

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA, et al.,)	
)	
Plaintiffs,)	
)	
v.)	Case No. 1:13-cv-01236-CKK
)	
US AIRWAYS GROUP, INC.)	
)	
and)	
)	
AMR CORPORATION,)	
)	
Defendants.)	

DEFENDANT US AIRWAYS GROUP, INC.’S ANSWER TO AMENDED COMPLAINT

Defendant US Airways Group, Inc. (“US Airways”) responds to the allegations in the Amended Complaint as set forth below. Any allegation not expressly and explicitly admitted is denied.

GENERAL RESPONSE TO PLAINTIFFS’ ALLEGATIONS

This merger will greatly enhance competition and provide immense benefits to the traveling public. Combined, US Airways and American Airlines will offer more and better travel options for passengers through an improved domestic and international network, something that neither carrier could provide on its own. Millions more passengers each year will fly on this new network than would fly on US Airways and American, should they be forced to remain separate. Conservative estimates place the net benefits to consumers at more than \$500 million annually. Simply put, from the perspective of consumers, the new American will be

much greater than the sum of its parts. This merger will be procompetitive and lawful.

Plaintiffs' request for this Court to enjoin the merger should be summarily denied.

It is ironic that plaintiffs fixate on maintaining the number of "legacy" carriers—those airlines that, prior to 1978, endured the well-documented failure of federal regulation of routes and fares—because those carriers are by most relevant measures the least financially successful companies in the industry. The oversight of the federal government left legacy carriers saddled with route and cost structures ill-suited to meeting the evolving consumer demand of the day, much less the radically different consumer demand of the 21st century economy. The 35 years since deregulation have painted a vivid picture, completely absent from the Complaint, of the excruciatingly painful process of reshaping these airlines to better respond to consumer demand. The post-deregulation history of legacy carriers is one of staggering financial loss, dozens of bankruptcies, hundreds of thousands of lost jobs, dramatic reductions in employee pay and benefits, and painful restructuring.

The Complaint's focus on legacy airlines causes it to ignore the most meaningful competitive development in the airline industry since deregulation: the emergence of low cost carriers. Southwest, which in 1978 was an oddity limited to intrastate flying in Texas, is now the country's largest domestic airline, carrying more passengers last year than any legacy carrier and more than US Airways and American combined. Other low cost carriers, including JetBlue, Spirit Airlines, Virgin America, Sun Country, and Allegiant, are expanding at dramatic rates. These carriers, together with Southwest and regional competitors Alaska Airlines and Hawaiian Airlines, now transport over 40% of all domestic passengers, and that share continues to grow. The demonstrable success of low cost carriers is a market driven response to consumer demand,

but the Complaint inexplicably ignores their profound and permanent effect on industry competition.

The other potent market response to consumer demand ignored by the Complaint is the evolution of the industry through mergers. Since 1978, there have been over a dozen mergers involving legacy carriers as the fares paid by passengers fell substantially in real terms. Most recently Delta merged with Northwest (2008) and United with Continental (2010) as those firms—each of which had been reorganized in bankruptcy during the last decade—combined complementary assets to create networks better able to respond to consumer demand. The government approval of these two mergers created airlines with much larger and more comprehensive networks than either American or US Airways, leaving both American and US Airways at a competitive disadvantage which cannot be overcome on a standalone basis.

It is in this vigorously competitive world that US Airways and American Airlines seek to merge so that they can provide similar benefits to customers and have the chance to compete with the new Delta and new United. Taken separately, each of US Airways and American is incomplete. American has a weaker presence for traffic moving up and down the East Coast, US Airways is weaker in the Midwest, and both are relatively weaker on the West Coast. Without geographically strategic hubs and efficient and convenient connections from those hubs, American and US Airways cannot effectively appeal to travelers going to or from, or traveling within, these critical regions, and they necessarily lose business to the more complete networks that Delta and United offer. Together, US Airways and American will create an effective third competitor for that business and, in doing so, increase competition. It is the Complaint—by interposing the heavy hand of federal and state regulation—which will lessen competition by precluding the market from creating new and competitive flight options for passengers.

Plaintiffs argue that the merger is not necessary because “American is fully capable of emerging from bankruptcy proceedings on its own” and “US Airways today is competing vigorously.” That view, of course, is not relevant to the antitrust analysis before the Court. Moreover, the statistics provided in the Complaint focus on only very recent industry performance, during one of the few brief periods when the airlines turned a profit, and ignore the competitive landscape and extreme volatility of the airline business. The harsh reality is that over the last twelve years American lost \$10.3 billion and US Airways lost \$3.4 billion. US Airways filed for bankruptcy twice during that period and without the merger with America West Airlines would have liquidated. American filed for bankruptcy in November 2011, lost \$1.9 billion in 2012, and remains in bankruptcy today. Blocking the merger will not sharpen competition—it will prolong this cycle of crisis to the detriment of passengers, the employees of American and US Airways, and the communities the airlines serve.

The merger with US Airways is the foundation of American’s reorganization plan for growth and expansion, and is its only extant plan to emerge from bankruptcy. Thousands of new routes will be created simply by combining the two airlines. These new routes will offer travelers the convenience of more flight options to fit their schedule; offer flights with fewer connections to both domestic and global destinations; and offer passengers in smaller communities better access to the rest of the country and world. In addition to these benefits, the new American will grow its capacity and output, purchasing new aircraft and improving its airport services. In short, the combined network will offer passengers more opportunities to fly where they want to go, when they want to go, and how they want to go.

This growth will spur competition. The combined network can go head-to-head with United and Delta while competing vigorously against the rest of the industry, both domestically

and abroad. The potential harms are minimal; American and US Airways directly compete on only 17 of the nearly 900 nonstop city pairs that the carriers now serve, and on almost all of these routes face nonstop competition from other carriers. Indeed, across the industry, the low cost carriers offer strong competitive choices built on diverse business models, and play the role of industry “maverick” in a way that no legacy airline ever has or could. In every relevant aspect, this merger is more procompetitive than those previously approved by the government.

The Court’s review of the plaintiffs’ challenge to this merger should not be an evaluation of the few aspects of the intensely competitive airline industry plaintiffs do not like, or a comparison to some hypothetical state of the airline industry that plaintiffs would prefer. It must be a determination of whether this airline merger would result in a “substantial lessening of competition” relative to what would happen absent the merger. But rather than considering how this merger will create robust competition in the future, or how blocking the merger will impede competitive forces, plaintiffs rely on rhetoric and innuendo. The Complaint makes broad, unsupported claims about past industry coordination and cobbles together out-of-context statements in an effort to suggest by anecdote what the plaintiffs cannot support with analysis. This skewed and incomplete focus ignores the current realities of the airline industry. Detailed evidence will show that this merger is about growth and improved competition—a bigger network, new flight options, more jobs, and millions of additional customers each year who will choose the more competitive new American

RESPONSE TO SPECIFIC ALLEGATIONS

I. INTRODUCTION

- 1. Millions of passengers depend on the airline industry to travel quickly, efficiently, and safely between various cities in the United States and throughout the world. Since 1978, the nation has relied on competition among airlines to promote affordability, innovation, and service and*

quality improvements. In recent years, however, the major airlines have, in tandem, raised fares, imposed new and higher fees, and reduced service. Competition has diminished and consumers have paid a heavy price. This merger—by creating the world’s largest airline—would, in the words of US Airways’ management, “finish[] industry evolution.” It would reduce the number of major domestic airlines from five to four, and the number of “legacy” airlines—today, Delta, United, American, and US Airways—from four to three. In so doing, it threatens substantial harm to consumers. Because of the size of the airline industry, if this merger were approved, even a small increase in the price of airline tickets, checked bags, or flight change fees would cause hundreds of millions of dollars of harm to American consumers annually.

Response: US Airways admits that millions of passengers travel by air every year, that competition in the airline industry is robust, and that the merger would create a new network to compete more effectively with United and Delta globally while also competing vigorously against the rest of the industry. US Airways further admits that it is described as a “legacy” airline. US Airways respectfully refers the Court to the quoted document for a complete and accurate description of its contents. US Airways denies the remaining allegations in this paragraph.

2. *American and US Airways compete directly on thousands of heavily traveled nonstop and connecting routes. Millions of passengers benefit each year from head-to-head competition that this merger would eliminate. With less competition, airlines can cut service and raise prices with less fear of competitive responses from rivals.*

Response: US Airways admits that it and American overlap on a limited number of routes, almost all of which involve connecting rather than nonstop service. US Airways denies the remaining allegations in this paragraph.

3. *This merger will leave three very similar legacy airlines—Delta, United, and the new American—that past experience shows increasingly prefer tacit coordination over full throated competition. By further reducing the number of legacy airlines and aligning the economic incentives of those that remain, the merger of US Airways and American would make it easier*

for the remaining airlines to cooperate, rather than compete, on price and service. That enhanced cooperation is unlikely to be significantly disrupted by Southwest and JetBlue, which, while offering important competition on the routes they fly, have less extensive domestic and international route networks than the legacy airlines.

Response: US Airways admits that it is described as a “legacy” airline. US Airways further admits that Southwest and JetBlue offer important competition on domestic and international routes. US Airways denies the remaining allegations in this paragraph.

4. *US Airways’ own executives—who would run the new American—have long been “proponents of consolidation.” US Airways believes that the industry—before 2005—had “too many” competitors, causing an “irrational business model.” Since 2005, there has been a wave of consolidation in the industry. US Airways has cheered these successive mergers, with its CEO stating in 2011 that “fewer airlines” is a “good thing.” US Airways’ President explained this thinking that same year: “Three successful fare increases – [we are] able to pass along to customers because of consolidation.” (emphasis added). Similarly, he boasted at a 2012 industry conference: “Consolidation has also . . . allowed the industry to do things like ancillary revenues [e.g., checked bag and ticket change fees] That is a structural permanent change to the industry and one that’s impossible to overstate the benefit from it.” In essence, industry consolidation has left fewer, more-similar airlines, making it easier for the remaining airlines to raise prices, impose new or higher baggage and other ancillary fees, and reduce capacity and service. This merger positions US Airways’ management to continue the trend—at the expense of consumers.*

Response: US Airways admits that there have been several mergers in the United States air travel industry in recent years. US Airways further admits that the management team for the combined airline would include US Airways executives. US Airways respectfully refers the Court to the quoted documents for a complete and accurate description of their contents. US Airways denies the remaining allegations in this paragraph.

5. *US Airways intends to do just that. If this merger were approved, US Airways would no longer need to offer low-fare options for certain travelers. For example, US Airways employs “Advantage Fares,” an*

aggressive discounting strategy aimed at undercutting the other legacy airlines' nonstop fares with cheaper connecting service. US Airways' hubs are in cities that generate less lucrative nonstop traffic than the other legacy airlines' hubs. To compensate, US Airways uses its Advantage Fares to attract additional passengers on flights connecting through its hubs.

Response: US Airways admits that it employs "Advantage Fares." US Airways denies the remaining allegations in this paragraph.

6. *The other legacy airlines take a different approach. If, for example, United offers nonstop service on a route, and Delta and American offer connecting service on that same route, Delta and American typically charge the same price for their connecting service as United charges for its nonstop service. As American executives observed, the legacy airlines "generally respect the pricing of the non-stop carrier [on a given route]," even though it means offering connecting service at the same price as nonstop service. But American, Delta, and United frequently do charge lower prices for their connecting service on routes where US Airways offers nonstop service. They do so to respond to US Airways' use of Advantage Fares on other routes.*

Response: US Airways lacks the information and knowledge to respond to allegations concerning the pricing strategies and motivations of any of its competitors, including other legacy airlines. US Airways respectfully refers the Court to the quoted document for a complete and accurate description of its contents. US Airways denies the remaining allegations in this paragraph.

7. *If the merger were approved, US Airways' economic rationale for offering Advantage Fares would likely go away. The merged airline's cost of sticking with US Airways' one-stop, low-price strategy would increase. Delta and United would likely undercut the merged firm on a larger number of nonstop routes. At the same time, the revenues generated from Advantage Fares would shrink as American's current nonstop routes would cease to be targets for Advantage Fares. The bottom line is that the merged airline would likely abandon Advantage Fares, eliminating significant competition and causing consumers to pay hundreds of millions of dollars more.*

Response: US Airways denies the allegations in this paragraph.

8. *Consumers will likely also be harmed by the planned merger because American had a standalone plan to emerge from bankruptcy poised to grow. American planned to expand domestically and internationally, adding service on nearly 115 new routes. To support its plan, American recently made the largest aircraft order in industry history.*

Response: US Airways admits that American's management at one time was considering a preliminary plan. US Airways further admits that American ordered additional aircraft. US Airways lacks information and knowledge to respond to competitor strategies and motivations, and, on that basis, denies those allegations in this paragraph. US Airways denies the remaining allegations in this paragraph.

9. *American's standalone plan would have bucked current industry trends toward capacity reductions and less competition. US Airways called American's growth plan "industry destabilizing" and worried that American's plan would cause other carriers to react "with their own enhanced growth plans" The result would be to increase competitive pressures throughout the industry. After the merger, US Airways' current executives—who would manage the merged firm—would be able to abandon American's efforts to expand and instead continue the industry's march toward higher prices and less service. As its CEO candidly stated earlier this year, US Airways views this merger as "the last major piece needed to fully rationalize the industry."*

Response: US Airways admits that the management team for the combined airline would include US Airways executives. US Airways respectfully refers the Court to the quoted documents for a complete and accurate description of their contents. US Airways denies the remaining allegations in this paragraph.

10. *Passengers to and from the Washington, D.C. area are likely to be particularly hurt. To serve Ronald Reagan Washington National Airport ("Reagan National"), a carrier must have "slots," which are government-issued rights to take off and land. US Airways currently holds 55% of the slots at Reagan National and the merger would increase the percentage of slots held by the combined firm to 69%. The combined airline would have a monopoly on 63% of the nonstop routes served out of the airport. Competition at Reagan National cannot flourish where one airline*

increasingly controls an essential ingredient to competition. Without slots, other airlines cannot enter or expand the number of flights that they offer on other routes. As a result, Washington, D.C. area passengers would likely see higher prices and fewer choices if the merger were approved.

Response: US Airways admits that slots are government-issued rights to take off and land. US Airways further admits that a carrier must have slots to take off and land at Reagan National Airport. US Airways further admits that it has approximately 55 percent of the slots at DCA and that the merged firm would have approximately 69 percent of the Reagan National slots. US Airways denies the remaining allegations in this paragraph.

11. *Notwithstanding their prior unequivocal statements about the effects of consolidation, the defendants will likely claim that the elimination of American as a standalone competitor will benefit consumers. They will argue that Advantage Fares will continue, existing capacity levels and growth plans will be maintained, and unspecified or unverified “synergies” will materialize, creating the possibility of lower fares. The American public has seen this before. Commenting on a commitment to maintain service levels made by two other airlines seeking approval for a merger in 2010, the CEO of US Airways said: “I’m hopeful they’re just saying what they need... to get this [transaction] approved.” By making claims about benefits that are at odds with their prior statements on the likely effects of this merger, that is precisely what the merging parties’ executives are doing here—saying what they believe needs to be said to pass antitrust scrutiny.*

Response: US Airways admits that it will claim that the merger will benefit consumers and that the Advantage Fares program may continue after the merger is completed. US Airways respectfully refers the Court to the quoted document for a complete and accurate description of its contents. US Airways denies the remaining allegations in this paragraph.

12. *There is no reason to accept the likely anticompetitive consequences of this merger. Both airlines are confident they can and will compete effectively as standalone companies. A revitalized American is fully capable of emerging from bankruptcy proceedings on its own with a competitive cost structure, profitable existing business, and plans for*

growth. US Airways today is competing vigorously and earning record profits. Executives of both airlines have repeatedly stated that they do not need this merger to succeed.

Response: US Airways admits that it has, at all times, competed vigorously and that its earnings in the latest fiscal quarter were strong. Since the turn of the century, however, US Airways has lost an enormous amount of money, suffered through two bankruptcies and, at subsequent times, struggled for its very survival. US Airways lacks the knowledge and information sufficient to admit or deny paraphrasing of unspecified statements by unidentified individuals, and, on that basis, denies the allegations in this paragraph. US Airways denies the remaining allegations in this paragraph.

13. *The merger between US Airways and American would likely substantially lessen competition, and tend to create a monopoly, in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18. Therefore, this merger should be permanently enjoined.*

Response: US Airways denies the allegations in this paragraph.

II. JURISDICTION, INTERSTATE COMMERCE, AND VENUE

14. *The United States brings this action, and this Court has subject-matter jurisdiction over this action, under Section 15 of the Clayton Act, as amended, 15 U.S.C. § 25, to prevent and restrain US Airways and American Airlines from violating Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.*

Response: US Airways admits that the United States purports to bring this action pursuant to Section 15 of the Clayton Act, and that the United States purports to seek to prevent and restrain Defendants from violating Section 7 of the Clayton Act. US Airways denies that the merger violates the Clayton Act in any way and further denies the remaining allegations in this paragraph.

15. *The Plaintiff States bring this action under Section 16 of the Clayton Act, 15 U.S.C. § 26, to prevent and restrain US Airways and American Airlines from violating Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18. The Plaintiff States, by and through their respective Attorneys General, bring this action as parens patriae on behalf of the citizens, general welfare, and economy of each of their states.*

Response: US Airways admits that the Plaintiff States purport to bring the action as *parens patriae* pursuant to Section 15 of the Clayton Act and that the Plaintiff States purport to seek to prevent and restrain Defendants from violating Section 7 of the Clayton Act. US Airways denies that the merger violates the Clayton Act in any way and further denies the remaining allegations in this paragraph.

16. *The defendants are engaged in, and their activities substantially affect, interstate commerce, and commerce in each of the Plaintiff States. US Airways and American Airlines each annually transport millions of passengers across state lines throughout this country, generating billions of dollars in revenue while doing so.*

Response: Admitted.

17. *Venue is proper under Section 12 of the Clayton Act, 15 U.S.C. § 22. This Court also has personal jurisdiction over each defendant. Both defendants are found and transact business in this judicial district.*

Response: Admitted.

III. THE DEFENDANTS AND THE TRANSACTION

18. *Defendant US Airways Group, Inc., is a Delaware corporation headquartered in Tempe, Arizona. Last year, it flew over fifty million passengers to approximately 200 locations worldwide, taking in more than \$13 billion in revenue. US Airways operates hubs in Phoenix, Charlotte, Philadelphia, and Washington, D.C.*

Response: Admitted.

19. *US Airways is performing exceptionally well. In 2012, it enjoyed record profits. It is operating at high load factors—the percentage of seats sold*

on its flights—and has a national and international route network, alliances with international airlines, a strong brand name, modern equipment, and a competitive cost structure. In mid-2012, US Airways’ CEO, touting the airline’s “record second quarter results,” told Dow Jones that the company “has a great business model that works and we certainly don’t need to merge with another airline.”

Response: US Airways admits that it earned a profit in 2012, has a national and international route network, is a member of an alliance network that includes international airlines, has a strong brand name and modern equipment, and competes on cost. Since the turn of the century, however, US Airways has lost an enormous amount of money, suffered through two bankruptcies and, at subsequent times, struggled for its very survival. US Airways denies the remaining allegations in this paragraph, and respectfully refers the Court to the quoted document for a complete and accurate description of its contents.

20. *Defendant AMR Corporation is a Delaware corporation headquartered in Fort Worth, Texas. AMR Corporation is the parent company of American Airlines. Last year, American flew over eighty million passengers to approximately 250 locations worldwide, taking in more than \$24 billion in revenue. American operates hubs in New York, Los Angeles, Chicago, Dallas, and Miami. The American Airlines brand is “one of the most recognized . . . in the world.”*

Response: Admitted.

21. *In November 2011, American filed for bankruptcy reorganization and is currently under the supervision of the Bankruptcy Court for the Southern District of New York. American adopted and implemented a standalone business plan designed “to restore American to industry leadership, profitability and growth.” While in bankruptcy, American management “pursued and successfully implemented” key provisions of this plan, including revenue and network enhancements, as well as “restructuring efforts [that] have encompassed labor cost savings, managerial efficiencies, fleet reconfiguration, and other economies” That work has paid off. American reported that its revenue growth has “outpaced” the industry since entering bankruptcy and in its most recent quarterly results reported a company record-high \$5.6 billion in revenues, with \$357 million in profits. Under experienced and sophisticated senior*

management, American's restructuring process has positioned it to produce "industry leading profitability." As recently as January 8, 2013, American's management presented plans to emerge from bankruptcy that would increase the destinations American serves in the United States and the frequency of its flights, and position American to compete independently as a profitable airline with aggressive plans for growth.

Response: US Airways admits that American filed for bankruptcy reorganization in November 2011, and is currently under the supervision of the Bankruptcy Court for the Southern District of New York. US Airways respectfully refers the Court to the quoted document for a complete and accurate description of its contents. US Airways lacks the knowledge to admit or deny the remaining allegations in this paragraph, and, on that basis, denies them.

22. *US Airways sees American the same way. Its CEO observed in December 2011 that "A[merican] is not going away, they will be stronger post-bankruptcy because they will have less debt and reduced labor costs." A US Airways' executive vice president similarly wrote in July 2012 that "[t]here is NO question about AMR's ability to survive on a standalone basis."*

Response: US Airways admits that these quotes were selected from e-mails involving US Airways' employees, and respectfully refers the Court to the quoted documents for a complete and accurate description of their contents. US Airways denies the remaining allegations in this paragraph.

23. *US Airways and American agreed to merge on February 13, 2013. US Airways shareholders would own 28 percent of the combined airline, while American shareholders, creditors, labor unions, and employees would own 72 percent. The merged airline would operate under the American brand name, but the new American would be run by US Airways management.*

Response: US Airways admits that it and American agreed to merge on February 13, 2013. US Airways further admits that US Airways shareholders would own approximately 28 percent of the combined airline, while American shareholders, creditors, labor unions, and

employees would own approximately 72 percent. US Airways admits that the new airline would operate under the American brand name, and that its management would include US Airways executives. US Airways denies the remaining allegations in this paragraph.

IV. THE RELEVANT MARKETS

A. Scheduled Air Passenger Service Between Cities

24. *Domestic scheduled air passenger service enables consumers to travel quickly and efficiently between various cities in the United States. Air travel offers passengers significant time savings and convenience over other forms of travel. For example, a flight from Washington, D.C. to Detroit takes just over an hour of flight time. Driving between the two cities takes at least eight hours. A train between the two cities takes more than fifteen hours.*

Response: US Airways admits that domestic scheduled air-passenger service often enables consumers to travel quickly and efficiently between various cities in the United States. US Airways further admits that travel time from Washington, D.C. to Detroit by plane, automobile, or train varies. US Airways denies the remaining allegations in this paragraph.

25. *Due to time savings and convenience afforded by scheduled air passenger service, few passengers would substitute other modes of transportation (car, bus, or train) for scheduled air passenger service in response to a small but significant industry-wide fare increase. Another way to say this, as described in the Fed. Trade Comm'n & U.S. Dep't of Justice Horizontal Merger Guidelines (2010), and endorsed by courts in this Circuit, is that a hypothetical monopolist of all domestic scheduled air passenger service likely would increase its prices by at least a small but significant and non-transitory amount. Scheduled air passenger service, therefore, constitutes a line of commerce and a relevant product market within the meaning of Section 7 of the Clayton Act.*

Response: This paragraph contains numerous legal conclusions and other non-factual statements to which no response is required. To the extent a response is required, US Airways denies the allegations in this paragraph.

26. *A “city pair” is comprised of a flight’s departure and arrival cities. For example, a flight departing from Washington and arriving in Chicago makes up the Washington-Chicago city pair. Passengers seek to depart from airports close to where they live and work, and arrive at airports close to their intended destinations. Most airline travel is related to business, family events, and vacations. Thus, most passengers book flights with their origins and destinations predetermined. Few passengers who wish to fly from one city to another would likely switch to flights between other cities in response to a small but significant and non-transitory fare increase.*

Response: US Airways admits that a “city pair,” as that term is generally used in the airline industry, is comprised of a flight’s departure and arrival cities. US Airways lacks the knowledge or information sufficient to form a belief as to the allegations concerning the preferences of passengers because those preferences can differ widely among a diverse set of passengers in different areas and near different airports, and, on that basis, denies these allegations. US Airways denies the remaining allegations in this paragraph.

27. *Airlines customarily set fares on a city pair basis. For each city pair, the degree and nature of the competition from other airlines generally plays a large role in an airline’s pricing decision.*

Response: US Airways admits that competition among airlines is robust and plays a significant role in airline pricing decisions and that airlines will set fares on a city-pair basis. US Airways denies the remaining allegations in this paragraph.

28. *Therefore, a hypothetical monopolist of scheduled air passenger service between specific cities likely would increase its prices by at least a small but significant and non-transitory amount. Accordingly, each city pair is a relevant geographic market and section of the country under Section 7 of the Clayton Act.*

Response: This paragraph contains numerous legal conclusions and other non-factual statements to which no response is required. To the extent a response is required, US Airways denies the allegations in this paragraph.

29. *Consumer preferences also play a role in airline pricing and are relevant for the purpose of analyzing the likely effects of the proposed merger. Some passengers prefer nonstop service because it saves travel time; some passengers prefer buying tickets at the last minute; others prefer service at a particular airport within a metropolitan area. For example, most business customers traveling to and from downtown Washington prefer service at Reagan National over other airports in the Washington, D.C. metropolitan area. Through a variety of fare restrictions and rules, airlines can profitably raise prices for some of these passengers without raising prices for others. Thus, the competitive effects of the proposed merger may vary among passengers depending on their preferences for particular types of service or particular airports.*

Response: US Airways admits that air travel preferences vary among consumers.

US Airways admits that some consumers have preferences for nonstop service or a particular airport, and some consumers have last-minute travel needs. US Airways further admits that demand plays a role in airline pricing and that the number of consumers who prefer a particular type of service or airport affects demand. US Airways further admits that, depending on schedules, destinations, pricing, and other factors, at least some business customers traveling to or from downtown Washington choose to travel through Reagan National Airport. US Airways further admits that this merger will provide tremendous net benefits for customers and that some consumers may benefit more than others, depending on where they are flying from and to, among other things. US Airways denies the remaining allegations in this paragraph.

B. Takeoff and Landing Slots at Reagan National Airport

30. *Reagan National is one of only four airports in the country requiring slots for takeoffs and landings. Slots are expensive (often valued at over \$2 million per slot), difficult to obtain, and only rarely change hands between airlines. There are no alternatives to slots for airlines seeking to enter or expand their service at Reagan National.*

Response: US Airways admits that Reagan National and the three New York City area airports require slots for takeoffs and landings. US Airways lacks the knowledge or

information sufficient to form a belief as to the truth of the allegations concerning the price of slots, difficulty of obtaining slots, and frequency at which slots change hands between airlines, and, on that basis, denies the allegations in this paragraph. US Airways denies the remaining allegations in this paragraph.

31. *Reagan National is across the Potomac River from Washington, D.C., and, due to its proximity to the city and direct service via the Metro, airlines actively seek to serve passengers flying into and out of Reagan National. Airlines do not view service at other airports as adequate substitutes for service offered at Reagan National for certain passengers, and thus they are unlikely to switch away from buying or leasing slots at Reagan National in response to a small but significant increase in the price of slots. Airlines pay significant sums for slots at Reagan National, despite having the option of serving passengers through the region's other airports. A hypothetical monopolist of slots at Reagan National likely would increase its prices by at least a small but significant and non-transitory amount. Thus, slots at Reagan National Airport constitute a line of commerce, section of the country, and relevant market within the meaning of Section 7 of the Clayton Act.*

Response: US Airways admits that Reagan National is across the Potomac River from Washington, D.C., that there is a Metro stop at Reagan National, that airlines pay for slots at Reagan National, and have options of serving passengers through the region's other airports, and that passengers have options of flying to and from the region's other airports. This paragraph contains numerous legal conclusions and other non-factual statements to which no response is required. To the extent that a response is required, US Airways denies such statements. US Airways denies the remaining allegations in this paragraph.

V. THE MERGER IS LIKELY TO RESULT IN ANTICOMPETITIVE EFFECTS

A. Industry Background

32. *Today, four network or "legacy" airlines remain in the United States: American, US Airways, United, and Delta. These four have extensive national and international networks, connections to hundreds of destinations, established brand names, and strong frequent flyer reward*

programs. In addition, there are non-network airlines, including Southwest Airlines and a handful of smaller firms, which typically do not offer “hub-and-spoke” service.

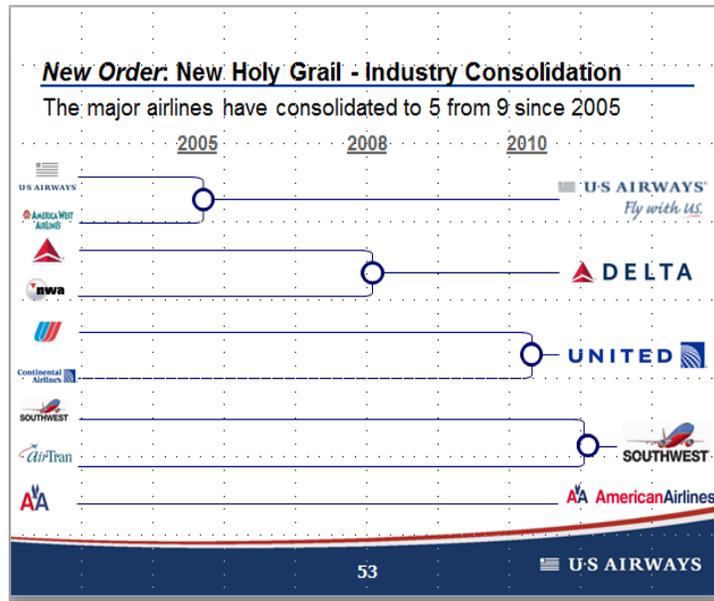
Response: US Airways admits that it is often described as a “legacy” airline.

US Airways admits that two other legacy airlines, United and Delta, have extensive national and international networks, connections to hundreds of destinations, established brand names, and strong frequent-flyer reward programs. US Airways admits that Southwest Airlines is the largest of all domestic airlines. US Airways admits that some non-legacy airlines do not offer hub and spoke service. US Airways denies the remaining allegations in this paragraph.

33. *Airlines compete in many ways. One is the price of a ticket. Airlines also compete based on: nonstop versus connecting flights; number of destinations served; convenient flight schedules; passenger comfort and seating policies; choices for classes of service; carry-on baggage policies; the degree of personal service at ticket counters and boarding areas; onboard meal and drink service; in-flight entertainment; and the quality and generosity of frequent flyer programs.*

Response: US Airways admits that airlines vigorously compete on these and many other bases.

34. *Since 2005, the U.S. airline industry has undergone significant consolidation. The consolidation “wave” started with the 2005 merger between US Airways and America West, creating today’s US Airways. In 2008, Delta and Northwest Airlines merged; in 2010, United and Continental merged; and in 2011, Southwest Airlines and AirTran merged. The chart below, in which one of US Airways’ executive vice presidents referred to industry consolidation as the “New Holy Grail,” demonstrates that since 2005 the number of major airlines has dropped from nine to five.*



Response: US Airways admits that—with the approval of the Department of Justice—US Airways and America West merged in 2005, Delta and Northwest Airlines merged in 2008, United and Continental merged in 2010, and Southwest Airlines and AirTran merged in 2011. US Airways respectfully refers the Court to the excerpted document for a complete and accurate description of its contents. US Airways denies the remaining allegations in this paragraph.

35. *Increasing consolidation among large airlines has hurt passengers. The major airlines have copied each other in raising fares, imposing new fees on travelers, reducing or eliminating service on a number of city pairs, and downgrading amenities. An August 2012 presentation from US Airways observes that consolidation has resulted in “Fewer and Larger Competitors.” The structural change to “fewer and larger competitors” has allowed “[t]he industry” to “reap the benefits.” Those benefits to the industry are touted by US Airways in the same presentation as including “capacity reductions” and new “ancillary revenues” like bag fees.*

Response: US Airways respectfully refers the Court to the quoted document for a complete and accurate description of its contents. US Airways denies the remaining allegations in this paragraph.

B. Many Relevant Markets Are Highly Concentrated and the Planned Merger Would Significantly Increase that Concentration

36. *In 2005, there were nine major airlines. If this merger were approved, there would be only four. The three remaining legacy airlines and Southwest would account for over 80% of the domestic scheduled passenger service market, with the new American becoming the biggest airline in the world.*

Response: US Airways admits that, if the merger were consummated, there would be three comparably sized legacy carriers in the United States and that, by some measures, the new American would be the largest, but Southwest, a non-legacy carrier, would remain the largest domestic carrier. US Airways denies the remaining allegations in this paragraph.

37. *Market concentration is one useful indicator of the level of competitive vigor in a market, and the likely competitive effects of a merger. The more concentrated a market, and the more a transaction would increase concentration in a market, the more likely it is that a transaction would result in a meaningful reduction in competition. Concentration in relevant markets is typically measured by the Herfindahl-Hirschman Index (“HHI”). Markets in which the HHI exceeds 2,500 points are considered highly concentrated. Post-merger increases in HHI of more than 200 points are considered to be significant increases in concentration.*

Response: US Airways admits that the Herfindahl-Hirschman Index (“HHI”) is used by Plaintiffs as a measure of market concentration. US Airways admits that the Horizontal Merger Guidelines issued by the Antitrust Division of the United States Department of Justice and the Federal Trade Commission on August 19, 2010, reference the HHI, but otherwise states that the Horizontal Merger Guidelines, which the Department of Justice itself refers to as only an outline of enforcement policy, speak for themselves. US Airways denies the remaining allegations in this paragraph.

38. *In more than 1,000 of the city pair markets in which American and US Airways currently compete head-to-head, the post-merger HHI would exceed 2,500 points and the merger would increase the HHI by more than 200 points. For example, on the Charlotte-Dallas city pair, the post-*

merger HHI will increase by 4,653 to 9,324 (out of 10,000). In these markets, US Airways and American annually serve more than 14 million passengers and collect more than \$6 billion in fares. The substantial increases in concentration in these highly concentrated markets demonstrate that in these relevant markets, the merger is presumed, as a matter of law, to be anticompetitive. The relevant markets described in this paragraph are listed in Appendix A.

Response: US Airways hereby incorporates its response to paragraph 37 as if fully set forth herein. US Airways admits that there is a limited number of city pairs that are served by both US Airways and American. The allegation that the city pairs in Appendix A are relevant markets and the allegations about concentrations and legal presumptions are conclusory and are legal conclusions to which no response is required. To the extent a response is required, US Airways denies the allegation. US Airways denies the remaining allegations in this paragraph.

39. *Other city pairs across the country would likely be affected by the loss of competition stemming from this planned merger. In some of these markets, US Airways and American compete head-to-head, often offering consumers discounted fares. If approved, this merger will likely end much of that discounting, significantly harming consumers in the process. Moreover, the loss of competition in these markets would increase the likelihood that the remaining airlines can coordinate to raise price, reduce output, and diminish the quality of their services. In these relevant markets, the merger is likely also to substantially lessen competition.*

Response: US Airways denies the allegations in this paragraph.

40. *In the market for slots at Reagan National, the merger would result in a highly concentrated market, with a post-merger HHI of 4,959. The merger would also significantly increase concentration by 1,493 points. As a result, the merger should be presumed, as a matter of law, to be anticompetitive.*

Response: US Airways hereby incorporates its response to paragraph 37 as if fully set forth herein. The allegation that slots at Reagan National are a relevant market is a legal conclusion to which no response is required. To the extent a response is required, US Airways denies the allegation. US Airways denies the remaining allegations in this paragraph.

C. This Merger Would Increase the Likelihood of Coordinated Behavior Among the Remaining Network Airlines Causing Higher Fares, Higher Fees, and More Limited Service

41. *The structure of the airline industry is already conducive to coordinated behavior: Few large players dominate the industry; each transaction is small; and most pricing is readily transparent.*

Response: US Airways denies the allegations in this paragraph.

42. *For example, the legacy airlines closely watch the pricing moves of their competitors. When one airline “leads” a price increase, other airlines frequently respond by following with price increases of their own. The initiating carrier will lead the price increase and then see if the other carriers will match the increase. If they do not, the initiating carrier will generally withdraw the increase shortly thereafter.*

Response: US Airways admits that, as in any competitive industry, the perceived pricing of competitors is one of the factors that an airline may take into account in setting its prices. US Airways denies the remaining allegations in this paragraph.

43. *The legacy airlines also use what they call “cross-market initiatives,” or “CMIs,” to deter aggressive discounting and prevent fare wars. A CMI occurs where two or more airlines compete against each other on multiple routes. If an airline offers discounted fares in one market, an affected competitor often responds with discounts in another market—a CMI—where the discounting airline prefers a higher fare. CMIs often cause an airline to withdraw fare discounts. For example, in the fall of 2009, US Airways lowered fares and relaxed restrictions on flights out of Detroit (a Delta stronghold) to Philadelphia. Delta responded by offering lower fares and relaxed restrictions from Boston to Washington (a US Airways stronghold). US Airways’ team lead for pricing observed Delta’s move and concluded “[w]e have more to lose in BOSWAS . . . I think we need to bail on the [Detroit-Philadelphia] changes.”*

Response: US Airways admits that airlines vigorously compete against each other in many ways, including the use of discounts in order to attract more passengers, and that one type of discount is sometimes referred to as a cross-market initiative. US Airways denies the

remaining allegations in this paragraph, and respectfully refers the Court to the quoted document for a full and accurate description of its contents.

44. *There is also past express coordinated behavior in the industry. For example, all airlines have complete, accurate, and real-time access to every detail of every airline's published fare structure on every route through the airline-owned Airline Tariff Publishing Company ("ATPCO"). US Airways' management has called ATPCO "a dedicated price-telegraph network for the industry." The airlines use ATPCO to monitor and analyze each other's fares and fare changes and implement strategies designed to coordinate pricing. Airlines have previously used ATPCO to engage in coordinated behavior. In 1992, the United States filed a lawsuit to stop several airlines, including both defendants, from using their ATPCO filings as a signaling device to facilitate agreements on fares. That lawsuit resulted in a consent decree, now expired.*

Response: US Airways admits that ATPCO publishes some airline fares. US Airways further admits that the United States filed a Complaint in 1992 against a number of airlines which eventually resulted in a consent decree, which has since expired. US Airways denies the remaining allegations in this paragraph.

45. *US Airways also has communicated directly with a competitor when it was upset by that competitor's efforts to compete more aggressively. In 2010, one of US Airways' larger rivals extended a "triple miles" promotion that set off a market share battle among legacy carriers. The rival airline was also expanding into new markets and was rumored to be returning planes to its fleet that had been mothballed during the recession. US Airways' CEO complained about these aggressive maneuvers, stating to his senior executives that such actions were "hurting [the rival airline's] profitability – and unfortunately everyone else's." US Airways' senior management debated over email about how best to get the rival airline's attention and bring it back in line with the rest of the industry. In that email thread, US Airways' CEO urged the other executives to "portray[] these guys as idiots to Wall Street and anyone else who'll listen." Ultimately, to make sure the message was received, US Airways' CEO forwarded the email chain—and its candid discussion about how aggressive competition would be bad for the industry—directly to the CEO of the rival airline. (The rival's CEO immediately responded that it was an inappropriate communication that he was referring to his general counsel.)*

Response: US Airways denies that it intended to complain to a rival airline about its competitive behavior. US Airways respectfully refers the Court to the quoted documents for a complete and accurate description of their contents. US Airways denies the remaining allegations in this paragraph.

46. *Coordination becomes easier as the number of major airlines dwindles and their business models converge. If not stopped, the merger would likely substantially enhance the ability of the industry to coordinate on fares, ancillary fees, and service reductions by creating, in the words of US Airways executives, a “Level Big 3” of network carriers, each with similar sizes, costs, and structures.*

Response: US Airways respectfully refers the Court to the quoted document for a complete and accurate description of its contents. US Airways denies the remaining allegations in this paragraph.

47. *Southwest, the only major, non-network airline, and other smaller carriers have networks and business models that differ significantly from the legacy airlines. Traditionally, Southwest and other smaller carriers have been less likely to participate in coordinated pricing or service reductions. For example, Southwest does not charge customers for a first checked bag or ticket change fees. Yet that has not deterred the legacy carriers from continuing, and even increasing, those fees. In November 2011, a senior US Airways executive explained to her boss the reason: “Our employees know full well that the real competition for us is [American], [Delta], and [United]. Yes we compete with Southwest and JetBlue, but the product is different and the customer base is also different.”*

Response: US Airways admits that Southwest is the largest domestic airline and that each airline has a different business model. US Airways further admits that each airline has many different policies regarding checked-bag fees, ticket-change fees, and other passenger charges. US Airways respectfully refers the Court to the quoted document for a complete and accurate description of its contents. US Airways denies the remaining allegations in this paragraph.

1. The Merger Would Likely Result in the Elimination of US Airways' Advantage Fares

48. *On routes where one legacy airline offers nonstop service, the other legacies “generally respect the pricing of the non-stop carrier,” as American has put it. Thus, if American offers nonstop service from Washington to Dallas at \$800 round-trip, United and Delta will, “[d]espite having a service disadvantage,” price their connecting fares at the level of American’s nonstop fares. The legacy carriers do this because if one airline, say Delta, were to undercut fares in markets where American offers nonstop service, American would likely do the same in Delta’s nonstop markets. To Delta, the cost of being undercut in its nonstop markets exceeds the benefit it would receive from winning additional passengers in American nonstop markets.*

Response: US Airways lacks knowledge and information on the motivations that drive other airlines’ pricing decisions, and, on that basis, denies the allegations in this paragraph.

49. *US Airways, alone among the legacy carriers, has a different cost-benefit analysis for pricing connecting routes. Although it too is a national network carrier, US Airways has hubs in cities that generate less revenue from passengers flying nonstop than the other legacy airlines’ hubs. Because US Airways’ hubs generate less revenue from passengers flying nonstop, US Airways must gain more revenue from connecting passengers. It gets that revenue by offering connecting service that is up to 40% cheaper than other airlines’ nonstop service. US Airways calls this program “Advantage Fares.”*

Response: US Airways admits that one of its many competitive practices is a program known as “Advantage Fares.” US Airways admits that the Advantage Fares program is used on routes where US Airways offers connecting service and a competitor offers nonstop service. US Airways denies the remaining allegations in this paragraph.

50. *Millions of consumers have benefitted. Advantage Fares offer consumers, especially those who purchase tickets at the last minute, meaningfully lower fares. The screenshot below from ITA Software, Airfare Matrix (“ITA”), taken on August 12, 2013, for travel departing on August 13 and*

returning August 14 from Miami to Cincinnati, shows the benefits of US Airways' Advantage Fare program to passengers.¹

	US Airways, Inc.	Multiple Airlines	American Airlines Inc.	United Airlines, Inc.	Delta Air Lines Inc.
All flights					
Nonstop	--	--	From \$740	--	--
1 stop	From \$471	From \$686	From \$751	From \$762	From \$762

American is the only airline on this route to offer nonstop service, charging \$740. Delta and United do not meaningfully compete. Both charge more for their connecting service than American charges for nonstop service. Thus, on this particular route, a passenger who chose Delta or United would pay more for an inferior product. In contrast, US Airways' fares today are significantly lower than American's fares, and offer consumers a real choice. Those consumers who are more price conscious receive the benefit of a substantially lower-fare option. In this case, a customer who purchased a US Airways one-stop ticket would save \$269 compared to American's nonstop service.

Response: US Airways admits that one of its many competitive practices is a program known as "Advantage Fares." US Airways cannot verify the ITA screenshot purportedly taken on August 12, 2013. US Airways denies the remaining allegations in this paragraph.

51. *The benefits from Advantage Fares extend to hundreds of other routes, including those where more than one carrier offers nonstop service. The screenshot below from ITA, taken on August 12, 2013, for travel departing on August 13 and returning August 14 from New York to Houston, demonstrates just how dramatic the savings can be:*

¹ "Multiple Airlines" refers to an itinerary where a passenger uses different airlines for their departing and returning flights.

	US Airways, Inc.	Jetblue Airways Corporation	AirTran Airways, Inc.	Multiple Airlines	United Airlines, Inc.	Delta Air Lines Inc.	American Airlines Inc.
All flights							
Nonstop	--	From \$907	--	--	From \$1,445	From \$1,457	From \$1,477
1 stop	From \$575	From \$1,618	From \$909	From \$1,006	From \$1,331	From \$1,467	From \$1,467

US Airways' connecting fare is \$870 cheaper than the other legacy carriers' nonstop flights, and beats JetBlue and AirTran's fares by more than \$300. Although Southwest does not participate in the standard online travel sites, a cross-check against the Southwest website demonstrates that US Airways also beats Southwest's \$887 nonstop fare by more than \$300.

Response: US Airways admits that one of its many competitive practices is a program known as "Advantage Fares." US Airways cannot verify the ITA screenshot purportedly taken on August 12, 2013. US Airways denies the remaining allegations in this paragraph.

52. *Other airlines have chosen to respond to Advantage Fares with their own low connecting fares in markets where US Airways has nonstop service. That is, the other legacy airlines undercut US Airways' nonstop fares the same way that US Airways undercuts their nonstop fares. The screenshot below from ITA, taken on August 12, 2013, for travel on August 13 and returning August 14 from Charlotte to Syracuse, shows how the other legacy carriers respond to Advantage Fares to the benefit of consumers:*

	Delta Air Lines Inc.	United Airlines, Inc.	Multiple Airlines	US Airways, Inc.	Jetblue Airways Corporation	American Airlines Inc.
All flights						
Nonstop	--	--	--	From \$685	--	--
1 stop	From \$375	From \$395	From \$458	From \$696	From \$691	From \$1,258

Here, US Airways is the only airline to offer nonstop service, charging \$685. Delta and United undercut that price by charging \$375 and \$395,

respectively, for connecting service. Once again, consumers benefit by having the option of far less expensive connecting service. A customer who buys a Delta one-stop flight saves \$310 over US Airways' nonstop service.

Response: US Airways cannot verify the ITA screenshot purportedly taken on August 12, 2013. US Airways lacks knowledge and information on the motivations that drive other airlines' pricing decisions, and, on that basis, denies the allegations in this paragraph.

53. *There are over 100 routes where other carriers offer nonstop service on which US Airways does not offer Advantage Fares. Consumers in these markets are not given the option of a low-cost connecting alternative and are forced to pay significantly more for service. For example, US Airways does not currently offer Advantage Fares on flights from Cincinnati to Pittsburgh. Without the option of a low connecting fare, consumers see significantly higher prices, as illustrated by a screenshot from ITA, taken on August 12, 2013, for travel on August 13 and returning August 14:*

	Delta Air Lines Inc.	Multiple Airlines	US Airways, Inc.	United Airlines, Inc.	American Airlines Inc.
All flights					
Nonstop	From \$892	--	--	--	--
1 stop	From \$1,298	From \$902	From \$911	From \$914	From \$1,363

Response: US Airways admits that there are routes on which the Advantage Fares program is not offered. US Airways cannot verify the ITA screenshot purportedly taken on August 12, 2013. US Airways lacks knowledge and information on the motivations that drive other airlines' pricing decisions, and, on that basis, denies the remaining allegations in this paragraph.

54. *Advantage Fares have proven highly disruptive to the industry's overall coordinated pricing dynamic. An American executive expressed her*

frustration in September 2011 with US Airways' Advantage Fares, noting that US Airways was "still way undercutting us [on flights from Boston and New York to Dallas] and getting significant share." One response American considered was to lower its fares on the same route. Another option was "to take up this battle w/them again," in an attempt to force US Airways to limit or abandon its strategy.

Response: US Airways lacks knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph, and on that basis denies them.

55. *US Airways' President acknowledged in September 2010 that its Advantage Fare strategy "would be different if we had a different route network" Currently, US Airways' network structure precludes Delta and United from preventing US Airways' aggressive "one-stop pricing." Because US Airways' hubs have relatively less nonstop traffic, the other legacy airlines cannot respond sufficiently to make Advantage Fares unprofitable. But by increasing the size and scope of US Airways' network, the merger makes it likely that US Airways will have to discontinue its Advantage Fares.*

Response: US Airways admits that the merger would increase the size and scope of the merged airline's network and enable the merged carrier to compete vigorously and effectively with its larger rivals. US Airways respectfully refers the Court to the quoted document for a complete and accurate description of its contents. US Airways lacks knowledge or information sufficient to form a belief as to the truth of the allegations concerning Delta's and United's current internal strategic decisions regarding pricing or how, if at all, those two larger airlines would change their respective pricing decisions post-merger, and, on that basis, denies the remaining allegations in this paragraph.

56. *American's executives agree. American believes that Advantage Fares will be eliminated because of the merger. Internal analysis at American in October 2012 concluded that "[t]he [Advantage Fares] program would have to be eliminated in a merger with American, as American's large non-stop markets would now be susceptible to reactionary pricing from Delta and United." Another American executive observed that same month: "The industry will force alignment to a single approach—one that*

aligns with the large legacy carriers as it is revenue maximizing.”

Response: US Airways lacks knowledge or information sufficient to form a belief as to the truth of the allegations concerning the beliefs of certain, unspecified American executives, and, on that basis, denies the allegations in this paragraph.

57. *US Airways believes that it currently gains “most of its advantage fare value from AA,” meaning that Advantage Fares provide a substantial value for US Airways on routes where American is the legacy airline offering nonstop service. Post-merger, continuing Advantage Fares would mean that US Airways was taking that value away from itself by undercutting its own nonstop prices. Plainly, this would make no sense. Thus, for US Airways post-merger, the benefits of Advantage Fares would go down, and its costs would go up.*

Response: US Airways admits that it uses the Advantage Fares program as well as many other competitive practices to compete with other airlines. US Airways respectfully refers the Court to the quoted document for a complete and accurate description of its contents. US Airways otherwise denies the allegations in this paragraph.

58. *By ending Advantage Fares, the merger would eliminate lower fares for millions of consumers. Last year, more than 2.5 million round-trip passengers—including more than 250,000 passengers from the greater Washington, D.C. area; another 250,000 passengers in the Dallas-Fort Worth area; half a million passengers in the greater New York City area; and 175,000 passengers from Detroit—bought an Advantage Fare ticket. Hundreds of thousands of other passengers flying nonstop on US Airways, particularly from their hubs in Phoenix, Charlotte, and Philadelphia, benefited from responsive fares offered by the legacy airlines.*

Response: US Airways admits that a number of passengers have purchased Advantage Fare tickets. US Airways denies the remaining allegations in this paragraph.

2. The Merger Would Likely Lead to Increased Industry-Wide “Capacity Discipline,” Resulting in Higher Fares and Less Service

59. *Legacy airlines have taken advantage of increasing consolidation to exercise “capacity discipline.” “Capacity discipline” has meant restraining growth or reducing established service. The planned merger would be a further step in that industry-wide effort. In theory, reducing unused capacity can be an efficient decision that allows a firm to reduce its costs, ultimately leading to lower consumer prices. In the airline industry, however, recent experience has shown that capacity discipline has resulted in fewer flights and higher fares.*

Response: US Airways admits that reducing unused capacity can be an efficient decision that allows airlines to reduce costs and to lower consumer prices. US Airways denies the remaining allegations in this paragraph.

60. *Each significant legacy airline merger in recent years has been followed by substantial reductions in service and capacity. These capacity reductions have not consisted simply of cancellation of empty planes or empty seats; rather, when airlines have cut capacity after a merger, the number of passengers they carry on the affected routes has also decreased.*

Response: US Airways lacks knowledge or information sufficient to form a belief as to the truth of the allegations concerning other airlines’ decisions to cut capacity, and, on that basis, denies the allegations in this paragraph.

61. *US Airways has recognized that it benefitted from this industry consolidation and the resulting capacity discipline. US Airways has long taken the position that the capacity cuts achieved through capacity discipline “enable” fare increases and that “pricing power” results from “reduced industry capacity.” US Airways’ CEO explained to investors in 2006 that there is an “inextricable link” between removing seats and raising fares.*

Response: US Airways responds that Plaintiffs’ selective quotation of unidentified written material or communications, offered without context, is misleading as framed, and refers

the Court to the quoted documents, once identified, for a complete and accurate description of their contents. US Airways otherwise denies the allegations in this paragraph.

62. *In 2005, America West—managed then by many of the same executives who currently manage US Airways—merged with US Airways. American West had hubs in Phoenix and Las Vegas while the former US Airways had hubs in Pittsburgh, Charlotte, and Philadelphia. Following the merger, the combined firm reduced capacity, including significant cuts in Pittsburgh and Las Vegas. In 2010, the Chief Financial Officer for US Airways explained:*

We believe in the hub system. I just think there's too many hubs. If you look across the country, you can probably pick a few that are smaller hubs and maybe duplicative to other hubs that airlines have that they could probably get out of. In our example, we merged with US Airways [and] . . . what we have done over time, which is unfortunate for the cities, but we couldn't hold a hub in Pittsburgh and we couldn't hold a hub in Las Vegas. So over time we have consolidated and condensed our operation back, which is really important, condensed it back to our major hubs.

A post-merger US Airways analysis confirmed that it succeeded in obtaining a "3% to 4% capacity reduction."

Response: US Airways admits that it merged with America West in 2005.

US Airways further admits that American West had hubs or large operations in Phoenix and Las Vegas and that US Airways had hubs in Pittsburgh, Charlotte, and Philadelphia. US Airways respectfully refers the Court to the quoted documents for a complete and accurate description of their contents. US Airways denies the remaining allegations in this paragraph.

63. *In 2006, on the heels of the America West/US Airways merger, the combined firm submitted an ultimately unsuccessful hostile bid for Delta Air Lines. US Airways' management had concluded that a merged US Airways/Delta could reduce the combined carrier's capacity by 10 percent, which would lead to higher revenues for the combined firm and for the industry. In 2007, following the rejection of the hostile bid, US Airways' CEO explained to investors how the deal would have increased industry profits:*

It's part of what we tried to impress upon people as we were going through our run at Delta, was that . . . it was good for US Airways [and] good for the entire industry. We're going to take out 4% of the industry capacity as we did that. Everyone's 2008 numbers would look a (expletive) of a lot better had that transaction happened . . .

Response: US Airways admits that it made an unsuccessful bid to acquire Delta in 2006. US Airways respectfully refers the Court to the entire conference call transcript from which Plaintiffs have selected only excerpts for a complete and accurate description of its contents. US Airways denies the remaining allegations in this paragraph.

64. *In 2008, Delta merged with Northwest Airlines. Despite promises to the contrary, the combined airline reduced capacity, including significant cuts at its former hubs in Cincinnati and Memphis. US Airways' CEO was "quite happy" to see the merger and advocated for further consolidation. He explained that an industry structure of "five different hub and spoke airlines with who knows how many hubs across the United States . . . results in all of us fighting for the same connecting passengers over numerous hubs." Left unsaid was that fewer airlines meant less competition and higher fares.*

Response: US Airways admits that Delta and Northwest Airlines merged in 2008, but lacks knowledge or information sufficient to form a belief as to the truth of the allegations concerning Delta's intentions with respect to its 2008 merger or its capacity reductions. US Airways respectfully refers the Court to the entire conference call transcript from which Plaintiffs have selected only excerpts for a complete and accurate description of its contents. US Airways denies the remaining allegations in this paragraph.

65. *In May 2010, United Airlines and Continental Airlines announced their planned merger. The announcement caused speculation about the future of each airline's hubs, including Continental's Cleveland hub. In Congressional testimony, an industry analyst stated that he did not believe the merger would cause reductions in Cleveland. On June 18, 2010, upon seeing the testimony, US Airways' CEO wrote an email to other US Airways executives stating, "[s]urely these guys [United/Continental]*

aren't really planning to keep Cleveland open. I'm hopeful they're just saying what they need to (including to [the analyst]) to get this approved." United and Continental closed their deal on October 1, 2010. The combined firm has reduced capacity at nearly all of its major hubs (including Cleveland) and at many other airports where the two airlines previously competed. Similarly, Southwest/AirTran has reduced service in a number of its focus cities and on many of AirTran's former routes following its 2011 merger.

Response: US Airways admits that United Airlines merged with Continental Airlines in 2010, and that Southwest merged with AirTran in 2011, with Department of Justice approval. US Airways lacks knowledge or information sufficient to form a belief as to the truth of the allegations concerning unspecified "speculation," the beliefs of an industry analyst, or the reasons that the combined United/ Continental or Southwest/Air Tran reduced capacity or service at certain of its hubs if such reductions occurred, and, on that basis, denies the allegations. US Airways respectfully refers the Court to the entire e-mail from which Plaintiffs have selected only excerpts for a complete and accurate description of its contents. US Airways denies the remaining allegations in this paragraph.

66. *The defendants are fully aware of these earlier mergers' effects. A 2012 American Airlines analysis concluded that "following a merger, carriers tend to remove capacity or grow more slowly than the rest of the industry." US Airways' management concluded that although industry consolidation has been a success, as its CEO stated publicly in 2010, the industry had yet to hit its "sweet spot," and additional consolidation was needed because the industry remained "overly fragmented."*

Response: US Airways denies knowledge or information sufficient to form a belief as to the truth of the allegations concerning American Airlines' analyses of earlier mergers and, on that basis, denies them. US Airways denies the remaining allegations in this paragraph.

67. *A merger with American would allow US Airways to hit the "sweet spot." For consumers, however, it would be anything but sweet. US Airways believes that merging with American "finishes industry evolution" by*

accomplishing US Airways' goal of "reduc[ing] capacity more efficiently." When first considering a combination with American, US Airways projected that the merged firm could reduce capacity by as much as 10 percent. Similarly, American expects that the merger will lead to capacity reductions that would negatively impact "communities," "people," "customers," and "suppliers." Higher fares would be right around the corner.

Response: US Airways responds that Plaintiffs' selective quotation of unidentified written material or communications, offered without context, is misleading as framed, and respectfully refers the Court to the quoted documents, once identified, for a complete and accurate description of their contents. US Airways denies the remaining allegations in this paragraph.

3. The Planned Merger Would Likely Block American's Standalone Expansion Plans, Thwarting Likely Capacity Increases

68. *American does not need this merger to thrive, let alone survive. Before the announcement of this merger, a key component of American's standalone plan for exiting bankruptcy revolved around substantial expansion, including increases in both domestic and international flights. Thus, in 2011, American placed the largest order for new aircraft in the industry's history.*

Response: US Airways admits that American's management at one time was considering a preliminary plan. US Airways admits that American made an aircraft order, but denies knowledge or information sufficient to form a belief as to the truth of the allegations concerning the reasons for the aircraft purchase. US Airways denies the remaining allegations in this paragraph.

69. *US Airways executives feared that American's standalone growth plan would disrupt the industry's capacity discipline "momentum." In a 2012 internal presentation, US Airways executives recognized that while "[i]ndustry mergers and capacity discipline expand margins," American's standalone "growth plan has potential to disrupt the new dynamic" and would "Reverse Industry Capacity Trends." Moreover, US Airways*

believed that if American implemented its growth plans, other airlines would “react to AMRs plans with their own enhanced growth plans destabilizing industry.” US Airways believed that American’s standalone capacity growth would “negatively impact” industry revenues and threaten industry pricing.

Response: US Airways responds that Plaintiffs’ selective quotation of unidentified written material or communications, offered without context, is misleading as framed, and respectfully refers the Court to the quoted documents, once identified, for a complete and accurate description of their contents. US Airways otherwise denies the allegations in this paragraph.

70. *US Airways thought that a merger with American was a “lower risk alternative” than letting American’s standalone plan come to fruition because US Airways management could maintain capacity discipline. American’s executives have observed that “the combined network would likely need to be rationalized,” especially given the merged carrier’s numerous hubs, and that it is “unlikely that [a combined US Airways/American] would pursue growth”*

Response: US Airways responds that Plaintiffs’ selective quotation of unidentified written material or communications, offered without context, is misleading as framed, and respectfully refers the Court to the quoted documents, once identified, for a complete and accurate description of their contents. US Airways otherwise denies the allegations in this paragraph.

4. The Merger Would Likely Result in Higher Fees

71. *Since 2008, the airline industry has increasingly charged consumers fees for services that were previously included in the price of a ticket. These so-called ancillary fees, including those for checked bags and flight changes, have become very profitable. In 2012 alone, airlines generated over \$6 billion in fees for checked bags and flight changes. Even a small increase in these fees would cost consumers millions.*

Response: US Airways admits that some airlines charge certain fees to defray the

costs associated with some of the ancillary services provided to those passengers who actually use these services instead of incorporating the cost of these services into the general-fare prices. US Airways lacks the knowledge and information sufficient to form a belief as to the truth of the other allegations as related to the industry as a whole, and, on that basis, denies the remaining allegations in this paragraph.

72. *Increased consolidation has likely aided the implementation of these fees. The levels of the ancillary fees charged by the legacy carriers have been largely set in lockstep. One airline acts as the “price leader,” with others following soon after. Using this process, as a US Airways strategic plan observed, the airlines can raise their fees without suffering “market share impacts.” For example, American announced that it would charge for a first checked bag on May 21, 2008. On June 12, 2008, both United and US Airways followed American’s lead. Similarly, over a period of just two weeks this spring, all four legacy airlines increased their ticket change fee for domestic travel from \$150 to \$200.*

Response: US Airways admits that checked bags is a service for which some airlines charge ancillary fees. US Airways denies knowledge or information sufficient to form a belief as to the truth of the allegations concerning the motivations that drive other airlines’ pricing decisions. US Airways responds that Plaintiffs’ selective quotation of unidentified written material or communications, offered without context, is misleading as framed, and respectfully refers the Court to the quoted document, once identified, for a complete and accurate description of its contents. US Airways otherwise denies the allegations in this paragraph.

73. *The legacy airlines recognize that the success of any individual attempt to impose a new fee or fee increase depends on whether the other legacies follow suit. When, in July 2009, American matched the other legacy carriers by raising its checked bag fee to \$20, but did not join the others in offering a \$5 web discount, US Airways was faced with the decision of whether to “match” American by either eliminating its own web discount, or raising its price to \$25, with a \$5 discount. US Airways’ CEO gave his view:*

I can't believe I'm saying this, but I think we should stand still on this for now. I recognize that increases the chances of everyone standing still . . . the [dollars] aren't compelling enough for us to stick our necks out first. I do think D[elta] or U[nited] won't let them have an advantage, so it'll get matched - I'm just not sure we should go first. If a couple weeks go by and no one's moved, we can always jump in.

Response: US Airways denies knowledge or information sufficient to form a belief as to the truth of the allegations concerning how other airlines determine how or when to impose or increase their fees. US Airways denies the remaining allegations in this paragraph, and respectfully refers the Court to the quoted document for a full and accurate description of its contents.

74. *Similarly, when US Airways was considering whether to raise its second checked bag fee to \$100 to match Delta's fee, a US Airways executive observed: "Wow - \$100 is a lot for a second bag. I would think there's big passenger gag reflex associated with that, but if we can get it, we should charge it. Do you think we should wait for [United] or [American] to move first, though?"*

Response: US Airways responds that Plaintiffs' selective quotation of unidentified written material or communications, offered without context, is misleading as framed, and respectfully refers the Court to the quoted document, once identified, for a complete and accurate description of its contents. US Airways otherwise denies the allegations in this paragraph.

75. *Conversely, in 2008, when US Airways began charging passengers for soft drinks, the other legacy airlines did not follow its lead, and US Airways backed off. US Airways' CEO explained: "With US Airways being the only network carrier to charge for drinks, we are at a disadvantage." Had US Airways not rescinded this fee, it would have lost passengers to the other legacy airlines.*

Response: US Airways admits that it briefly had a policy of charging passengers for soft drinks. US Airways respectfully refers the Court to the quoted document, once identified,

for a complete and accurate description of its contents. US Airways otherwise denies the allegations in this paragraph.

76. *At times, the airlines consider new fees or fee increases, but hold off on implementing them while they wait to see if other airlines will move first. For example, on April 18, United announced that it was increasing its ticket change fee from \$150 to \$200. American decided that “waiting for [Delta] and then moving to match if [Delta] comes along” would be its best strategy. Over the next two weeks, US Airways, Delta, and American each fell in line, leading a US Airways executive to observe on May 1: “A[merican] increased their change fees this morning. The network carriers now have the same \$200 domestic . . . change fees.”*

Response: US Airways admits that checked bags is a service for which some airlines charge fees. US Airways lacks sufficient information to admit or deny whether the allegations concerning American’s purported decision and the actions of other airlines are accurate, and, on that basis, denies them. US Airways further responds that Plaintiffs’ selective quotation of unidentified written material or communications, offered without context, is misleading as framed, and respectfully refers the Court to the quoted documents, once identified, for a complete and accurate description of their contents. US Airways otherwise denies the allegations in this paragraph.

77. *Post-merger, the new American would likely lead new fee increases. A December 2012 discussion between US Airways executives included the observation that after the merger, “even as the world’s largest airline we’d want to consider raising some of the baggage fees a few dollars in some of the leisure markets.”*

Response: US Airways responds that Plaintiffs’ selective quotation of an unidentified “discussion,” offered without context, is misleading as framed, and respectfully refers the Court to the quoted document, once identified, for a complete and accurate description of its contents. US Airways otherwise denies the allegations in this paragraph.

78. *New checked bag fees on flights from the United States to Europe are a likely target. Both US Airways and American have considered imposing a first checked bag fee on flights to Europe but have refrained from doing so. US Airways seriously considered leading such a price move but was concerned that other airlines would not match: “We would hope that [other airlines] would follow us right away . . . but there is no guarantee . . .” Ultimately, US Airways concluded it was “too small” to lead additional checked bag fees for flights to Europe. Post-merger, that would no longer be true. The merged firm would be the world’s largest airline, giving it sufficient size to lead industry fee and price increases across the board.*

Response: US Airways admits that it does, at times, change its pricing and/or fee structure to compete more efficiently and effectively and that it has, at times, considered certain international bag fees and other charges for ancillary services. US Airways lacks knowledge or information sufficient to form a belief as to the truth of allegations concerning American’s internal deliberations regarding fees, and, on that basis, denies the allegations. US Airways further responds that Plaintiffs’ selective quotation of unidentified written material or communications, offered without context, is misleading as framed, and respectfully refers the Court to the quoted documents, once identified, for a complete and accurate description of their contents. US Airways otherwise denies the allegations in this paragraph.

79. *Some fee increases are likely to result from US Airways raising American’s existing fees. Today, “US Airways generally charges higher bag fees than AA” for travel from the United States to international destinations. Post-merger, US Airways would likely raise American’s ancillary fees to US Airways’ higher fee levels as part of a “fee harmonization” process. US Airways’ own documents estimate that “fee harmonization” would generate an additional \$280 million in revenue annually—directly harming consumers by the same amount. A US Airways presentation from earlier this year analyzing the merger identified American’s lower bag fees as a “value lever” that US Airways “will likely manage differently with tangible financial upside.” The analysis concludes that “[i]ncreasing AA baggage fees to match US creates significant revenue impact.” US Airways also plans to institute its fees (\$40 on average) for the redemption of frequent flyer tickets on American’s existing frequent fliers, who currently are not charged for*

mileage redemption.

Response: US Airways responds that Plaintiffs' selective quotation of unidentified written material or communications, offered without context, is misleading as framed, and respectfully refers the Court to the quoted documents, once identified, for a complete and accurate description of their contents. US Airways otherwise denies the allegations in this paragraph.

80. *The merger would also likely reduce the quality and variety of ancillary services offered by the legacy airlines—a side effect of consolidation anticipated and embraced by US Airways' CEO. In a 2011 email exchange lamenting the need for US Airways to deploy wireless internet on all of its airplanes, a senior US Airways executive groused:*

[N]ext it will be more legroom. Then industry standard labor contracts. Then better wines. Then the ability to book on Facebook. Penultimately, television commercials. Then, finally, we will pay the NYSE an exorbitant fee to change our ticket symbol [from LCC].

US Airways' CEO responded: "Easy now. Consolidation will help stop much of the stupid stuff but inflight internet is not one of them."

Response: US Airways responds that Plaintiffs' selective quotation of unidentified written material, offered without context, is misleading as framed, and respectfully refers to the Court to the quoted documents, once identified, for a complete and accurate description of their contents. US Airways otherwise denies the allegations in this paragraph.

81. *If the planned merger is enjoined, both American and US Airways will have to compete against two larger legacy rivals, and against each other. The four legacy airlines will not look exactly the same. As the smallest of the legacy airlines, American and US Airways will have greater incentives to grow and compete aggressively through lower ancillary fees, new services, and lower fares.*

Response: US Airways admits that it and American currently compete and will

continue to compete post-merger against the two larger legacy airlines, Delta and United, as well as Southwest, the largest domestic carrier, and the other fast-growing low cost carriers, including Virgin America, JetBlue, Spirit, and Allegiant. US Airways admits that it and American will not compete against each other after they are merged into a single company, but responds that the merged company would be a more robust and effective competitor to other airlines, including United, Delta, Southwest, and JetBlue. US Airways denies the remaining allegations in this paragraph.

D. The Merger Would Eliminate Head-to-Head Competition in Hundreds of Relevant Markets and Entrench US Airways' Dominance at Reagan National Airport

82. *American and US Airways engage in head-to-head competition with nonstop service on 17 domestic routes representing about \$2 billion in annual industry-wide revenues. American and US Airways also compete directly on more than a thousand routes where one or both offer connecting service, representing billions of dollars in annual revenues. The merger's elimination of this head-to-head competition would create strong incentives for the merged airline to reduce capacity and raise fares where they previously competed.*

Response: US Airways admits that it and American overlap on a limited number of routes, nearly all connecting. US Airways denies the remaining allegations in this paragraph, including but not limited to the allegation that the merger would lead to reduced capacity or higher fares on overlap routes.

83. *The combined firm would control 69% of the slots at Reagan National Airport, almost six times more than its closest competitor. This would eliminate head-to-head competition at the airport between American and US Airways. It would also effectively foreclose entry or expansion by other airlines that might increase competition at Reagan National.*

Response: US Airways admits that the merged firm would have approximately 69 percent of the Reagan National slots. US Airways admits that it and American will not compete

against each other after they are combined into a single company, and responds that the merged company would be a more robust and effective competitor to other airlines, including United, Delta, Southwest, and JetBlue. US Airways denies the remaining allegations in this paragraph.

84. *The need for slots is a substantial barrier to entry at Reagan National. The FAA has occasionally provided a limited number of slots for new service. In almost all cases, however, a carrier wishing to begin or expand service at Reagan National must buy or lease slots from an airline that already owns them.*

Response: US Airways admits that slots are required to take off and land at Reagan National, and that airlines may acquire slots either through transactions with existing slot holders or by being assigned slots by the Federal Aviation Administration. US Airways denies the remaining allegations in this paragraph.

85. *This merger would thwart any prospect for future entry or expansion at Reagan National. US Airways, which already has 55% of the airport's slots, does not sell or lease them because any slot that goes to another airline will almost certainly be used to compete with US Airways. The merger would only increase US Airways' incentives to hoard its slots. Today, US Airways provides nonstop service to 71 airports from Reagan National, and it faces no nonstop competitors on 55 of those routes. After this merger, the number of US Airways routes with no nonstop competition would increase to 59, leaving, at best, only 21 routes at the entire airport with more than one nonstop competitor. Unsurprisingly, Reagan National is US Airways' second most-profitable airport.*

Response: US Airways admits that it holds a number of slots at Reagan National and that it provides nonstop service out of Reagan National to a number of cities. US Airways denies the remaining allegations in this paragraph.

86. *Potential entrants would likely not be able to turn to other airlines to obtain slots. When allocating their slots, airlines prioritize their most profitable routes, typically those where they have a frequent, significant pattern of service. If a carrier has a small portfolio of slots, it is likely to allocate almost all of its slots to its most profitable routes. If it has*

additional slots beyond what is needed to serve those routes, a carrier will then work its way down to other routes or sell or lease those slots to other airlines. Over the last several years, US Airways has purchased nearly all of the slots that might otherwise be available to interested buyers. Thus, before this planned merger, American was the only airline at Reagan National with the practical ability to sell or lease additional slots.

Response: US Airways lacks knowledge or information sufficient to form a belief as to the truth of the allegations concerning other airlines' strategies and motivations, and, on that basis, denies them. US Airways denies the remaining allegations in this paragraph.

87. *In March 2010, American and JetBlue entered into an arrangement in which JetBlue traded slots at New York's JFK International Airport to American in exchange for American trading slots at Reagan National to JetBlue. And until American reached agreement with US Airways to merge, it had been negotiating to sell those slots and ten other Reagan National slots to JetBlue.*

Response: US Airways admits that American and JetBlue exchanged a limited number of slots in 2010. US Airways further admits that it is aware that American and JetBlue discussed a possible transaction involving slots at Reagan National airport. US Airways denies the remaining allegations in this paragraph.

88. *JetBlue's entry on four routes, particularly Reagan National to Boston, has generated stiff price competition. Fares on the route have dropped dramatically. US Airways estimated that after JetBlue's entry, the last-minute fare for travel between Reagan National and Boston dropped by over \$700. The combined firm will have the right to terminate the JetBlue leases and thereby eliminate, or at least diminish, JetBlue as a competitor on some or all of these routes.*

Response: US Airways admits that JetBlue, like other airlines, provides robust price competition. US Airways further responds that Plaintiffs' reference to an unspecified estimate by US Airways, offered without context, is misleading as framed, and respectfully refers the Court to the quoted documents, once identified, for a complete and accurate description of their

contents. US Airways denies the remaining allegations in this paragraph.

89. *The merger would also eliminate the potential for future head-to-head competition between US Airways and American on flights at Reagan National. In 2011, US Airways planned to start service from Reagan National to Miami and St. Louis, which would directly compete with American's existing service. US Airways argued to the Department of Transportation that this new competition would "substantial[ly] benefit[]" consumers, and so asked DOT to approve the purchase of slots from Delta that would make the service possible. DOT ultimately approved that purchase. When it developed its plan to merge with American, however, US Airways abandoned its plans to enter those markets and deprived consumers of the "substantial benefits" it had promised.*

Response: US Airways admits that American offers service to Miami and St. Louis out of Reagan National. US Airways further admits that the quoted statement was made on behalf of US Airways in comments to the Federal Aviation Administration, and respectfully refers the Court to the quoted document for a complete and accurate description of its contents. US Airways admits that the Department of Transportation allowed US Airways and Delta to exchange certain slots in 2011. US Airways denies the remaining allegations in this paragraph.

90. *By acquiring American's slot portfolio, US Airways would eliminate existing and future head-to-head competition, and effectively block other airlines' competitive entry or expansion.*

Response: US Airways denies the allegations in this paragraph.

VI. ABSENCE OF COUNTERVAILING FACTORS

91. *New entry, or expansion by existing competitors, is unlikely to prevent or remedy the merger's likely anticompetitive effects. New entrants into a particular market face significant barriers to success, including difficulty in obtaining access to slots and gate facilities; the effects of corporate discount programs offered by dominant incumbents; loyalty to existing frequent flyer programs; an unknown brand; and the risk of aggressive responses to new entry by the dominant incumbent carrier. In addition, entry is highly unlikely on routes where the origin or destination airport is*

another airline's hub, because the new entrant would face substantial challenges attracting sufficient local passengers to support service.

Response: US Airways denies the allegations in this paragraph.

92. *United and Delta are unlikely to expand in the event of anticompetitive price increases or capacity reductions by the merged airline. Indeed, those carriers are likely to benefit from and participate in such conduct by coordinating with the merged firm.*

Response: US Airways denies the allegations in this paragraph.

93. *The remaining airlines in the United States, including Southwest and JetBlue, have networks and business models that are significantly different from the legacy airlines. In particular, most do not have hub-and-spoke networks. In many relevant markets, these airlines do not offer any service at all, and in other markets, many passengers view them as a less preferred alternative to the legacy carriers. Therefore, competition from Southwest, JetBlue, or other airlines would not be sufficient to prevent the anticompetitive consequences of the merger.*

Response: US Airways admits that each different airline uses a different business model. US Airways denies the remaining allegations in this paragraph.

94. *There are not sufficient acquisition-specific and cognizable efficiencies that would be passed through to U.S. consumers to rebut the presumption that competition and consumers would likely be harmed by this merger.*

Response: US Airways denies the allegations in this paragraph.

VII. VIOLATION ALLEGED

95. *The effect of the proposed merger, if approved, likely will be to lessen competition substantially, or tend to create a monopoly, in interstate trade and commerce in the relevant markets, in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18.*

Response: US Airways denies the allegations in this paragraph.

96. *Unless enjoined, the proposed merger likely would have the following effects in the relevant markets, among others:*

(a) actual and potential competition between US Airways and American Airlines would be eliminated;

(b) competition in general among network airlines would be lessened substantially;

(c) ticket prices and ancillary fees would be higher than they otherwise would;

(d) industry capacity would be lower than it otherwise would;

(e) service would be lessened; and

(f) the availability of slots at Reagan National would be significantly impaired.

Response: US Airways admits that it and American would no longer compete against each other post-merger. US Airways denies the remaining allegations in this paragraph.

VIII. REQUEST FOR RELIEF

97. *Plaintiffs request:*

(a) that US Airways' proposed merger with American Airlines be adjudged to violate Section 7 of the Clayton Act, 15 U.S.C. § 18;

(b) that Defendants be permanently enjoined from and restrained from carrying out the planned merger of US Airways and American or any other transaction that would combine the two companies;

(c) that Plaintiffs be awarded their costs of this action, including attorneys' fees to Plaintiff States; and

(d) that Plaintiffs be awarded such other relief as the Court may deem just and proper.

Response: US Airways denies that Plaintiffs are entitled to any of the relief requested, and requests that US Airways be awarded the costs incurred in defending this action, and any and all other relief as the Court may deem just and proper.

DEFENDANTS' AFFIRMATIVE DEFENSES

Defendants assert the following defenses, without assuming the burden of proof on such defenses that would otherwise rest with Plaintiffs:

1. The Amended Complaint fails to state a claim on which relief can be granted.
2. Granting the relief sought is contrary to the public interest.
3. The combination of the Defendants' complementary networks will bring new routes online, increase number and convenience of flights on existing routes, grow capacity, and benefit consumers. These consumer benefits, as well as the cost synergies and other efficiencies that will result from the merger, greatly outweigh any and all proffered anticompetitive effects.
4. US Airways reserves the right to assert any other defenses as they become known to US Airways.

Dated: September 10, 2013

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