BEFORE THE
U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, D.C.

In the matter of:

Revisions to the Regulatory Definitions of
“On-Demand Operation”, Supplemental Operation” and
“Scheduled Operation”

Docket No. FAA 2023-1857

COMMENTS OF JSX

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I. Introduction

JSXsubmitsthesecommentsinresponsetotheFederalAviationAdministration’s ("FAA") notice of intent “to initiate a rulemaking to address the exception from FAA’s domestic, flag, and supplemental operations regulations for public charter operators” ("NOI"). The wholly unjustifiable rule change contemplated in the NOI would eliminate or severely impair a successful and safe sector of the transportation industry that provides valuable air service to U.S. consumers and small communities while also offering new and innovative competition to the largest Part 121 airlines.

This rulemaking does not stem from any specifically identified safety problem about Part 135 operators of public charters. On the contrary, it is the product of a full-bore lobbying campaign of misinformation and innuendo by some of the most powerful, entrenched airline industry interests, including American Airlines, Inc. ("American"), Southwest Airlines Co. ("Southwest"), and the Air Line Pilots Association ("ALPA") (collectively, “JSX Opponents”).

1 Unless otherwise indicated, “JSX” refers to both JetSuiteX, Inc., a public charter operator, and its affiliate Delux Public Charter, LLC d/b/a JSX Air (“Delux”), a direct air carrier.

which seek to manipulate the regulatory process to drive JSX and similarly situated operators out of business. JSX has a stellar safety operation and, along with other Part 135 operators of public charters, an excellent safety record. Yet, the FAA, in a radical departure from longstanding practice, has initiated a rulemaking to address a purported safety issue with public charters that the FAA has failed to even define, much less demonstrate.

The FAA currently faces multiple, real and thoroughly documented safety challenges (none of which involves Part 135 operators of public charters). The FAA should withdraw the NOI and instead focus on addressing those safety challenges. Such action would reinforce the FAA’s commitment to its objective safety mission and resolve to resist political interference with the integrity of that mission, which is the basis of the FAA’s well-earned reputation as a global leader in aviation safety.

II. Executive Summary

• JSX is a small but growing air carrier headquartered in Dallas, Texas, that operates a fleet of 30-seat Embraer jet aircraft. Since 2016 it has held an FAA Part 135 certificate. It holds U.S. Department of Transportation (“DOT”) Commuter Air Carrier Authorization under 14 C.F.R. Part 298 and operates DOT-authorized public charters under 14 C.F.R. Part 380.

• The traveling public has embraced JSX’s high-quality, convenient, customer-friendly fares and services. JSX has operated safely and without incident since beginning operations. Its operations leadership team has decades of Part 121 experience at major airlines, including United and JetBlue. It employs highly experienced pilots, including many who have flown for the largest Part 121 airlines. JSX uses state-of-the-art safety technologies and programs that exceed the FAA’s requirements for Part 135 operators.

• Service to smaller airports and communities is a key focus for JSX. Many of the nation’s small airports do not hold FAA certification to accommodate Part 121 airlines, including a number served by JSX. If the FAA were to prohibit JSX (and other Part 135 operators) from operating public charters, some communities would lose the only regular air service they have today, and many more would no longer be eligible for such service.

• At a time when small community air service is in jeopardy for various reasons, including pilot shortages, the FAA/DOT should be encouraging innovative and safe operators such as JSX to expand their operations, rather than erecting regulatory barriers to entry that benefit only the JSX Opponents.

• The public charter regulations under which JSX operates have been in existence for 45 years and are intended to promote a broader diversity of air service options for U.S. consumers. JSX exemplifies how the marketplace is harnessing the public charter
sector’s potential to offer new service options for consumers and communities and a modest scale of competition for the incumbent legacy airlines, the largest four of which have a combined share of more than 80% of U.S. domestic market.\(^3\) American, which is “the world’s largest airline,”\(^4\) flies nearly one in five domestic passengers. Meanwhile, Southwest separately accounts for nearly one in five domestic passengers.\(^5\)

- It is not surprising that American and Southwest, which are based in Dallas, TX, have set their targets on JSX. JSX is also based in Dallas, where it has developed a loyal customer following. Among the mega airlines, American, which accounts for an 85% market share at Dallas/Ft. Worth International Airport (DFW), and Southwest, which accounts for a 95% market share at Dallas Love Field (DAL), stand to gain the most competitively if JSX were to disappear.

- President Biden and Secretary Buttigieg have criticized the U.S. airline industry’s excessive concentration. Secretary Buttigieg has recognized the daunting entry barriers facing smaller carriers that attempt to compete with the largest airlines. It is ironic, therefore, that the FAA has initiated a rulemaking that would eradicate new entrants like JSX, and deeply troubling that the FAA has done so without any safety basis.

- The FAA is proposing to fundamentally revise its regulations to prohibit many Part 135 carriers from operating public charters. The basis for this radical proposed restructuring of the existing regulatory scheme is a vague and wholly unarticulated safety “concern” related to some Part 135 operators of public charters. Although the NOI never mentions JSX, it is the primary target of this rulemaking, which the FAA/DOT are pursuing at the specific request of the JSX Opponents. These powerful interests want JSX put out of business, even if it involves fabricating safety concerns.

- The lack of any nexus between the NOI and an actual, verifiable, safety problem specific to the operations at issue is underscored by the DOT’s repeated and recent awards of small community air service subsidies and grants for public charter flights operated under Part 135, including most remarkably a $20 million grant, awarded approximately three weeks after the NOI was issued, to support such service using 30-seat regional jets. It is inconceivable that the DOT, the FAA’s parent agency, would have made the award if either agency had any legitimate safety concern with Part 135/Part 380 operations.

- The FAA currently faces real safety challenges, including, e.g., an air traffic controller shortage, successive incidents of “near miss” runway incursions that jeopardized the lives of thousands of passengers, and deficient oversight of pilot medical reporting. Yet, the FAA has diverted resources to initiate this rulemaking without any demonstrated evidence of an actual safety problem.

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\(^3\) See President Biden’s Executive Order on Promoting Competition in the American Economy (“EO”), July 9, 2021 (and contemporaneously issued White House “Fact Sheet”) (noting the market share of the four largest U.S. passenger airlines and the “lack of meaningful competitive pressure” they face).


• The FAA/DOT’s decision to initiate a rulemaking without a safety basis for doing so, thereby threatening to upend a regulatory scheme that has operated safely and effectively for decades, reflects the agency’s impermissible prejudgment of the issues, which is a violation of law. If the FAA does not withdraw the ill-conceived NOI, it must provide complete transparency about how this rulemaking came about.

• If the FAA decides to proceed with this rulemaking (which it should not), it must at a minimum designate this rulemaking as a significant regulatory action under Executive Order 12866 so that its true costs to the U.S. economy are assessed and weighed against the rulemaking’s purported benefits (which the NOI does not even identify).

• As a matter of transparency, the FAA also must post in this docket copies of:
  ➢ All reports, memoranda and other documents relating to the FAA’s process and decision to initiate the rulemaking and issue the NOI, including all safety data, analyses, and reports that provide an objective basis for the rulemaking; and
  ➢ Records of all meetings and communications between FAA/DOT officials and any party outside the Federal Executive Branch regarding any Part 135/Part 380 operations and/or relating to the development and issuance of the NOI and initiation of this rulemaking.

• Given the origins of the NOI, the lack of data to substantiate the existence of any safety “problem” with Part 135/Part 380 operations, and the risk that the contemplated changes present for competition, consumers and small communities, the NOI undermines the public’s confidence in the integrity of the rulemaking process and the FAA’s safety-focused mission. Accordingly, the NOI should be withdrawn and this rulemaking terminated.

III. About JSX

JSX launched its award-winning jet service in 2016, and since then its growth and success have been based on a truly innovative approach to air travel. It operates a fleet of 30-seat Embraer 135/145 jets – a quiet and fuel-efficient aircraft type that, since its introduction, has accumulated approximately 30 million flight hours without a single fatality. JSX holds an air carrier certificate issued by the FAA authorizing on-demand operations under 14 C.F.R. Part 135 and DOT Commuter Air Carrier Authorization issued pursuant to 14 C.F.R. Part 298. Based on these FAA and DOT authorities, JSX operates DOT-authorized public charters under 14 C.F.R. Part 380.

JSX benefits from strong financial and technical support from its investors. These include United and JetBlue, two leading Part 121 airlines. JSX’s senior management team and
board of directors have decades of aviation experience, including with Part 121 airlines. Under the leadership of its CEO and co-founder, Alex Wilcox (who also co-founded JetBlue), JSX’s network has grown to 42 markets. JSX has won the loyalty of its customers due to its safe and efficient operations, a superb inflight experience, with bright and modern aircraft interiors, personalized and attentive cabin service, business class legroom, in-seat power, and, as the launch customer for Starlink’s inflight Internet service, complimentary high-speed Wi-Fi.

JSX employs nearly 1,100 aviation professionals, and is a proud participant in United’s Aviate and JetBlue’s Gateway pilot training programs, through which JSX pilots have a preferred pathway to a career with either airline. The average experience for a JSX pilot is 8,466 hours (captains) and 3,747 hours (first officers). More than half of JSX’s employees identify as persons of color and more than one-third of JSX’s employees are women. Among JSX’s pilots, approximately 24% are persons of color (more than twice the industry average) and more than 27% are women (nearly six times the industry average).

JSX’s commitment to fostering career opportunities for historically under-represented groups is underscored by its support for organizations such as the National Gay Pilots Association, the Organization of Black Aerospace Professionals, the Pan Asian Pilots Association, Women in Aviation International, the Latino Pilots Association, and the Association for Women in Aircraft Maintenance, along with its partnership with historically black colleges and universities across the United States. Through its support of initiatives such as the Rotor to Air Group, Skybridge, and Patriots Path, JSX also provides meaningful opportunities to U.S. military veterans. For more information about JSX, see Exhibit A hereto.

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As of the date hereof, approximately 64,000 JSX customers have taken the time to submit comments to the FAA docket.

JSX’s obsessive focus on customer experience and outstanding work culture have won it accolades, including a coveted five-star rating from APEX for three consecutive years, the first-ever certification as an Autism Double-Checked operator, a 100% rating on Human Rights Campaign’s Corporate Equality Index every year since becoming eligible, and consistent rankings as a Top Workplace (both regional and national).

Finally, JSX has been at the forefront of advanced air mobility ("AAM") deployment since launching its public charter operations, repeatedly demonstrating its commitment to environmentally sustainable aviation. In 2018 JSX placed the world’s first order for the Zunum Aero hybrid and all-electric aircraft, reflecting the company’s commitment to greener aviation practices. In 2021, JSX entered into a letter of intent to purchase 10-seat Odys electric vertical take-off and landing ("eVTOL") aircraft, for which JSX hopes to be the inaugural operator once the type certification process is completed and the aircraft enters production, helping to usher in a new era of quiet and efficient air travel. This remarkable 19-seat aircraft is poised to revolutionize small community air service and, due to significantly lower operating costs, will allow JSX to further democratize the by-the-seat, semi-private aircraft experience.

IV. The FAA’s Proposed Rule Change Purports to Address a Safety Concern, Yet the FAA Has Not Identified Any Specific Safety Problem

Historically, when the FAA has revised its safety regulations applicable to air carrier operations, it has cited to data, studies, or events establishing a need to adjust the standards applicable to the affected operators. For example, when the FAA issued its final rule requiring certain commuter air carriers to conduct their operations under Part 121 instead of Part 135, it

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based that action on specific incidents, data-driven National Transportation Safety Board ("NTSB") recommendations, and future accident rate projections.\(^\text{10}\)

In stark contrast, here the FAA intends to initiate a rulemaking to consider regulatory changes to an entire class of commercial operations without citing to any – much less persuasive – data in support of its position that the "recent high volume" of such operations and growth in their "size, scope, frequency, and complexity" necessitate a different approach to the FAA’s "management of the [applicable] level of safety."\(^\text{11}\) Given the absence of such data, the FAA appears to be motivated by economic considerations traditionally outside the FAA’s purview, without regard to actual, verifiable, safety-based data and analysis.\(^\text{12}\) If anything, the available data show that "there is no evidence of any safety issues present among [Part 135] public charter operators."\(^\text{13}\)

Underscoring the FAA’s apparent lack of any data indicating the presence of a safety problem warranting regulatory changes is a recent FAA Notice tasking principal inspectors with


\(^\text{11}\) NOI at 59,480. It is incongruous that the FAA has cited the "high volume" of Part 135/Part 380 operations when such operations make up a very small minority of overall Part 135 operations. For example, NetJets, which operates on-demand charter flights under Part 135 as well as flights under Part 91 Subpart K, operates a whopping 1,200 flights \textit{per day} (which, per NetJets, equates to "nearly one landing every minute"). \textit{See} https://www.netjets.com/en-us/private-jet-access?go=beneﬁts-of-scale (last accessed Oct. 13, 2023).

\(^\text{12}\) The FAA issued the NOI when it lacks the independent leadership of a congressionally confirmed administrator. In order to protect the administrator and by extension the FAA from political interference with objective safety determinations (such as those at issue in the NOI), Congress established a five-year term for confirmed administrators, with such term to run without regard to the presidential election calendar. In recent months, however, senior FAA positions, including the administrator position, have been occupied in an "acting" capacity by seconded political appointees from the DOT. The NOI is a far-reaching and highly consequential initiative to effect a fundamental change in the FAA’s longstanding safety regulations – without any safety basis for doing so. If the DOT wished to avoid the appearance of political interference with the FAA’s objective safety determinations on such a controversial matter (one for which JSX Opponents specifically lobbied), it would not have proceeded with the NOI in the absence of a congressionally confirmed FAA administrator.

\(^\text{13}\) Stephen Jonesyoung and Gary Leff, \textit{A Public Interest Comment on Public Charter Operators}, George Mason University Mercatus Center (Oct. 6, 2023) at 25-29 (noting that (i) there are no known fatalities attributed to Part 135/380 operations in the 45 years they have been operating under the existing regulatory scheme, (ii) there are no known fatalities attributed to Embraer 135 and 145 aircraft, and (iii) Part 135 public charter operators have delivered an "exceptional safety performance").
the collection of data on Part 135/Part 380 operations.\textsuperscript{14} Issued on September 13, 2023, a full 20 days after the issuance of the NOI, the Notice strongly suggests that when the FAA initiated this rulemaking, it had not yet collected any meaningful quantum of data specific to the level of safety exercised by Part 135/Part 380 operators or, if it had collected such data, the results did not substantiate the need for the NOI. The timing of the Notice exemplifies the FAA’s “ready, fire, aim” approach to the issue at hand.

Regardless, any increase in Part 135/Part 380 operations, taken together with the notable lack of any corresponding increase in the rate of accidents or serious incidents, actually proves the point that no wholesale modification to the applicable operating rules is necessary to maintain the safety of the national airspace system (“NAS”),\textsuperscript{15} nor are such changes desirable from the perspective of competition and service to smaller communities and airports. If the safety of Part 135/Part 380 operations presented a problem, surely by now the FAA would have issued a Safety Alert for Operators (“SAFO”) or other direction/recommendation addressing actions to be taken by operators, informed by a rigorous analysis of the agency’s own surveillance, investigation, and enforcement data. It has not done so. Instead, it has tasked safety inspectors with what appears to be a fishing expedition.

Similarly, if the NTSB had concerns with the safety aspects of Part 135/Part 380 operations specifically, one would expect the NTSB to have issued a report or recommendations specifically addressing such operations.\textsuperscript{16} It has not done so. Lastly, if – as

\begin{itemize}
\item \textsuperscript{15} Southwest’s claim that public charter flights with 30 or fewer seats have increased by “more than 9,000%” since 2008, without the identification of a single accident involving a public charter flight during that time, just goes to prove the safety with which such operations have been conducted. Letter from Andrew Watterson, Chief Operating Officer, Southwest Airlines Co., to David Boulter, Associate Administrator, FAA (Oct. 2, 2023) (“Southwest Comments”), at 3. Although the Southwest Comments do not specifically identify JSX by name, they are clearly directed at JSX, which conducts more Part 380 public charter flights under the operating rules of Part 135 than any other similarly situated operator.
\item \textsuperscript{16} Southwest cites to NTSB fatality rates for the 20-year period ending in 2020, for the proposition that Part 135 operations have higher accident rates than Part 121 operations. Southwest Comments at 4-5. This is an irresponsible oversimplification by Southwest because the NTSB data on which Southwest
the FAA suggests in the NOI – the level of safety management for Part 135/Part 380 operations is inadequate, then certainly the DOT would not have awarded a substantial grant (funded with taxpayer money) to support Part 380 air service conducted under the Alternate Essential Air Service Program (“AEAS”) approximately three weeks after the NOI was issued.17

Indeed, the notion that Part 135 operators of public charter flights present safety risks is further refuted by decisions that the DOT has repeatedly made and re-affirmed under the essential air service (“EAS”) program. Several communities receive EAS under Parts 135 and 380 with subsidy contracts in effect until late 2025. See Orders 2022-8-21 (Aug. 30, 2022) (Paducah, KY), 2022-8-24 (Sept. 2, 2022) (Clarksburg, WV), 2022-8-31 (Aug. 30, 2022) (Lewisburg, WV), 2022-8-32 (Aug. 29, 2022) (Staunton, VA), 2022-9-1 (Sept. 6, 2022) (Cape Girardeau, MO) and 2022-10-12 (Oct. 13, 2022) (Fort Leonard Wood, MO). Each of the foregoing communities is served with 30-seat regional jet aircraft. Each of the service proposals selected by the DOT (and endorsed by the individual communities) detailed the proposal’s reliance on Part 380 to provide the regular air service at issue. It is inconceivable that the DOT, as recently as 2022, would have awarded EAS subsidy to support service at these communities had it – or the FAA – believed that the Part 135/Part 380 business model poses safety risks to the traveling public.18 The scope and complexity of Part 380 operations have not materially changed since these subsidy awards were made last year.

17 Order 2023-9-4 (Sept. 12, 2023) (entering into a $20.2 million grant agreement with Macon, Georgia, to support Part 380 public charter service flown by Contour Airlines under Part 135 using 30-seat regional jet aircraft).

18 Of course, there would be no rational safety or other basis for exempting EAS from any regulatory change that would prohibit Part 135 carriers from operating public charters because there is no safety-based distinction between EAS and non-EAS Part 135/Part 380 operations. More fundamentally,
In sum, the NOI fails to articulate any safety risk associated with Part 135/Part 380 operations specifically and instead appears to take issue with the commercial success (i.e., the “growth”) of these operations. There is no regulatory predicate,\textsuperscript{19} properly within the safety-focused purview of the FAA's statutory mission, to proceed with a rulemaking to consider revising the definitions at issue in FAR Part 110.

V. The FAA is Proposing to Eliminate a Settled Regulatory Scheme Under Which Carriers Have Long Provided Safe Public Charter Service That Benefits Consumers and Communities

The FAA’s definitions of “scheduled operation” and “on-demand operation” are as clear as they are longstanding:

“\textit{On-demand operation} means any operation for compensation or hire that is…conducted as a public charter under part 380….”\textsuperscript{20}

“\textit{Scheduled operation} means any common carriage passenger-carrying operation for compensation or hire conducted by an air carrier or commercial operator for which the certificate holder or its representative offers in advance the departure location, departure time, and arrival location. It does not include any passenger-carrying operation that is conducted as a public charter operation under part 380 of this chapter.”\textsuperscript{21}

Underscoring that the regulations mean what they say, the FAA previously confirmed that Part 135 air carriers holding appropriate DOT economic authority may operate an \textit{unlimited} number of public charter flights, and has never expressed any safety concerns with such operations, or otherwise suggested that the growth in such operations necessitates a re-evaluation of the applicable safety standards.\textsuperscript{22}

\textsuperscript{19} JSX agrees with Southwest on one crucial issue: “[T]he safety of the flying public and flight crew members should be the FAA’s only consideration” in this rulemaking. Southwest Comments at 1.

\textsuperscript{20} 14 C.F.R. § 110.2.

\textsuperscript{21} Id.

\textsuperscript{22} \textit{See} Letter from Mark W. Bury, FAA Ass’t Chief Counsel for International Law, Legislation and Regulations, to Robert Ceravolo dated July 24, 2013, at 1 (responding to a question on whether a Part 135 carrier can fly an “unlimited number of public charter flights under DOT 380 authorization,” the FAA stated, “Your statement is correct….So long as the direct air carrier conducts these flights as public
The fact that such flights may resemble scheduled service operated under Part 121 (a point of apparent concern to the FAA in the NOI) is nothing new.\textsuperscript{23} Indeed, the DOT public charter regulations themselves have for decades explicitly required that “the proposed flight schedule, listing the origin and destination cities, dates, type of aircraft, [and] number of seats” be submitted as part of the initial charter prospectus for approval.\textsuperscript{24} And, long before the issuance of the NOI, the FAA itself stated (without any apparent concern) that, “although the operations may look like scheduled operations, the passengers are treated as charter passengers in an on-demand operation.”\textsuperscript{25} Regardless, any reference in the NOI to the resemblance between a public charter flight and scheduled service is immaterial to the level of safety that should be applied to Part 135 flights flown for Part 380 public charter programs.\textsuperscript{26}

JSX and other successful Part 135/Part 380 operators built their business models in reasonable reliance on the decades-long definitions in Part 110,\textsuperscript{27} investing hundreds of millions

\textsuperscript{23} The FAA has made clear that “part 380 operations were specifically carved out from the definition of scheduled operations” and “[c]onsequently, public charter flights by definition are not scheduled operations.” Letter from Mark W. Bury, FAA Ass’t Chief Counsel for International Law, Legislation and Regulations, to Susan B. Jollie dated May 13, 2014 (“Jollie Letter”), at 2. This has been the FAA’s position for decades. See 62 Fed. Reg. 13,248 (Mar. 10, 1997) (revising the definitions of “on-demand operation,” “scheduled operation,” and “supplemental operation” to “make it clear that public charter operations conducted under 14 CFR part 380 are not considered scheduled operations.”).

\textsuperscript{24} 14 C.F.R. § 380.28(a)(1)(i).

\textsuperscript{25} Jollie Letter at 2.

\textsuperscript{26} The far-reaching regulatory changes identified in the NOI are targeted at public charter flights operated under the Part 135 on-demand rules that the FAA claims are “indistinguishable from flights conducted by air carriers as supplemental or domestic operations.” NOI at 59,840. Setting aside that, by definition, on-demand and supplemental operations are nearly identical in that both are charter and not “scheduled operations,” JSX’s public charter flights, whether held out for sale on jsx.com or another airline or travel website, are very distinguishable from Part 121 domestic operations. First, such JSX flights are displayed with clear and conspicuous disclosures advising consumers that the operation is a public charter flight. Second, when marketed on other websites, the booking paths for such JSX flights are segregated from booking paths for Part 121 scheduled operations. Third, the airport locations from which JSX operates make it obvious to any reasonable consumer that JSX’s public charter flights are operations distinct from those of the major U.S. airlines.

\textsuperscript{27} As noted herein, in 1997 the FAA specifically excluded Part 380 public charter flights from the definition of “scheduled operations.” 62 Fed. Reg. at 13,248. Southwest, selectively quoting the FAA’s notice of proposed rulemaking (“NPRM”), claims that this exclusion was buried in an NPRM the FAA intended to be “mostly editorial or typographical in nature.” Southwest Comments at 2. Southwest conveniently omits the
of dollars to launch and expand their operations and, in the process, create thousands of good-paying jobs for aviation professionals. Their service offerings have been embraced by consumers and communities, increased competition in an industry that suffers from persistently high market concentrations, and spurred innovation.

Now, in an effort to placate powerful industry special interests that take parochial issue with the success of Part 135/Part 380 operations, the FAA appears willing to rewrite longstanding regulations to eliminate these operations and an entire sector of the nation’s air transportation industry – all without articulating any actual safety problem to justify such extraordinary action. Under the circumstances, in particular the lack of any data, trends, analyses or statistics substantiating a safety-based problem specific to Part 135/Part 380 operations, the FAA should withdraw the NOI and terminate this rulemaking.

VI. Carriers, Consumers, and Communities Would Be Negatively Impacted by the Contemplated Regulatory Changes

It is no secret that the JSX Opponents want JSX out of business.\(^28\) As noted in section V above, the public charter regulations have been in existence for decades.\(^29\) The JSX Opponents have marshalled their formidable lobbying resources and influence in Washington, D.C.,


\(^29\) Southwest incredibly claims that "public charters were in their infancy as an air travel option" when the FAA finalized the so-called Commuter Rule in 1997. Southwest Comments at 2-3. The public charter regulations have been in existence for at least 45 years, and were intentionally designed to stimulate competition and broaden travel options and service offerings available to the travelling public. See generally Summary of Report of the Senate Subcommittee on Administrative Practice and Procedure (1975) (reprinted by the SMU Journal of Air Law and Commerce at 41 J. Air L. & Comm. 607 (1975)) (recommending the "adoption of considerably more liberal charter rules and a subsequent expansion of charter service.").
fabricating “safety and “security” concerns in an effort to change the regulations and put new entrant JSX and other innovative, small operators out of business.\(^3\)

The elimination of JSX’s services (and those of other Part 135/Part 380 operators) will harm communities. JSX has had a demonstrably positive impact on competition since launching operations in 2016. Today, JSX flies in competition with other operators on more than one-third of the non-stop routes it serves, including the large legacy airlines. But JSX provides consumers more than expanded choice and convenience. It also offers fares that are affordable to a broad range of travelers. These include individuals who find it difficult to travel through crowded terminals, such as those with special needs, the elderly, people with neurodiverse disabilities, and those traveling with pets.\(^3\)

At a time when only four airlines control more than 80% of the domestic market, regulators should be promoting competition and creating opportunities for smaller carriers to innovate and pursue new business models, which in turn results in more choice and better service for consumers. Instead, the FAA’s proposal would do the opposite, by erecting barriers

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\(^3\) The JSX Opponents have peddled an absurdly and patently false narrative that JSX and similarly situated operators exploit a “regulatory loophole.” See Southwest Comments; Letter of American (May 16, 2023) (“American Letter”) and Letter of ALPA \textit{et al.} (May 5, 2023) (“ALPA Letter”) (DOT-OST-2022-0071). As discussed herein, the definitions in Part 110 are unambiguous and the FAA purposely amended its regulations more than 25 years ago to specifically exclude Part 380 public charter flights from the definition of “scheduled operations.” 62 Fed. Reg. 13,248 (Mar. 10, 1997). Southwest goes so far as to claim that this intentional FAA exclusion of public charters from the definition of “scheduled operations” is a “gaping” regulatory loophole, while simultaneously arguing that the FAA inexplicably “abdicated” its “One Level of Safety” commitment in 1997. Southwest Comments at 2. If anything, the decision by the FAA in 1997 to codify the public charter exclusion makes clear that the FAA, when finalizing the so-called Commuter Rule only one year earlier, had never intended to classify public charters as scheduled operations. This is hardly an “abdication” of anything. Regardless of how the JSX Opponents may attempt to characterize JSX’s operations, no credible argument can be made that a regulatory loophole now exists or has ever existed.

\(^3\) Indeed, JSX’s less crowded boarding and inflight experience is ideally suited for customers with autism, and through a special autism awareness program, JSX staff have been specially trained to assist such customers, earning JSX the title of the world’s first autism-certified airline by Autism Double-Checked, which reviews carriers, hotels and other travel industry companies for autism readiness. See Lacey Pflaz, \textit{JSX is The World's First Autism-Certified Air Carrier}, TravelPulse (Mar. 25, 2022), available at https://travelpulse.com/News/Airlines-Airports/JSX-is-The-World's-First-Autism-Certified-Air-Carrier (last accessed Oct. 13, 2023).
to entry, protecting dominant incumbents from competition, and further concentrating market share among a very few legacy carriers.

The consequences of the FAA’s contemplated definitional revisions to Part 110 would also worsen the air service crisis facing small and medium-sized communities. Indeed, no fewer than 14 U.S. airports have lost all scheduled air service since 2019. In the last three years alone, 324 U.S. airports have experienced service cuts, losing an average of 30% of their flights, service reductions that have disproportionately impacted smaller communities.

Critically, any U.S. airport that serves (i) scheduled passenger-carrying operations using aircraft configured with more than nine seats or (ii) unscheduled passenger-carrying operations using aircraft configured with 31 seats or more must be certificated by the FAA under 14 C.F.R. Part 139, which is a lengthy and costly process (both with respect to obtaining initial certification and maintaining certification eligibility). There are approximately 5,200 public use airports in the United States. Of these, approximately 1,500 have runways of 5,000 feet or more (which


34 See Adam Bearne, More Small Airports are Being Cut Off From the Air Travel Network. This is why, NPR (Sept. 4, 2023) (reporting on the reduction in scheduled service for 74 communities since April 2020), available at https://www.npr.org/2023/09/04/1197337454/more-small-airports-are-being-cut-off-from-the-air-travel-network-this-is why#:~:text=To%20lose%20service%20entirely%20is,aviation%20consulting%20firm%20Ailevon%20Pacific (last accessed Oct. 13, 2023).

35 In a December 2003 Report to Congress, the FAA estimated that the average cost for an airport to become certificated under Part 139 would be $157,000 per airport ($261,547 when adjusted for inflation), consisting of $50,000 ($83,295) in equipment costs and ongoing labor and operating costs of $107,000 per year ($178,252). FAA, Report to Congress: Economic Impact on Air Service at Airports Serving Small Air Carrier Aircraft Resulting from Certain Changes to Title 14 CFR Part 139 – Certification of Airports, at iii, available at https://www.faa.gov/sites/faa.gov/files/airports/resources/publications/reports/report-to-congress.pdf (last accessed Oct. 13, 2023). Further, Part 139 airports are subject to myriad FAA requirements, including but not limited to those specifically addressing FAA documentation inspections, aircraft rescue and firefighting operations, hazardous materials handling and storage, wildlife hazard management, the maintenance of and airport safety management systems and emergency plans, pavement maintenance and repairs, runway safety areas, snow and ice control, and marking, signs and lighting.
can accommodate the aircraft type used by JSX), but only about 500 (or roughly 10% of all public use airports) are certificated under Part 139.

Because JSX aircraft are configured with 30 seats and its flights are not scheduled operations under Part 110, JSX can serve airports that the larger, Part 121 airlines are not permitted to serve. If the FAA were to categorize flights conducted under Part 380 as scheduled operations, no aircraft with more than nine seats would be able to serve a non-Part 139 certificated airport, systematically cutting off smaller communities and airports from the NAS.36 This is not a theoretical or abstract point. Examples of non-Part 139 certificated airports that JSX serves include Taos, NM (TSM); Lajitas, TX (T89); and Destin, FL (DSI).

To be clear, JSX’s operations at small communities also include airports that are Part 139 certificated. Communities served by such certificated airports also would be adversely impacted if the FAA were to shut down or vastly curtail the Part 135/Part 380 business model. In fact, on more than half of its routes, JSX is the only operator, and at many Part 139 airports, such as Buchanan Field Airport (CCR), Rocky Mountain Metropolitan Airport (BJC), Miami-Opa Locka Executive Airport (OPF), and McClellan-Palomar Airport (CLD), JSX is the only by-the-seat air carrier. If the FAA proceeds with the unnecessary regulatory changes identified in the NOI, smaller airports, along with the communities, residents and visitors they serve, will be dealt a devastating blow.

VII. JSX Has an Impeccable Safety Record and a Safety Program That Exceeds FAA Requirements

JSX’s success and growth are based on an innovative business model, the foundation of which is its impeccable safety record. It has safely operated approximately 130,000 flights since its inception in 2016. JSX’s operations leadership team has decades of experience at major

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36 Southwest’s Comments do not even attempt to address the impact that the FAA’s contemplated change will have on small communities. JSX can only conclude that Southwest is not concerned with ensuring the continuity of small community service.
airlines, including United and JetBlue. It employs highly experienced pilots, including many who spent their earlier careers flying for major U.S. airlines under Part 121. Using its rigorous approach to safety, JSX brings award-winning service to more than a million customers annually, often at smaller, under-utilized airports where Part 121 airlines cannot or choose not to operate.

JSX’s safety record relies upon state-of-the-art safety technologies and programs that exceed the FAA’s requirements for Part 135 operators. For example, JSX maintains a Safety Management System (SMS) program, an Aviation Safety Action Program (ASAP) and Flight Operational Quality Assurance (FOQA) program, none of which is currently mandated for Part 135 operators.\textsuperscript{37} JSX’s voluntary adoption of these programs underscores the lengths to which it goes to ensure operations are conducted with the highest degree of safety. In addition to these programs, JSX utilizes a Flight Safety Review Board and a Training Review Board.

JSX’s pilot training exceeds FAA requirements for Part 135 operators.\textsuperscript{38} Every JSX flight is operated by two type-rated pilots trained in the same Level D Full Flight Simulators with instructors used by Part 121 airlines. In fact, JSX’s pilot training requirements include nearly all the extended envelope training requirements to which Part 121 airlines are subject under 14 C.F.R. § 121.423, including manually controlled slow flight, loss of reliable airspeed and instrument departure and arrival, as well as upset recovery maneuvers.\textsuperscript{39}

Although not required by Part 135, JSX conducts initial operating experience (IOE) training with company instructors for all pilots (both captains and first officers), involving a minimum of 25 hours, as well as Line Oriented Flight Training (LOFT) on a recurrent basis using

\textsuperscript{37} The FAA has issued an NPRM that would require SMS for Part 135 operators. See 88 Fed. Reg. 1,932 (Jan. 11, 2023).

\textsuperscript{38} A significant portion of JSX’s pilots used to work for large Part 121 airlines, and they often report that JSX’s training and professional standards are equal to or better than those airlines.

\textsuperscript{39} JSX performs all of the extended envelop training specified in 14 C.F.R. § 121.423, except for “recovery from bounced landing” (14 C.F.R. § 121.423(b)(5)).
real-life scenarios and events based on information obtained through JSX’s safety programs, including those identified above. Additionally, all JSX pilots who are upgraded to captain must complete JSX’s leadership class, which is conducted by JSX check airmen and covers cockpit resource management, aircraft weight and balance systems, aircraft performance and systems, aircraft dispatch and operational control, flight release, and operational decision making.

JSX’s system for releasing flights is similar to that utilized by Part 121 supplemental operations under 14 C.F.R. § 121.597. Nearly all JSX flight coordinators and control supervisors are FAA-certificated dispatchers under 14 C.F.R. § 65.52, even though Part 135 imposes no such requirement on JSX’s operations. JSX’s operational control capabilities are further enhanced by its use, across its entire aircraft fleet, of real-time telemetry from JSX’s Starlink system which provides unmatched capabilities in terms of the collection, transmittal and measurement of aircraft data, including providing real-time data to its pilots, oftentimes more quickly than Part 121 airlines, and real-time video connection capabilities with all JSX aircraft at all times.

Additionally, JSX voluntarily limits pilot and flight attendant duty times to 12 consecutive hours for nearly all flights (in contrast to the 14 hours provided for under 14 C.F.R. §§

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40 Southwest makes much of the 1,500 hour requirement applicable to first officers utilized in Part 121 domestic and flag operations, claiming that the absence of that requirement for pilots serving as first officers in Part 135 operations subjects the public to a lower level of safety. Southwest Comments at 3. Setting aside whether there is any verifiable correlation between the 1,500 requirement for Part 121 first officers and safety, the requirement resulted from legislative changes following the crash of Colgan Air Flight 3407 in 2009, a commercial flight operated under Part 121 and for which the two pilots had accumulated more than 1,500 hours each.

All JSX flight attendants complete an FAA approved and monitored training program. JSX requires completion of the same supervised operating experience applicable to Part 121 airlines’ flight attendants under 14 C.F.R. § 121.434(e). Once again, Part 135 imposes no such requirements.

JSX proudly operates an all Embraer 135/145 fleet, an aircraft type that, since its introduction more than 25 years ago, has accumulated approximately 30 million flight hours and, to the best of JSX’s knowledge, has not been involved in a single fatality. Nor has JSX been the subject of an FAA or Transportation Security Administration (“TSA”) penalty, or finding of violation by any of its FAA or TSA inspectors. Furthermore, JSX routinely passes the same International Air Transport Association-based (“IATA”) Operational Safety Audit (the gold standard in the aviation industry) that Part 121 airlines use to confirm the safety of their codeshare partner airlines. This is in addition to JSX’s regular successful passage of audits from JetBlue, SpaceX, the U.S. Department of Defense, and other civilian and military customers that JSX proudly serves.

In sum, JSX maintains a flawless safety record, and many of its operating procedures and training and safety programs exceed those required of Part 135 operators. There is simply no basis to conclude that JSX’s operations present a safety problem simply because they are not conducted under Part 121, as the JSX Opponents have cynically claimed. In fact, American and Southwest actively recruit from JSX’s highly trained pilots, effectively conceding that such claims are as baseless as they are intentionally provocative.43

42 The only exception is due to circumstances beyond the control of JSX, and then only with the concurrence of the flight crewmembers and the operations dispatcher, in which case the duty time may be extended up to the regulatory limit permitted under the applicable Part 135 duty period regulation.

43 American’s claim that JSX’s business model “degrades our nation’s aviation system” is not only shamefully disingenuous, but is directly contradicted by American’s own business arrangements, which include interlining its passengers on flights operated by Contour Airlines and Boutique Air, and marketing on AA.com flights operated by Cape Air. Contour Airlines, Boutique Air and Cape Air all conduct their flights under the operating rules of Part 135. In fact, and also like JSX, Contour Airlines’ flights are exclusively operated as public charter flights under Part 380 using jet aircraft configured for 30 passengers – the very “facsimile of common carriage scheduled service” that American claims “distorts
The U.S. commercial aviation system is among the safest in the world because all stakeholders share a common goal of reducing risk. Against this backdrop, the industry historically has not used safety as a commercial or political weapon to neutralize competition and quash innovation. Yet, this is exactly what the JSX Opponents hope to accomplish by falsely portraying the Part 135/Part 380 business model as unsafe. Their efforts should be rejected and the NOI should be withdrawn.

VIII. The Contemplated Definitional Changes Would Undermine Competition, Service to Smaller/Underserved Communities, Innovation, and Emerging Technologies

A. The Proposed Rule Change Would Reduce or Eliminate Service to Many Smaller and Underserved Communities and Airports

As discussed above, JSX and similarly situated operators connect smaller communities and airports that otherwise would have no regular air service. The contemplated revisions to the definitions of “on-demand” and “scheduled” operations in Part 110 would eliminate or vastly reduce such service. This service reduction would come at a time when many smaller airports have struggled to re-instate scheduled service that was cut during the pandemic and previously operated by Part 121 airlines.

The threat that the contemplated definitional changes pose to smaller airports that are not certificated by the FAA under Part 139 is even greater. As noted in section VI, supra, under federal statute any airport serving a scheduled passenger operation using aircraft with more than nine passenger seats must first hold a certificate issued by the FAA under 14 C.F.R. Part 139. If the operations of carriers such as JSX that provide Part 380 public charters under the operating rules of Part 135 using aircraft configured with between 10 and 30 seats were re-

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44 See 49 U.S.C. § 44706(a)(2) (the FAA “shall issue an airport operating certificate to a person desiring to operate an airport...that is not located in the State of Alaska and serves any scheduled passenger operation of an air carrier operating aircraft designed for more than 9 passenger seats but less than 31 passenger seats.”).
classified by the FAA as scheduled operations, the communities served by non-Part 139 certificated FAA airports would be largely cut off from the NAS, having to instead rely exclusively on operators that use very small aircraft with nine or fewer seats (often with only a single engine and pilot) for any regular air service.\textsuperscript{45}

Yet nowhere in the NOI is there any indication that the FAA has given careful thought to the impact that the proposed re-categorization of “on-demand” operations into “scheduled” operations will have on airports that are not certificated under Part 139. Indeed, even when the FAA moved the scheduled operations of many Part 135 commuter air carriers using aircraft with more than nine seats to Part 121 during the mid-1990s, it went to great lengths to ensure that affected communities would not lose air service due to the then-impending regulatory change.

The adverse impact of the FAA’s proposed definitional revisions would be even worse for communities under the DOT’s EAS program. By statute, EAS generally must be provided using aircraft with at least two pilots and two engines. 49 U.S.C. § 41732(b)(5). Many Part 135 aircraft used in scheduled operations are single-engine aircraft, such as the Pilatus PC-12 and the Cessna 208 Caravan. The changes contemplated in the NOI would force EAS communities that are unable to either attract or accommodate scheduled service from Part 121 airlines into receiving a level of service that they have historically resisted. Although the statute provides a mechanism for EAS communities to seek a DOT waiver from the statutory requirement that they receive service from multi-engine aircraft with two pilots, many such communities have been highly reluctant to do so.\textsuperscript{46}

\textsuperscript{45} See 60 Fed. Reg. at 65,847 (“[P]ending Congressional resolution of this issue, affected commuters are permitted to operate into other than part 139 certificated airports. If the FAA receives expanded authority over airport certification, it would propose rulemaking standards that are sufficiently flexible to cover the range of airports presently served under part 135.”).

\textsuperscript{46} See, e.g., Order 2023-9-17 (Sept. 28, 2023) (requesting new round of EAS proposals after community rejected and did not seek waiver for proposal involving nine-seat aircraft); Order 2022-8-15 (Sept. 6, 2022) (re-opening the bidding process after community declined to waive its right to receive service with twin engine aircraft); and Order 2022-9-5 (Sept. 6, 2022) (rejecting EAS proposals and re-opening the bidding process because community “declined to waive its right to basic EAS consisting of aircraft with at least 2 engines and using 2 pilots.”). In contrast, many communities have sought and successfully
The economic risks that the NOI presents to regular air service at smaller communities and airports is substantial. Requiring Part 135 operators using aircraft with between 10 and 30 seats to be certificated as Part 121 domestic or flag operators would eliminate or dramatically decrease the availability of regular air service at approximately 1,000 airports that are not currently certificated under Part 139 but have runways that can accommodate aircraft of the size that JSX and similar operators fly. Such a measure would have adverse consequences for communities served by small airports, undercutting local efforts to grow their economies, increase tourism and improve links to the NAS. On this basis alone the NOI should be withdrawn.

B. The Proposed Rule Change Would Reduce Competitive Options for Consumers and Shield Legacy Mega-Carriers From Competition

As an initial matter, JSX respectfully notes that the FAA lacks authority to regulate economic competition in the manner suggested in the NOI. However, mindful that the NOI was borne out of certain entrenched Part 121 airlines’ attempts to stifle innovation and competition, JSX welcomes the FAA’s request for comments on the competitive implications of the contemplated rule change.

It is indisputable that the domestic airline industry is more concentrated now than at any time since deregulation. As previously noted, four mega airlines control more than 80% of the domestic market. Although the market shares of JSX and other innovative new entrants will not fundamentally change this market structure, such smaller carriers are key to a robust domestic economic competition.
airline competition policy in an industry where barriers to entry are high. Indeed, President Biden’s Executive Order on Promoting Competition in the American Economy (“Competition EO”) recognizes that new entry is an essential ingredient to aviation consumer welfare. More specifically, the Competition EO directs DOT to “ensure competition in air transportation and the ability of new entrants to gain access,” to “extend opportunities for competition and market entry as the industry evolves,” and to “promote competition and economic opportunity to resist monopolization.”48 The NOI does exactly the opposite of what the Competition EO instructs.

JSX, through its innovative business model, provides much-needed competition to the domestic airline industry in furtherance of the Competition EO’s directives. JSX offers lower priced walkup business and leisure fares that are responsive to the needs of consumers, and it does so with an excellent safety record. Since starting service in 2016, JSX has steadily expanded the number of routes it serves, and today flies in competition with other operators on 15 of the 42 non-stop routes it serves. When JSX enters markets in which other operators are present, it provides greater consumer choice and expanded competition. As has repeatedly been found, when the number of carriers competing in a given market increases, consumers overwhelmingly benefit.49


The definitional revisions at issue in the NOI would bring an end to JSX’s service at small communities and airports where it has delivered demonstrable consumer benefits. The success of JSX’s business model is built on Part 380 public charter service provided with a particular size of aircraft under the Part 135 operating rules. JSX’s business model is not feasible (and thus the resulting unique pro-competitive benefits that JSX offers are not obtainable) with aircraft of nine or fewer seats. In the absence of any rigorous safety-based analysis demonstrating a rate of accidents or serious incidents among Part 135/Part 380 operators of 30-seat aircraft that is higher than the rate applicable to Part 121 operators, JSX and similarly situated operators should be permitted to continue operating under Part 135 when providing public charter flights under Part 380. In sum, rather than changing the FAA’s regulation to prevent operators like JSX from continuing to deliver greater choice and savings to consumers, the DOT and the FAA should be encouraging the growth of this important sector of the air transportation system.

C. The Proposed Rule Change Would Stifle Innovation and Create a Barrier to Entry for Technology Innovators Like Advanced Air Mobility Companies

The damage threatened by the definitional changes in the NOI extends well beyond current Part 135/Part 380 operators, to include other innovative business models that will be key to the maintenance and further development of a vibrant national air transportation system. Among such future business models are AAM operations.

As the FAA is well aware, AAM is an emerging aviation sector that will leverage newly type-certificated passenger-carrying aircraft (including novel eVTOL aircraft) and an array of related technologies to provide air transportation that is responsive to the needs of the traveling public. AAM will present operators, communities and policymakers with the opportunity to

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50 AAM is defined in the AAM Coordination and Leadership Act as “a transportation system that transports people and property by air between two points in the United States using aircraft with advanced technologies, including electric aircraft or electrical vertical take-off and landing aircraft, in both controlled and uncontrolled airspace.” Pub. L. No. 117-203 (Oct. 17, 2022).
achieve more efficient, more environmentally sustainable, and more equitable options for air transportation.

Recognizing the importance of AAM operations to the U.S. economy and the many public benefits that such operations are expected to produce, the FAA earlier this year issued its AAM Implementation Plan ("AAM Plan").51 The purpose of the AAM Plan is to provide a roadmap for steps that the FAA must take in order to integrate AAM operations into the NAS, culminating in the launch of such operations serving multiple origins and destinations by 2028. As most relevant to the NOI, the AAM Plan calls for AAM commercial operators “to be certified to operate under 14 CFR part 135.”52

Given the role that the operating rules of Part 135 will have in the successful deployment of AAM operations, it is not surprising that AAM interests (including JSX) object to the definitional changes presented in the NOI. Such regulatory changes, if implemented by the FAA, will almost certainly disrupt plans for the eventual implementation of AAM passenger-carrying aircraft into the NAS. More specifically, if the FAA were to “delink” its regulations from DOT’s economic regulations (as the NOI contemplates), nearly every future AAM passenger-carrying operator offering even a modest number of weekly frequencies on a specific route would have to undergo an initial DOT fitness determination under the economic rules of 14 C.F.R. Part 204 as a “commuter air carrier” as defined in Part 298.53 This is the only logical outcome under the NOI’s contemplated definitional changes, given that such AAM operators wishing to operate

52 Id. at 7 (emphasis added).
53 Under 14 C.F.R. § 298.2, a “commuter air carrier” is any air carrier that (i) operates aircraft with 60 or fewer seats and a payload capacity of 18,000 pounds or less, and (ii) “carries passengers on at least five round trips per week on at least one route between two or more points according to its published flight schedules that specify the times, days of the week, and places between which those flights are performed.”
public charters under Part 380 would no longer qualify as FAA on-demand Part 135 certificate holders, and instead would be deemed Part 135 commuter operators.

Such a regulatory change would materially lengthen the timeframe for launching AAM passenger-carrying operations, given the extent of data that must be included in applications for DOT commuter air carrier authorizations and the time required for DOT’s Air Carrier Fitness Division to confirm that the applicant satisfies the Department’s three-part fitness test, and to thereafter issue a show cause order and final order.\(^\text{54}\) This, in turn, would erect barriers to entry for a fledging industry that is critical for maintaining U.S. ingenuity and competitiveness. Given the likely resulting backlog of commuter air carrier applications that would be pending before the DOT at any given time, the NOI threatens to inhibit, rather than foster, technological innovation.

The importance of AAM solutions for future small community air service cannot be overstated. To be certain, initial AAM operations of scale as envisioned under the FAA’s AAM Plan will pave the way for widespread commercial service. Part 135 air carriers are ideally positioned to serve as the inaugural operators. The ability of such carriers to reach nearly any public-use airport in the United States situates them as key players in expanding small community accessibility to the NAS. For example, JSX intends to use AAM aircraft to serve markets like Del Rio, TX, which is located approximately 150 miles from San Antonio, TX, and presently has no regular air service.

JSX has proven its unique ability to bring commercial by-the-seat services to previously unserved and underserved markets, to introduce a new way to fly to the public, and to successfully market and reliably operate those services. In other words, JSX exemplifies innovation, a cornerstone of the Biden administration’s competition policy, and the deployment

\(^{54}\) The three-part fitness test examines “whether the applicant (1) will have the managerial skills and technical ability to conduct the proposed operations, (2) will have access to resources sufficient to commence operations without posing an undue risk to consumers, and (3) will comply with the Transportation Code and regulations imposed by Federal and State agencies.” Order 2016-4-13 (Apr. 15, 2016), at 1. Additionally, before granting commuter air carrier authorization, DOT must find that the applicant is a “citizen of the United States” within the meaning of 49 U.S.C. § 40102(a).
of AAM aircraft is the logical next step in JSX’s evolution as an innovator. If the FAA/DOT were to prohibit the business model used by JSX and similarly situated operators, such regulatory action will irreparably harm this nascent industry and compromise the global leadership in aviation that the U.S. has long enjoyed.

In short, the United States’ civil aviation network, a national treasure that includes over 5,000 public-use airports and thousands more heliports, stands poised to vastly benefit from the availability of environmentally sustainable AAM aircraft. However, without a supportive regulatory framework, the potential of these innovative solutions will be stifled. In light of these considerations alone, the NOI should be withdrawn and this rulemaking terminated.

**IX. The FAA/DOT Have Impermissibly Prejudged the Issues in this Rulemaking and Must Publicly Disclose All Information and Documents Relating to this Rulemaking’s Origins**

The NOI superficially presents as an objective rulemaking initiative bearing due process features. This, however, is a façade to mask FAA/DOT political leadership’s prejudgment of the outcome of this proceeding. The NOI lacks any evidence of a safety problem, let alone one warranting the proposed regulatory change, yet it invites public comment on a range of topics relating to such a change.55 An email from the FAA’s Deputy Administrator stated that the NOI’s issuance “mark[s] the beginning of a collaborative process with stakeholders, experts, and the general public.”56

The invitation for public comment and platitudes about “a collaborative process” are meaningless, however, where an agency has violated the law and veered away from its own rulemaking guidance by prejudging the need for the regulatory change that is purportedly under “consideration.” As a legal matter, this precipitous and peremptory action by the FAA/DOT violates due process because an agency cannot provide meaningful public notice-and-

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55 NOI at 59,480-81 (inviting comment on “any … topics interested parties believe should be considered”).
56 Email from Katie Thomson, Deputy Administrator, FAA (Aug. 24, 2023).
comment, as required by the Administrative Procedure Act and fundamental due process, if the agency has already closed its mind to the question of whether a legitimate basis exists for promulgating a truly significant and consequential rule change, as contemplated in the NOI.57

The shadowy origins of this rulemaking belie its legitimacy and evince the FAA/DOT’s impermissible bias and prejudgment. The NOI was not a response to the FAA’s objective identification of a real safety problem (because no such problem exists), but rather appears to be the product of lobbying by the JSX Opponents that are exploiting the regulatory process to put JSX out of business, all in pursuit of their own economic gains, which have nothing to do with safety or the public interest.58 Their coordinated lobbying has been so effective in finding an audience at the highest levels of the FAA/DOT that it appears to have deterred FAA/DOT officials from even meeting with JSX. Such a meeting, which the FAA/DOT have routinely accommodated in the past as a matter of longstanding policy and practice, and which the FAA/DOT’s own rulemaking guidance requires, would have enabled FAA/DOT leadership and staff to gain an objective, fact-based understanding of JSX’s business and operations. Instead, FAA/DOT leadership apparently was (and continue to be) more interested in responding to the JSX Opponents than in understanding the consequences of this rulemaking.59

In JSX’s case, those consequences could include driving out of business a successful new entrant air carrier, putting more than a thousand aviation professionals out of work, and

57 5 U.S.C. § 553; see Ass’n of Nat. Advert., Inc. v. F.T.C., 627 F. 2d 1151, 1170 (D.C. Cir. 1979) (agency decision maker “reached an irrevocable decision on whether a rule should be issued prior to the [agency’s] final action.”).


59 Although the NOI never mentions JSX or any other Part 135/Part 380 operator by name, JSX is the largest such operator. Some of the JSX Opponents have informally but directly confirmed to JSX their intent to secure this rulemaking as a mechanism to eliminate JSX as a competitor. Indeed, ALPA bragged about the effectiveness of its lobbying in a statement issued five minutes after the FAA posted the NOI (thereby inadvertently exposing the level of apparent coordination between ALPA and the FAA), in which ALPA described the NOI as “a significant achievement” by ALPA, the result of “ALPA’s efforts.” Statement of Capt. Jason Ambrosi, ALPA President (issued at 12:35 pm ET, Aug. 24, 2023). The FAA issued the NOI at 12:30 pm ET on the same day.
depriving consumers and communities across the nation of valuable air service. President Biden and Secretary Buttigieg have repeatedly criticized the U.S. airline industry for an excessive concentration of market share among the four largest airlines and touted the importance of new entry (and breaking down barriers to new entry).\textsuperscript{60} This rulemaking, however, would further entrench the market power of two of the largest U.S. airlines by suppressing a start-up air carrier for its temerity to compete even on a very modest scale,\textsuperscript{61} albeit with a superior product that consumers demonstrably prefer. It is ironic that this administration has criticized American’s market power while capitulating to American’s (and others’) political muscle.\textsuperscript{62} This rulemaking is the embodiment of a new type of barrier: a lobbying-inspired, targeted regulatory barrier to entry, erected to protect influential parties that are prepared to fabricate safety concerns – concerns FAA/DOT’s leadership are prepared to credulously accept (or simply act upon) without the need for any supporting safety data.

A. The FAA/DOT Refused to Meet with JSX Before Issuing the NOI

The law and the FAA/DOT’s rulemaking guidance require the FAA/DOT to adopt an “equitable” approach to all interested parties.\textsuperscript{63} JSX is aware that the FAA/DOT communicated

\textsuperscript{60} See Competition EO, supra n.47; Oversight of the Department of Transportation’s Policies and Programs, Secretary Pete Buttigieg testimony before the U.S. House of Representatives Committee on Transportation & Infrastructure (Sept. 20, 2023), available at https://transportation.house.gov/calendar/eventsingle.aspx?EventID=406858 (last accessed Oct. 13, 2023). Despite these successive statements about addressing excessive airline industry concentration and the need for new entrants to overcome structural and other barriers to entry, DOT cannot cite a single specific agency policy initiative or action to address this problem. On the contrary, DOT’s actions in this proceeding create the appearance of “agency capture” as a political matter by the same interests the administration claims to find to be objectionable as a policy matter.

\textsuperscript{61} For example, in Dallas, JSX has just 18 daily flights, compared with American, which operates more than 800 daily flights and bases nearly 35,000 employees in the region.

\textsuperscript{62} The FAA/DOT’s apparent responsiveness to American’s and others’ lobbying in this case stands in contrast to the Department of Justice’s successful litigation against American, which led to a federal court decision earlier this year finding that American has violated the antitrust laws. See United States v. Am. Airlines Grp. Inc., No. CV 21-11558-LTS, 2023 WL 3560430 (D. Mass. May 19, 2023).

with the JSX Opponents on multiple occasions before issuing the NOI to discuss their manufactured safety “concerns” about JSX’s operations. In fact, this rulemaking is the product of lobbying by the JSX Opponents, not any empirically demonstrated safety problem. JSX representatives made repeated attempts to meet with senior FAA/DOT officials prior to the NOI’s issuance, but the FAA/DOT rejected each and every one of those requests. Yet FAA/DOT rulemaking guidance requires the FAA/DOT to “treat parties equitably in administrative proceedings by making every reasonable effort to afford interested parties an equal opportunity to be heard.”\(^6\) If FAA/DOT officials met or otherwise communicated with the JSX Opponents regarding the operations at issue in this rulemaking while refusing to meet with JSX, the FAA/DOT violated their own agency rulemaking guidance before they even issued the NOI.\(^6\)

The FAA/DOT’s rulemaking guidance requires public disclosure of meetings and communications relating to a rulemaking, including the decision to initiate a rulemaking.\(^6\) JSX therefore requests that the FAA/DOT make public (by placing in this docket) a record of all meetings and communications between FAA/DOT officials and any other party outside the Federal Executive Branch regarding any Part 135/Part 380 operations and related to the development and issuance of the NOI and the initiation of this rulemaking. Such disclosure is essential to enable “an open, transparent rulemaking process that is equitable to all parties.”\(^6\)

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\(^6\) Id. See also Administrative Procedure Act, 5 U.S.C. § 553 (governing agency rulemaking); Executive Order 12866, § 6(a) (“each agency should, where appropriate, seek the involvement of those who are intended to benefit from and those expected to be burdened by any regulation…”) (Sept. 30, 1993), available at https://www.archives.gov/files/federal-register/executive-orders/pdf/12866.pdf (last accessed Oct. 2, 2023).

\(^6\) If one party meets or communicates with the FAA/DOT, the guidance states that “DOT personnel will make every reasonable effort to meet with any other outside party who requests a similar opportunity. DOT personnel should ensure, through appropriate affirmative outreach where necessary, that the opportunity to engage in ex parte communications is equitable to all parties, including stakeholders who might otherwise be less represented in DOT’s rulemaking process.” DOT Memo at 12-13; see also id. at 4 (“Further, [DOT] must treat parties equitably in administrative proceedings by making every reasonable effort to afford interested parties an equal opportunity to be heard through ex parte communications”).

\(^6\) See DOT Memo at 10-11.

\(^6\) Id. at 10. See also id. at 3 (“[e]x parte communications can also be useful ways to engage the public and obtain improved data and information and clarification of views that can assist the agency in making
The FAA/DOT have recognized that only hearing from one side risks severely damaging the integrity of agency rulemaking or other action:

Ex parte communications … can have serious ramifications if the agency receives information in an ex parte communication and relies on that information in reaching a decision without disclosing it in the record. A failure to disclose can also create the appearance of undue influence that can cause the public to lose trust in the integrity of the decision-making process. 68

Yet that appears to be exactly what FAA/DOT leadership have done in this case.

B. The FAA/DOT Have Failed to Follow Their Own Rulemaking Guidance in Initiating the NOI

The FAA/DOT’s guidance states that the FAA/DOT may initiate a rulemaking for any of several reasons, including: (1) a specific statutory mandate; (2) the agency’s identification of a specific problem warranting regulation 69; (3) a petition for rulemaking; or (4) in response to relevant NTSB, GAO, IG, or similar recommendations. 70 None of those predicates, however, applies in this case.

The FAA/DOT’s guidance states that in deciding whether to initiate a rulemaking, the FAA/DOT must evaluate less burdensome alternatives in order to determine whether the benefits of a rule justify the costs. 71 After deciding to pursue a rulemaking, the FAA/DOT’s well-informed decisions. They can also give regulated entities and other interested members of the public additional assurance that their viewpoints have been heard by the Department.

68 Id. at 3-4.

69 The FAA/DOT guidance states that “agency identification of a problem” may be “a result of inspectors’ reports or general agency oversight. For example, we review accident reports or data that may show an increasing safety problem with motor vehicle side collisions or leaks of hazardous materials during transportation. Investigations of accidents may indicate a manufacturing problem that needs to be addressed. We may have difficulties enforcing existing rules, and this may provide evidence of a need to modify the rules. Requests for interpretations or exemptions may demonstrate that a rule needs to be clarified or modified. Finally, changes in technology may justify a change to a rule.” See DOT, Rulemaking Process, https://www.transportation.gov/regulations/rulemaking-process#identify (last accessed Oct. 13, 2023). Agencies may also use “risk assessments – an analytical tool for determining the probability of a problem occurring (e.g., an accident) and the probability of the problem causing harm (e.g., personal injuries) – to help it determine whether to initiate rulemaking.” Id. The FAA/DOT have not indicated that they relied on any of those objective means of identifying a “problem” warranting a rulemaking in this case. Moreover, the NOI does not even identify such a “problem.”

70 Id.

71 Id.
rulemaking guidance discusses the preparation by the relevant DOT agency of a “Rulemaking Initiation Request” for submission to DOT’s Office of Regulation.\textsuperscript{72} Such a Request, among other things, must specifically address the need for the regulation and disclose the stakeholder engagement that took place before initiating the rulemaking, including whether the agency afforded other parties “balanced opportunities to weigh in on the issues involved in the rulemaking.”\textsuperscript{73} The FAA/DOT’s rulemaking guidance also details other actions the FAA/DOT must take in order to comply with the Administrative Procedure Act and DOT’s own regulations.\textsuperscript{74} JSX hereby specifically requests that the FAA/DOT disclose (by placing in this docket) a copy of any “Rulemaking Initiation Request” prepared for this rulemaking (as contemplated in the FAA/DOT’s rulemaking guidance) and reports, memoranda and other documents relating to the process and decision to initiate this rulemaking and issue the NOI.\textsuperscript{75}

C. The FAA/DOT Have a Legal and Ethical Obligation to Fully Disclose the Origins of this Rulemaking

It is a tried-and-true aphorism of good government that “sunlight is the best disinfectant” to cleanse the contamination of “behind closed doors” dealmaking when an agency capitulates to the demands of powerful special interests. The NOI and this rulemaking appear to be the product of just such contamination. The FAA/DOT have a legal obligation to be fully transparent about the origins of this rulemaking. Nothing less than disclosure of all communications and documents that led to this rulemaking (as requested above) will suffice to address that


\textsuperscript{73} \textit{Id.} at § 8 (pages 5-6). Per FAA/DOT’s guidance, a Rulemaking Initiation Request” should “specifically” address 11 different predicates to initiating a rulemaking. \textit{Id.}

\textsuperscript{74} \textit{See, e.g., id.} at § 11 (page 15) (encouraging the FAA/DOT to comply with the Administrative Procedure Act, 5 U.S.C. § 553 (governing agency rulemaking), and DOT’s regulations at 49 C.F.R. § 5.5 (governing agency contacts with interested parties during informal rulemakings).

\textsuperscript{75} The FAA/DOT should also disclose copies of any memoranda and other communications with OIRA, including those that incorrectly presented this as a non-significant rulemaking. \textit{See} section X hereto.
obligation, recognizing that, in DOT’s own words, “[a] failure to disclose can … create the appearance of undue influence that can cause the public to lose trust in the integrity of the [agency] decision-making process.” This DOT statement is only partially true: failure to provide the required disclosure not only can create the “appearance of undue influence”; it can also mask the fact of undue influence.

X. The FAA/DOT Propose to Take a Significant Regulatory Action, But Have Failed to Comply with Executive Order 12866

The definitional revisions to Part 110 contemplated under the NOI constitute a significant regulatory action under Executive Order 12866, “Regulatory Planning and Review” (Sept. 30, 1993) (“Executive Order”) because the likely effect on the economy will exceed $200 million annually. JSX’s operations for 2023 are projected to account for nearly $300 million in annual revenue. However, JSX is by no means alone when it comes to the threat that the NOI presents to its business model. Based on the FAA/DOT’s own assessment, there are nearly 20 air carriers with a business model that includes Part 380 public charter flights flown under the FAA’s Part 135 operating rules – the very same operations at issue in the NOI – suggests a more extensive record of communications between the FAA/DOT and persons outside the Executive Branch directly bearing on the decision to issue the NOI. The public has a right to know the nature and details of these communications.

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76 On October 4, 2023, the DOT posted to the docket for SkyWest Charter LLC’s (“SWC”) pending application for DOT commuter air carrier authorization (i) a letter from Southwest opposing SWC’s application and dated December 21, 2022, and (ii) a letter from the Assistant Secretary for Aviation and International Affairs, also dated October 4, 2023, responding to Southwest’s December 2022 letter. See Docket entries 108 and 109 in DOT-OST-2022-0071. The absence from the SWC docket, for nearly 10 months, of a letter from Southwest opposing an applicant’s business proposal entailing Part 380 public charter flights conducted under the FAA’s Part 135 operating rules – the very same operations at issue in the NOI – suggests a more extensive record of communications between the FAA/DOT and persons outside the Executive Branch directly bearing on the decision to issue the NOI. The public has a right to know the nature and details of these communications.

77 DOT Memo at 3-4.

78 Executive Order at § 3(f)(1), as amended by § 1(b) of Executive Order 14094 of April 6, 2023, titled “Modernizing Regulatory Review” (increasing the threshold from $100 million to $200 million).

79 By contrast, annual revenue for American Airlines Group, which claims to be competitively disadvantaged by JSX, stands at a staggering $52 billion, which is larger than the GDP of more than 85 countries. Source: Worldometer, GDP by Country, available at https://www.worldometers.info/gdp/gdp-by-country/ (last accessed Oct. 13, 2023).

80 FAA Notice 8900.674 (Sept. 13, 2023), at Appendix A.
FAA’s Part 135 on-demand operating rules, many of which operate either jet aircraft or turboprop aircraft with more than nine seats.81

As explained herein, if the FAA/DOT were to implement the regulatory changes at issue, those changes would prevent JSX from operating its ERJ-135/145 aircraft under Part 135. In that case, JSX’s business model would no longer be economically viable and the company would be forced to either discontinue or radically alter its service offerings and products. Similarly situated operators also would be faced with the prospect of either ending service or (as contemplated in the NOI) becoming Part 121 domestic and flag operators.

Of equal – if not greater – significance for the U.S. economy is the resulting impact that the NOI’s contemplated regulatory change would have on small airports and communities, in particular airports that do not hold Part 139 certification or where JSX and similarly situated operators are the only providers of regular air service.82

Even if the likely impact of the contemplated changes on the U.S. economy were somehow less than $200 million (a far-fetched scenario), the NOI qualifies as a significant regulatory action because of its likely adverse material effect on a “sector of the economy[,] . . . competition, [and] jobs.”83 Air carriers conducting Part 380 public charter flights under the operating rules of Part 135 play an important role in the air transportation industry, which in turn is one of the principal economic engines of the U.S. economy. Additionally, and as explained

81 To be clear, the costs of the changes contemplated in the NOI are by no means limited to these 20 carriers. If the public charter exception were removed from the FAA’s definition of scheduled operation, Part 135 on-demand operators currently utilizing only non-turbojet aircraft equipped with nine or fewer seats would be forced to obtain certification for Part 135 commuter operations or else discontinue engaging in public charter flights.

82 See Crampton, supra n.32 (“The industry’s airport desertions pose a serious risk to the economies of these communities, and local leaders believe that a lack of air service threatens a teetering rural America that already feels forgotten by the rest of the country” and citing as an example the loss of air service to Dubuque, which cost nearly 200 jobs and reduced its economic output by more than $26 million from 2019 to 2022); The Economic & Social Benefits of Air Transport, Air Transport Action Group, available at https://www.icao.int/meetings/wrdss2011/documents/jointworkshop2005/atag_socialbenefitsairtransport.pdf (last accessed Oct. 13, 2023) (describing global economic impact of the air transport industry).

83 Executive Order at § 3(f).
herein, the market for domestic air travel is highly concentrated. Operators such as JSX bring meaningful and sustainable competition, in a safe and dependable manner, to the entrenched, legacy airlines, including the American/Southwest duopoly in Dallas. Indeed, American has conceded that its attack on JSX is rooted in competition (albeit under an absurd theory that JSX’s business model places American at a competitive disadvantage). Finally, JSX employs nearly 1,100 aviation professionals, and its presence at various airports indirectly contributes to thousands of additional jobs across the travel and hospitality sectors. There is no credible basis for asserting that the changes proposed under the NOI are anything other than significant regulatory action under the Executive Order.

Yet, that is exactly what the FAA/DOT have asserted. More specifically, in presenting the NOI to the Office of Information and Regulatory Affairs (“OIRA”) for approval by the Biden administration, the FAA/DOT classified the rulemaking as not economically significant. This is not surprising, of course, given that the objective of the JSX Opponents is to put JSX out of business as soon as possible. Any classification of the rulemaking as significant would slow down those efforts.

84 For its part, Southwest’s efforts for the FAA/DOT to regulate JSX and similarly situated operators out of business demonstrates how much Southwest has abandoned its once well-earned reputation as a maverick and disruptor that had withstood efforts by entrenched, powerful interests to pass laws aimed at preventing Southwest from succeeding in the marketplace. Instead, Southwest has calculated that its interests today are better served by leveraging its power and influence to peddle a baseless safety-focused narrative in an attempt to crush a start-up competitor. The irony of Southwest seeking to delegitimize JSX’s commercial success and record of safe and secure operations by pointing to an imagined “gaping loophole” in the FAA regulations is not lost on JSX. Southwest itself boasts that the early success during its formative years was due to the ingenuity of its visionary founder, Herb Kelleher, to identify and exploit a regulatory “loophole” (not just gaping, but Texas-sized) in order to keep Southwest outside the jurisdiction of federal economic regulators and limit its flights to intrastate operations. See Southwest Airlines, “Courting Success: Early Southwest Legal Battles,” available at https://southwest50.com/our-stories/courting-success-early-southwest-legal-battles (last accessed Oct. 13, 2023) (“Herb and Rollin King, however, had already identified a loophole. If Southwest limited its flights to Texas, it could remain beyond the reach of the [Civil Aeronautics Board] and seek certification at the state level.”)

85 OIRA, a division of the White House’s Office of Management and Budget, serves as the “central authority for the review of Executive Branch regulations.” See https://www.whitehouse.gov/omb/information-regulatory-affairs/ (last accessed Oct. 13, 2023).

86 See Exhibit B hereto.
Unfortunately for the JSX Opponents, however, the law is quite clear: when, as here, an agency is considering taking a significant regulatory action, there is an established process that must be followed to ensure the agency makes a fully informed decision and carefully weighs available alternatives. This process is designed to encourage deliberation and thoughtfulness in agency rulemaking activities – and to minimize the risk of agencies quickly pursuing ill-informed initiatives that lack supporting data to substantiate the existence of the very problem that the initiative purports to address. In other words, the Executive Order, which has proven to be durable over the course of no fewer than five different presidential administrations, exists to prevent precisely the type of rush to judgment that the FAA/DOT appear to have made in the NOI.

Under the Executive Order, significant regulatory actions must be presented to OIRA with an analysis of costs and benefits, not only of the proposed action, but also available alternatives, including the costs and benefits of not regulating. And, in contrast to the FAA/DOT’s utter failure in the NOI to identify a single specific safety problem, the Executive Order requires agencies to clearly articulate the problem and “assess the significance of that problem.” Moreover, agencies must “propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs.” Finally, an agency “shall base its decisions on the best reasonably obtainable scientific, technical, economic, and other information concerning the need for, and consequences of, the intended regulation.”

In issuing the NOI, the FAA/DOT failed to follow any of the above requirements under the Executive Order. On this basis alone, this rulemaking should be terminated. If the FAA/DOT nevertheless continue with the rulemaking (which they should not), then the FAA/DOT’s

87 Executive Order at § 6(a)(3)(C).
88 Id. at § 1(b)(1).
89 Id. at § 1(b)(6).
90 Id. at § 1(b)(7).
proposal, such as it is, should be re-submitted to OIRA for the more rigorous analysis demanded under the Executive Order.

XI. This Rulemaking Jeopardizes the FAA’s Reputation for Objective Aviation Safety Regulation

The FAA has a well-deserved reputation as the world’s leading aviation safety regulator. This reputation is founded on the FAA’s technical expertise, use of data-driven approaches, and dedication to regulating aviation safety without regard for political influences that might seek to skew the FAA’s objectivity. Thus, when a potential safety problem is alleged, the FAA’s longstanding approach has been to develop the empirical data necessary to verify the problem, and then pursue a deliberative, consultative, data-driven approach to objectively determine whether a regulatory change may be appropriate. The FAA’s reliance on safety expertise and objectively verified data as the basis for safety regulation is also the cornerstone of its ability to influence the development of global safety standards at the International Civil Aviation Organization and, using its well-earned “bully pulpit,” to press other countries to meet those international standards.

As noted earlier, the FAA has historically revised its operating rules only after establishing a fact-based safety record demonstrating a need to adjust the standards applicable to the affected operators. Here, however, in contravention of this historic approach, the FAA

91 Indeed, the FAA is proud of this reputation. See FAA, International Leadership, available at https://www.faa.gov/international#:~:text=The%20FAA%20is%20a%20global%2C%20CRWG)%20to%20safeguard%20aviation%20(last%20accessed%20Oct.%2013,%202023) ("[a]s a global leader, the FAA works with international organizations to promote aviation safety…"); FAA Reauthorization: Enhancing America’s Gold Standard in Aviation Safety, Statement of David H. Boulter, Acting Associate Administrator for Aviation Safety, Hearing Before House Committee on Transportation & Infrastructure, Feb. 7, 2023, https://www.transportation.gov/faa-reauthorization-enhancing-americas-gold-standard-aviation-safety (last accessed Oct. 13, 2023) (linking FAA’s role as “a global leader in aviation safety” to its use of “technical data,” in collaboration with the NTSB to develop “modern tools and philosophies and incorporating performance-based regulation where possible to develop a regulatory environment that ensures aviation safety remains paramount.").

92 See supra section IV; see also 68 Fed. Reg. 54,520, 54,521 (Sept. 17, 2003) (in which the FAA adopted Part 91 Subpart K for fractional ownership only after convening a Fractional Ownership Aviation Rulemaking Committee (“FOARC”). The FOARC was established in October 1999 (nearly four years before the issuance of the final rule) and was comprised of 27 members, representing on-demand charter operators, fractional ownership program managers and owners, aircraft manufacturers, corporate flight
has decided to pursue a fundamental change in longstanding regulations (that have worked well) without first having established any safety-based case or record of empirical data and evidence for doing so, thereby putting the proverbial cart before the horse, and risking damaging its hard-earned reputation as the world’s leading safety regulator. Indeed, it was only after the NOI was issued that the FAA instructed inspectors to gather data to assess whether any problem even exists. Even worse, rather than engaging in safety regulation based on objective criteria (as it has done in the past), FAA/DOT leadership appears willing to accept the allegations of special interests that have politicized safety to eliminate Part 135/Part 380 operators as competitors.

The FAA’s unseemly rush to initiate a rulemaking in this case without first developing an objective safety case or even consulting with carriers that would be most directly affected by the planned rule change comes at a time when the FAA has been criticized (including by the DOT’s own Inspector General’s office) for its response to real, urgent safety oversight challenges, including:

- Staffing and management challenges facing the U.S. air traffic control system, which have resulted in well-publicized safety problems and led the FAA to mandate air service reductions at some of our nation’s busiest airports).93;

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• Multiple, notorious runway incursion incidents and near-misses (involving Part 121 carriers)\(^9\);  

• Deficient oversight of pilot medical (mental health) reporting\(^9\);  

• The handling of well-known challenges relating to Pratt & Whitney’s geared turbofan engines deployed on Airbus A320neo jets and emerging challenges, including engine parts, not approved by the FAA, on U.S. aircraft\(^9\);  

• The lagging pace of the integration of uncrewed aircraft systems (drones) into the NAS\(^9\); and  

• The development of certification and operating rules for AAM aircraft.\(^9\)


Against the backdrop of these real safety problems, the FAA’s leadership unfortunately has prioritized and devoted limited agency rulemaking resources to pursue the NOI. In addition to distracting urgently needed attention to these pressing safety problems, the NOI threatens to put Part 135/Part 380 operators out of business, jeopardizes small community air service (including service provided under the EAS program), and undermines competitive service options for U.S. consumers.

XII. Conclusion

For all of the reasons stated above, JSX urges the FAA to withdraw the NOI. If, however, the FAA decides to proceed with this rulemaking, it must at a minimum take the following additional steps. First, the FAA must correctly designate the rulemaking as a significant regulatory action under Executive Order 12866 and adhere to the requirements thereunder. Second, as a matter of transparency, the FAA must post in this docket copies of: 1) all reports, memoranda and other documents relating to the FAA’s process and decision to initiate the rulemaking and issue the NOI, including all safety data, analyses, and studies that provide an objective safety basis for the rulemaking; and 2) a record of all meetings and communications between FAA/DOT officials and any other party outside the Federal Executive Branch regarding any Part 135/Part 380 operations and/or relating to the development and issuance of the NOI and initiation of this rulemaking. Without these actions being taken, there can be little to no public confidence in the integrity of the rulemaking process.

Respectfully submitted,

____________________
Alex Wilcox
Chief Executive Officer
JSX

DATED: October 13, 2023
EXHIBIT A

JSX – Key Facts
Key Facts
Docket FAA-2023-1857
The History of JSX

On April 19, 2016, JSX’s first flight took off from Burbank, officially giving wings to a new and innovative approach to air travel - one that would serve the underserved and breathe life into seldom-used airports with attainable, reliable, and long-sought-after service. And when that flight touched down in Concord just one hour later, it didn’t just mark the start of what became America’s highest rated air carrier, it restored service to Buchanan Field after 24 years.
JSX has built its safety programs to meet or exceed all applicable FAA regulations. Its Operations Management team boasts decades of Part 121 experience from major Part 121 airlines including American, United, Spirit, JetBlue, and America West.

<table>
<thead>
<tr>
<th>JSX Safety Program/Practice</th>
<th>Exceeds Part 135 Requirements?</th>
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<tbody>
<tr>
<td>Flight Operational Quality Assistance (FOQA) program, voluntary adoption</td>
<td>✓</td>
</tr>
<tr>
<td>Pilot training program requirements (initial and recurrent)</td>
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<tr>
<td>Training Review Board, voluntary adoption</td>
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<tr>
<td>Pilot and flight attendant duty limits</td>
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<tr>
<td>Aviation Safety Action Program (ASAP), voluntary adoption</td>
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<tr>
<td>Dispatcher certification requirements</td>
<td>✓</td>
</tr>
<tr>
<td>Safety Management System, voluntary adoption</td>
<td>✓</td>
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<tr>
<td>Aircraft Performance program with 60%/80% runway distance margin for all flights</td>
<td>✓</td>
</tr>
</tbody>
</table>
 JSX's Pilot Pipeline
Where JSX sources its top-quality pilots.

**Airline Pathway Programs**
- jetBlue
- UNITE/AVIATE

**Flight Schools**
- ATP
- Skyborne

**Retiree Organizations**
- UNITED
- DELTA
- jetBlue
- American Airlines
- Southwest

**Other Professional Groups**
- NGPA
- Women in Aviation
- Latino Pilots Association
- OBAP

**Military-To-Civilian Pathways**
- SkyBridge
- PATRIOTS PATH
- NAG
JSX’s Pilot Training

JSX conducts pilot training with the highest degree of scrutiny.

New hire training exceeds Part 135 regulations in the following ways:

- Company instructors conduct indoctrination while CAE administers Level D simulator training.
- All new hire pilots are trained and typed as Pilot in Command.
- JSX conducts Initial Operating Experience (IOE) on the line with company instructors for a minimum of 25 flight hours.
- All JSX pilots start in the right seat and are then upgraded or transition to the left seat.
- IOE and Line Checks are conducted in the left seat.
- Line Oriented Flight Training (LOFT) is conducted at every recurrent training using real-life scenarios and events discovered as a result of our safety programs.

JSX Average Pilot Experience
Captains: 8,466 hours
First Officers: 3,747 hours

JSX Pilot Makeup
Female Pilots: 27% (Industry average: 4.6%)
Pilots of Color: 24% (Industry average: 10.6%)

Lawrence Kline
Captain (Dallas)

- Valedictorian, United States Merchant Marine Academy
- Captain, Southwest (30 years)
- Head of SWAPA Air Safety Committee (4 years)
A Simply Joyful Flight
The JSX experience is thoughtful, attainable, and reliable.

JSX is faster on the ground...
- Curbside valet parking
- Check in 20 minutes before departure
- Comfortable, crowd-free lounge
- Frictionless, non-invasive security
- Simple, quick boarding
- Plane-side baggage return

...and better in the air.
- 30-seat cabins with bright, modern interiors
- Business class legroom and in-seat power
- Complimentary Starlink high-speed Wi-Fi
- Curated inflight treats and open bar
- In-cabin sound dampening

Net Promoter Score

<table>
<thead>
<tr>
<th></th>
<th>JSX</th>
<th>WN</th>
<th>AA</th>
<th>U.S. Airline Industry Average</th>
</tr>
</thead>
<tbody>
<tr>
<td>Score</td>
<td>76</td>
<td>49</td>
<td>18</td>
<td>27</td>
</tr>
</tbody>
</table>

Source: Comparably (2023)
 JSX is the Product of Innovation

Some of JSX’s awards and achievements.

5-Star Regional Airline
The world’s only APEX “5-Star Regional Airline” for 4 consecutive years

Autism Aware
The first air carrier certified by Autism Double-Checked

Bright Ideas In Travel
Inaugural recipient of new Condé Nast Traveler badge

Engaged Crewmembers
Consistently ranked as a regional and national top workplace

Best Places to Work for Equality
100% on HRC’s Corporate Equality Index every year since becoming eligible

Starlink Launch Air Carrier
World’s first air carrier to purchase, certify and provide Starlink inflight internet

Tiarelei Wolfgramm
Director, Airports

“I love my job because this company embodies the three pillars of my Tongan culture: Ofa (love), Famili (family), and Fetokon’aiaki (help one another). We are passionate and we come together as one every day to serve from the heart.”
What Industry Observers Say

Excerpts from media reports.

"ALPA...cites statistics claiming that Part 121 operations are demonstrably safer than...Part 135 operations since 2009. That comparison, however, appears to be a false equivalency. AIN has been unable to find any Part 380 public charter accidents in that time period." Matt Thurber, AIN

"The major carriers' complaints are not persuasive. American may claim that JSX 'distorts competition,' but there's nothing stopping American—or any other airline—from doing the same thing...Yet the company prefers to complain that an upstart has found a way to eat into its market share." Joe Lancaster, Reason

"It cannot be a coincidence that #ALPA opposes [JSX and SkyWest Charter] and the feds are going after the same two. I've covered the industry for 40 years and I've never seen so many gov actions against just two carriers. This is politics, kowtowing to the #pilotunion vote. Never mind there are serious safety and service issues at stake in allowing ALPA to be a 900-pound gorilla. ALPA has gone rogue in playing #politics with #safety." Kathryn Creedy, Future Aviation/Aerospace Workforce News

"If the central theme of the antitrust laws is to promote competition ... today's labor/management have negotiated agreements that have all but eliminated wage competition among and between sectors. Whether the ULCCs, JSX, SkyWest - barriers to entry are being erected and will impact consumers going forward. This writing is as much about ALPA doing anything and everything to stop JSX from operating as it is today; or SkyWest having its application to fly a Part 135 operation approved. Remember when Southwest scared the network carriers? Now JSX scares Southwest. This really is a new day in the U.S. airline space. The JSX Effect." William Swelbar, Industry Analyst

"AA's actions reminds me of its scorched earth approach to Legend in the late 1990s/early 2000s. And how cynically ironic that Southwest is joining AA in this endeavor, given how Southwest had to fight established airlines (Braniff and Texas International) to start service." Henry Harteveldt, Industry Analyst

"ALPA, joined by American, claim that JSX exploits a 'loophole' but what they really acknowledge is that JSX is legal and they don't want them to be so they've asked the federal government to ban the competition." Gary Leff, View from the Wing
What Customers Say
Excerpts from public comments in Docket FAA-2023-1857.

"JSX is under attack. It’s one of the greatest things to happen to air travel in years." Joe Gebbia, Co-founder AirBnB

"JSX’s commitment to safety and convenience is unparalleled. JSX is VITAL for air travel for the elderly and handicapped. My mother is able to get on these planes and navigate easily to board the plane. Large airports do not have the means to appropriately get the disabled and elderly people to and from the planes, through security, and out of the airport for ground transportation." K. Rusch

"JSX’s commitment to serving airports and elderly flyers like me, without commercial air service, is a testament to their dedication to accessibility. Their presence brings communities closer and opens doors for economic development. I stand firmly against the outlawing of Part 135 and Part 380 (public charter) operators and wholeheartedly advocate for the continuation of service and survival of JSX. Supporting JSX is supporting progress and is what the people want!" P. Cooper

"It’s disheartening to learn that major airlines, namely American and Southwest, are employing tactics of misinformation to preserve their market dominance, especially when JSX has consistently demonstrated exemplary safety and customer satisfaction standards. The push against JSX is not just about an airline; it’s about preserving choices for communities and passengers who value the unique services JSX provides, including support for the elderly, families, and individuals with special needs. Their commitment to a Joyful, Simple Experience for every passenger is unmatched." S. Ungerleider

"JSX’s dedication to safety and hygiene, especially in the current climate, gives me peace of mind while traveling. Overall, JSX has transformed the way I approach air travel, making it a choice I wholeheartedly endorse and support. JSX’s impeccable safety record speaks for itself. We should reject any unjust attempts to curtail their operations and keep the skies open for diverse air travel options." C. Ghiggeri

"I am a retired Vet and Sheriff. 77 years young. JSX plays a vital role in connecting communities... their commitment to filling this gap is commendable, ensuring that even smaller regions have access to efficient, safe, and convenient travel options.” T. Atkins
What Customers Say
Excerpts from public comments in Docket FAA-2023-1857.

"I’m the son of a flight attendant, a senior staffer on Capitol Hill, an aviation enthusiast, and a massive supporter and customer of JSX. Southwest and American Airlines are feeding blatant lies to elected officials here in Washington because the rise of part 135 carriers like JSX and Contour threaten their business." J. Banks

"As an airline pilot and former flight test engineer who started flight training in 2004 and finally built enough flight time and meet all the requirements to join the airlines in 2021, I feel that the aviation industry needs all available means for pilots to build time in order to meet the requirements to work for Part 121 carriers. The effort by ALPA to fight these newly formed operators sends a message to all aspiring pilots that they don’t support their career development." T. Finn

"The best thing to happen to air travel in decades. JSX has changed my family's life." Kyle Sherman, Founder & CEO, Flowhub

"It has not escaped our attention that the Air Line Pilots Association (ALPA), in its objection to SkyWest’s application, has now taken aim at Part 380 air carriers, falsely labeling them as unsafe and unsecure. This could not be farther from the truth. In fact, policies enabling FAA Part 135 and DOT Part 380 consumer protections have been in place, without contest, for decades. ALPA is now asserting that operators following these long-standing regulations are exploiting a “loophole” that needs to be “closed”. There is no such loophole in Federal regulations. “ N. Pruitt

"I am a frequent customer of JSX and also have the perspective of a pilot as a flight instructor and holder of an FAA commercial pilot certificate. Having flown JSX numerous times, I can vouch for their excellent safety standards and service. It's essential to protect and encourage companies like JSX that offer safe, reliable alternatives in air travel." K. Helbing

"I am the CEO of a Global Threat management company called US Armor Group. Our Executive team works with and come from the Department of Defense, FBI, Secret Service, Los Angeles Police Department, Delta Force etc. Myself and my employees fly JSX to important business meetings frequently. The JSX platform allows for us to save time and money. As experts in the field of Anti Terrorism and mitigating global threats, we strongly believe that JSX is as safe or safer than flying on a Commercial airline." J. Engen
What Customers Say

Excerpts from public comments in Docket FAA-2023-1857.

"I am a pilot and have flown a variety of different missions. Having flown JSX, I feel safest when met by the safety standards and service delivered by JSX. It's essential to protect and encourage companies like JSX that offer safe, reliable alternatives in air travel." M. Geitheim

"As a frequent JSX flier, I can attest to the exceptional safety and service standards upheld by the company. It's unjust to let big airlines manipulate the system to stifle competition. I'm fully behind JSX in this fight to protect fair and innovative air travel options. Additionally, I am former US Navy pilot and current ATP rated first officer with another carrier - I can personally attest that JSX flies with a high level of safety and professionalism." M. Lovell

"I am a safety professional for a large auto manufacturer and am also a private pilot. I personally vouch for the safety and excellent customer service of JSX. I want airlines in many formats to be available for consumers to make their own choices about who they fly. Competition drives innovation and better service. JSX has consistently demonstrated its dedication to both. I stand firmly against the FAA outlawing of Part 135 and Part 380 (public charter) operators and wholeheartedly advocate for the continuation of service and survival of JSX. Let's defend our right to choose and fly with JSX." M. Press

"As a former United States Air Force pilot, I firmly believe that JSX is as safe an airline as can be." H. Wade

"I am writing as a commercial pilot to provide feedback on the FAA’s intention to amend title 14, Code of Federal Regulations (14 CFR), part 110, specifically concerning public charter operations under 14 CFR part 380. My experiences in the aviation industry have given me a unique perspective on the challenges faced by emerging pilots, especially those from underrepresented groups. The proposed changes could potentially stifle competition and innovation in the aviation industry. By requiring some operators to transition from operating under part 135 to part 121, the FAA might inadvertently create barriers to entry, reducing competition and limiting consumer choice. While safety is paramount, it’s crucial to differentiate between genuine safety concerns and those influenced by competitive pressures. Any regulatory change must be based on empirical evidence and a clear demonstration of safety benefits." A. Victorero
What Customers Say

Excerpts from public comments in Docket FAA-2023-1857.

"My name is James Ketner, President and CEO of KTNR. Inc. [M]y father was a pilot for American, my mother was a flight attendant for American, I learned to fly in a 1946 Champ that I had to prop. I’ve been an engineer and consultant for Aviation Manufacturers for almost 35 years. I am writing in strong support of JSX. I stand firmly against the outlaw of Part 135 and Part 380 (public charter) operators and stand against putting them out of business with new regulations." J. Ketner

"As a pilot, business traveler, and long time supporter of the FAA and aviation in general, it utterly distresses me that a (supposedly impartial) government organization like the FAA would even consider bowing to corporate or political pressure instead of upholding the values that make our country, economy, and aviation great. It is imperative that companies like JSX continue to operate safely, providing a convenience to the US business center that is critical for the infrastructure of our economy and stability as a commerce hub. JSX's impeccable safety record speaks for itself. We should reject any unjust attempts to curtail their operations and keep the skies open for diverse air travel options."
R. Culver

"JSX’s business model is clearly highly desirable, especially for those of us with Autism and high levels of social anxiety around crowds, as well as those who need to travel with their animals. JSX is the ONLY airline providing legitimate services for people with mental health needs, support animals and Autism. This should not be taken lightly and discarded by the FAA because they are getting pressured by politics. There is absolutely no other reason to obliterate JSX, like they did to Legend Air, other than OPPROBRIOUS greed! These regulations have been in place for years, and now they want to change them?" E. Banks
EXHIBIT B

OIRA Conclusion of EO 12866 Regulatory Review
OIRA Conclusion of EO 12866 Regulatory Review

**RIN: 2120-ZA32**  View EO 12866 Meetings
**Title:** Notice of Intent to Consider Revisions to the Regulatory Definitions of "On-Demand Operation", "Supplemental Operation" and "Scheduled Operation" under 14 CFR Part 110

**Agency/Subagency:** DOT / FAA  
**Concluded Action:** Consistent with Change

**Legal Deadline:** None  
**Publication Date:**  
**Major:** No  
**Regulatory Flexibility Analysis Required:** Undetermined  
**Federalism Implications:** No  
**International Impacts:** No  
**Pandemic Response:** No  

**Received Date:** 07/11/2023  
**Stage:** Notice  
**Concluded Date:** 08/21/2023  
**Section 3(f)(1) Significant:** No  
**Economically Significant:** No  
**Unfunded Mandates:** No  
**Related To Homeland Security:** No  
**Small Entities Affected:**  
**Affordable Care Act [Pub. L. 111-148 & 111-152]:** No  
**Dodd-Frank Wall Street Reform and Consumer Protection Act, [Pub. L. 111-203]:** No

**Note:**  
* Following the issuance of E.O. 14094 on April 6, 2023, which amended Section 3(f)(1) of E.O. 12866, OIRA has designated regulatory actions as "Section 3(f)(1) Significant" if under that newly amended section of E.O. 12866 they are likely to result in a rule that may have an annual effect on the economy of $200 million or more (adjusted every 3 years by the Administrator of OIRA for changes in gross domestic product); or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, territorial, or tribal governments or communities. After April 6, 2023, OIRA no longer designated regulatory actions as "Economically Significant."

**Between September 30, 1993, when E.O. 12866 was issued, and April 6, 2023, when E.O. 14094 was issued, OIRA designated regulatory actions as "Economically Significant" if under Section 3(f)(1) of E.O. 12866 they were likely to result in a rule that may have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.