Nevada (VGT); Santa Barbara, California (SBA) and San Jose, California (SJC); and San Jose, California (SJC) and Santa Ana, California (SNA)—all flights under 350 miles with flight time less than an hour.^[2] DOT approved JSX’s authorization on that basis,^[3] and did not make a finding that JSX is fit for operations that would require part 121 certification from the FAA.^[4] Now, JSX is flying between places such as Las Vegas and Dallas, Phoenix and Denver, and Miami and Westchester—operating longer routes in markets already well-served by airlines, and competing unfairly on the basis of lower safety and security standards.

[1] Application of Delux Public Charter, LLC For Commuter Air Carrier Authorization, at 1-2, *available at* https://downloads.regulations.gov/DOT-OST-2015-0208-0001/attachment_1.pdf.

2 Third Supplement to the Application of Delux Public Charter, LLC for Commuter Air Carrier Authorization, Attachment T, *available at* https://downloads.regulations.gov/DOT-OST-2015-0208-0010/attachment_1.pdf.

3 Order to Show Cause Proposing Issuance of Commuter Air Carrier Authority, at 4, *available at* https://downloads.regulations.gov/DOT-OST-2015-0208-0018/attachment_1.pdf.

4 Final Order, Item #2 of Terms, Conditions, and Limitations, *available at* https://downloads.regulations.gov/DOT-OST-2015-0208-0022/attachment_1.pdf.

5 FAA Airline Certificate Information, *available at* https://av-info.faa.gov/detail.asp?DSGN_CODE=4DPA&OPER_FAR=135&OPER_NAME=DELUX+PUBLIC+CHARTER+LLC.