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January 11, 2021

Submitted to Docket DOT-OST-2021-0001

The Honorable Steven G. Bradbury
Deputy Secretary & General Counsel
Department of Transportation
1200 New Jersey Ave. SE
Washington, DC 20590

Re: Request of Spirit Airlines for On-the-Record Investigation of American Airlines- JetBlue Airways "Strategic Partnership"

Dear Deputy Secretary Bradbury:

Southwest Airlines Co. (Southwest) submits this letter in support of the Complaint filed by Spirit Airlines on January 7, 2021, raising serious competitive concerns about the joint venture between American Airlines and JetBlue Airways announced on July 16, 2020. Spirit's Complaint requests an on-the-record investigation of the codeshare and related joint-venture agreements to determine if they constitute an anticompetitive unfair method of competition that should be prohibited under 49 U.S.C. § 41712. Southwest supports this request and agrees that the competitive concerns outlined in the Complaint warrant a transparent and comprehensive investigation.

Southwest raised many of the same concerns in its July 29, 2020 letter to the Department, which is attached. In particular, Southwest referenced press reports quoting executives from both American and JetBlue that indicate the carriers are planning a much deeper level of coordination than their public announcements indicate, potentially including coordinating service, pooling slots, and allocating markets. In light of these statements and the potential competitive concerns they raise, we urged the DOT to undertake a rigorous investigation of the proposed joint venture. Southwest continues to have these same concerns, as we are not aware of any actions taken by the Department to address them.

Spirit's Complaint mirrors Southwest's concerns about the partnership, which are especially acute at slot-controlled airports that both American and JetBlue serve, particularly Ronald Reagan Washington National Airport (DCA) and New York La Guardia Airport (LGA). The competitive issues raised by Southwest are magnified by the fact that JetBlue acquired the great majority of its DCA and LGA slots via government-mandated

slot divestitures based on JetBlue's role as an *independent low-cost carrier* (LCC) that would exert competitive discipline against dominant legacy airlines at those airports. However, if American and JetBlue coordinate their services at these airports as the press reports indicate, JetBlue would obviously no longer be considered an independent LCC providing competitive discipline to American or other legacy carriers. Therefore, the Department should not permit the joint venture to proceed without ordering the divestiture of JetBlue slots to an independent LCC airline that will preserve essential low-fare competition at these critical airports.

Sincerely,

Mark R. Shaw

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Southwest

July 29, 2020

The Honorable Steven G. Bradbury
Deputy Secretary & General Counsel
Department of Transportation
1200 New Jersey Ave. SE
Washington, DC 20590

The Honorable Makan Delrahim
Assistant Attorney General for Antitrust
Department of Justice
900 Pennsylvania Ave. NW
Washington, DC 20530

Re: American Airlines/JetBlue Airways "Strategic Partnership"

Dear Deputy Secretary Bradbury and Assistant Attorney General Delrahim:

Southwest Airlines Co. (Southwest) submits this letter in regard to potential competitive concerns raised by the joint venture between American Airlines (American) and JetBlue Airways (JetBlue) announced on July 16, 2020. As part of this agreement, American and JetBlue have stated that they will create "a strategic partnership" with "seamless connectivity for travelers in the Northeast."[1] According to the joint press release, the carriers plan to codeshare on 130 JetBlue routes and 60 American routes and will also include loyalty benefits.[2] Together the carriers state that they will operate 489 flights from the three New York City area airports to 120 destinations.[3]

Based on the information available to us today, Southwest does not oppose the "strategic partnership" *en toto*. However, certain aspects of the transaction raise potentially serious anticompetitive concerns that should be thoroughly investigated and remedied. For example, there have been media reports that the two carriers envision a much greater degree of cooperation and coordination than mere codesharing. In an interview on the day the joint venture was announced, American's Chief Revenue Officer Vasu Raja stated that "JetBlue could grow beyond its tiny presence at LaGuardia by utilizing gates and slots that American might not need," thereby implying that the two carriers may coordinate service and pool slots

[1] http://otp.investis.com/clients/us/jetblue_airways/usn/usnews-story.aspx?cid=981&newsid=69683

[2] *Id*.

[3] *Id.*

and airport facilities at airports that both carriers serve.[4] In the same interview, Mr. Raja suggested that the two carriers could coordinate their overlapping New York – Los Angeles services by marketing to different groups of consumers. Mr. Raja stated that the partnership would enable American to "focus the A321T as a true corporate shuttle while JetBlue can help serve all those coach travelers that American has turned away due to lack of capacity."[5]

These statements indicate that American and JetBlue are planning a much deeper level of coordination than their public announcements disclose, potentially including the allocation of markets between competitors. In light of these statements and the potential competitive concerns they raise, we urge both the DOT and DOJ to undertake rigorous investigations of the proposed joint venture. In this respect, the DOT should institute a docketed proceeding pursuant to 49 U.S.C. § 41720 and grant interested parties access to all relevant documents. The DOT has taken this approach when evaluating previous domestic codeshare proposals and the stakes are just as high, if not higher, in the current case.[6] We also are confident that the DOJ will closely examine the antitrust implications of the proposed arrangement under the Sherman Act.

The competitive concerns about the partnership are especially acute at slot-controlled airports that both American and JetBlue serve, including Ronald Reagan Washington National Airport (DCA) and New York La Guardia Airport (LGA). This concern is magnified by the fact that JetBlue acquired the great majority of its DCA and LGA slots via government-mandated slot divestitures in reliance on JetBlue's role as an independent low-cost carrier (LCC) that would exert competitive discipline against dominant legacy airlines at those airports. In 2012 JetBlue acquired 16 DCA slots and 16 LGA slots from divestitures ordered in DOT's "slot swap" proceeding. At the time DOT stated that the purpose of those divestitures was "to maximize the potential competitive discipline of the slots" against the large legacy airlines at DCA and LGA.[7] For that reason, DOT limited eligible bidders for the divested slots to carriers that had no codesharing relationship with any carrier holding more than 5% of the slots at those airports. Obviously JetBlue would not qualify as an eligible bidder for those slots under its proposed partnership with American.

In 2014 JetBlue acquired a total of 40 DCA slots as a result of DOJ-mandated slot divestitures designed as a competitive remedy to the American Airlines/US Airways merger.[8]

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[4] https://crankyflier.com/2020/07/16/american-becomes-instantly-relevant-in-new-york-with-jetblue-strategic-partnership/

[5] *Id.* Mr. Raja also stated during American's recent earnings call that "we see a lot of ways that we can work together that may be a little unconventional from traditional code-shares." *American Airlines Group Q2 2020 Earnings Call Transcript, July 23, 2020, at p. 22.*

[6] *See, e.g.*, *Review Under 49 US.C. 41720 of United/US Airways Agreements*, 67 FR 50745, Aug. 5, 2002; *Review Under 49 U.S.C. 41720 of Delta/Northwest/Continental Agreements*, 67 FR 69804, Nov. 19, 2002.

[7] *FAA Notice of Grant of Petition for Waiver with Conditions*, 76 Fed. Reg. 1313, 45331, July 28, 2011.

[8] In 2014 JetBlue received 16 DCA slots it previously leased from American that were transferred to JetBlue in the American/US Airways merger divestiture, and 24 additional slots in the same divestiture.

DOJ made it abundantly clear that the entire purpose of the slot divestitures was to enhance LCC competition against the legacy carriers that dominate slot-controlled airports:

> The consumer benefits that flow from LCC entry are well established. Previous work by the Department of Justice has shown that the presence of an LCC on a nonstop route results in both significant price reductions and capacity increases. An extensive body of economic research confirms that LCC entry on a route – whether by nonstop or connecting service – reduces fares three times as much as the addition of a legacy competitor.[9]

In fact, DOJ specifically cited JetBlue's entry into the DCA – BOS route as a prime example of effective LCC competition at a slot-controlled airport, noting that it was designed "to drive down fares and increase output."[10]

In total, the slots acquired by JetBlue in DOT/DOJ divestiture proceedings amount to over 90% of its current DCA slots and over half of its current LGA slots. *See* Exhibit 3. All of these divestitures were premised on JetBlue's status as an independent LCC that would provide competitive discipline to dominant legacy airlines at those airports, particularly American.

However, if American and JetBlue are now planning to coordinate services under their new partnership at airports they both serve, as indicated by American's Chief Revenue Officer, JetBlue would obviously no longer be an independent LCC providing competitive discipline to American. In that circumstance, the purpose of the DOT/DOJ slot divestitures to JetBlue will have been completely nullified.

The loss of JetBlue as an independent LCC at those airports will have real-world consequences. At DCA, for example, 50% of JetBlue's slots are used in service to Boston (BOS), and the two carriers compete vigorously, head-to-head with one another in the DCA – BOS market. *See* Exhibits 4 and 5. But if the two carriers were to coordinate their services, the DCA – BOS route would effectively become a partnership monopoly since American and JetBlue are the only airlines currently serving the market. Although the carriers' public materials do not explicitly reference DCA – BOS, it strains credulity to believe that the two "strategic partners" would continue to compete vigorously with each other in this market given that they intend to codeshare and otherwise cooperate on virtually all other markets affecting BOS. Our economists estimate that in a monopoly scenario, DCA – BOS fares could increase by more than 50% due to the loss of competition. *See* Exhibit 6.

The DOJ's 2016 challenge to American's codeshare agreement with Alaska Airlines asserted that due to its "extensive codeshare relationship with American, Alaska would likely

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[9] Response of Plaintiff United States to Public Comments on the Proposed Final Judgment: *U.S and Plaintiff States vs. US Airways Group, Inc. and AMR Corporation*, Am. (p. 9) (internal citations omitted) [*hereafter* DOJ Response].

[10] DOJ Response ¶ 88." (pp. 10-11).

exit or compete less aggressively" on routes where the two carriers currently competed.[11] That concern would seem to apply equally to the present matter.

If the competitive concerns described above are substantiated following the investigations we have urged, DOT and/or DOJ would have to take action to avoid harm to the public, either by disapproving the joint venture as unacceptably anticompetitive, or approving it only with appropriate remedial conditions. As an alternative to complete disapproval, one obvious remedy would be to require American and JetBlue to *re-divest* a sufficient number of DCA and LGA slots to other, true LCC airline(s) to provide the independent low-fare competition that will be lost due to JetBlue's conversion into a legacy affiliated carrier.

Southwest Airlines, the nation's pre-eminent low fare airline, would be interested in acquiring any DCA or LGA slots that the partnership carriers may be ordered to divest. Despite having increased its presence at those airports over the last several years, Southwest's slot holdings remain very small compared to the dominant legacy airlines. *See* Exhibits 1 and 2. Even with its small share of slots, Southwest has produced enormous public benefits by reducing fares and increasing traffic on the routes it is able to serve at these airports. Within one year of acquiring DCA slots divested in the AA/US merger, for example, fares on Southwest's new routes decreased 21% while passenger traffic increased 42% (Exhibit 7). Southwest would welcome the opportunity to expand its low-fare competition at the slot-controlled airports, and would provide substantial additional public benefits while doing so.

Sincerely,

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Blane Workie
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Robert Lepore
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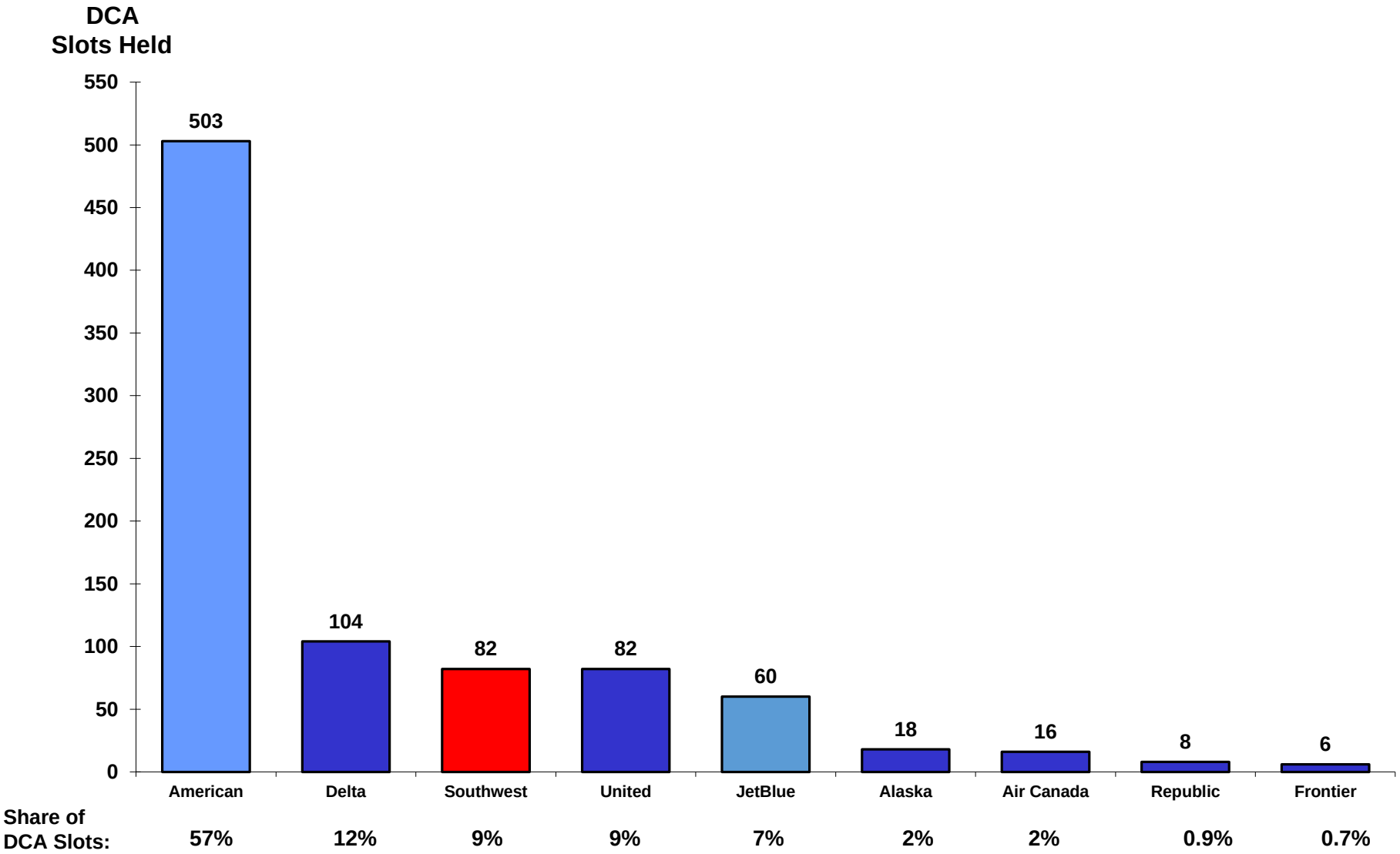
[11] U.S. Dep't of Justice Antitrust Division, "Competitive Impact Statement," *U.S. v. Alaska Air Group, Inc. et al*., 16-cv-2377 (Dec. 6, 2016 D.D.C.), available at https://www.justice.gov/atr/case-document/file/915986/download at p. 3.

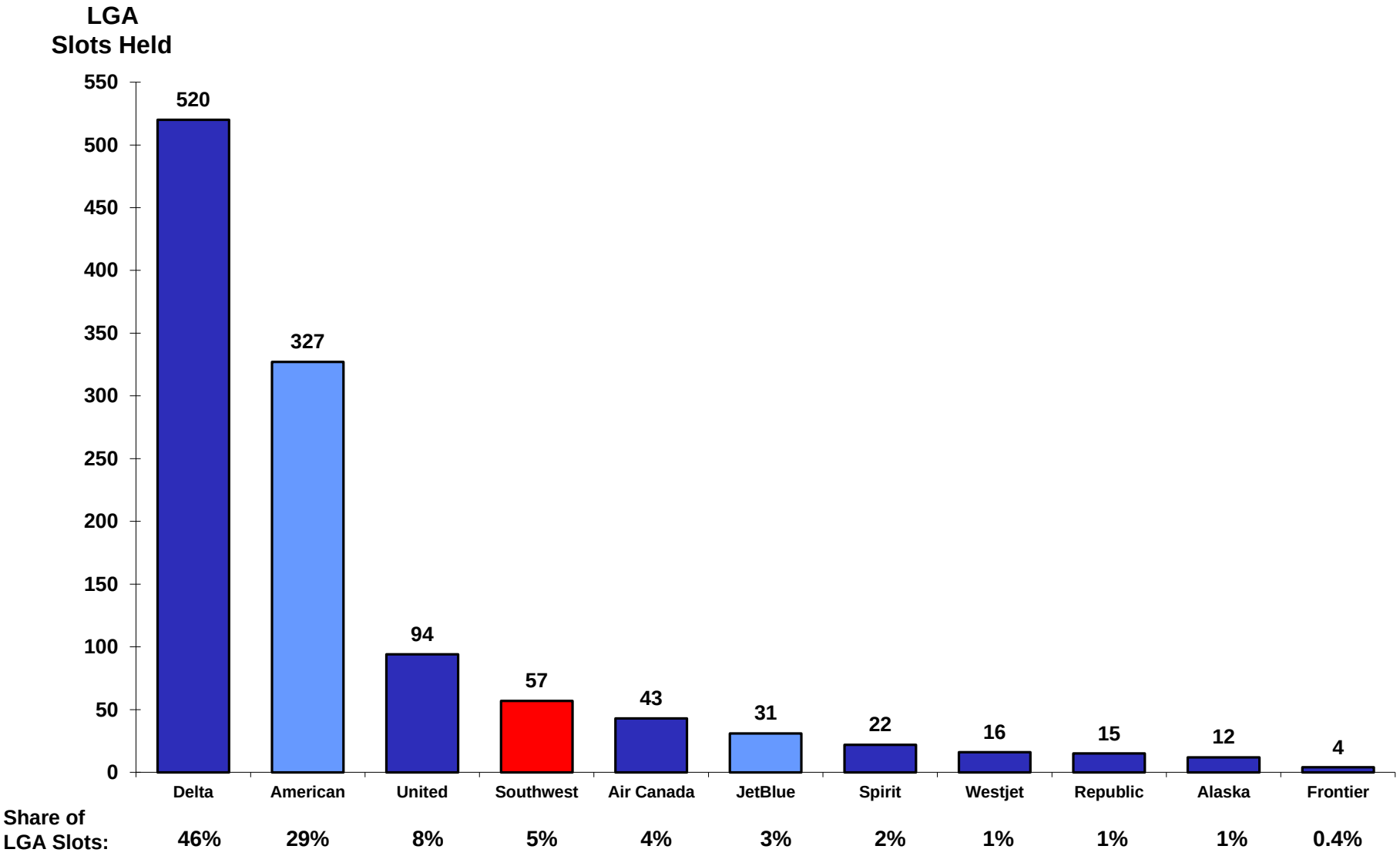
American Continues to Dominates DCA – Accounting for 57% of Slot Holdings



Source: FAA DCA Slots Held Report, updated 4/7/2020.

Exhibit 2

Delta and American Dominate LGA – Accounting for 75% of Slot Holdings Combined

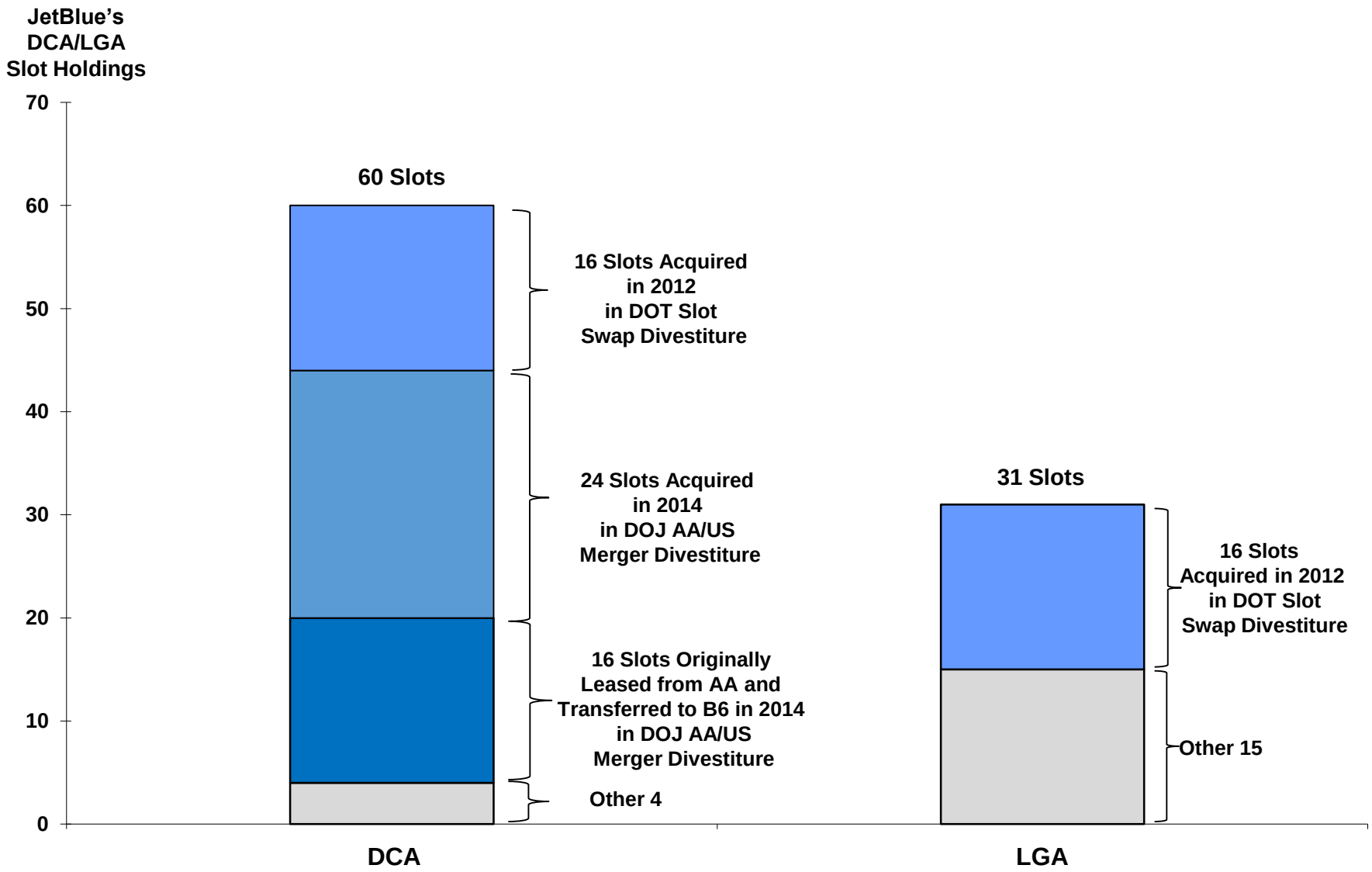


Note: Delta slots include slots held by Endeavor Air, a wholly-owned subsidiary.

Source: FAA LGA Slots Held Report, updated 4/7/2020.

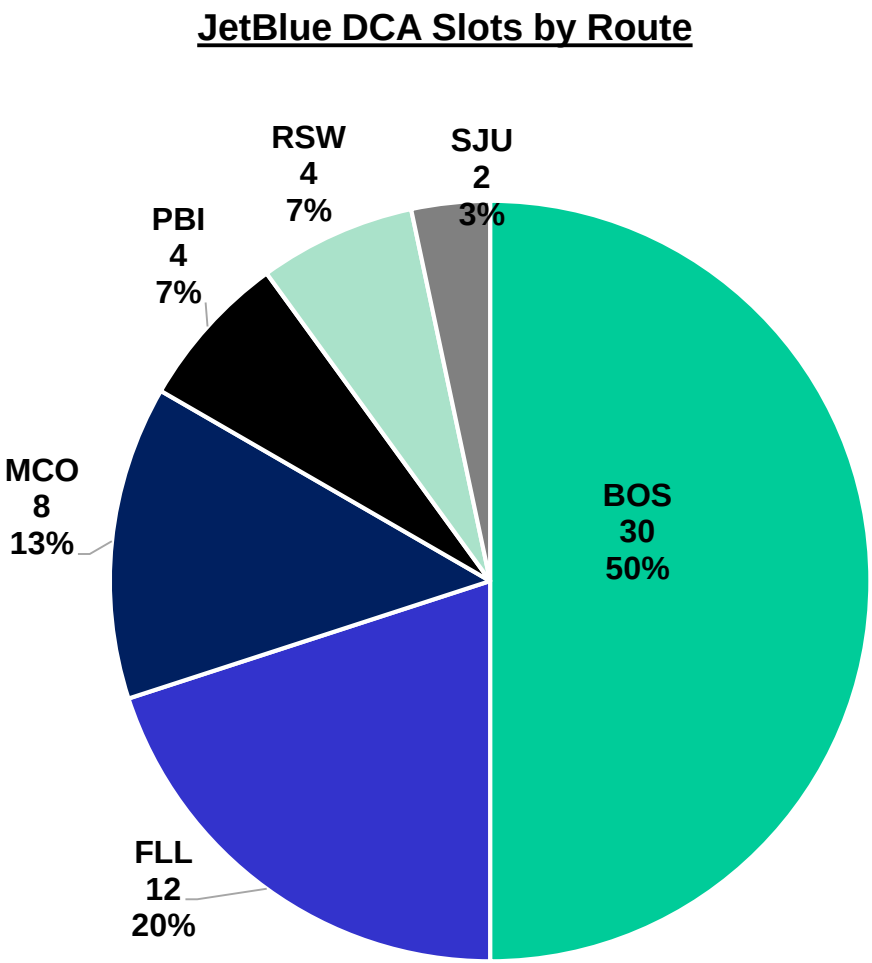
Exhibit 3

JetBlue Acquired the Great Majority of its DCA and LGA Slots from DOT/DOJ-Mandated Divestitures Designed to Increase LCC Competition



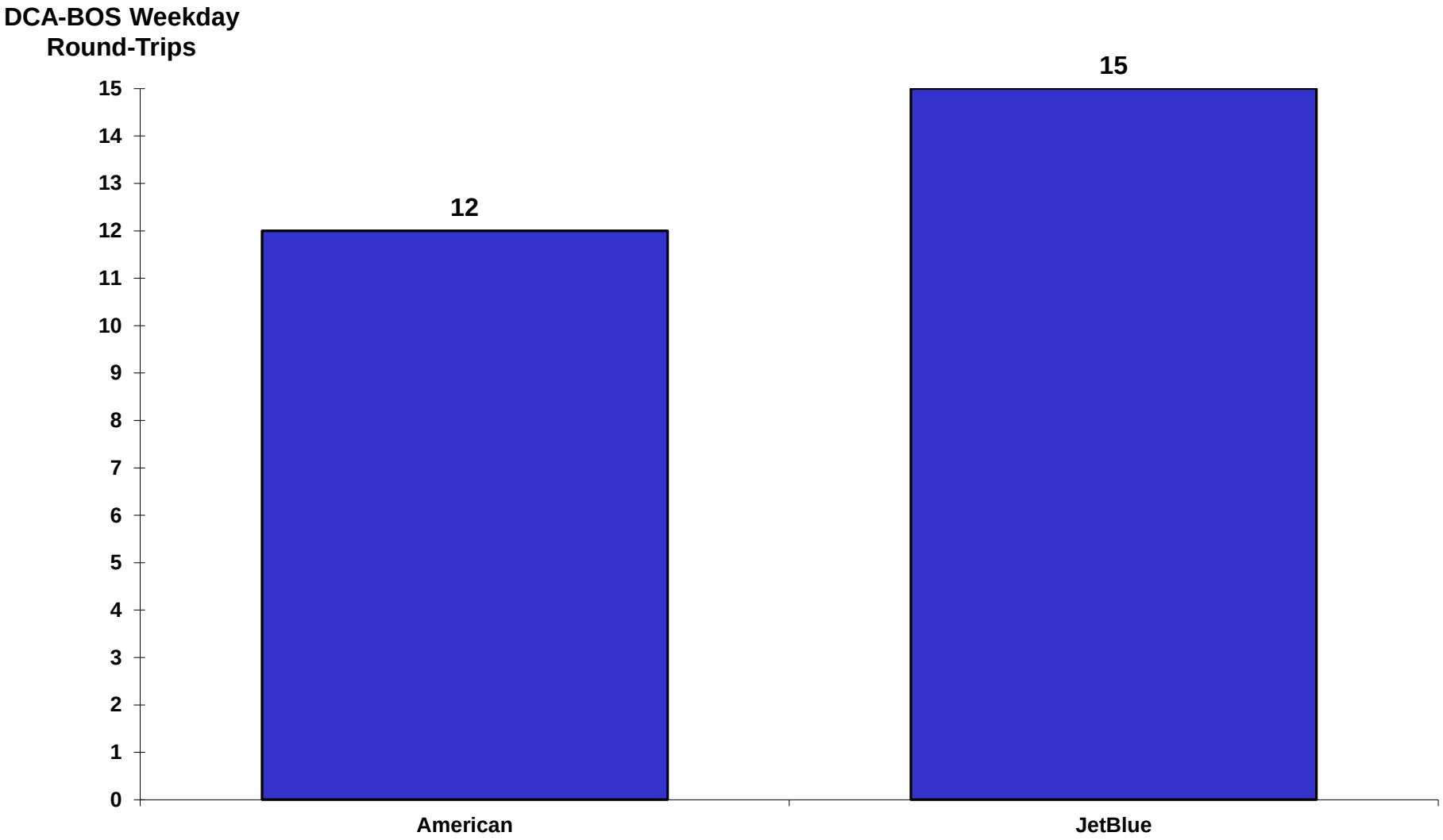
Source: FAA DCA/LGA Slots Held Report, updated 4/7/2020.

Half of JetBlue's DCA Slots Are Tied to Boston



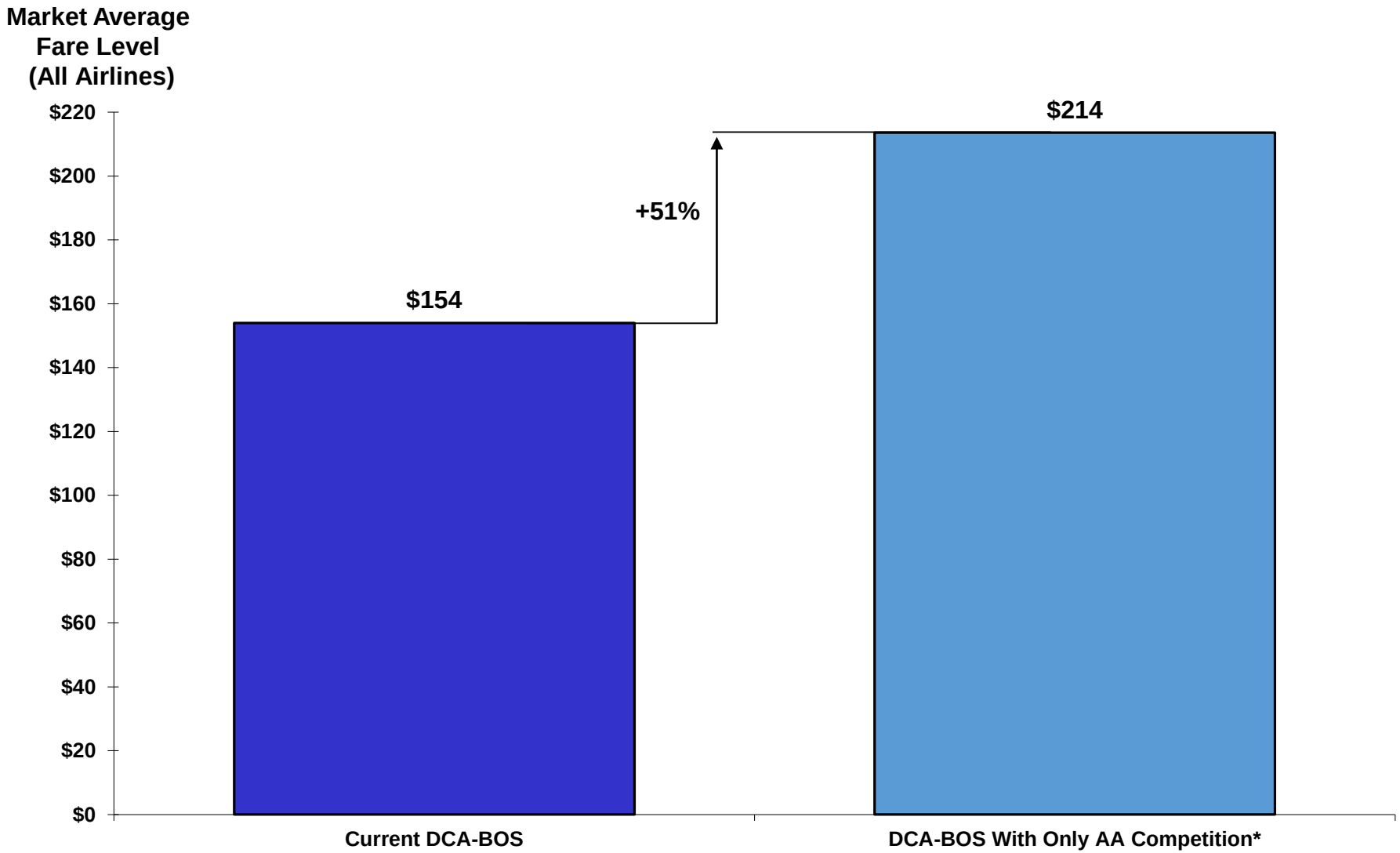
Source: Cirium schedule data for Monday, February 2, 2020.

American and JetBlue Compete Head-to-Head in the DCA-BOS Market



Note: Although Delta served the market in February, it is excluded because it has subsequently discontinued the route.
Source: Cirium Schedule Data February 2020.

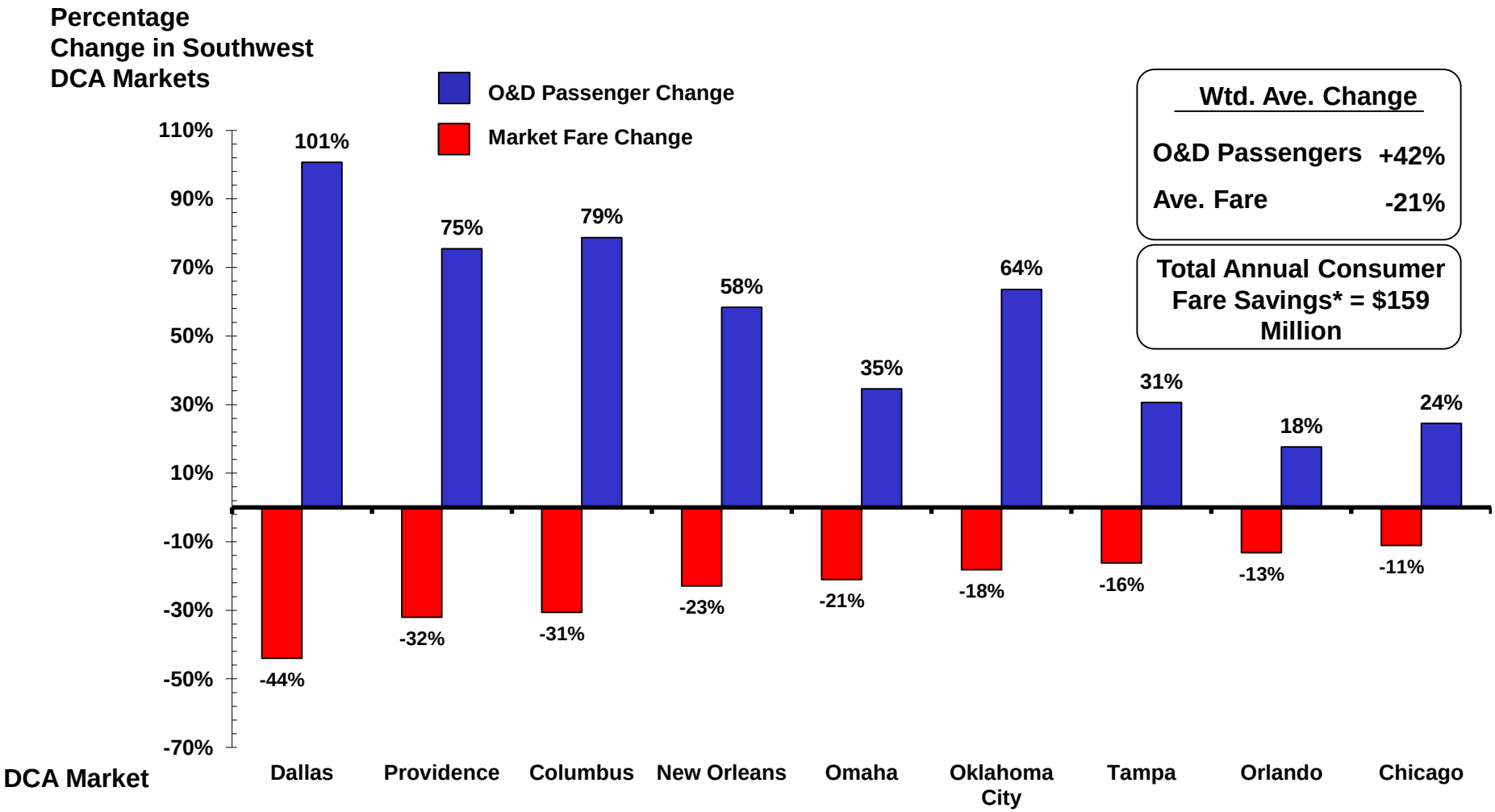
Without Independent LCC Competition, DCA-BOS Fares Could Increase by Over 50%



Note: All fares include baggage and cancellation fees. DCA-BOS fare is $141 and baggage and cancellation fees are $13.
* Calculated using log-log regression based on DCA markets where AA had no nonstop competition in CY 2019.
These fare levels would be similar to DCA-LGA (a market without LCC competition) where fares averaged $213.

Source: U.S. DOT, O&D Survey data, CY 2019.

Fares in Southwest DCA Markets Added After the American Airlines Divestiture Declined by 21% and Passengers Increased by 42% (the "Southwest Effect")



Wtd. Ave. Change

O&D Passengers	+42%
Ave. Fare	-21%

Total Annual Consumer Fare Savings* = $159 Million

Change in Annual O&D Passengers:	Dallas	Providence	Columbus	New Orleans	Omaha	Oklahoma City	Tampa	Orlando	Chicago
	+365,575	+100,464	+84,260	+106,162	+36,535	+40,832	+115,803	+108,885	+196,133

Note: Compares the full year before Southwest entered to the first full year after Southwest entered. Includes baggage and cancellation fees.
*Consumer fare savings calculated using Consumer Surplus methodology and just includes the routes shown.
Source: U.S. DOT, Origin-Destination Passenger Survey.