In the Matter of the Arbitration Between:

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ASSOCIATION OF
PROFESSIONAL FLIGHT ATTENDANTS

AA/APFA Reopener

AND

AMERICAN AIRLINES INC.

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# DISSENT

The majority's decision is wrong and perpetuates a long record of misapprehension regarding the reality at American Airlines. Through the bankruptcy and voluntary restructuring process, US Airways and American Airlines flight attendants collectively invested over $6 billion in their respective carriers. The flight attendants sought, as would any rational investor, to turn their painful concessions into an investment. They negotiated a mechanism where they could realize an upside from their financial sacrifices.

The flight attendants protected their interests and deep concessions by negotiating a "market-based in the aggregate" standard in the parties' Negotiations Protocol Agreement (NPA). That contract, under which the present dispute was submitted to these arbitrators, is the source and limit of this panel's authority and power.

The majority of this Panel recognizes that the NPA language

> Sets the stage for a potential "reopener," triggered by implementation of the United JCBA, that requires the parties to analyze a carefully-defined market for purposes of adjusting American flight attendant pay levels. That much is undisputed. The parties also agree that Paragraph B.3 of the NPA denotes Delta and United as the relevant "market" for purposes of determining 'market-based in the aggregate.'

Unfortunately, the majority goes on to wrongly apply the operations of a "market." Only a misguided interpretation would use a 2014 market for a 2016 analysis, and ignore actual Delta flight attendant numbers, while illogically also acknowledging that the parties have agreed that

Delta and United make up the relevant market for purposes of determining the "market-based in the aggregate" standard. This is offensive reasoning—it is reminiscent of the double talk our flight attendants have been subjected to and are all too familiar with for years.

As evidenced by the negotiating history of the NPA, the Company attempted to make the market-based standard a snapshot in time but was not successful. The Union specifically rejected language proposed by the Company to limit the market to 2014 economic values. American Airlines ultimately accepted the Union's position and signed the final version of the NPA, which purposefully omitted language regarding the 2014 market value that the carrier had attempted to include. The majority opinion omits the true impact of this negotiating history from its analysis. This offends all notions of sound contract interpretation and underscores that lack of faith American Airlines flight attendants have in their employer and, frankly, in the legitimacy of these proceedings.

Instead of correctly applying the clear language of the NPA, the majority of the arbitration panel hamstrings its decision by wrongfully focusing on a computer model that was not even in existence at the time the NPA was executed. The majority admits that the NPA is the cornerstone agreement central to the resolution of this dispute and agrees "with APFA's observation that the controlling elements in this matter are the words of the NPA, not the deliberations of the Model makers." Yet, somehow, the majority's decision still relies on the non-binding model.

We find nothing in the contract that confers upon this panel the authority to interpret a computer model in lieu of the language of the NPA from which its jurisdiction arises. As stated in the majority opinion, "this Arbitration Board is charged with 'determin[ing] what changes, if any, should be made to American's JCBA under the 'market-based in the aggregate' standard." We

respectfully submit that the majority departs from that mandate and ignores the parties' contract language and the bargaining history that led up to it.

The majority tethered itself to only one option—it misapplied an after-the-fact computer program to this arbitration. This was a maneuver to avoid the NPA language and wrongly undermine this case by hiding behind a computer program and model. This approach is clearly misguided given that the computer analysts and economists had no independent authority to bind the parties. The majority undermines the workers' collective intelligence by setting up a convenient pretext that a computer model, again, **not even in existence when the NPA was executed**, controls this case. APFA correctly asserts, "the Model was not to supersede the NPA, but rather was construed to assist in computing the pro forma costs consistent with the NPA." Simply put, the parties did not agree to operationalize the model for this arbitration and the Company could not prove that the model superseded the language of the NPA.

One would rightfully assume that any agreement to deviate from the NPA language must be clearly expressed by the parties. Instead, the majority merely assumes, in a conclusory fashion, that the non-binding model deviates from and supersedes the NPA language. The panel's illogical approach is compounded when it irrationally concludes that an opposite showing is required to prove that the NPA language remains intact. The majority's baseless reliance on the model improperly forces upon APFA the futile task of proving a negative, namely, that there was never any discussion suggesting that the Delta placeholder would replace the language of the NPA. This is an incorrect shifting of the burden on to the victim which violates longstanding notions of industrial due process and arbitral precedence. This award perverted the required "market-based in the aggregate" analysis by cleverly and improperly creating a false burden of proof and persuasion.

The majority's rationale is peculiar given that the decision otherwise recognizes that those who came up with the model lacked authority to bind the parties. The majority correctly points out that the company's position assumes the model was a binding agreement. Deprived of the accuracy of that assumption, the Company's argument must fail. Indeed, the majority opinion states:

> In his testimony, the APFA economist expressed his belief that the 3% figure was intended as a mere "placeholder." There is no reason to question his own conclusion on that score, but we do not regard it as the product of any negotiations. For much the same reason, we reject the Company's suggestion that APFA economist somehow agreed, on behalf of the Association, to the methodology here espoused by the Company.

Nevertheless, the majority opinion relies on the model and arbitrarily chooses which party's interpretation of the model should prevail.

Respectfully, we note that the panel has consistently sided with the Company on every single issue throughout the interest arbitration and the instant case. The flight attendants cannot help but notice that while the bankruptcy professionals collect hefty fees, the outside experts submit their seven figure invoices, and the corporate leaders are richer than ever—the workers obtain less money and less justice, and are ridiculed in opening statements comparing "eating cake" to the need to provide for their families.

The majority opinion fuels the jaded notion that workers have regarding the arbitration process—or seemingly how it is stacked against the employees. Flight attendants have completely lost faith in the very unique dispute resolution mechanism that labor law favors. We acknowledge that these words are harsh, but the real-world realities are harsher. We agree with the majority that the parties "agreed to consider the impact of the Untied JCBA – on the market aggregate at the time that labor agreement appeared," again, that labor agreement appeared in September of 2016. Pursuant to the NPA, the flight attendant salary market in 2016 had to also reflect the raises received by Delta employees. We respectfully note that the majority's decision cannot be squared

with a proper market analysis. The award is irreconcilable with the language of the NPA and the negotiation history of that contract. This panel was charged with interpreting the NPA; the majority cannot substitute its judgment for that of the parties as expressed through the negotiations and execution of the NPA.

It was critically important for the Company to promote the 2014 JCBA as "Industry Leading" for the Flight Attendants and went as far as matching a Delta increase during the ratification process. The Company has squandered a unique opportunity here to reinforce to its Flight Attendants the respect and well-deserved position as the "Industry Leading" compensated Flight Attendant workforce. In this arbitration, American Airlines has now spent critical resources to put our workforce below the market. As the APFA economist testified, American Airlines Flight Attendants with the 1.63% increase will be significantly below "the market"

Board Member, Marcus Gluth, joined by Board Member, Alin Boswell

Dated: April 17, 2017