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August 31, 2022

The Honorable Nancy Pelosi
Speaker

House of Representatives
Washington, DC 20515

The Honorable Kevin McCarthy
Minority Leader

House of Representatives
Washington, DC 20515

The Honorable Chuck Schumer
Majority Leader

United States Senate
Washington, DC 20510

The Honorable Mitch McConnell
Minority Leader

United States Senate
Washington, DC 20510

Dear Leader Schumer, Speaker Pelosi, Leader McConnell, and Leader McCarthy,

As our states' chief consumer protection enforcers, we receive consumer complaints and work hard to hold accountable irresponsible actors who treat consumers deceptively or unfairly. Over the course of the COVID-19 pandemic, certain corporate actors have systematically failed to live up to their responsibilities to their customers and have caused significant frustrations and unnecessary challenges for these customers. In particular, the airline industry has failed their customers.

Over the past couple of years, our offices have received thousands of complaints from outraged airline passengers about airline customer service—including about systematic failures to provide required credits to those who lost travel opportunities during the pandemic. The Colorado Attorney General's Office, for example, received more consumer complaints about Frontier Airlines than any other company in 2020.¹

As you are aware, federal law places the central responsibility for addressing violations of airline consumer protection with the United States Department of Transportation (US DOT). Accordingly, our offices

¹ Since 2020 Colorado has continued to receive significant numbers of complaints concerning a range of customer service issues with Frontier, particularly regarding its failures to provide refunds or to promptly issue such refunds to consumers when required by law, including for flights cancelled or significantly changed or delayed by Frontier.

have relayed the complaints we have received to the US DOT.² Unfortunately, the agency has thus far failed to respond and to provide appropriate recourse in those cases. Americans are justifiably frustrated that federal government agencies charged with overseeing airline consumer protection are unable or unwilling to hold the airline industry accountable and to swiftly investigate complaints submitted to the US DOT.

The lack of action has spanned multiple administrations – both Republican and Democratic Presidents have failed to spur the US DOT to act in a manner that responds effectively to consumer complaints. If state attorneys general had a substantial and meaningful role in overseeing airline consumer protection, the failure of the US DOT would be ameliorated by the ability of state attorneys general to enforce the law. But state attorneys general have little to no authority to hold airline companies accountable for unacceptable behavior towards consumers. This vacuum of oversight allows airlines to mistreat consumers and leaves consumers without effective redress. Moreover, given the increased level of concentration in the airline industry and the decreased levels of competition, the ability of the marketplace to punish or reward industry behavior that harms or helps consumers is lessened, increasing the importance of effective enforcement of consumer protection requirements.³

For airline consumers to be properly protected, we urge Congress to take meaningful action and pass legislation that would authorize state attorneys general to enforce our state and federal consumer protection laws governing the airline industry. Furthermore, we encourage Congress to consider shifting the authority for federal investigations of patron complaints

² For example, Colorado has also raised concerns regarding consumer protection failures in the airline industry to US DOT numerous times since 2020. *See e.g.*, Letter from Colorado Attorney General Phil Weiser to U.S. Secretary of Transportation Elaine L. Chao (Sept. 1, 2020), *available at* <https://coag.gov/app/uploads/2020/09/Colorado-AG-letter-to-USDOT-re-Frontier-9.1.2020-final.pdf>; Letter from Colorado Attorney General Phil Weiser to U.S. Secretary of Transportation Pete Buttigieg (Feb. 4, 2021). A bipartisan coalition of 40 attorneys general also has urged Congressional action regarding consumer protection measures for airline industry customers previously. *See* Letter from Attorneys General to Congress (Oct. 2020), *available at* <https://coag.gov/app/uploads/2020/10/Final-Airline-Consumer-Protection-NAAG-Letter.pdf>.

³ As Attorney General Weiser explained:

As a group of commentators related, “between 2005 and 2014, the Antitrust Division reviewed seven airline mergers, in five of those cases, there were no challenges, and the Antitrust Division settled the other two. Now, four airlines control almost 70 percent of domestic air travel in the United States.” And because consumers are basically limited to the flights available from nearby local airports, this means that, in practice, most consumers are left to choose between two or three airlines when making travel plans. There is also little to no entry in this sector, as discussed in the next part, in part because incumbent airlines have developed a reputation for predation. Finally, in what demonstrates the clear consumer harm from the high level of concentration in the airline industry, consider that when fuel prices fell dramatically, consumers did not see any benefits passed on to them, but rather the industry recorded massive profits.

Philip J. Weiser, *Meeting this Antitrust Moment* (Feb. 2021) *available at* <https://coag.gov/app/uploads/2021/02/Meeting-this-Antitrust-Moment.pdf>. A bipartisan coalition of state attorneys general joined an antitrust lawsuit filed by the U.S. Department of Justice challenging the joint venture between American Airlines and JetBlue on various grounds including that the proposed consolidation would undermine competition and harm consumers. *See* U.S. v. Jet Blue, Case 1:21-cv-11558-LTS (D. Mass.), *available at* <https://www.mass.gov/doc/northeast-alliance-complaint/download>.

concerning airlines from the US DOT to an agency more primarily focused on consumer protection, such as the U.S. Department of Justice or the Federal Trade Commission.

The mistreatment of airline consumers is a bi-partisan issue—one that requires immediate action from federal lawmakers. Flying is essential to millions of Americans as they go about their personal and professional lives and is critical to our local, state, and national economies. Customers booking airline tickets should enjoy a reasonable expectation of being treated fairly, respectfully, and consistently under the law throughout all interactions during their experience with the airline industry. Consumer confidence in the air travel experience is paramount to a thriving economy.


In making these requests, we acknowledge that the US DOT is presently considering a series of rulemakings to provide consumers with additional protections. We support such efforts and will urge a greater solicitude for and reliance on state attorneys general in such processes. But even if the US DOT improves the current regulatory protections, we remain deeply concerned and frustrated that the agency is unable or unwilling to vindicate the rights of consumers and to hold airline companies accountable for irresponsible actions. It is time to authorize state attorneys general, and perhaps a different federal agency, to enforce consumer protections for airline travelers.

Thank you for your attention to these serious concerns and our recommendations to help address this vital issue for our country. We stand ready to work with you and with your chambers to craft legislation that provides far better enforcement for consumer violations and protects Americans that rely on air travel.


Sincerely,




Mark Brnovich
Arizona Attorney General



Phil Weiser
Colorado Attorney General



Treg R. Taylor
Alaska Attorney General



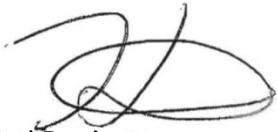
Rob Bonta
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William Tong
Connecticut Attorney General



Kathleen Jennings
Delaware Attorney General



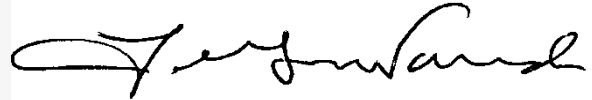
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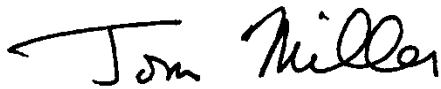
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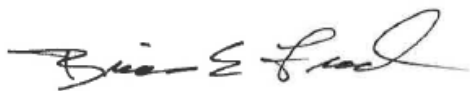
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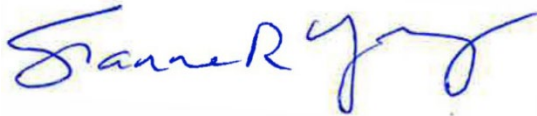
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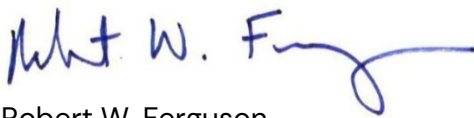
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