Airline Deregulation at 40: A Golden Age for Taxpayers

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Introduction – A Policy Success Story that Deserves Retelling

The Airline Deregulation Act ("The Act") of 1978 marked a significant shift in the evolution of air transport in the United States.[1] Since the beginning of modern commercial aviation activity in the 20th century, the federal government prioritized command-and-control policies over free markets. During that period, federal officials believed that their vision of micromanagement was superior to organic competition in creating a prosperous airline structure that could best serve the public. The result was an inefficient, stagnant network that resisted innovation and effectively denied millions of middle-class Americans the benefits of air travel.

It never should have been this way. Heavy-handed regulatory regimes are added burdens on private businesses and can have the same effect as harmful taxes, making it harder for private firms to serve customers, boost wages, invest, and expand to new markets. When Washington interferes too much in market activity, it can curb progress toward raising our standard of living. The heavily regulated regime that existed prior to the Airline Deregulation Act was a form of protectionism that advantaged no one but a few incumbent service providers.

Yet, by the mid-1970s, a revolution led by Executive Branch leaders, Democratic and Republican lawmakers, consumer groups, and taxpayer advocates transformed an entire sector of the economy. Until the enactment of this deregulation bill, and arguably to this day, no law has done more to liberate a domestic industry, create unforeseen opportunities for growth, and steer government policy in a productive, responsible direction. It demonstrated that consumer welfare is often better enhanced through *less* regulation.

On October 24, the United States will celebrate the 40th anniversary of the signing of the Airline Deregulation Act. With government's role greatly diminished, air carriers have cut prices, established new airline routes, and industry efficiencies have spurred innovation. None of these have come at the expense of safety, which has actually improved dramatically since the 1970s. Today, with an exemplary record of safety and fares more than 40 percent lower than they were in at the outset of deregulation, it is no surprise that nearly 90 percent of Americans report having flown in their lifetimes.

Equally important – and often unappreciated – are the benefits that the Airline Deregulation Act has delivered to taxpayers. The bill established a competitive market for air travel that has avoided other countries' mistakes of over subsidizing (or even owning) airlines, hastened legislation to divest other areas of transportation of taxpayer-backed assets, and encouraged reliance on tools such as less burdensome business taxes to drive competitiveness. How this happened, and what it has achieved, should serve as

important lessons for policymakers today, too many of whom seem intent on turning back the clock. With so much more promise from market-based reforms ahead, they should be looking toward the future instead.

Overregulated from the Beginning

The start of the commercial aviation industry can be pinned to the middle of the 1920s, when Congress passed the Contract Air Mail Act of 1925 that permitted the Department of the Post Office to provide contracts for private companies to fly mail to different areas of the country.[2] While this system was meant to be a competitive bidding process, it was actually a crony system, with the Postmaster holding sway over which airlines could service certain routes and which would get generous subsidies. In most cases, these subsidies actually exceeded the cost of the mail, and some carriers took advantage of the system by sending junk mail to gain even more profit –all at taxpayers' expense. The following year, Congress passed the Air Commerce Act of 1926 to formally assert the executive's authority over the aviation system, and vesting within this branch the power to "foster air commerce."[3] After years of political scandals and inefficiencies, President Franklin Roosevelt ended this spoils system, but a small number of carriers established themselves as legitimate companies.

Under the Civil Aeronautics Act enacted in 1938, the Commerce Department was enabled to establish the Civil Aviation Authority, but it in turn was shortly reorganized as the Civil Aeronautics Board (CAB). This extensive apparatus had broad control over the entire system. Specifically, the CAB was able to:

- **Set Prices:** Regulated ticket fares, which in effect set arbitrary and often expensive ticket prices to ensure profitability of airlines.
- **Control Exit/Entry:** Determined which carriers could enter or exit a segment of the market.
- **Interstate Certification:** Required carriers to gain certification through a long and arduous process in order to service consumers across states.
- **Business Control:** Had authority to authorize mergers, acquisitions, and bankruptcies.

As a result of anticompetitive practices, ticket prices tended to be exorbitantly high, costing the equivalent of several hundreds if not thousands of 2018 dollars just to travel by air. This meant flying was a luxury, available to a fortunate few. A domestic round trip by air in the 1950s could devour 5 percent of an average American's disposable income – over five times more than today. With price competition essentially forbidden, carriers had no incentive to innovate or find greater efficiency and pass savings along to consumers. In effect, a government-sponsored cartel ruled over air travel, and with it services were dictated by bureaucratic whims and incumbents' interests rather than economic imperatives or consumer preferences. All the while, air travel was less safe and less convenient than it is now.[4]

At that time, any airline operating in interstate markets had to possess a CAB certificate listing the routes it was authorized to serve. Before any new firm could be "certificated," it had to be found "fit, willing, and able" to provide scheduled service, which few managed to do – and those few were confined to small, short-haul routes. Prior to entering a route, a carrier had to prove the added service was needed and that incumbent airlines would not be substantially harmed by the presence of a new competitor. In a textbook example of government-sponsored bailouts, new routes were often awarded to financially weak carriers in the hope of boosting their earnings.

Deregulation to the Rescue

For decades, the anticompetitive philosophy of CAB bureaucrats enabled substantial revenue growth for a few incumbent airlines. However, government's stranglehold on the market created vast inefficiencies for air travel, with consumers serving as collateral damage. The crossroads of government policy really took shape after the introduction of jet engine aircraft. Unfortunately, while innovation brought the aviation industry into the modern age technologically, the rules surrounding these aircraft were still governed by a Depression-era system. Instead of invigorating the industry with a free market approach during a period of great financial difficulty for airlines, government doubled down. Motivated by safety concerns over management of our national airspace, Congress passed the Federal Aviation Act of 1958. An unwelcome byproduct of these concerns was to tighten CAB's role in distorting the economics of air travel, and the results became more evident as time went on. A 1972 study by economist Theodore Keeler determined that fares on regulated routes were 48 percent to 84 percent higher than they should have been, absent government interference.[5]

> *"It is economically and technologically possible to provide present air service at significantly lower prices, bringing air travel back within the reach of the average American citizen."*
>
> *- Sen. Edward Kennedy, 1975* [37]

But that would change, and from the unlikeliest quarters. Although pioneering economists had noted the corrosive impact of the CAB since the late 1940s, by the 1960s they were intensely examining intrastate airline markets within California and Texas—which were exempt from some federal regulations since they did not cross state lines. Studies found that prices were less expensive by nearly 60 percent, compared to similar distance flights that crossed state lines. When Congress studied these developments, the Senate Subcommittee on Administration and Procedure concluded:

> Greater freedom to compete is probably responsible for these fuller planes and lower fares. New airlines willing and able to provide the public with fuller-plane, lower-fare service in California and Texas have been allowed to enter those markets, and the low-fare service they provide has led to greatly increased demands for air travel with a resulting increase in scheduled flights.[6]

Airline deregulation represents one of the most remarkable intersections of economic and political history, in that regulators themselves became advocates for change even as public officials across the political spectrum saw the wisdom of such a move. At CAB, Assistant Director of the Bureau of Operating Rights Roy Pulsifer "had become radical libertarian" on the matter after being steeped in economic literature about the costs to society of bureaucratic aviation oversight. CAB Attorney Michael Roach came to a similar realization when he wrote one opinion for a route approval knowing just the name of the winning airline and no other pertinent information, only to see his text adopted verbatim.[7] And of course CAB Chairman Alfred Kahn, appointed by President Carter, encouraged members of his staff to follow their instincts, which would lead to one of the few examples of an agency advocating for its own abolishment.[8]

Meanwhile, staff on Capitol Hill (among them future Supreme Court Justice Stephen Breyer) began taking an interest in deregulation as well. Breyer, who served with Senator Ted Kennedy (D-MA), recalled a 1975 conversation with the Senator where the two saw the political and economic upsides of such an effort:

> I remember thinking, *This is a very good thing because it's both less government and consumer benefit, and it can be done.* It's less government, consumer benefit, and people are interested in airlines so maybe there will be a little publicity. You can make a name for the subcommittee. The subcommittee will mean something because it will have accomplished something significant.[9]

Backing up these sentiments were diverse constituencies off Capitol Hill, including National Taxpayers Union, which at the time called airline deregulation the best opportunity in a generation to liberate an entire area of the consumer-driven economy from the grip of government. A 1985 Cato Institute retrospective noted that "When [deregulation] was being debated in Congress, support came from an unlikely coalition which brought together such strange bedfellows as Ralph Nader's Aviation Consumer Action Project and the American Conservative Union, Common Cause and the National Taxpayers Union, as well as such groups as the National Association of Manufacturers, the American Association of Retired Persons, and Sears Roebuck."[10]

That so many groups were involved in this effort is testament to its monumental importance. The economic liberalization of air travel was part of a series of "deregulation" moves based on the growing realization that a politically controlled economy served no continuing public interest. By this time, there was no going back; Congress began laying the groundwork for substantial policy reform for one of the most heavily regulated industries in America.

The Airline Deregulation Act Soars

After years of extensive hearings and CAB backing of deregulation, Congress in a bipartisan vote passed S. 2493, the Airline Deregulation Act, which was subsequently signed by President Jimmy Carter on October 24, 1978. After this act became law, the

power of the CAB quickly began to diminish and substantial changes were made to its authority. Importantly, this historic action marked the first time in decades that a major sector of the economy was deregulated and driven primarily by market forces, rather than big government. Without this effort it is unlikely the United States would have one of the most prosperous and efficient aviation systems in the world. As result, more people have been provided more service to more destinations at lower prices than ever before.

Deregulation of the commercial aviation system is a first-rate example that market-oriented policies, not top-down government regimes, are more likely to produce economic efficiency and better consumer welfare standards. While not much changed immediately, the Airline Deregulation Act initiated a gradual reduction to the CAB's anti-competitive practices. Major provisions of the Airline Deregulation Act include:

- **Change in CAB Policy:** Altered the declaration of policy of the CAB from protecting the interests of existing large carriers to one of increasing competition; facilitating entry into the marketplace; and preventing monopolistic and anti-competitive industry practices.
- **Exemption and Preemption of State Regulation:** Prevented states from enacting or enforcing any law or regulation relating to airline prices, routes, or services.
- **CAB Route and Fare Control:** Allowed airlines to automatically enter certain locations without going through a long bureaucratic process as well as allows airlines to price their own fares, rather than be set by an arbitrary government level.
- **Phase Out of the CAB:** Required the CAB to send a report to Congress on the implementation of the Act and recommendations for a complete phase out the board.
- **Establishment of "Essential Air Service":** Provided federally subsidized air service to rural areas where it may not be profitable for private companies to do so.

The Act wound down CAB operations to the point where Congress acted to dissolve the Board as of December 31, 1984. A number of government responsibilities, such as air safety standards, oversight, and the nation's air traffic control (ATC) system, continued under the Federal Aviation Administration (FAA).

During the period before and during deregulation, opponents of such change believed that market forces would result in consolidation of carriers, higher prices, less quality service, and deterioration of safety. However, the concerns of these skeptics were overblown and wrong as deregulation resulted in unprecedented consumer and aggregate economic benefits. The most important metric from a consumer perspective is, unsurprisingly, the price of an airline ticket. Between 1978 and 2017, while adjusting for inflation, the total ticket price – ancillary charges included – has fallen by more than 40 percent. As a percentage of disposable income, air travel is even more affordable. In 1980, a roundtrip airfare (including ancillary fees) consumed 2.5 percent of an average American's annual disposable income. Today that figure is consistently below 1 percent.[11] While at the time

flying was a luxury reserved for well-off business travelers or those from households with upper incomes, today cheaper tickets have enabled Americans from all income brackets to travel by air. As a result of more affordable flying options, the number of airline flights has nearly doubled and the number of passengers has more than tripled to nearly 900 million per year.

"The U.S. deregulation experience has become a model for the rest of the world and we may, over the next decade, witness the gradual spread of airline deregulation throughout a large part of the free world."

- Federal Aviation Administration Report, 1987 [38]

Today, the commercial aviation industry helps drive more than 5 percent of U.S. gross domestic product and unites millions of families in communities all across the country.[12]

Opponents of deregulation were chiefly concerned about the potential impact on safety and on service to smaller and medium-sized communities. Since deregulation left most safety oversight standards in place, air travel is still an incredibly safe choice. National Transportation Safety Board (NTSB) statistics indicate there has been only one passenger fatality from 2010 through present involving a U.S. carrier.

Markets have also evolved to mitigate many fears that entire areas of the country would be excluded from convenient travel options. According to a 1996 U.S. Government Accountability Office (GAO) study of 112 airports, between 1979 and 1994, fares declined an average of 9 percent at smaller airports, 11 percent at medium-sized ones, and 8 percent at larger ones.[13] Those differentials fluctuated over time. A subsequent, expanded GAO analysis found reductions in airfares at 168 of 171 airports, though medium and larger facilities experienced sharper declines.[14] One trend that policymakers generally did not anticipate was the rise of the "hub and spoke" system, which changed the nature of flying from small communities. Prior to deregulation, a more linear route system guaranteed that small population centers could have some kind of service, but the destinations were often haphazardly determined by CAB and the fares were out of reach of all but better-off and business travelers. Today, the use of connecting flights from remote areas to more trafficked ones as way-stops is more common. In addition, GAO identified what industry analysts had seen coming as well: concerns that only slow, second-class propeller-driven aircraft would serve small communities are lessening every year as increasingly efficient regional jets are being rotated into fleets.[15]

Re-Calibrating the Compass for Other Deregulation

When historians look back on the successes of airline deregulation, they do so through a lens usually focused on commercial passengers. Yet an equally dynamic shift took place in another area of transportation that actually *preceded* the Airline Deregulation Act: freer movement of air cargo. Public Law 95-163, enacted nearly a year before the deregulation of passenger service, was a precursor of things to come for air passengers in

that it freed cargo carriers from restrictions on the movement of priority freight. Kenneth Button and David Christensen of George Mason University's Mercatus Center described these changes in a 2014 retrospective:

> Under CAB regulation, if a parcel needed extremely rapid transport it could be shipped "belly hold" over routes for which an airline had passenger authority, thus limiting overnighting to point-to-point routes available under passenger air flight regulations. The availability of shipping space was unpredictable, as it was subject to the amount of space leftover after passenger luggage was loaded into the belly of the plane. The deregulation of passenger services increased the options available for belly hold cargo. The 1977 deregulation of air cargo allowed carriers, such as FedEx, to use larger aircraft for overnight shipping over any route, with prices determined by the market. This makes it possible for a lobsterman in Maine to ship crates of fresh lobster from Bangor to Bismarck, or nearly anywhere else in the nation.[16]

According to the authors, just as impressive were the "second order" impacts of the law in hastening the development of modern "just in time" retailing, accurate tracking systems for goods, optimization of specialized services that short delivery times of key components can support, and, of course, e-commerce. All of these advances can translate into direct savings for taxpayers, such as online government purchasing portals, more effective management of military and civilian supply chains, and transparency in contracting, which can help to avoid unnecessary costs. Governments have proven slow in embracing these trends, but such options would never have been available without wise regulatory decisions that supported the infrastructure necessary to build them.

In any case, cheaper and more convenient passenger travel likewise had a salutary impact on the federal government's expenses for its own employees, though pinpointing the benefits is a challenge amid otherwise poor government oversight of personnel policies. According to data NTU extrapolated from a GAO report, in 2015 total federal expenditures on employee travel amounted to approximately $14 billion–roughly $3 billion below 2012.[17] To be certain, this reduction occurred due to a number of factors, including a large drop in Department of Defense travel with a wind-down in overseas operations and the issuance of an Executive Order in 2011 mandating a 20 percent decrease in agency travel costs. Furthermore, employee travel expenses cover a great deal more than airfare, such as lodging, automobile rentals, and meals. But lower airfares have indisputably been a boon to taxpayers -- they foot the bill not only for government employees who travel through contractual deals negotiated with airlines but also for government contractors who get reimbursed for privately

"I hope it's a precursor to what the Congress can help me do next year to minimize regulation of other crucial industries, particularly in the transportation field."

- President Carter at the signing of the Airline Deregulation Act[34]

arranged official travel. The savings involved could easily total in the hundreds of millions of dollars per year. The Modernizing Government Travel Act, which became law in 2017, should by the end of this year begin providing more systematic data to put a finer point on the fiscal impact.

The benefits of airline deregulation are not solely limited to the users of the U.S. aviation system, whether it be for business or personal travel. Instead, this consequential legislation set the stage for a deregulatory agenda in Congress and the Carter Administration that the free market, not the government, should occupy the driver's seat in other transportation-related areas of the economy. Lifting the burdens of excessive regulation with a more responsible approach leaves the American people with more freedom of choice and lower prices. In the years following the Airline Deregulation Act, Congress and two administrations undertook aggressive action to liberalize sectors under significant federal control. The following examples are illustrative within the transportation area, but impacts on other industries such as public utilities and telecommunications should not be overlooked.

Motor Carrier Act of 1980: As a direct consequence of airline deregulation, President Carter's Interstate Commerce Commission Administrator approved of new rules changes that allowed more stable ratemaking and eased entry for new companies in the area of trucking. This was followed by the Motor Carrier Act, which prompted extensive change to regulations that had governed the commercial trucking industry since 1945.[18] Like the airline industry, truckers were limited in their economic operations. But this legislation replaced strict regulations with a free-enterprise system, allowing truckers to determine prices, freely enter or exit the market, and engage in a competitive environment. The number of trucking firms has skyrocketed as a result (increasing 25-fold over three and a half decades), and with it far more efficient movement of goods that has benefited the private and public sectors alike.[19] All of this has come with marked improvements in safety, because subsequent driver certifications have been tied to each individual candidate rather than the entity employing them.

> "Crippling railroad regulation which began at the turn of the century is in large part responsible for the troubled state of the railroad industry. Congress is to be applauded for passing long overdue deregulation legislation." – National Taxpayers Union's Dollars & Sense newsletter, December 1980/January 1981 edition.

Staggers Rail Act of 1980: Prior to the Staggers Act, the railroad industry had been regulated by a set of antiquated rules from the 1880s. These complex regulations and strict federal control pushed the railroad industry to the brink of collapse, but since Congress scaled back the regulatory authority over the railroads, the industry has boomed and is on sound financial footing. With the passage of Staggers Act prices have fallen, productivity has increased, and accident rates have plummeted.[20] Even the Brookings Institution, not always a fan of light-touch federal policies, celebrated the 25th Anniversary of the Staggers Act by concluding, "The evidence strongly indicates that rail deregulation has accomplished its primary goal of putting the U.S. rail freight industry on

a more secure financial footing. Surprisingly, deregulation has also turned out to be a great boon for shippers as rail carriers have passed on some of their cost savings to them in lower rates and significantly improved service times and reliability." The author of the Brookings piece, Clifford Winston, even called for "elimination of residual regulation by the Surface Transportation Board, [so as to] preserve this rare win-win outcome."[21]

The Federal Railroad Administration also celebrated the achievements of the Staggers Act, noting that:

> Return on investment has averaged nearly 8 percent between 1990 and 2009, up from a 2 percent average in the 1970s. And with the industry's improved financial condition, railroads have invested over $6 billion a year in roadway, structures, and equipment since the mid-1990s. Between 1981 and 2009, the railroads have expended $511 billion in capital improvements and maintenance of track and equipment. Prior to 1980, the rail plant was in poor repair. The industry also showed remarkable safety improvements since Staggers with train accident rates declining by 65 percent (1981-2009).[22]

Total cumulative private investment has since increased to nearly $700 billion, none of it the burden of American taxpayers. Just as impressive, following the Staggers Act in 1981 was legislation to provide for the sale of Conrail, a Northeast regional railroad that ran largely on tax dollars. It took until 1986 to arrange for Conrail's transfer to private ownership, leading NTU's then-Chairman James Dale Davidson to comment at the time, "not only is the government singularly unsuited to running a railroad, but privatization of [entities] the government has no business in – like Conrail – is a very sensible way to reduce the budget deficit." By the time Conrail's federal apron strings were cut, taxpayers had shelled out $7 billion.[23]

Although the Airline Deregulation Act was a landmark achievement in reform, the Staggers Act is no less so. Indeed, the entire rail industry, not just Amtrak, was under threat of outright nationalization by the mid-to-late 1970s – raising the specter of billions a year in taxpayer subsidies. The turnaround in freight rail brought on by the Staggers Act is unfortunately endangered from ill-advised proposals such as forced reciprocal switching. The achievements of this law must be vigorously defended.

Bus Regulatory Reform Act of 1982: The commercial bus industry was first regulated in 1935, subjecting firms to strict federal rules - such as approvals of certain markets, pick up and drop off locations, and ticket prices. Such restrictions limit the efficiency of private companies, thus causing artificially high ticket prices, delays, and stifled innovation. Because of this legislation, it got government out of the way, allowing businesses to operate how they see fit without federal approval.

Although it would take many years to do so, the Bus Regulatory Reform Act also helped to provide a regulatory environment that up-and-coming discount passenger bus services could count on to bring new consumer-friendly travel options to market.[24] The mid-2000s saw the proliferation of services like Megabus and Bolt, which offered convenient

reservations, WiFi, and other on-board amenities. This growth has in turn provided more options for consumers in smaller communities to link up to hub airports.

Deregulation Abroad: In February 1980 President Carter signed the International Air Transportation Competition Act into law, which clarified and added safeguards against excessive federal interference with U.S. airlines' decisions to offer routes, whether domestically or overseas, and set specific criteria the government was to use in evaluating how and whether carriers decided to expand.[25] These events did not go unnoticed outside of the United States.

Initially, countries with state-owned airlines in Europe and elsewhere were skeptical of the U.S. experience with airline deregulation (some remain so today). Yet, the United Kingdom under Margaret Thatcher's government went ahead with a liberalization effort that included privatizing British Airways and negotiating with other nations (among them Ireland) to allow greater competition on routes serving the U.K. As a 1980 report commissioned by the House of Lords put it, "the interests of the [European] consumer appear to be sacrificed to the prestige of flag carrying national airlines and the protected environment in which they operate."[26] It would take over a decade for the rest of Europe to warm to rectifying this situation, but by 1992 the European Community was able to form an internal market for inter-country air travel ("Open Skies") that significantly expanded the availability of alternative low-cost carriers while shaking remaining state-run carriers out of an anticompetitive slumber. Last year, on the 25th Anniversary of Open Skies, popular travel journalist Michael Calder noted:

> It is probably the greatest single achievement of the entire European project. It democratised air travel, lead to more rewarding lives for European citizens and of course there was a huge economic stimulus. Ireland and the UK were way ahead of absolutely everybody else in terms of opening up the skies and that was genuinely transformative not just for us but for all of Europe.[27]

These outcomes have been quantified through academic research as well. For instance, a 2015 Brookings Institution paper modeled the impact of Open Skies agreements using a sampling of U.S. international routes, and determined that fares average nearly 15 percent less than in markets that are still overregulated.[28]

Open Skies agreements since then have not been without controversy, as some governments have continued to offer their nations' airlines subsidies and other advantages that carriers in countries with freer markets don't enjoy to the same degree. Nonetheless, the Airline Deregulation Act continues to serve as a historical milestone – and a lodestone – that attracts regulatory reformers at home and abroad.

Shortfalls of the Airline Deregulation: Not of Its Own Making

The aggregate advantages of airline deregulation cannot be disputed: consumers continue to benefit from lower prices, airlines have entered a period of sustained profitability, especially low cost carriers (LCCs) remain profitable; and the industry spurs substantial

economic growth. As revolutionary as the Airline Deregulation Act has been for the economy, it did have some shortfalls and missed opportunities for even greater pro-taxpayer reforms.

As stated previously, a chief concern for many lawmakers, particularly those from smaller, rural states, was the possibility that air carriers would shift their focus away from places with relatively low passenger levels to high-traffic areas. To address such a concern, Congress established the Essential Air Service (EAS) program, which makes sure communities did not lose access to air transportation by compensating carriers for providing service to those areas. At the time of the Airline Deregulation Act, this subsidy may have made sense to ensure a smooth transition, which is why it was set to expire after 10 years. However, 40 years later, EAS is still alive and is an unnecessary $250 million taxpayer-funded subsidy. NTU constantly urges Congress to reduce or remove this ill-advised spending from the budget. The fact remains, however, that airline deregulation itself has provided the best alternative to more subsidies, by giving large and small airlines the flexibility to experiment with business models and to acquire the optimal aircraft to serve markets of different sizes, as well as to consider the proximity of airports to one another when contemplating service levels. NTU recently explained how taxpayers benefit from this arrangement, and how recent efforts to re-regulate fares and ancillary fees could backfire:

> Two of the ways airlines are able to serve smaller communities is through ticket pricing that allows budget travelers to forgo services they don't value and through locking in as many passengers for flights as possible. Slapping arbitrary limits on change fees or making à la carte pricing untenable for carriers means these routes become more expensive. That only puts pressure to funnel more federal government dollars into the $250 million-per-year Essential Air Service program, which Washington subsidizes for underserved destinations.[29]

It is clear the aviation transportation sector is more efficient since the improvements of the Airline Deregulation Act, but the benefits have been somewhat blunted due to an absence of reform to our outdated and broken air traffic control (ATC) system. Unlike those of nearly every other developed country, U.S. ATC services are provided by a taxpayer-funded government agency. The result is a scheme that is riddled by poor project management, little accountability to users of the system, and lack of cost discipline in making modernization investments. As a result, U.S. air transport is riddled with delays and government-imposed deadweight losses.

From a taxpayer's perspective, ATC reform would be fiscally responsible and accountable. NavCanada, the nonprofit, user-funded ATC entity most often cited as a model for U.S. reform, is more modern, efficient, and fiscally disciplined than the government-run structure it supplanted. NavCanada has cut its user fees twice since 2004. Last year, after news that key elements of the FAA's "NextGen" modernization program had more than doubled in cost and were as much as six years behind schedule, Congress appeared ready to move ahead with sensible changes to America's ATC approach. Unfortunately, a disingenuous campaign from the private general aviation community,

which stirred up unfounded fears of unaffordable fees and reduced service at small airports, cowed lawmakers into shelving their plans. Such a decision, which carried over in 2018, should not be allowed to stand in years ahead. As a coalition of advocates from 23 free-market organizations (including NTU) wrote to Congress in an open letter:

> Through a new service-providing nonprofit organization governed by all stakeholders in the system, consumers will experience fewer travel delays, the movement of goods will become more efficient, aircraft will burn less fuel, capacity will expand, responsiveness and transparency will improve, political micromanagement will recede, costs will be easier to control and sustain, and the economy could experience tens of billions of dollars in growth. Meanwhile, all facilities and the pilots who depend on them will benefit from speedy technological innovations that the new, non-bureaucratic entity would encourage. Furthermore, the FAA's focus on regulating overall aviation safety would actually be sharper.[30]

One criticism of the Airline Deregulation Act that has proven valid lies in its very name. While the law dramatically rolled back meddlesome federal policies controlling the supply of aviation service, the industry was certainly not left without regulation. Indeed, today at least 20 federal entities have some kind of authority over air transport, including the Transportation Security Administration, the Department of Agriculture, the Environmental Protection Agency, the National Mediation Board, the General Services Administration, and the Department of State. And the Department of Transportation and Federal Aviation Administration have completed 20 rulemakings with 123 new regulations since 2009, with a dozen rulemaking actions pending or planned. No wonder a 2016 Mercatus Center examination of 107 industries ranked airlines as sixth most-regulated in the entire economy.[31]

This fact is ironically lost on many elected officials, who continue to argue that the air travel marketplace is some capitalist free-for-all untouched by government supervision. Yet, had other barriers been addressed sooner by prudent acts of policy, the benefits of the Act could have gone further and deeper. GAO identified a number of these barriers as far back as the 1990s, including poor gate capacity at airports, restrictive landing rights, and "perimeter rules" barring some facilities from receiving long-haul flights.[32] In retrospect, a more accurate name for the 1978 law might have been the "Air Travel Liberalization Act" – one that likewise might have motivated Washington to follow up with bolder laws.

The Future: Tax and Regulatory Reform, Not Tax-and-Spend, Is the Right Course

Policy developments from Capitol Hill and the Executive Branch have the power to lead the domestic airline industry forward, or reverse course and undo decades of progress. Either path will have a direct impact on the service and price consumers will pay. As we have seen, when Washington places free market principles over a top-down, bureaucratic system it can unleash unprecedented positive results for consumers, business, and the economy.

Perhaps the most consequential law to have the largest long term impact on the air transportation industry will be the Tax Cuts and Jobs Act (TCJA), which was the most comprehensive reform of the federal tax code in a generation. The pro-growth changes on the business side will ensure continued prosperity for American companies. Notably, TCJA slashed the corporate income tax rate from 35 percent (the highest in the developed world), to a fairer permanent rate of 21 percent, and established a temporary deduction for capital projects. These changes will have two major effects: cash flow will improve under a lighter tax load, while capital expenditures on new equipment (capex) will rise.

By the very nature of their operating models, airlines pay an effective net tax rate (excluding loss carryovers) that is closer to the actual statutory corporate tax rate than companies in most other industries. Speaking at this year's Airline Industry Summit, Deutsche Bank analyst and CNBC reporter Michael Linenberg commented that this element of TCJA is already benefiting airlines because the rate reduction "went straight to the bottom line." United Airlines' 4th-quarter 2017 tax expense, for example dropped by an astounding 96.9 percent.[33]

Airline employees have benefited directly as well from TCJA-related bonuses passed through to them. Alaska, American, JetBlue, and Southwest were among the first to announce $1,000 payments to their workers.

TCJA's provisions for fuller and more immediate write-offs for capex are especially helpful to incumbent airlines replacing their aging fleets as well as low-cost carriers. Writing for the Motley Fool, Adam Levine-Weinberg identified at least four smaller airlines "set to spend a lot of money on new aircraft in the next few years" that would benefit from expensing: Alaska Air, Hawaiian Holdings, JetBlue, and Spirit.[34]

"Budget" airline companies like these can therefore continue to disrupt the market in positive ways. Though these airlines typically serve only major metropolitan areas, they have an outsized impact on moderating ticket prices. Though the large airlines do not necessarily compete directly with budget airlines for every type of passenger, the low-cost carriers nonetheless influence incumbents in figuring out a way to draw the most price-sensitive fliers in any given market — those who scour the Internet for the cheapest tickets possible. The convergence of less economic regulation, lower taxes, and private-sector driven technology innovation has made this type of market entry – and the ensuing benefits to consumers and taxpayers – far superior to any government-heavy industrial policy.

Foreign carriers, often subsidized by their countries' taxpayers, are taking note as well. Earlier this year Scope Group, a European credit rating firm, observed that "the Trump tax reforms, if not reversed by the next administration, favour US airlines over European and Middle Eastern carriers in the competitive transatlantic market in the mid-term as a result of tax savings and a potential fleet expansion/rejuvenation."[35]

As evidenced by tax reform, government action can encourage positive change in the industry that is also beneficial to consumers. Conversely, if Washington takes the other approach, as they have recently flirted with, it could simply be the first domino to fall in re-regulating the transportation sector. In recent negotiations over the five-year FAA Reauthorization Bill, House and Senate lawmakers flirted with (but thankfully avoided) legislative provisions that would have imposed price controls on certain airfare charges. The FAIR Fees Act would have established "standards for assessing whether baggage, seat selection, same day change, and other fees are reasonable and proportional to the costs of the services provided." Such a proposal amounted to a re-regulation of the airline industry and a return to the central-planning approach that once made the skies accessible only to the wealthy. Congressional Democrats in particular ought to be wary of such proposals, given that their political forebears were among the thought leaders and indeed the architects of airline deregulation. Regrettably, taxpayers have likely not seen the last of FAIR Fees and its ilk.

In addition to regulating fees, many lawmakers are keen on increasing the amount of taxes passengers pay per airline ticket. In 1972, prior to deregulation, air travelers faced an 8 percent excise tax on tickets and a $3 international departure tax. Shippers paid a 5 percent tax on cargo waybills. Today, while the excise has dropped to 7.5 percent, waybill taxes have risen by over one-fourth and the tax on international flights has increased twelve-fold, to $18.30 each way.[36] Added to the current tab on airlines and their customers are fuel taxes, domestic flight segment taxes, TSA security fees, passenger facility charges, and a host of other levies. All told, taxpayers can easily face a tax and fee load of 20 percent or more on an airline ticket, which would be far higher than what a middle-class traveling family would pay on their 1040 federal income tax return.

Congress must rationalize and reduce this plethora of taxes, through steps such as ATC reform. At the same time, federal funding for the Airport Improvement Program could be replaced by smarter policies such as: having airports (instead of carriers) collect and spend their own user charges, removing project-labor agreement rules that drive up construction prices, expanding the Airport Privatization Pilot Program, and equalizing the tax treatment of private activity bonds for airports.

Conclusion: Airline Deregulation Act's Remarkable Journey Keeps Making History

Taxpayers and consumers alike have so much to celebrate in remembering the 40th anniversary of the Airline Deregulation Act. Bipartisan cooperation in Congress, farsighted regulatory policy views from Executive Branch officials, and encouragement from diverse organizations outside of government all came together in an effort that transformed an industry (and to a large degree the economy itself). As a result, air travel became a middle-class option, commerce became vastly more efficient, other transportation modes experienced the benefits of reform, and taxpayers were freed from many bonds of subsidies and regulation.

Yet, anniversaries are about looking ahead as well as behind. Public officials across the ideological spectrum should be defending all of these tremendous gains rather than denigrating them. At the same time, they should be seeking additional opportunities to collaborate on proven solutions to 21st century infrastructure policy challenges, such as restructuring U.S. air traffic control into the user-funded, user-accountable model that so many other countries have embraced.

Traditionally, a “Golden Anniversary” is marked by 50 years. For consumers and taxpayers, the Airline Deregulation Act helped ushered in a Golden Age that arrived far sooner.

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National Taxpayers Union (NTU)

Founded in 1969, NTU is a 501(c)(4) nonprofit, nonpartisan citizens group that works for lower taxes, limited government, and economic freedom at all levels.

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