IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

US AIRLINE PILOTS ASSOCIATION,	)	
Plaintiff,	)	
v.	)	Civil Action No. 14-0328 (BAH)
US AIRWAYS, INC., et al.,	)	
Defendants.	)	

DECLARATION OF WESLEY KENNEDY

WESLEY KENNEDY hereby declares that the following is true and correct, under penalty of perjury:

Background

1. I have been a shareholder in the Chicago, Illinois law firm of Allison, Slutsky & Kennedy, P.C. since its founding on or about January 1, 1995. I hold a Bachelor of Arts degree, with Honors, from Grinnell College, awarded in 1981; and a J.D. degree from the Yale Law School, awarded in 1984. From 1984 until the founding of Allison, Slutsky & Kennedy, P.C., I practiced law as an associate and then partner in the Chicago, Illinois firm of Cotton, Watt, Jones & King.

2. Throughout my legal career, in addition to a general practice representing labor organizations, employee benefit funds, and employees, I have represented labor organizations and employee groups in the airline industry in matters arising from mergers, acquisitions and other corporate transactions, including matters relating to the integration of employee seniority lists arising under Sections 3 and 13 of the Allegheny/Mohawk Labor Protective Provisions and/or the

McCaskill Bond Act. Among other things, I am presently counsel to the Seniority Integration Committee (the "APA SIC") established by defendant/counter-plaintiff Allied Pilots Association ("APA") to represent the American Airlines Pilots in connection with the integration of seniority lists arising from the merger of defendant/counter-plaintiffs American Airlines, Inc. ("American") and US Airways, Inc. ("US Airways").

The McCaskill Bond Act and Sections 3 and 13 of the *Allegheny/Mohawk* LPPs

3. The "McCaskill Bond" statute provides, in pertinent part:

> (a) Labor integration.--With respect to any covered transaction involving two or more covered air carriers that results in the combination of crafts or classes that are subject to the Railway Labor Act (45 U.S.C. 151 et seq.), sections 3 and 13 of the labor protective provisions imposed by the Civil Aeronautics Board in the Allegheny-Mohawk merger (as published at 59 C.A.B. 45) shall apply to the integration of covered employees of the covered air carriers; except that--
> …
> (2) the requirements of any collective bargaining agreement that may be applicable to the terms of integration involving covered employees of a covered air carrier shall not be affected by the requirements of this section as to the employees covered by that agreement, so long as those provisions allow for the protections afforded by sections 3 and 13 of the Allegheny-Mohawk provisions.

49 U.S.C § 42112, note § 117.

4. Sections 3 and 13 of the Allegheny/Mohawk Labor Protective Provisions ("LPPs"), in turn, provide as follows:

> 3. Insofar as the merger affects the seniority rights of the carriers' employees, provisions shall be made for the integration of seniority lists in a fair and equitable manner, including, where applicable, agreement through collective bargaining between the carriers and the representatives of the employees affected. In the event of failure to agree, the dispute may be submitted by either party for adjustment in accordance with section 13.
>
> 13. (a) In the event that any dispute or controversy (except as to matters arising under section 9) arises with respect to the protections provided herein which cannot be settled by the parties within 20 days after the controversy arises, it may be referred by any party to an arbitrator selected from a panel of seven names furnished

> by the National Mediation Board for consideration and determination. The parties shall select the arbitrator from such panel by alternatively striking names until only one remains, and he shall serve as arbitrator. Expedited hearings and decisions will be expected, and a decision shall be rendered within 90 days after the controversy arises, unless an extension of time is mutually agreeable to all parties. The salary and expenses of the arbitrator shall be borne equally by the carrier and (I) the organization or organizations representing the employee or employees or (ii) if unrepresented, the employee or employees or group or groups of employees. The decision of the arbitrator shall be final and binding on the parties.
>
> (b) The above condition shall not apply if the parties by mutual agreement determine that an alternative method for dispute settlement or an alternative procedure for selection of an arbitrator is appropriate in-their particular dispute. No party shall be excused from complying with the above condition by reason of having suggested an alternative method or procedure unless and until that alternative method or procedure shall have been agreed to by all the parties.

Copies of the McCaskill Bond Act and Sections 3 and 13 of the LPPs are Exhibit B to APA's Counterclaim in this matter.

5. As set forth above, Section 13(a) of the LPPs provides for an arbitration process including, *inter alia*:

* submission of the dispute to arbitration 20 days after the onset of the dispute;

* resolution of the dispute before a single arbitrator, selected from a panel of seven names provided by the NMB; and

* "expedited hearings and decisions," including a final decision within 90 days after the dispute arises.

6. In my experience in airline seniority integrations, Section 13(b) of the LPPs does not require that an "alternative Method for dispute settlement" be expressly denominated as occurring under Section 13(b); in some cases the agreement to such process expressly references Section 13(b), but in other cases it does not. In all cases, the "alternative method for dispute settlement" under Section 13(b) of the LPPs consists of an arbitration process, albeit on terms different from those provided in Section 13(a) of the LPPs. Indeed, the essence of the Section 13 protection is

neutral, final and binding arbitration. I have never been aware of an alternative process subject to Sections 3 and 13 of the LPPs that did not culminate in arbitration.

7. In prior cases arising under the McCaskill Bond Act and/or Sections 3 and 13 of the LPP's – including cases in which the affected employee groups are represented by different bargaining representatives, or some of the affected employees have no collective bargaining representative – the seniority integration issues have been resolved through such alternative arbitration processes. By way of illustration, to cite one recent example since the enactment of McCaskill Bond, Republic Airways Holdings' 2009 acquisitions of Midwest Airlines and Frontier Airlines (together with Frontier's affiliate Lynx Aviation) led to a seniority integration under McCaskill Bond and Sections 3 and 13 of the LPPs, among four pilot groups with separate pre-acquisition collective bargaining representatives. William Wilder, counsel of record for USAPA in this matter, represented the International Brotherhood of Teamsters ("IBT"), the representative of the Republic Pilots. The parties entered into a procedural agreement, expressly captioned as a "Section 13(b) Dispute Resolution Agreement," culminating in arbitration, but on terms different than Section 13(a) of the LPPs. (Exhibit 1 hereto.)

The Negotiation of the MOU

8. As counsel for the APA SIC, I participated in the negotiation of the January 15, 2013 Memorandum of Understanding (the "MOU") among American, US Airways, APA, and the U.S. Airline Pilots Association ("USAPA"), including the negotiation of paragraph 10 of the MOU. (Declaration of Mark Stephens ["Stephens Decl."], Exhibit 1.) The MOU was negotiated, *inter alia*, in face-to-face meetings among representatives of the parties in Dallas, Texas commencing on December 11, 2012 and continuing without interruption for much of the rest of that month. I

participated in those meetings in person on December 11 and 12, 2012. Thereafter, I participated *via* email and telephone with respect to discrete issues, including the seniority integration provisions ultimately set forth in paragraph 10 of the MOU.

9. Patrick Szymanski, counsel for the USAPA Merger Committee, was not present at the meetings I attended in Dallas, Texas on December 11 and 12, 2012. At those meetings, my principal point of contact for USAPA was Roland P. Wilder, a principal in the Washington, D.C. firm of Baptiste & Wilder, P.C. Thereafter, although I received certain communications from Mr. Szymanski, either directly or through Roland Wilder, and Mr. Szymanski participated in certain teleconferences (along with Roland Wilder), the principal point of contact for USAPA remained Roland Wilder. So far as I am aware, Mr. Szymanski did not attend any of the face-to-face meetings in Dallas, Texas, and was not the "spokesman" for USAPA.

10. Edgar N. James, APA's general counsel, was not present at the meetings I attended in Dallas, Texas on December 11 and 12, 2012. At those meetings, APA's principal spokesperson was First Officer Neil Roghair, then the Chairman of APA's Negotiating Committee. Thereafter, Mr. Roghair remained the head of APA's negotiating team with respect to the MOU until the MOU was concluded. Although Mr. James forwarded me certain proposals from other parties with respect to the seniority integration issues, and forwarded proposals which I drafted to other parties, he was not the principal drafter for APA of the provisions which ultimately became paragraph 10 of the MOU. Similarly, although Mr. James may have participated in some of the conferences in which I participated by telephone, he did not participate in all of those conferences, and was not the principal APA spokesman in those conferences with respect to the seniority integration issues.

11. At the meetings I attended in Dallas, Texas on December 11 and 12, 2012, the

principal spokespersons for US Airways were US Airways President Scott Kirby and General Counsel Paul Jones. US Airways outside counsel Robert Siegel and Chris Hollinger were present at those meetings, but Mr. Kirby and Mr. Jones were the the principal spokespersons. That remained true in the subsequent conferences in which I participated telephonically, although Mr. Siegel and Mr. Hollinger were involved in the drafting of paragraph 10 of the MOU.

12. From the outset of the negotiations, the proposed provisions with respect to the integration of seniority lists (ultimately set forth in paragraph 10 of the MOU [Stephens Decl. Exhibit 1, at 6-7]) referenced the McCaskill Bond Act, 49 U.S.C § 42112, note § 117. Those references to McCaskill Bond were not included because of any particular disagreement on the terms of the seniority integration arbitration (including, without limitation, disagreements as to the identities of the parties to any such arbitration). Rather, the references to the McCaskill Bond Act were included because the McCaskill Bond Act applied to and governed the integration of seniority lists, since all parties agreed that the American-US Airways merger would be a "covered transaction" involving "covered employees" within the meaning of the Act.

13. In fact, during the negotiations leading to Section 10 of the MOU, there was a disagreement as to who the appropriate parties would be in any seniority integration arbitration. USAPA's negotiators contended that USAPA should remain the only party to the seniority integration arbitration representing the US Airways Pilots (including both the East and West Pilots) until the conclusion of an integrated seniority list, even if that occurred after APA or another organization was certified by the National Mediation Board ("NMB") as the bargaining representative of the combined craft or class of American and US Airways Pilots, and USAPA thereby lost its status as a bargaining representative of any affected pilots. The negotiators for

American, US Airways, and APA took the position that, once a single bargaining representative was designated for the combined craft or class, that single bargaining representative would as a matter of law assume responsibility for assuring the representation of the constituent pilot groups, consistent with the MOU, the organization's duty of fair representation, and the organization's other legal obligations. For instance:

a. US Airways' initial December 11 and 12, 2012 drafts of the MOU (Exhibits 2 and 3 hereto) included the following proposed seniority integration provisions:

> A seniority integration process consistent with McCaskill-Bond shall begin within 30 days of the approval by the bankruptcy court of a Plan of Reorganization that contemplates a combination of the two airlines. If, on the date 30 days following the approval of such Plan of Reorganization, direct negotiations have failed to result in a merged seniority list acceptable to the pilots at both airlines, an arbitrator(s) will be designated within 30 days to resolve the dispute. That arbitration will commence no later than ____ days after the designation of the arbitrator(s). The arbitrator(s) will render his or her award within ___ days of the commencement of the arbitration. No later than___ days after the commencement of the arbitration, the parties will present to the Company a merged seniority list. US Airways and the New American Airlines, and their successors (if any), agree to implement that seniority list if it complies with the following criteria: (i) no "system flush" whereby an active pilot may displace any other active pilot from the latter's position; and (ii) furloughed pilots may not bump/displace active pilots; and (iii) except as set forth in paragraphs 11 and 12 below, no requirement for pilots to be compensated for flying not performed (e.g., differential pay for a position not actually flown); and (iv) allows pilots who, at the time of implementation of an integrated seniority list, are in the process of completing or who have completed initial qualification training for a new category (e.g., A320 Captain or 757 First Officer) to be assigned to the position for which they have been trained, regardless of their relative standing on the integrated seniority list; and (v) does not contain conditions and restrictions that materially increase costs associated with training or company paid move as specified in the JCBA. The integrated seniority list resulting from the McCaskill-Bond process shall be final and binding. During the McCaskill-Bond process, including any arbitration hearing, US Airways and New American Airlines, or their successors (if any) shall remain neutral with respect to which seniority list should be adopted insofar and to the extent such lists comply with restrictions (i)-(v) above. The obligations contained in this Paragraph shall be specifically enforceable on an expedited basis before a System Board of Adjustment in accordance with this Memorandum's "Enforcement" Paragraph and/or before a court of competent jurisdiction.

(Exhibit 2, at 4-5; Exhibit 3, at 4-5.)

b. The foregoing language remained in the proposals from the carriers and the Unsecured Creditors Committee ("UCC") until December 16, 2012, as discussed below. In the intervening period, the APA and USAPA negotiators exchanged proposed language in an effort to arrive at a common position. For instance, a USAPA draft on December 13, 2012 (Exhibit 4 hereto) included the following proposed provision:

> APA and USAPA shall begin a seniority integration process as provided by the McCaskill-Bond Amendment within 30 days of the Effective Date. If APA and USAPA are unable to agree upon a merged seniority list within 180 days of the Effective Date, then not later than 195 days after the Effective Date the two Unions shall designate a panel of three neutral arbitrators to resolve the dispute. The McCaskill-Bond arbitration proceeding will commence no later than 60 days after the arbitrators are designated, or as soon thereafter as practicable given the availability of the designated arbitrators. The panel of arbitrators will render its award within six months of the commencement of the arbitration and, in any event, not later than 22 months after the Effective Date. Not later than 24 months after the Effective Date, APA and USAPA will present a merged seniority list to the Company(ies), or their successors (if any). The Company(ies), and their successors (if any), agree to implement that seniority list if it complies with the following criteria: (i) no "system flush" whereby an active pilot may displace any other active pilot from the latter's position; and (ii) furloughed pilots may not bump/displace active pilots; and (iii) except as set forth in Paragraphs 14 and 15 below, no requirement for pilots to be compensated for flying not performed (e.g., differential pay for a position not actually flown); and (iv) provides that pilots who, at the time of implementation of an integrated seniority list, are in the process of completing or who have completed initial qualification training for a new category (e.g., A320 Captain or 757 First Officer) or who have successfully bid such a position but have not been trained either because of conditions beyond their control (such as a Company freeze) or has been withheld (AA) shall be assigned to the position, regardless of their relative standing on the integrated seniority list; and (v) does not contain conditions and restrictions that materially increase costs associated with training or company paid moves as specified in the JCBA. The integrated seniority list resulting from the McCaskill-Bond process, whether negotiated or arbitrated, shall be final and binding. The Company(ies), or their successors (if any), may participate in the McCaskill-Bond process to the extent necessary to insure that any award is consistent with criteria (i) through (v) but shall otherwise remain strictly neutral with respect to the McCaskill-Bond process. The Company(ies), and their successors (if any), shall provide promptly any information relevant to the

> McCaskill-Bond proceeding requested by either APA or USAPA subject to agreed terms for confidentiality. The obligations contained in this Paragraph shall be enforceable on an expedited basis before a System Board of Adjustment in accordance with Paragraph 24 ("Enforcement") and/or before a court of competent jurisdiction.

(Exhibit 4, at 4.) By email on December 14, 2012, USAPA added the following sentence to the proposed provision: "This Memorandum is not intended to nor shall it constitute the 'Single Agreement' referred to in Paragraph VI.A. of the September 23, 2005, 'Transition Agreement' applicable to the merger of America West and US Airways." (Exhibit 5 hereto.)

c. APA was unwilling to agree to the USAPA formulation, which made USAPA the representative of the US Airways Pilots even after certification of a single bargaining representative for the combined craft or class. Accordingly, an alternative formulation drafted by me was transmitted to the USAPA negotiators on December 14, 2012, providing as follows:

> Commencing promptly upon [conclusion of transition/merger/cba], APA and USAPA shall, in advance of the POR, agree upon a seniority integration process consistent with McCaskill-Bond, providing for at least the following elements. Additional elements of the seniority integration procedure will be as agreed to by the parties and/or as determined by the arbitrators.
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> * The pilot groups' representatives shall begin negotiations and/or mediation within __ days of the Effective Date.
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> * The Company(ies), and their successors (if any), shall provide promptly any information relevant to the McCaskill-Bond proceeding requested by either pilot group's representative subject to agreed terms for confidentiality.
>
> * If the pilot groups' representatives are unable to agree upon a merged seniority list, including any attendant conditions, within ___ days of the Effective Date, then not later than ___ days after the Effective Date the pilot groups' representatives shall designate a panel of three neutral arbitrators to resolve the dispute.
>
> * The McCaskill-Bond arbitration proceeding will commence no later than __ days after the arbitrators are designated, or as soon thereafter as practicable given the availability of the designated arbitrators. The panel of arbitrators will

render its award within _____ of the commencement of the arbitration and, in any event, not later than _____ after the Effective Date.

* Not later than 24 months after the Effective Date, the pilot groups' representatives will present a merged seniority list, including any attendant conditions, to the Company(ies), or their successors (if any).

US Airways and the New American Airlines, and their successors (if any), agree to implement that merged seniority list, including any attendant conditions, if it complies with the following criteria: (i) no "system flush" whereby an active pilot may displace any other active pilot from the latter's position; and (ii) furloughed pilots may not bump/displace active pilots; and (iii) except as set forth in Paragraphs 14 and 15 below, no requirement for pilots to be compensated for flying not performed (e.g., differential pay for a position not actually flown); and (iv) provides that pilots who, at the time of implementation of an integrated seniority list, are in the process of completing or who have completed initial qualification training for a new category (e.g., A320 Captain or 757 First Officer) or who have successfully bid such a position but have not been trained either because of conditions beyond their control (such as a Company freeze) or has been withheld (AA) shall be assigned to the position, regardless of their relative standing on the integrated seniority list; and (v) does not contain conditions and restrictions that materially increase costs associated with training or company paid moves as specified in the JCBA. The integrated seniority list, including any attendant conditions, resulting from the McCaskill-Bond process, whether negotiated or arbitrated, shall be final and binding on APA and USAPA (and/or the certified bargaining representative of the combined pilot group), the Companies and their successors (if any), and the pilot employees of New American Airlines and US Airways. The Company(ies), or their successors (if any), may participate in the McCaskill-Bond process to the extent necessary to insure that any award is consistent with criteria (i) through (v) but shall otherwise remain strictly neutral with respect to the McCaskill-Bond process. The obligations contained in this Paragraph shall be enforceable on an expedited basis before a System Board of Adjustment in accordance with Paragraph 24 ("Enforcement") and/or before a court of competent jurisdiction. This Memorandum is not intended to nor shall it constitute the "Single Agreement" referred to in Paragraph VI.A. of the September 23, 2005, "Transition Agreement" applicable to the merger of America West and US Airways.

(Exhibit 6 hereto.)

d. On December 15, 2012, I participated by telephone in a conference of the parties' negotiators in Dallas, Texas regarding, *inter alia*, the seniority integration provisions of the MOU. Roland Wilder, who was at the meetings in Dallas, was the principal spokesman for USAPA.

Following that conference, USAPA transmitted a complete draft of the proposed MOU (Exhibit 7 hereto), including the following seniority integration provisions:

> 11. (a) APA and USAPA shall begin a seniority integration process as provided by the McCaskill-Bond Amendment within 30 days after the Effective Date. If APA and USAPA are unable to agree upon a merged seniority list within 180 days of the Effective Date, then not later than 195 days after the Effective Date, the two Unions shall designate a panel of three neutral arbitrators to resolve the dispute. The McCaskill-Bond arbitration proceeding will commence no later than 60 days after the arbitrators are designated, or as soon thereafter as practicable given the availability of the designated arbitrators. The panel of arbitrators will render its award within six months of the commencement of the arbitration and, in any event, not later than 22 months after the Effective Date. Not later than 24 months after the Effective Date, APA and USAPA will present a merged seniority list to the Company(ies), or their successors (if any).
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> (b) Within 60 days after the Effective Date Memorandum, APA and USAPA will negotiate and agree to a Seniority Integration Process Agreement consistent with the McCaskill-Bond Amendment and which incorporates the elements set forth in this Section. Additional elements of the Seniority Integration Process Agreement will be as may be agreed to by the parties and/or as may be determined by the arbitration panel.
>
> (c) The Company(ies), and their successors (if any), shall provide promptly any information relevant to the McCaskill-Bond proceeding requested by either APA or USAPA subject to agreed terms for confidentiality.
>
> (d) The Company(ies), or their successors (if any), may participate in the McCaskill-Bond process to the extent necessary to insure that any award is consistent with criteria set forth in subsection (f), below, but shall otherwise remain strictly neutral with respect to the McCaskill-Bond process.
>
> (e) The parties agree that this Memorandum is not a waiver of any argument which either APA or USAPA or their seniority integration representatives may make in the seniority integration process. Nor do the provisions of this Agreement constitute an admission as to the appropriate allocation of flying following Operational Integration, or the manner in which the Airline respective carriers would have operated in the absence of a merger, or the job entitlements or equities that arguably underlie the construction of an integrated seniority list, or for any other purpose. APA and USAPA and their seniority integration representatives may offer this Memorandum into evidence or show it to a mediator as background information and to describe the actual operations of the separate carriers prior to Operational Integration.

(f) The Company(ies), and their successors (if any), agree to implement the merged seniority list if it complies with the following criteria: (i) no "system flush" whereby an active pilot may displace any other active pilot from the latter's position; (ii) furloughed pilots may not bump/displace active pilots; (iii) except as set forth in Paragraphs 14 and 15 below, no requirement for pilots to be compensated for flying not performed (e.g., differential pay for a position not actually flown); (iv) provides that pilots who, at the time of implementation of an integrated seniority list, are in the process of completing or who have completed initial qualification training for a new category (e.g., A320 Captain or 757 First Officer) or who have successfully bid such a position but have not been trained because of conditions beyond their control (such as a Company freeze) shall be assigned to the position, regardless of their relative standing on the integrated seniority list; and (v) otherwise does not contain conditions and restrictions that materially increase costs associated with training or company paid moves as specified in the JCBA.

(g) The integrated seniority list resulting from the McCaskill-Bond process, whether negotiated or arbitrated, shall be final and binding, provided that any negotiated agreement for an integrated seniority list shall be subject to whatever legal process is required by APA and/or USAPA before it becomes final and binding.

(h) The obligations contained in this Paragraph shall be enforceable on an expedited basis before a System Board of Adjustment in accord with Paragraph 24 ("Enforcement") and/or before a court of competent jurisdiction.

(i) US Airways agrees that neither this Memorandum nor the JCBA shall provide any basis for changing the seniority lists currently in effect at US Airways other than through the process set forth in this Paragraph 11.

(Exhibit 7, at 6-7.)

e. By email on December 16, 2012, in response to the December 15 USAPA proposal, Mr. Siegel transmitted the carriers' proposed language for the seniority integration provision:

a. A seniority integration process consistent with McCaskill-Bond shall begin as soon as possible after the Effective Date. If, on the date 90 days following the Effective Date, direct negotiations have failed to result in a merged seniority list acceptable to the pilots at both airlines, a panel of three neutral arbitrators will be designated within 15 days to resolve the dispute, pursuant to the authority and requirements of McCaskill-Bond. That arbitration will commence no later than 60 days after the designation of the arbitrators, or as soon thereafter as practicable given the availability of the designated arbitrators. The panel of arbitrators will render its

award within 6 months of the commencement of the arbitration, and in any event not later than 22 months after the Effective Date.

b. US Airways, American or New American Airlines, and their successors (if any), agree to implement that seniority list if it complies with the following criteria: (i) no active pilot may displace any other active pilot from the latter's position; and (ii) furloughed pilots may not bump/displace active pilots; and (iii) except as set forth in Paragraphs 12 and 13 below, no requirement for pilots to be compensated for flying not performed (e.g., differential pay for a position not actually flown); and (iv) allows pilots who, at the time of implementation of an integrated seniority list, are in the process of completing or who have completed initial qualification training for a new category (e.g., A320 Captain or 757 First Officer) to be assigned to the position for which they have been trained, regardless of their relative standing on the integrated seniority list; and (v) does not contain conditions and restrictions that materially increase costs associated with training or company paid move as specified in the JCBA.

c. The integrated seniority list resulting from the McCaskill-Bond process shall be final and binding.

d. During the McCaskill-Bond process, including any arbitration hearing, US Airways, American or New American Airlines, or their successors (if any) shall remain neutral with respect to which seniority list should be adopted insofar and to the extent such lists comply with restrictions (i)-(v) above.

e. The obligations contained in this Paragraph shall be specifically enforceable on an expedited basis before a System Board of Adjustment in accordance with Paragraph 20 and/or before a court of competent jurisdiction.

f. A Seniority Integration Protocol Agreement ("Protocol Agreement") consistent with McCaskill-Bond and this Paragraph of the Memorandum will be agreed upon within 15 days of the Effective Date. The Protocol Agreement will set forth the process and protocol for conducting negotiations and arbitration, if applicable. The company(ies) will be parties to the arbitration, if any, in accordance with McCaskill-Bond. The company(ies) shall provide information requested by the pilots for use in the arbitration, if any, in accordance with requirements of McCaskill-Bond, and so long as the requests are reasonable and do not impose undue burden or expense, and so long as the pilots agree to appropriate confidentiality terms.

g. This Memorandum is not a waiver of any argument which participants may make in the seniority integration process. Nor do the provisions of this Memorandum constitute an admission as to the appropriate allocation of flying following the expiration of the protections in Paragraph 8 of this Memorandum, or

> the manner in which the respective pre-merger carriers would have operated in the absence of a merger, or the job entitlements or equities that arguably underlie the construction of an integrated seniority list, or for any other purpose. This Memorandum may be offered into evidence or shown to a mediator as background information and to describe the actual operations of the separate carriers prior to expiration of the protections in Paragraph 8 of this Memorandum.
>
> h. US Airways agrees that neither this Memorandum nor the JCBA shall provide a basis for changing the seniority lists currently in effect at US Airways other than through the process set forth in this Paragraph 11.

(Exhibit 8 hereto.) Mr. Siegel supplemented his proposal, based on a further conference on December 16, 2012; I participated in some, but not all, of that conference by telephone. In particular, Mr. Siegel added, *inter alia*, a clause confirming that the seniority integration arbitration would not commence until after the conclusion of a Joint Collective Bargaining Agreement; and a four-month deadline following the merger for APA to commence the NMB proceeding to lead to the designation of a single bargaining representative. (Exhibit 9 hereto.)

e. By email on December 17, 2012, I provided Mr. Siegel with additional comments on his December 16 draft. (Exhibit 10 hereto.) Mr. Siegel accepted those revisions. (Exhibit 11 hereto.) Later that day, Mr. Hollinger transmitted a complete draft of the MOU (Exhibit 12 hereto), including Mr. Siegel's proposal as revised by me:

> a. A seniority integration process consistent with McCaskill-Bond shall begin as soon as possible after the Effective Date. If, on the date ninety (90) days following the Effective Date, direct negotiations have failed to result in a merged seniority list acceptable to the pilots at both airlines, a panel of three neutral arbitrators will be designated within fifteen (15) days to resolve the dispute, pursuant to the authority and requirements of McCaskill-Bond. That arbitration will commence no later than 60 days after the designation of the arbitrators, or as soon thereafter as practicable given the availability of the designated arbitrators, provided that it is understood that, in all events, the seniority integration arbitration will not commence prior to final approval of the JCBA pursuant to the deadlines and procedures in Paragraph 27 below. The panel of arbitrators will render its award within six (6) months of the commencement of the arbitration, and in any event not later than 24 months after the Effective Date.

b. The panel of arbitrators may not render an award unless it complies with the following criteria: (i) the list does not require any active pilot to displace any other active pilot from the latter's position; and (ii) furloughed pilots may not bump/displace active pilots; and (iii) except as set forth in Paragraphs 12 and 13 below, the list does not require that pilots to be compensated for flying not performed (e.g., differential pay for a position not actually flown); (iv) the list allows pilots who, at the time of implementation of an integrated seniority list, are in the process of completing or who have completed initial qualification training for a new category (e.g., A320 Captain or 757 First Officer) to be assigned to the position for which they have been trained, regardless of their relative standing on the integrated seniority list or who have successfully bid such a position but have not been trained because of conditions beyond their control (such as Company freeze) and (v) it does not contain conditions and restrictions that materially increase costs associated with training or company paid move as specified in the JCBA.

c. The integrated seniority list resulting from the McCaskill-Bond process shall be final and binding on APA and USAPA (and/or the certified bargaining representative of the combined pilot group), the Company(ies) and its(their) successors (if any), and the American/New American Airlines and US Airways pilots.

d. During the McCaskill-Bond process, including any arbitration hearing, US Airways, American or New American Airlines, or their successors (if any), shall remain neutral with respect to which seniority list should be adopted insofar and to the extent that such lists comply with restrictions (i)-(v) above.

e. The obligations contained in this Paragraph shall be specifically enforceable on an expedited basis before a System Board of Adjustment in accordance with Paragraph 20 and/or before a court of competent jurisdiction.

f. A Seniority Integration Protocol Agreement ("Protocol Agreement") consistent with McCaskill-Bond and this Paragraph of the Memorandum will be agreed upon within 15 days of the Effective Date. The Protocol Agreement will set forth the process and protocol for conducting negotiations and arbitration, if applicable. The company(ies) will be parties to the arbitration, if any, in accordance with McCaskill-Bond. The company(ies) shall provide information requested by the pilots for use in the arbitration, if any, in accordance with requirements of McCaskill-Bond, and so long as the requests are reasonable and do not impose undue burden or expense, and so long as the pilots agree to appropriate confidentiality terms.

g. This Memorandum is not a waiver of any argument which participants may make in the seniority integration process. Nor do the provisions of this

> Memorandum constitute an admission as to the appropriate allocation of flying following the expiration of the protections in Paragraph 8 of this Memorandum, or the manner in which the respective pre-merger carriers would have operated in the absence of a merger, or the job entitlements or equities that arguably underlie the construction of an integrated seniority list, or for any other purpose. This Memorandum may be offered into evidence or shown to a mediator as background information and to describe the actual operations of the separate carriers prior to expiration of the protections in Paragraph 8 of this Memorandum.
>
> h. US Airways agrees that neither this Memorandum nor the JCBA shall provide a basis for changing the seniority lists currently in effect at US Airways other than through the process set forth in this Paragraph 10.

(Exhibit 12, at 6-7.) At that point, I understood that the parties were near agreement on the final form of the seniority integration-related terms of the MOU.

f. Then, by email late in the afternoon of December 17, 2012, Roland Wilder transmitted "our seniority integration proposal from Pat," apparently drafted by Mr. Szymanski. (Exhibit 13 hereto.) The USAPA proposal again injected USAPA's demand that it continue to represent the US Airways Pilots (both East and West) in the seniority integration, even after USAPA was no longer the bargaining representative of any affected pilot. Following a telephonic conference among counsel that evening, in which US Airways and APA did not agree with USAPA's proposal on that point, Mr. Szymanski circulated another revised proposal which reverted to the previous US Airways proposal, with some suggested revisions unrelated to the party issue. (Exhibit 14 hereto.) By email that evening, I agreed on APA's behalf to Mr. Szymanski's suggested changes. (Exhibit 15 hereto.)

g. An exchange of emails ensued between Mr. Siegel and Mr. Szymanski regarding the terms of the merged carrier's obligation to remain "neutral" as to the composition of the integrated seniority list, subject to certain conditions. (Exhibits 16-18 hereto.) Thereafter, on the evening of December 18, 2012, Mr. Hollinger circulated another complete draft of the MOU (Exhibit 19

hereto), including the proposed paragraph 10 as revised by Mr. Siegel and Mr. Szymanski, and an additional clause that the contemplated seniority integration "protocol" would address the allocation of funds which the carriers' had committed to the reimbursement of the pilot group representatives' seniority integration-related expenses. (Exhibit 19, at 6-7.) By email on December 19, 2012, Mr. Szymanski, who apparently had not participated in the addition of that clause, advised counsel that "Roland Wilder has explained to me the newly proposed addition to Paragraph 10.f. namely 'and will include a methodology for allocating the reimbursement provided for in Paragraph 7.'" (Exhibit 20 hereto.) Mr. Szymanski demanded assurance that "USAPA is not agreeing that anyone other than the merger representatives of APA and the merger representatives of USAPA are proper union parties in the McCaskill Bond process." (Id.) By responsive email, Mr. Siegel confirmed that "this addition does not mean that USAPA has agreed, one way or the other, about appropriate merger representatives in the McCaskill Bond process." (Exhibit 21 hereto.) Roland Wilder and Mr. Szymanski separately replied to Mr. Siegel, confirming that the proposed paragraph 10 was acceptable. (Exhibits 22, 23 hereto.)

14. In the negotiations leading to paragraph 10 of the MOU, every proposal for the arbitration of the seniority list integration contemplated a procedure different from that provided in Section 13(a) of the LPPs. In particular, every proposal contemplated a panel of more than one arbitrator; and every proposal provided for an arbitration schedule commencing later than 20 days following the onset of the dispute, and ending more than 90 days following the onset of the dispute. Ultimately, rather than the single arbitrator contemplated by Section 13(a) of the LPPs, paragraph 10 of the MOU as agreed to provides for a panel of three arbitrators. Rather than the 20-day period provided for in Section 13(a) of the LPPs, paragraph 10 of the MOU as ultimately agreed to

provides for the arbitration to commence only after:

* a 90-day period following the merger for negotiations;

* a finding by the NMB that American and US Airways constitute a single carrier, and the certification of a single bargaining representative in the combined craft and class at that single carrier; and

* the conclusion of a Joint Collective Bargaining Agreement covering the combined craft or class.

Finally, rather than the 90-day deadline provided for in Section 13(a) of the LPPs, paragraph 10 of the MOU as ultimately agreed to provides that the Arbitration Board's final award is to be issued no later than 24 months following the merger.

15. Paragraph 10.f. of the MOU also provides for a further "seniority integration protocol" to set forth further elements of the seniority integration process. At no time in the negotiations leading to the MOU did any negotiator for USAPA or any other party suggest that, if no such "protocol" was concluded, the other elements of the process agreed to in the MOU – including the schedule for the arbitration or the number of arbitrators on the Arbitration Board – would no longer be effective. Similarly, the fact that no "protocol" was concluded has not rendered any other provisions of the MOU ineffective – including numerous provisions of the MOU from which USAPA and the US Airways Pilots benefit such as significantly increased hourly pay rates, training pay, and per diem; unprecedented escalation in retirement contributions; meaningful quality of work life improvements; and absolute protection from furlough.

16. In the negotiations leading to the MOU, no negotiator for USAPA or any other party ever suggested that the MOU did not constitute an "alternative method of dispute settlement" under Section 13(b) of the LPPs, or that in the absence of a further "protocol" the procedures of Section 13(a) of the LPPs would instead apply. Based on my experience in seniority integration-related

matters, and my participation in the negotiations leading to the MOU, I understood that the MOU constituted an "alternative method of dispute settlement" under Section 13(b) of the LPPs, and that the agreed-upon terms of the MOU would apply regardless of whether a further "protocol" was concluded.

16. In Section 10.e. of the MOU, the parties agreed:

> The obligations contained in this Paragraph shall be specifically enforceable on an expedited basis before a System Board of Adjustment in accordance with Paragraph 20, provided that the obligations imposed by McCaskill-Bond may be enforced in a court of competent jurisdiction.

(Stephens Decl., Exhibit 1, at 7.) Under this provision, while the parties acknowledged the availability of judicial enforcement of statutory obligations under McCaskill Bond, the parties' principal agreement was to the arbitration of any dispute regarding the interpretation and application of paragraph 10 the MOU, pursuant to paragraph 20 of the MOU; and, in particular, to the specific enforcement of the contractual obligations imposed by paragraph 10 through arbitration under the MOU. Indeed, as of US Airways' December 17, 2012 draft (Exhibit 12), the proposed MOU would have provided, consistent with the preceding drafts of the MOU (Exhibits 2, 3, 4, 6, 8): "The obligations in this Paragraph shall be specifically enforceable on an expedited basis before a System Board of Adjustment in accordance with Paragraph 20 and/or before a court of competent jurisdiction." (Exhibit 12, at 7.) Mr. Szymanski then deleted the phrase "and/or before a court of competent jurisdiction" in his December 17, 2012 proposal (Exhibit 13); and then added the more limited phrase "provided, that the obligations imposed by McCaskill Bond may be enforced in a court of competent jurisdiction" in his revised proposal later the same day. (Exhibit 14.)

The Protocol Negotiations

17. I did not attend the December19, 2013 meeting referenced in paragraph 13 of the

Declaration of Mark Stephens in this matter; or the December 20, 2013 meeting referenced in paragraph 7 Mr. Szymanski's Declaration in this matter. As counsel for the SIC, I otherwise participated in the negotiations regarding a possible seniority integration protocol. Captain Stephens' Declaration accurately describes those negotiations.

18. As described in paragraph 19 of Captain Stephens' Declaration, the first indication that any party disputed the MOU's status as an "alternative method of dispute settlement" under Section 13(b) of the LPPs was USAPA's January 29, 2014 proposed protocol, which inserted the phrase "pursuant to Section 13(b) of the Allegheny-Mohawk LPPs" in a "Whereas" clause which USAPA had previously proposed and APA had accepted without modification. (Stephens Decl., Exhibit 5, at 4.)

19. As set forth in Captain Stephens' Declaration, in the negotiations regarding a possible protocol, the parties agreed on every term of the proposed protocol (including the method of selecting the three-person Arbitration Board agreed to in the MOU), with the sole exception of USAPA's demand that it remain a party and control the USAPA Merger Committee, even after USAPA ceased to be a bargaining representative of any pilot affected by the seniority integration.

Declaration Pursuant to 28 U.S.C. § 1746

I declare under penalty of perjury that the foregoing is true and correct.

Wesley Kennedy

Dated: May 29, 2014