

U.S. Senate Committee on the Judiciary
Subcommittee on Antitrust, Competition Policy, and Consumer Rights
“Examining Competition in America’s Skies”
Questions for the Record for William J. McGee
Submitted October 7, 2025

QUESTIONS FROM SENATOR CORY A. BOOKER

1. After the *Airline Deregulation Act of 1978* was passed, the Department of Transportation established the Essential Air Service (EAS) to subsidize flights to rural communities. Unfortunately, EAS has faced challenges as flights often operate below capacity and are not profitable for the airlines. As you and Professor Sitaraman pointed out in your report *How to Fix Flying: A New Approach to Regulating the Airline Industry*, “This means one of two things: either higher prices for people who live in smaller markets (which also dissuades travel and economic growth) or less frequent service,” which creates a vicious cycle as “[h]igher prices dissuade travelers, which pushes airlines to offer less frequent service.”¹
 - a. How can the EAS program be improved to ensure rural Americans have access, or has it failed to fulfill its mission and should be discontinued altogether?

ANSWER:

Congress created the EAS program to guarantee that small communities maintain a minimum level of air service. This was due to valid concerns that deregulation would entice airlines to serve larger, more lucrative cities and abandon smaller communities.² By providing subsidies, Congress ensures reliable access, thereby helping local economies and ensuring all Americans have access to the national aviation grid.

Currently, EAS serves 177 communities nationwide, 65 in Alaska.³ When Covid-19 hit in 2020, the U.S. Department of Transportation (DOT) allowed airlines to reduce EAS service.⁴ In 2020, the first year of the pandemic, U.S. airline traffic fell by 557 million passengers, a 60% decrease from the previous year.⁵ What's more, major carriers continued cutting service to smaller markets even after the

¹ William J. McGee and Ganesh Sitaraman, *How to Fix Flying: A New Approach to Regulating the Airline Industry*, American Economic Liberties Project (Jan. 2024), <https://www.economicliberties.us/wp-content/uploads/2024/01/20240124-AELP-airlines-v5.pdf>.

² Rachel Y. Tang, “Essential Air Service (EAS),” U.S. Congressional Research Service, December 19, 2018, <https://www.congress.gov/crs-product/R44176>.

³ U.S. Department of Transportation, “Essential Air Service,” <https://www.transportation.gov/policy/aviation-policy/small-community-rural-air-service/essential-air-service>.

⁴ U.S. Department of Transportation, “U.S. Department of Transportation Issues Notice Regarding Essential Air Service Program, Given the Impact of COVID-19,” April 29, 2020, <https://www.transportation.gov/briefing-room/us-department-transportation-issues-notice-regarding-essential-air-service-program>.

⁵ Bureau of Transportation Statistics, “Full Year 2020 and December 2020 U.S. Airline Traffic Data,” March 11, 2021, <https://www.bts.gov/newsroom/full-year-2020-and-december-2020-us-airline-traffic-data>.

industry stabilized.⁶

EAS needs to be revamped. Currently, the program only covers small towns, but it doesn't cover small cities, a development that clearly was not foreseen in 1978. Due to the dramatic industry consolidation that I addressed in my testimony, dozens of airline mergers have caused the remaining legacy airlines to close hubs in cities as large as St. Louis, Cincinnati, Cleveland, and Pittsburgh (see below). As we also noted, cities as large as Cheyenne, Wyoming are not served by EAS.⁷

To improve EAS, Congress should ensure that ALL American air travelers have geographic access, similar to the Interstate Highway System and U.S. Postal Service models. We recommend Congress can do this by either of two models:

- A "Draft Pick System," whereby Congress would direct the largest airlines to choose smaller communities to serve at regulated, affordable rates. In effect, this would expand upon the regulated EAS model already in place for the last 47 years.
- A "Regional Conference System," whereby Congress would designate a major carrier in each region of the country to serve smaller markets. This would allow network airlines to expand upon their existing hub-and-spoke models.

We provide greater detail on both models in "How to Fix Flying."⁸

- b. Should EAS or a similar initiative focus on connecting rural airports to major hubs or would instead direct point-to-point flights better serve rural communities?

ANSWER:

There is more than one model that could effectively expand or replace EAS. Such decisions have much to do with geography. Some smaller and rural airports are ideal satellites for major carrier hubs and could be properly served as spoke routes to these hubs. Other airports may require point-to-point routes, based on passenger traffic demands and flight distances. AELP suggests such considerations be taken on a case-by-case basis, rather than on a "one-size-fits-all" basis.

⁶ Michelle Gao, "'We're a long way from anywhere else': Small U.S. cities hit with airline service cuts in pandemic," CNBC, October 23, 2020, <https://www.cnbc.com/2020/10/23/coronavirus-travel-airlines-cut-service-to-small-airports.html>.

⁷ Written Testimony of William J. McGee Before the U.S. Senate Committee on the Judiciary, Subcommittee on Antitrust, Competition Policy, and Consumer Rights, "Examining Competition in America's Skies," September 30, 2025, <https://www.judiciary.senate.gov/imo/media/doc/a5baedff-b8d1-271b-902e-844a8b350dab/2025-09-30%20PM%20-%20Testimony%20-%20McGee.pdf>.

⁸ William J. McGee and Ganesh Sitaraman, *How to Fix Flying: A New Approach to Regulating the Airline Industry*, American Economic Liberties Project (Jan. 2024), <https://www.economicliberties.us/wp-content/uploads/2024/01/20240124-AELP-airlines-v5.pdf>, p. 10-11.

- c. Do flight subsidies interfere with natural market forces and discourage competition in the industry?

ANSWER:

No, flight subsidies do not disrupt market forces or discourage competition, especially in smaller and rural communities. EAS or other subsidies would not be needed if airlines were eager to serve such communities, a fact that many Members of Congress from less populated regions accurately predicted in 1978, including Sen. Howard Cannon (D-NV) and Sen. Robert Byrd (D-WV).⁹

However, EAS subsidies should be reexamined since two key issues have emerged: 1) as noted above, larger carriers have publicly lobbied against serving EAS routes so that they can use their aircraft and crew assets in more lucrative markets and 2) smaller, low fare carriers could potentially provide more service to smaller and rural markets. That said, airline subsidies are necessary to ensure the benefits of commercial aviation are available to Americans nationwide, including in smaller and rural communities that are not as attractive to airlines focused primarily on shareholder value rather than providing comprehensive service.

2. In your written testimony you contend that the lack of competition in the airline industry harms not just rural communities but major cities as well. You write “Consolidation spurred the majors to close hubs in cities as large as St. Louis, Cincinnati, Cleveland, and Pittsburgh. [That] in the case of St. Louis, American’s daily flights plunged from an average of 200 to just 36” in 2009.
- a. Why do you believe consolidation has had this effect? Are there other factors that could have contributed to airport closures, including low demand or increased costs?

ANSWER:

This question gets to the heart of the twin failures of deregulation and consolidation within the U.S. airline industry for nearly five decades. Effective transportation systems--like all utilities--are designed to provide ubiquitous service to all communities, coupled with aggregated pricing so that all users share in the costs. As we noted in "How to Fix Flying," the deregulated free market system has incentivized airline executives to focus exclusively on monetizing a smaller number of "fortress hubs," and the locations of these hubs have been chosen to maximize profits rather than being designed for passenger convenience or even population distribution. As stated in my testimony for this hearing, the

⁹ James S. Meyer, “Section 419 of the Airline Deregulation Act: What Has Been the Effect on Air Service to Small Communities,” *Journal of Air Law and Commerce*, 1981, Volume 47, Issue 1, Article 6, <https://scholar.smu.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=2331&context=jalc>.

largest airlines have not only gotten too big to fail, but also too big to care.¹⁰

American shut down the former TWA hub in St. Louis because American already maintained fortress hubs in Chicago and Dallas, making St. Louis obsolete once American acquired TWA.¹¹ Similar reasons were given for other post-merger hub closures; after merging with Continental, United closed Continental's hub in Cleveland because it was superfluous due to United's own hubs in Washington and Chicago.¹² And Delta downgraded its Cincinnati hub after it acquired Northwest and its Detroit hub.¹³ In the case of Pittsburgh, US Airways struggled financially after the 9/11 attacks, which contributed to de-hubbing PIT.¹⁴

The deregulated hub-and-spoke networks have not only left behind millions of Americans in smaller and rural communities, but millions more in some of the nation's largest metropolitan areas. Sensible airline networks meet demand, as the Civil Aeronautics Board did during the 40 years it regulated the airlines. It would have been unimaginable that such large cities would see service downgrades prior to 1978, so that not only air travelers but even local corporations are denied adequate nonstop routes and daily flight frequencies. This is why AELP was so supportive of *Sec. 514 of the FAA Reauthorization Act of 2024*, which calls on the Government Accountability Office to study the effects of consolidation on airline competition.¹⁵

3. Would breaking up larger carriers help to restore lost service, or are new, smaller carriers entering the market the only viable solution? Or do we need both?

ANSWER:

We do need both solutions. As detailed in my testimony, the only real competition and pricing discipline in the domestic airline industry today comes from the low fare airlines.

¹⁰ William J. McGee and Ganesh Sitaraman, *How to Fix Flying: A New Approach to Regulating the Airline Industry*, American Economic Liberties Project (Jan. 2024), <https://www.economicliberties.us/wp-content/uploads/2024/01/20240124-AELP-airlines-v5.pdf>; William J. McGee on behalf of the American Economic Liberties Project, Response to Request for Information on Merger Enforcement, Before the Department of Justice and the Federal Trade Commission, Docket ID FTC-2022-0003, April 2022, <https://www.economicliberties.us/wp-content/uploads/2022/04/2022-04-20-AELP-DOJ-FTC-Airlines-McGee.pdf>.

¹¹ Justin Hayward, "Throwback: When American Airlines Had A Hub At St Louis Lambert International Airport," Simple Flying, November 18, 2024, <https://simpleflying.com/american-airlines-st-louis-hub-history/>.

¹² Leila Atassi, "What will become of Concourse D after United Airlines cut regional flights at Cleveland Hopkins International Airport?," Cleveland.com, February 5, 2014, https://www.cleveland.com/cityhall/2014/02/what_will_become_of_concourse.html.

¹³ James Pilcher, "Why CVG lost half of all flights," Cincinnati.com, May 24, 2010, <https://web.archive.org/web/20150629022844/http://archive.cincinnati.com/article/20100524/EDIT03/5230393/Why-CVG-lost-half-all-flights>.

¹⁴ Mark Belko, "The Long Decline: Pittsburgh International Airport Still Trying to Rebound From the Effects of 9/11," Aviation Pros, August 30, 2021, <https://www.aviationpros.com/airport-business/airport-infrastructure-operations/news/21236220/the-long-decline-pittsburgh-international-airport-still-trying-to-rebound-from-the-effects-of-9-11>.

¹⁵ FAA Reauthorization Act of 2024, Section-by-Section Summary, https://transportation.house.gov/uploadedfiles/faa_reauth_act_section_by_section.pdf.

The MIT study I cited in my testimony found that the entry of a low cost carrier (i.e., JetBlue, Southwest) on a route reduced fares on average by 8%, while the entry of an ultra-low cost carrier (i.e., Allegiant, Frontier, Spirit, etc.) reduced fares by 21%.¹⁶

However, the challenges for new-entrant carriers are underscored by noting that since 2007, the United States has seen only two new start-up scheduled passenger airlines: Avelo and Breeze in 2021.¹⁷ We believe this is due in large measure to the harms of common ownership of airline stock by institutional investors who abhor true competition since low fare airlines offer lower fares and force the major carriers to compete.¹⁸ This is why AELP wrote model legislation that we urge the Senate Judiciary Committee to consider, since it would restrict investors from owning more than 1% of any domestic carrier if they also own more than 1% of one or more other domestic carriers.¹⁹

We also believe the time has come for Congress to examine breaking up the "Big Four" largest carriers--American, Delta, Southwest, and United--that together control an unprecedented 80% of the domestic airline market.²⁰ This increase in market share was not won by offering better service, but instead was the result of dozens of mergers over the decades,²¹ culminating in the rapid consolidation of the Big Six network carriers combining into the Big Three: Delta-Northwest in 2008, United-Continental in 2010, and American-US Airways in 2013.²² As noted, the Airline Deregulation Act of 1978 is rife with broken promises. For example, its opening statement assured Americans that deregulation would usher in "placing maximum reliance on competition," "avoidance of unreasonable concentration," and "encouragement of entry...by new air carriers."²³ None of this has happened, and as a result, the oligopoly of the Big Four has harmed

¹⁶ Written Testimony of William J. McGee Before the U.S. Senate Committee on the Judiciary, Subcommittee on Antitrust, Competition Policy, and Consumer Rights, "Examining Competition in America's Skies," September 30, 2025, <https://www.judiciary.senate.gov/imo/media/doc/a5baedff-b8d1-271b-902e-844a8b350dab/2025-09-30%20PM%20-%20Testimony%20-%20McGee.pdf>; Alexander R. Bachwich and Michael D. Wittman, "The Emergence and Effects of the Ultra-Low Cost Carrier (ULCC) Business Model in the U.S. Airline Industry," Massachusetts Institute of Technology, International Center for Air Transportation, October 17, 2016, <https://dspace.mit.edu/bitstream/handle/1721.1/104869/ulcc-paper-draft-revFINAL.pdf%3Bjsessionid=B077%205022ED165FAFDF3A9F0809460539>.

¹⁷ Julie Weed, "Despite it All, Two New U.S. Airlines Prepare to Fly," The New York Times, March 16, 2021, <https://www.nytimes.com/2021/03/16/travel/airlines-breeze-avelo-usa.html>.

¹⁸ Jose Azar et al., "Anticompetitive Effects of Common Ownership," Journal of Finance, May 13, 2018, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2427345.

¹⁹ American Economic Liberties Project, "How to Address the Air Travel Crisis: Eliminating the Airlines' Legal Liability Shield," September 20, 2022, <https://www.economicliberties.us/our-work/end-federal-preemption/>.

²⁰ William J. McGee on behalf of the American Economic Liberties Project, Response to Request for Information on Merger Enforcement, Before the Department of Justice and the Federal Trade Commission, Docket ID FTC-2022-0003, April 2022, <https://www.economicliberties.us/wp-content/uploads/2022/04/2022-04-20-AELP-DOJ-FTC-Airlines-McGee.pdf>.

²¹ Rahul Mukherjee, Erin Davis, and Jacob Knutson, "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>.

²² Bureau of Transportation Statistics, "Full Year 2020 and December 2020 U.S. Airline Traffic Data," March 11, 2021, <https://www.bts.gov/newsroom/full-year-2020-and-december-2020-us-airline-traffic-data>.

²³ Airline Deregulation Act of 1978, 95th Congress, S.2493, <https://www.congress.gov/bill/95th-congress/senate-bill/2493>.

consumers, workers, and entire cities and even regions of the country. Monopoly power has corrupted an industry that is vital to the nation's economy and security, and Americans' ability to travel freely. Breaking up the Big Four would at last fulfill the 47-year-old promises of robust competition and new entry within the airline industry.

AI and surveillance pricing has become a concern in airline ticket purchasing. During your testimony to the subcommittee, you mentioned that a test conducted twenty-four years ago demonstrated that major airlines were collecting shopping data from consumers online to learn about their purchasing preferences and habits.

- a. Could you provide further information on the test conducted and the types of data it found the airlines were collecting over two decades ago?

ANSWER:

During the 22 years from 2000 to 2022 when I worked and consulted for Consumer Reports (formerly Consumers Union), I repeatedly found compelling evidence of what came to be known as "dynamic pricing" within the airline and travel sector. Research in this area was quite nascent, and undoubtedly what we discovered was technologically crude as dynamic pricing geared toward demographics (i.e., Mac users vs. PC users, urban residents vs. rural residents, etc.) devolved into personalized "surveillance pricing" geared toward individuals.

As Editor of Consumer Reports Travel Letter from 2000 to 2003, we accidentally stumbled upon this phenomenon while conducting extensive comparison testing of travel and airline websites, when we saw different airfares for identical itineraries in real time on different devices. We continued to see this from 2003 to 2006 when I conducted extensive travel site testing for Consumer Reports WebWatch. Some of our findings:

- In a 2004 report, we provided details on numerous cases of fares being unavailable or switching, and quoted responses from Orbitz, Expedia, and Travelocity.²⁴
- We bundled numerous online discrepancies into a 2005 report that detailed travel sites offering invalid fares and a phenomenon we termed "fare-jumping," whereby rates jumped in real time mid-booking.²⁵
- We summarized all these findings in a lengthy press release warning consumers about dynamic pricing in 2007, detailing discrepancies found with airfares and hotel prices on Expedia and Travelocity, and chronicled side-by-side testing conducted in 2006 using different browsers, both

²⁴ William J. McGee, "Global Concerns: An In-Depth Examination of U.S. Travel Web Sites Selling International Airline Tickets," Consumer Reports, September 22, 2004, <https://advocacy.consumerreports.org/wp-content/uploads/2013/05/global-concerns.pdf>.

²⁵ William J. McGee, "Major Travel Sites Face Credibility Crunch: An Examination of Booking First-Class Tickets Online," Consumer Reports, March 1, 2005, <https://advocacy.consumerreports.org/wp-content/uploads/2013/05/first-class.pdf>.

scrubbed and unscrubbed.²⁶ The price differentials in real time amounted to hundreds of dollars in some cases, and we quoted an Expedia spokeswoman who stated: "This is probably a system hiccup or something."

- Subsequently, I oversaw and wrote about an extensive month-long research project in 2016 for Consumer Reports Magazine.²⁷ During 372 searches, we found different airfares on different browsers in 42 cases, or 11% of the time; 25 resulted in higher fares (up to \$121) and 17 resulted in lower fares (down to \$84) on the scrubbed browsers. A Kayak spokesman told us that was impossible. This is why recent media reports indicating dynamic pricing has existed for years raise unanswered questions about exactly what practices the airline industry has pioneered—and when.²⁸

- b. In your opinion, is it likely that the airlines were adjusting their prices based on consumer data?

ANSWER:

While researchers can offer informed opinions, only the airlines themselves know exactly how they employ the user data they collect. However, it is quite likely that they use such data to adjust airfares. My earlier research at Consumer Reports strongly indicated such practices were in place years before the technology evolved to make such data gathering easier, quicker, and more comprehensive. There also is compelling evidence of tailored pricing in the comments from organizations, such as Fetcherr,²⁹ and the long-time efforts to hone "New Distribution Capability" by the International Air Transport Association, a global trade organization touting "personalized offers."³⁰

²⁶ Chuck Bell, "Pay Your Money, or You're Taking a Chance," Consumer Reports, press release, July 6, 2007, https://advocacy.consumerreports.org/press_release/pay-your-money-or-youre-taking-a-chance/.

²⁷ William J. McGee, "How to Get the Lowest Airfares," Consumer Reports, August 25, 2016, <https://www.consumerreports.org/airline-travel/how-to-get-the-lowest-airfares/>.

²⁸ Robert Silk, "Airlines inching closer to dynamic pricing," Travel Weekly, February 20, 2018, <https://www.travelweekly.com/Travel-News/Airline-News/Airlines-inching-closer-to-dynamic-pricing>.

²⁹ Fetcherr, "Dynamic Pricing in Aviation: How AI is Revolutionizing Airline Revenue Management: Real-Time Optimization: Future Outlook: Why Dynamic Pricing Will Never Be the Same," December 5, 2024, <https://www.fetcherr.io/blog/dynamic-pricing-in-aviation>.

³⁰ IATA, "Distribution with Offers and Orders (NDC) Factsheet," May 2025, <https://www.iata.org/en/iata-repository/pressroom/fact-sheets/fact-sheet-ndc/>.

- c. It seems likely that airlines are collecting even more data from consumers today, whether through AI or other data-scraping technologies. What potential harms could this pose to consumers, and what steps can Congress take to address these concerns?

ANSWER:

The airlines collecting and exploiting consumer data poses serious harms to consumers, workers, and the public. Using this data to set prices not only makes it difficult for consumers to make informed choices, but also results in higher prices.

In addition, such practices also threaten consumers' privacy, as companies collect and acquire as much personal information as they can. This includes "past purchase behavior,"³¹ precise location, financial data, or browsing history.³² Therefore, as I stated during my oral testimony at this hearing, it is imperative that Congress convene a hearing with U.S. airline executives and determine exactly what they are doing in collecting consumer information; how they are implementing such collection (e.g., via third parties, social media sites, etc.); what they use this data for; and how long such practices have been in place.³³

As I also stated during my oral testimony, it's critical that Congress establish precisely and clearly what is meant when airlines and airline trade organizations refer to the "personal information" they collect. The standard definition of gathering information concerning gender, age, race, etc. clearly does not go nearly far enough in a digital age in which corporations are intrusively tracking customers' every move and even shoppers activities across the internet. AELP believes individual browsing and shopping habits are in fact "personal information" and should not be used to penalize consumers via higher fares and fewer choices. This is why airline privacy policies often raise more questions than they answer.

For example, the Delta Air Lines Privacy Policy posted on its website states the company will use "information related to your preferences and personal and professional interests," including internet activity, to "tailor our products and services for you."³⁴ Until Congress swears in airline executives under oath, the

³¹ Fetcherr, "Dynamic Pricing in Aviation: How AI is Revolutionizing Airline Revenue Management: Real-Time Optimization: Future Outlook: Why Dynamic Pricing Will Never Be the Same," December 5, 2024, <https://www.fetcherr.io/blog/dynamic-pricing-in-aviation>.

³² FTC, "FTC Surveillance Pricing Study Indicates Wide Range of Personal Data Used to Set Individualized Consumer Prices," press release, January 17, 2025, <https://www.ftc.gov/news-events/news/press-releases/2025/01/ftc-surveillance-pricing-study-indicates-wide-range-personal-data-used-set-individualized-consumer>; FTC, "Surveillance Pricing 6(b) Study: Research Summaries; A Staff Perspective: Types of Data," p. 8, January 2025, https://www.ftc.gov/system/files/ftc_gov/pdf/p246202_surveillancepricing6bstudy_research_summaries_redacted.pdf.

³³ U.S. Senate, Committee on the Judiciary, Subcommittee on Antitrust, Competition Policy, and Consumer Rights, "Examining Competition in America's Skies," September 30, <https://www.judiciary.senate.gov/committee-activity/hearings/examining-competition-in-americas-skies>.

³⁴ Delta Airlines, Inc., "Privacy Policy," Effective September 2025, <https://www.delta.com/us/en/legal/privacy-and-security>.

American public will continue to have no clear sense on what these companies are doing with consumers' privacy data.

4. Would greater regulation of the airline industry risk driving more carriers out of the market?

ANSWER:

No. Additional regulation of the airline industry would not drive existing carriers out of the market. In fact, it would create market opportunities that better enable entrepreneurs to enter the airline market with new and low-fare service. Greater regulation, such as reducing hub concentration, limiting slot sub-leasing, and facilitating gate access will improve market access and allow smaller carriers to better compete, expand routes, and bring down airfares.³⁵

It's worth noting that data archived by Airlines for America (A4A) demonstrate the stability of the U.S. airline industry during the regulated era through 1978. This stability benefited all stakeholders--passengers, workers, airports, cities and communities, and investors. A4A detailed there were 15 airline mergers and acquisitions in the 49 years between 1929 and 1978; subsequently, there have been 44 mergers and acquisitions since 1978.³⁶ In addition, A4A stated: "Pre-1978, bankruptcies were extremely rare in the unduly regulated environment." And since then? There have been more than 210 bankruptcy filings, bringing undue pain via stranded passengers, laid-off workers, and unpaid creditors.³⁷ Airline regulation would bring stability to a critical industry that has been unstable for far too long.

³⁵ William J. McGee and Ganesh Sitaraman, *How to Fix Flying: A New Approach to Regulating the Airline Industry*, American Economic Liberties Project (Jan. 2024), <https://www.economicliberties.us/wp-content/uploads/2024/01/20240124-AELP-airlines-v5.pdf>, P. 5-10.

³⁶ Airlines for America, "U.S. Airlines Mergers and Acquisitions," April 12, 2022, <https://pdflink.to/d2b7af81/>.

³⁷ Airlines for America, "U.S. Airline Bankruptcies," August 24, 2022, <https://pdflink.to/e377c03f/>.