The ALPA Arbitration Board

In the Matter of the Seniority Integration of The Pilots of US Airways, Inc. and The Pilots of America West Airlines, Inc.	**OPINION AND AWARD**

The ALPA Arbitration Board
George Nicolau, Chairman
Captain Stephen Gillen, Pilot Neutral
Captain James P. Brucia, Pilot Neutral

APPEARANCES

For the US Airways Pilots:
Katz & Ranzman, P.C.
By: Daniel M. Katz, Esq.
Jason M. Whiteman. Esq.

For the America West Pilots:
Bredhoff & Kaiser, P.L.L.C.
By: Jeffrey R. Freund, Esq.
Roger Pollack, Esq.
Lisa Powell, Esq.

On May 19, 2005, US Airways and America West Airlines announced that they would merge, taking the name US Airways. Both pilot groups were represented by the Air Line Pilots Association, which has a Merger Policy governing the integration of pilot seniority lists. Pursuant to that Policy, each group chooses a Merger Committee, whose representatives are charged with exchanging employment data and seeking to determine a fair and equitable integration of their respective lists.

The Policy, in pertinent part, provides as follows:

> The merger representatives shall carefully weigh all the equities inherent in their merger situation. In joint session, the merger representatives should attempt to match equities to various methods of integration until a fair and equitable agreement is reached, keeping in mind the following goals, in no particular order:
>
> a. Preserve jobs.
>
> b. Avoid windfalls to either group at the expense of the other.
>
> c. Maintain or improve pre-merger pay and standard of living.
>
> d. Maintain or improve pre-merger pilot status.
>
> e. Minimize detrimental changes to career expectations.

If the Merger Representatives are unable to agree on an integrated list, the matter may be referred to Mediation-Arbitration or directly to arbitration if the Representatives choose that path. In this instance, despite a year of negotiating efforts, there was no agreement on a list. Subsequently, the Representatives choose the Undersigned as Board Chairman and opted for the Med-Arb process. Those mediation efforts, held over the course of five days in October 2006, were similarly unsuccessful. Thereafter, the Parties agreed on the arbitration ground rules, and, pursuant to the Policy, each chose a Pilot Neutral from ALPA's Pilot Neutral Master List as a nonvoting member of the Arbitration Board.

After receiving pre-hearing statements of position, the Arbitration Board held a hearing over eighteen days in Washington, D.C. in the months of December, 2006 and January and February, 2007, during which both Parties were afforded full opportunity to offer evidence and argument and to present, examine and cross-examine witnesses. A transcript, consisting of 3102 pages, was taken. There were 20 witnesses and 14 volumes of exhibits. Subsequent to the hearing, the Parties filed comprehensive post-hearing briefs, with the Record closed on March 23, 2007, the day of their receipt. Thereafter, the Board met in a number of executive sessions to weigh the arguments and reach its conclusions. In doing so and in the process of fashioning the Award, it called upon and received, with the express permission of the Parties, the assistance and comments of their technical experts, with no objection raised as to the fairness or regularity of the proceedings.

The Background

As in many other mergers, the airlines differ in size, with US Airways substantially larger than America West. The former, a product of previous mergers over the course of a number of years, is also much older, which consequently reflects a wide disparity in pilot dates of hire as between the two airlines. Additionally, US Airways has a substantial international presence in which planes not in America West's fleet are flown. However, in most categories, America West's pay scales are higher. Beyond this, at the time of the merger announcement, US Airways had a significant number of pilots on furlough while America West had none. Moreover, the financial future of US Airways was not comparable to or as bright as that of America West.

These factors, as could be predicted, led to great differences in the Parties' concepts of a fair and equitable merger. In basic outline, US Airways argued for a Date of Hire list, adjusted for Length of Service, subject to certain seven-year conditions and restrictions, a model that placed the most senior America West pilot far down the seniority list and merged a number of furloughed US Airways pilots above active pilots at America West. In contrast, America West, relying heavily on its view of the pre-merger financial picture at US Airways, urged a series of ratios that gave little weight to the longer service of pilots at US Air. Despite indications by the Board that both approaches created difficulties if the goal was a fair and equitable integration, those positions were not fundamentally changed.

Before discussing the aforesaid approaches in greater detail, some uncontroverted facts and then some recent history. US Airways is the product of a series of mergers stretching back to 1968. At the time of the US Air/America West merger, US Airways had a grand total of 5098 pilots on its seniority list, 1691 of which (33%) were on furlough.[1] Their dates of hire (DOH) ranged from 4/20/66 to 6/19/00, with the most senior furloughed pilot (Colello) having been hired in 1988. When furloughed in 2003, Colello (3303) had 16.4 years of service.[2]

In contrast to the US Airways genesis of 1968, America West did not begin service until 1983. As of the merger, it had 1894 pilots on its list. All, however, were active and less than 200 had spent time on furlough and then for relatively short periods during the early and mid-90s, at which point hiring resumed with 1131 additional pilots added to the list.[3] The most senior America West pilot was hired on 6/1/83, 17 years after the most senior pilot on the other airline, and America West's least senior pilot (Odell) was hired on 4/4/05, close to 5 years after the hiring date of US Airways' least senior furloughee and only a month before the merger. Another disparate factor was the difference in the age of both groups, leading US Airways to argue, with its higher

[1]The 1691 include 105 so-called CEL (Combined Eligibility List) pilots who never flew on the mainline, to be discussed below, and 212 other Mid-Atlantic Division (MDA) pilots. Though listed as active in a US Airways summary sheet, they are carried as furloughed on the US Airways Certified 5/1/05 List.

[2] The number 3303 is Colello's Pilot Position Number on the US Airways May 19, 2005 Certified Seniority List. His Seniority Number at that time was 3538.

[3] There were also some 165 America West pilots furloughed following 9/11/01, but those furloughs were somewhat short-lived. A very few were about 11 1/2 months, the bulk were much shorter.

average age and consequent attrition, that America West pilots would soon inherit the list, which the America West pilots countered with the argument that what they would inherit under the US Airways proposal would be First Officer positions, not Captaincies.

There were also differences in the financial condition of the two carriers. For a short time, America West had been in bankruptcy but emerged in 1994 as a low cost carrier (LCC) operating out of hubs in Phoenix and Las Vegas. US Airways had also declared bankruptcy, not once but twice. And it was still in bankruptcy at the time of the merger and was unprepared to present a reorganization plan for its emergence. Despite these differences, to be detailed later, it is clear from the evidence that the more financially able needed the other and that both have benefited financially from the acquisition.

The fleets also differed. As of May 19, 2005, US Airways operated 270 jets, including 9 A330s and 10 B767s. There were firm orders for 19 A320's and 10 A330-200s, but none had been delivered. As of January 1, 2007, however, the US Airways fleet was down to 226 aircraft; 9 A330s, 10 B767s, 34 B757s, 102 A320s, 69 B737s and 2 Embraer190s. Then, by July 1, 2007, 3 B757s had been retired and 3 Embraers were added, leaving the total number at 226. As of May 19, 2005, America West had 144 jet aircraft; 13 B757s, 39 B737s and 92 A320s, with firm orders for 19 A320s. As of January 1, 2007, the number of America West aircraft was down to 133; 12 B757s, 26 B737s and 94 A320s. As of July 1, 2007, with the elimination of 1 B737, the total had dropped to 132.

As of the merger date, there were also differences in staffing, differences that remain. As of January 1, 2007, the aircraft and staffing figures were:

US Airways			America West		
Equip.	**A/C**	**Staffing**	**Equip.**	**A/C**	**Staffing**
A330	**9**	**23.11**	**NA**	**NA**	**NA**
B767	**10**	**21.50**	**NA**	**NA**	**NA**
B757	**34**	**10.09**	**B757**	**12**	**14.75**
A320	**102**	**10.70**	**A320**	**94**	**12.32**
B737	**69**	**9.01**	**B737**	**27**	**12.07**
EMB	**2**	**19.50**			

In addition to changes in the number of aircraft since the merger date, there have also been changes in the number of personnel. At America West, the total number of pilots including those in non-flying jobs on January 1, 2007, is 1829, down from the merger date figure of 1894. In contrast, the total active US Airways pilots as of January 1, 2007, including those who have returned from furlough, is 3005.

The Proposals

As must be evident from the number of witnesses, the too-numerous to count exhibits, and the exhaustive briefs filed by counsel, both groups presented detailed testimony and evidence in support of their respective positions. I will not attempt to reprise each and every argument in the same detail in which it was advanced. To do so would only lengthen this Opinion beyond reason. I will do no more than summarize and then discuss the salient points. The Representatives can be assured, however, that this Board has thoroughly considered all of the testimony and exhibits, including the expert opinions and statistical analyses, that have been presented and have carefully weighed each in reaching its determination.

The US Airways Proposal

The US Airways initial proposal was grounded on a pilot's Date of Hire adjusted for Length of Service. That proposal placed the most senior America West pilot below some 900 US Airways pilots and integrated a number of furloughed US Airways pilots with active America West pilots. This was justified, according to the US Airways representatives, by the much greater length of service (LOS) of US Airways pilots; prior cases in which DOH or LOS was used as the primary means of integration irrespective of active or furloughed status; the claimed approximate equivalency of the two collective bargaining agreements, and, contrary to the assertion of the America West pilots, the absence of an alleged financial disparity between the pre-merger carriers. In this regard, the US Airways pilots argue that even if US Airways' financial condition was not as sturdy as that of America West, the evidence shows that America West's position was not particularly stable and that the merger strengthened both carriers. Beyond this, any ratio system would, in US Airways' words, "improperly produce unacceptable inequities and windfall gains for the America West pilots at the expense of the US Airways pilots" and create unfairness throughout the list.

The US Airways pilots also imposed a number of seven-year conditions and restrictions on its adjusted DOH list and a series of quotas and ratios designed to do the work of the list for that period of time, all of which, except for domicile protection for America West pilots, favored US Airways pilots on both replacement and new aircraft as well as existing aircraft. For example, the quotas reserve all A330, B767 and B757 international Captain and First Officer positions for US Airways pilots while allocating flying on new aircraft on a ratio based on the total number of pilots rather than active-to-active pilots.

In support of their proposal, the US Airways Representatives emphasize the benefits America West pilots will achieve based on the fact that in the coming years US Airways age-60 attrition is roughly four times that of America West. This "contribution" that the pilots of US Airways bring to the merger can only mean, as their analysis shows, greatly accelerated advancement for America West pilots, advancement more certain than projected pre-merger aircraft growth since firm orders, unlike age, can be renegotiated, cancelled or matched by aircraft returns. The power of this attrition is not diminished because some of it occurs, to the dismay of the America West pilots, in the first officer, non-flying or furloughed ranks. Furloughs, the US Airways pilots say, are not an issue because, at the present pace of recalls, all who wish to return will do so and be active pilots. As to those pilots who are now active, their retirements, regardless of their positions, create vacancies that must be filled. It is also pointless, in the US Airways' view, to suggest that consideration must be given to the possibility of a change in the retirement age to 65. That possibility is remote and, if it occurs, is well into the future. Besides, against the "magnitude of US attrition," any change in the rule, would be "insignificant." With respect to this point, US Airways also argues that attrition for reasons other than age, much of which is age-related, will also be proportionally greater in the US Airways ranks. It also asserts, in arguing that senior furloughed US Airways pilots should precede junior active America West pilots, that this would not have as much of an effect as America

West fears. This is so because analysis shows that some 37%-45% of furloughees, though invited to return, will not.

On this point, US Airways references a few prior cases in which furloughees were integrated with active pilots and insists that this must be done here in order to "recognize [US Airways] length of service and pre-merger promotional prospects arising from attrition."

As to the fleet, US Airways proposal is premised on the fleets as they existed on July 1, 2006. (The US Airway figures are as set forth in the above table; the America West total is 135, rather than 133, the latter representing a reduction of 2 B737s.) US Airways contends that the 19 extra aircraft America West supposes because they were on firm order is just that, a supposition, more accurately, a fiction. This is so, according to US Airways, because they would never have appeared on the property. The reason, as CEO Parker said in February 2006 and on other post-May 19, 2005 occasions, is that, without a merger, America West would have filed for bankruptcy, and cut aircraft and jobs rather than the reverse. If the Board considers those aircraft, it must similarly add the 29 aircraft US Airways had on firm order. But instead of relying on speculative ruminations about the future, a period of uncertainty for any airline in these times, it is better to concentrate on the actual aircraft on hand.

In support of its proposal, US Airways also argues that the Collective Bargaining Agreements (CBAs) are "economically equivalent

[when] viewed as a whole." While some rates are higher or lower in one contract or another, the issue, to quote counsel, is "a wash." In addition, the US Airways scope, successorship and labor protection language, a matter of great importance to pilots, is superior to that of America West. While some, but by no means all, US Airways pilots may gain economically when and if a combined CBA is signed, that will not come at the expense of those at America West; both sides will benefit. Furthermore, in prior cases where such differences in pay were larger than here, those differences had no real effect on the composition of the list. In any event, when one considers the profit sharing, stock options and other economic benefits promised to its pilots by US Airways in exchange for concessionary agreements, some of which benefits are now to be shared with America West, the picture of total compensation disparity that America West seeks to paint simply does not exist.

The US Airways pilots also argue that they made "substantial investments" in their carrier. Those "sweat equity" investments, in the form of pay cuts, the termination of the defined benefit pension plan and furloughs, need to be recognized and the fair way to do that is to adopt their adjusted DOH proposal.

Finally, the US Airways pilots assert, at considerable length (US Airways brief, pp. 66-88), that US Airways was not a failing carrier. Though its position was not robust, neither was the position of

America West. As US Airways was in bankruptcy, it was reaching financial arrangements that would allow it to recover, while America West, as CEO Parker admitted, was approaching bankruptcy and, without a merger, had no realistic way of avoiding it. Thus, both were in poor financial condition; neither saved the other, and both gained. Even if there were some differences, US Airways argues that applicable precedent gives little weight to such distinctions and that this should be the case here.[4]

Near the end of the proceeding there was some discussion of some elements of the US Airways proposal, but its nature never changed.

The America West Proposal

America West's initial proposal differed dramatically from that of US Airways. As previously indicated, its position, when first presented in detail, was a series of ratios accompanied with a two year condition and restriction reserving to US Airways pilots all Captain positions on the 9 A330 aircraft flying international routes as of May 19, 2005. The first proposed ratio was not Captain to Captain. Instead, America West added to its 855 Captains an additional 114 First Officers, who, America West claimed, expected captaincies based on the 19 A320s on firm order as of May 2005. That combined figure (969) was to be

[4] The financial condition arguments and the role those conditions properly play are discussed below.

integrated on a straight ratio basis with 1121 US Airways Captains, a number derived from staffing assumptions based on what were 221 US Airways aircraft as of February 2006. This ratio would be followed by an integration of the remaining America West First Officers (925) with 1051 US Airways First Officers, also on a straight ratio basis. After the reinsertion of those on extended medical leaves and those in non-flying positions, this would put 2431 US Airways pilots on the bottom of the list, 959 of whom were active pilots as of May 19, 2005 with the remaining 1472 furloughees.

Like that of US Airways, America West's position was not substantially modified during the proceedings. It conceded that the term of its proposed fence might be lengthened, but it continued to insist that it apply only to Captains sufficient to staff 9 A330s, saying that B767 international flying was highly seasonal; that B767s and B757s are both Group I aircraft for pilot pay purposes, and that bidding experience shows that B767 flying is not highly prized. It also insisted that any list must ratio active pilots with active pilots; that, based on what was scheduled to happen at America West absent the merger and because its pilots have been denied promotional opportunities as a result of the merger while US Airway pilots who were on the verge of losing their jobs have since been upgraded, a substantial number of America West First Officers, set above at 114, should be treated as Captains for ratio purposes, and, above all, that there be a substantial number of active US Airways pilots placed below the least senior America West pilot (Odell) so that they are exposed to the risk of furlough before he is faced with that prospect. The reason this must be done, according to the America West representatives, is that US Airways pilots have been far more exposed to the risk of furlough over the course of their careers; that prospects of recovery at US Airways were slim, while Odell, absent the merger, would have been increasingly protected from furlough through the arrival of additional aircraft on firm order combined with normal attrition at the carrier.

America West's argument precedes from the premise that present ALPA Merger Policy does not speak of date of hire or length of service or age. Though the policy was changed in 1952 to specifically list length of service as "the governing factor" in list construction, with consideration to be given to other factors, such as loss of earnings, employment or advancement opportunities, all references to date of hire or length of service were eliminated in 1991 leaving the Policy as it is today. From this history, America West argues that date of hire is no longer an "equity in itself" and that the sole focus must be on maintaining pilot "pre-merger expectations regarding jobs, status, pay and future career path."

From this premise, America West contends that its pilots' career expectations were dramatically better that those at US Airways. In the

America West view, US Airways was a failed carrier at the time of the merger, an airline nearing liquidation. Its history shows a steady decline in its fortunes, with no hiring at all between 1990 and 1998, an unsuccessful Metrojet "airline within an airline" venture, an inability because of government disapproval to merge with a then stronger United Airlines, continuing furloughs after September 11, 2001, a concessionary Restructuring Agreement in July 2002, an August 2002 bankruptcy filing, a failed reorganization following its emergence from bankruptcy because of its inability to resolve its structural problems, and a consequent second bankruptcy in September 2004, after which its pilots had to make additional concessions of both pay and protection if the carrier was to have a chance to survive. When all this is coupled with the fact that as of the time of the merger there had not even been the presentation of a stand-alone reorganization plan to its creditors' committee it is plain that the career expectations of the US Airways pilots were bleak indeed, with no prospect of growth or significant advancement even through attrition, and the clear possibility of no jobs at all.

The America West pilots maintain that the picture at their airline was not at all similar; that the airline was strong and growing with a "solid business model and LCC structure." In addition to the evidence of its financial performance, the fact is that 360 pilots, close to 20% of the work force, had been hired between 11/4/02 and the date of the merger. This, in contrast to the picture at US Airways, where there were no new hires after 4/7/00 and, as of the date of merger, no returning furloughees. In addition, at the time of the merger, America West had already taken delivery of 3 A320's and had firm orders for 19 others, all of which were to be delivered by January 2007, and which, along with attrition, would have produced 300 new America West pilots.

The America West Representatives concede that the scheduled repayments of the Company's ATSB loan created potential liquidity problems for the airline. They assert, however, that the evidence of Company performance and the availability of financing as well as the distinct possibility of principal payment postponement minimized such concerns to the point where they do not merit serious consideration. However one views the financial position of the carriers, and even if the position of US Airways is viewed in the most of favorable lights, the fact is that the career expectations of the America West pilots on May 19, 2005 were far superior to those of the US Airways pilots.

America West also asserts that consideration must be given to what has happened since the merger and the negative effect those events have had on America West pilots while benefiting those who came from US Airways. Though US Airways was to return 25 aircraft as of the merger date, only 15 were removed from its fleet, the remaining

10 taken from America West. US Airways also expanded its international flying, acquired three more B757s and was taking on more Embraers. These factors, together with a relaxation of concessionary work rules, have brought the first US Airways recalls since 2001, with 300 having returned and more to follow. When a combined contract, now in negotiation, is finally achieved, those returnees, as well as those presently flying A320s and B737s, the bulk of the combined fleet, will receive substantial wage increases even if that contract does no more than continue the present America West rates for those aircraft. Without the merger, their lower rates would have remained until at least the December 31, 2009 amendable date of the US Airways Agreement.

In contrast to these benefits, the America West pilots contend that their careers, on the rise before the merger, have stood still. Pilot hiring has stopped, with no new pilots hired in the last two years. Beyond this, Odell, who expected, based on what went before, a reasonable career progression, is still on the bottom of America West's list. while Colello, the junior active US Airways pilot at the time of the merger, now has 300 working pilots behind him.

In America West's view, all of these factors, when examined objectively, fully justify its proposal.

Discussion and Analysis

During the course of this proceeding, both sides referred to my words in the Federal Express/Flying Tiger merger following my receipt of the extensive exhibits, citations to other cases and final proposals from those parties. There I said and, based on subsequent experience, say once again:

> There are four basic lessons to be learned from those submissions; that each case turns on its own facts; that the objective it to make the integration fair and equitable; that the proposals advanced by those in contest rarely meet that standard; and that the end result, no matter how crafted, never commands universal acceptance.

It is understandable that universal acceptance is never achieved. The merged list cannot be a copy of any list that previously attained; other names now appear. Moreover, no matter the effort in minimizing unfavorable changes to career expectations, merged lists do change career expectations; it is in their nature that they do. It is equally understandable that merger committees find it difficult to reach agreement, choosing instead to turn to Boards such as this. Unlike advocates who go on to represent others in proceedings of a different nature, tomorrow and for many days thereafter merger committee members continue to fly side-by-side with those they represent.

Before turning to the building blocks of our decision and the reasons for those choices, a preliminary matter needs to be addressed. That is the question of the CEL pilots. Some 105 such pilots (4993-5098) appear on the US Airways May 19, 2005 Certified Seniority List. However, none had flown for the mainline; all were pilots at Mid-Atlantic Airways, a regional carrier designed to be a US Airways wholly-owned subsidiary, but actually flown at all times during its short existence on the mainline's operating certificate as a division of US Airways.

It is the position of the America West pilots that these pilots do not belong on the list; that they have no right to be there because there were no flow-up provisions to which they can lay claim; that they were only put on the list in an effort to "beef up" the US Airways list, and that they should therefore be removed. The US Airways pilots disagree. Though they concede that there was some question of their status early on, they assert that the submitted evidence makes it clear that the CEL pilots belong on the list where they are.

The Board has carefully studied the respective presentations. While the history is cloudy at best, in our considered opinion there is insufficient evidence to justify the America West request to remove them from the list. However, we agree with the America West alternative proposal; that they be treated in the same fashion as

Constructive Notice pilots. Because there have been no new hires since the merger and inasmuch as we have decided on particular integration methodologies regarding active pilots, their placement at the bottom of the integrated list, a position they know occupy on the US Airways list, will not adversely affect America West pilots.

As to the construction of the integrated list, we have made certain assumptions. The first is that the list should be constructed based on a continuation of the Age-60 Rule. The Board is aware that the FAA has undertaken a formal study of the desirability of increasing the retirement age to 65; that legislation to that effect is being considered; that the US Airways MEC has asked the Company to support individual waivers of the rule, and that the Company has indicated its willingness to do so. However, previous efforts to modify the rule have not succeeded and the likelihood of near-term modification is by no means assured. Moreover, the Company's assent is contingent on conditions the FAA might impose, such as requiring a below age-60 pilot to accompany an above age-60 pilot, and ALPA's agreement on the manner in which to treat inevitable seniority conflicts in the event a split cockpit is ultimately adopted. In the Board's view, all of this uncertainty requires caution, rather than risk. As a consequence, the list is not constructed on the assumption that pilots will be able to fly until age 65. We may, of course, be wrong on that score, in which event the attrition the US Airways pilots speak of as America West's inheritance will be substantially slower in coming, further justifying our placement of America West pilots on the combined list.

Though we have not constructed the list based on Age 65 retirement, closing statements and ongoing events have persuaded us that we should consider the possibility of that change occurring. With that in mind, we have set forth a change in the condition and restriction we intend to impose on bidding for the A330 and B767 positions, finding it prudent to incorporate the likelihood of such a change into our view of the post-integration world. The FAA's announcement of a Notice for Proposed Rule Making (NPRM), the pending legislation in both houses of Congress, and the drive to harmonize with the ICAO age standards have all created a momentum for change that has not been present to date. In so far as we have imposed conditions & restrictions that affect a pilot's ability to bid into a particular type of equipment and status for a set period of time, we recognize that the measure of attrition is a component in determining the length of such a restriction. Were the Age 60 Rule to change within the period such conditions and restrictions are in place, such a change would have a negative impact on the attrition component which we relied on in our original thinking. If the FAA Age 60 Rule were to change within the period of the restriction on pilots bidding into the existing international wide-body aircraft (A330 and B767), any restrictions with respect to the bidding for positions in those aircraft would be made null and void on the date of implementation of the change. US Airways pilots entitled to bid those positions have already been protected for two years. A further fence of four years from the date of this Award is based on attrition projected on Age 60 retirement. If the age limit were raised to 65 and becomes effective prior to the expiration of the condition and restriction in 2011, there seems little fairness in its continuance.

In the exercise of caution, we have also constructed the list on a no-growth basis, using the fleet as it existed on January 1, 2007, and giving no weight to pre-merger orders except to the extent that any such additions were in place as of January 1, 2007. Our judgment as to the fleet is based, not on asserted expectations as both sides urged, but on reality. Particularly in this day and age, with airline instability a way of life, it makes little sense to rely on pre-merger projections. This is especially the case here when the financial picture of both airlines was less than optimum. A January 1, 2007 list also is a closer reflection of reality on the merged airline.

As to staffing, we have, for a variety of reasons, used the jobs each group brought to the merger as amended by the shifts that occurred as of January 1, 2007.

While the Board has repeatedly expressed misgivings as to the fairness of each group's full proposal, in our judgment certain aspects of both meet the fair and equitable standard. That standard, it must be recalled, does not rank its stated criteria in any particular order. Rather they are goals to be kept in mind as equities are matched to various integration methods until a fair and equitable result is reached.

Of considerable importance is the question of career expectations. As previously stated, America West argues that the career expectations of the US Airways pilots were nil; that if the airline was not a failing carrier saved from certain liquidation by its purchase by America West, it was so close as to make little difference. On the other hand, America West, in the view of its pilots, was robust and on its way to sustained achievement. The US Airways pilots argue that neither description fits the facts. In their view, US Airways, though in bankruptcy for the second time, had lowered its costs and secured additional investment capital ensuring its survival and prospects of emerging from bankruptcy. Beyond this, as shown by repeated post-merger statements by America West's CEO and by expert analysis, that airline was also in poor financial condition. Thus, both airlines needed each other and both have benefited from the merger. The US Airways pilots assert that this, as well as cases it cites as precedent, argue for the proposition that the financial picture of the two airlines was relatively the same and, as such, should not even be considered.

Our view is that neither picture is persuasive. The US Airways reliance on post-merger statements by America West's CEO, clearly made to assuage growing concerns of America West pilots who had seen a post-merger end to hiring, an increasing return of long-furloughed US Airways pilots and a flattening in their own advancement, is misplaced. Equally so is America West's insistence that US Airways was about to disappear. Yet, it cannot be disputed that there were differences in the financial condition of both carriers and that US Airways was the weaker. This necessarily means that career expectations differed and that US Airways pilots had more to gain from the merger than their new colleagues.

Gains also came in other ways. Though the US Airway pilots argue that the collective bargaining agreements are comparable, that is not the case. In pay, the America West Contract is better for comparable aircraft except for the B757. Though A330 and B767 pay did not exist at America West, those 19 aircraft are only 5% of the combined fleet and the B757s only add another 13%. The bulk of the fleet (81%) is comprised of the 292 A320s and B737s, where America West's higher rates, even without increases that a combined contract may bring, will result in a collective benefit to US Airways pilots of

$23 million a year. There are other benefits that will accrue to US Airways pilots in the form of increased vacations, higher caps and pay guarantees as well as salaries, that would have been unachievable until, at the earliest, the December 31, 2009 amendable date of the US Airways/AL{PA Agreement. The same can be said for the post-merger relaxation of onerous work rules that US Airways pilots had agreed to in concessionary negotiations sought by the Company as a means of survival.

This, however, does not justify ratios beginning at the top of the list as America West proposes, for there are compensating factors such a methodology ignores. Though Date of Hire, whether adjusted for Length of Service or not, is no longer listed as a determinant or even stated as a integration criterion, there are occasions when consideration should be given to that factor. Here, US Airways is far older than America West, a fact reflected in the average age difference between the two groups. Consideration must also be given to the different career expectations based on equipment flown. US Airways pilots fly wide-body international aircraft, while America West pilots do not. Those elements weigh in US Airways favor both in placement and interim restriction and thus argue against the America West proposal, as do the benefits US Airways pilots will achieve through their agreed upon receipt of stock options, increasing sums not factored into simple hourly rate comparisons. Equally worthy of consideration as an offsetting benefit to America West pilots is the US Airways attrition, whether swift or slower, that will accrue to the America West pilots in a measure that did not previously exist.

Though America West pilots can therefore expect some gain from factors US Airways brought to the merger, this by no means justifies the proposal on which US Airways insists. As previously stated, giving sole consideration to date of hire and length of service would put the senior America West pilot some 900 to 1100 numbers down the combined list. US Airways proposed restrictions, both as to aircraft and length, would unduly deprive too many senior America West pilots of upgrade opportunities for too long a time, and would also put a number of active America West pilots below long-furloughed US Airways pilots who, until the merger, had little prospect of an early return.

In our view, these competing considerations result in a list that has the effect of reserving a certain number of positions in present wide-body international aircraft to US Airways pilots, thus giving consideration to both their longer service and the fact that America West pilots did not have an immediate expectation of such flying. However, the placement of a number of US Airways pilots on the top of the list as a means of accomplishing that is not the 900 to 1100 they seek, but 423, which is equal to number of Captains and First Officers flying the A330 and B767 International. This would give those senior

US Airways pilots the opportunity to bid into such vacant positions if they so chose for an additional period of four years, making a total of six years since the merger unless, as we said before, Age 65 legislation or rule-making were to change the retirement age.

On balance, it is our judgment that this allocation is equitable and, since such protection has already existed for more than two years, that it is for a sufficient length so as to then allow the list to operate independently for such aircraft. Except for this restriction, all other present flying, as defined in the Conditions and Restrictions that follow, is to operate by the list. As set forth in those Conditions and Restrictions, new flying, as defined therein is to be equitably shared in the formula set forth.

A majority of the Board has also decided that the totality of pre-merger career expectations weighs in favor of active pilots as of the date of the announcement. When one considers the number and length of furloughs on the US Airways side and the dim prospects the airline faced and compares it to the lack of furloughs on the America West side, which furloughs ceased to exist long before the merger took place, merging active pilots with furloughees, despite the length of service of some of the latter, is not at all fair or equitable under any of the stated criteria.

The America West pilots insist that the Board should go further than the merger of active pilots with active pilots; that instead of placing America West's most junior pilot (Odell) just above Colello, the senior pre-merger US Airways' furloughee, that Odell should be placed some 750 numbers above Colello. Otherwise, Odell, who was not at risk of furlough because of the stability of America West as of May 19, 2005, would be placed at risk of furlough before some 750 active US Airways pilots, who, because of their airline's continuing instability, were at constant risk of that fate.

That approach simply reaches too far. Today, Colello, who was US Airways most senior furloughee on May 19, 2005, is now a B757 First Officer with some 300 active US Airways pilots beneath him. If Odell is placed on the list above Colello next to and just below Monda, who was the junior US Airways active pilot, that will insure that active pilots are integrated with active pilots and also give Odell a measure of protection the America West pilots justifiably seek. In making this judgment, we agree with America West's argument that in this case active pilots should be merged with active pilots, but do not agree that the equities are so persuasive as to disadvantage US Airways pilots such as Monda and those above him, who, like Odell, brought jobs to the merger. Hence, our adherence to the merger date as the point at which the pairing should be made. We also understand that our choices will place pilots with disparate lengths of service next to each other. That, however, is a result of the balancing of the equities inherent in ALPA merger policy, a balance that neither a top to bottom active pilot ratio as advanced by America West or a top to bottom length of service integration as proposed by US Airways achieves. We further understand that those pilots on furlough are not there through choice or fault and that, as a result of their placement, they will not advance as quickly as they would like. But when one looks at the length of many of those furloughs as well as the end of new hirings occasioned by the continuing difficulties US Airways had in resolving its structural problems and finding its way out of bankruptcy, their expectations of advancement could not have been intense, the opposite had to be true.

As evidenced by Captain Brucia's Concurring and Dissenting Opinion, attached hereto, he disagrees with this aspect of the Award. His view is that at a minimum consideration should be given to those US Airways pilots already recalled; that treatment of them as active pilots consistent with their present status would serve to recognize the substantial time they had already invested in their airline. In the majority's view, this gives weight to post-merger expectations rather than pre-merger expectations, contrary to what ALPA policy foresees. In so doing it fails to recognize the prospects the US Airways pilots faced before the merger; including the reduction of the active pilot work force from 5500 to close to 3000, the sharp reduction in the size of the fleet since the 1990's; the absence of recalls though many active pilots were retiring; the successive bankruptcies and the inability to successfully emerge from that condition. When all that is considered, in the majority's view, it is far more appropriate to combine those who brought jobs to the merger, particularly when the protection of career expectations is of such overriding concern. This is not to say, of course, that this merger is designed or should be thought of as a model for others that may follow. As stated at the beginning, each case does turn on its own facts. As a consequence, different facts may produce different results. Here, a majority is of the opinion that the facts of this case justify our conclusion.

What remains is the balance of the list. Here, we have decided on ratios by category and status based on the aircraft in the fleets as of January 1, 2007.

The first step in creating the Integrated List is to temporarily extract from the January 1, 2007 lists those non-flying pilots and those on leaves of absence (MGT, LOA and MED). The Integrated List will begin with a top-tier consisting of the first 423 US Airways pilots on the extracted US Airways list. Once the 423 senior active flying pilots are properly placed on the top of the list and Monda and Odell are placed immediately before Colello, the portion of the list between

424 and Monda/Odell is to be integrated as follows, an America West pilot first and ties broken by crediting the older of the two pilots:

A ratio based on 167 and 90 B757 Captains
A ratio based on 873 and 767 A320/B737 Captains
A ratio based on 176 and 87 B757 First Officers
A ratio based on 840 and 718 A320/B737 First Officers.

Following this, all pilots extracted from the lists are to be reinserted into the Integrated List immediately ahead of the next most junior pilot from the extracted pilot's List of January 1, 2007.[5]

Expect for the position noted by Captain Brucia on one point, our view, taking into account the attrition rate of both groups and all the factors that must be considered and balanced in any merger, leads us to the conclusion, despite that difference, as well as others that have since been resolved, that the List achieves, as well as any list can, the objectives of ALPA Merger Policy in this case.

In recognition of their efforts it was not been an easy task, I could not conclude this Opinion without thanking Captain Brucia and Captain Gillen for their immeasurable guidance and assistance.

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[5] Reinserting the pilots extracted from the top of the list brings the total number to 517 rather than 423. However, more than 70% of that difference is made up of pilots on long-term medical leave and of those most have been on such leaves for more than two years.

The Undersigned, acting as the Chairman of the Board of Arbitration pursuant to ALPA Merger Policy, and with the Board having duly heard and considered the proofs and allegations of the Parties, therefore renders the following

AWARD

A. The Integrated US Airways Pilot Seniority List shall be the List attached to this Award as Exhibit A.

B. **Conditions and Restrictions**

1. Neither the implementation of the Integrated System Seniority List nor the implementation or expiration of any of the accompanying Conditions or Restrictions shall cause, in and of itself, the displacement of any pilot from his or her current position.

2. No pilot on furlough on the effective date of the Integrated Seniority List may bump/displace an active pilot as a result, in and of itself, of the implementation of the Integrated Seniority List. Once recalled from furlough, the pilot may exercise his or her seniority without restrictions, except as otherwise provided in the merged Collective Bargaining Agreement (e.g., training restrictions) or in these Conditions and Restrictions.

3. Any pilot who, at the time of implementation of the Integrated Seniority List, is in the process of completing or who has completed initial qualification for a new category (e.g., A320 Captain or B757 First Officer) will be assigned to the position for which he or she has been trained, regardless of that pilot's relative standing on the List.

4. The first 161 positions as Captain and the first 262 positions as First Officers on the A330 and B767, or replacement aircraft as herein defined, shall be reserved for the top tier pre-merger US Airways pilots for a period of four years from the date of this Award.

However, if the Age 60 limit is changed to Age 65 during the existence of this condition and restriction, said condition and restriction shall cease to exist upon the effective date of the age limit change. As long as the condition and restriction does exist positions in excess of the aforesaid quota as well as positions within the quota if there are insufficient bidders for said vacancies from the US Airways top tier group shall be allocated pursuant to the Seniority List as shall positions within this quota upon the expiration of this restriction.

5. A330, B767 or similar aircraft that replace the existing A330 and B767 aircraft set forth in Condition 4 that no longer remain in the fleet are "replacement" aircraft within the meaning of Condition 4. All other aircraft, of whatever type, are "new" aircraft, positions on which are to be allocated to the pre-merger US Airways and America West pilot groups, respectively, 2:1 on wide-bodies and 1:1 on narrow-bodies for a period of four years from the date of this Award. Thereafter, positions are to be allocated pursuant to the Seniority List.

6. The allocation of Captain and First Officer positions on the EMB-190 shall be in accordance with the Eischen Award dated September 5, 2006. Any dispute as to the applicability or interpretation of that Award shall be referred, at the request of either party, to Chairman Eischen.

7. The Conditions and Restrictions imposed by the Kagel Award, effective October 31, 1988, shall not be affected by the foregoing Conditions and Restrictions.

8. The Board shall retain jurisdiction in accordance with Section H. 5 .b. of the ALPA Merger Policy to resolve any disputes over the meaning or interpretation of this Award. This retention of jurisdiction shall terminate when all provisions of the Award have been satisfied. In the event the Chairman becomes unavailable or unwilling to serve to resolve such disputes, the Merger Committees will agree on a replacement Chairman or will select one by the alternate strike method from the most recent ALPA list of seniority integrations

arbitrators. In the event one of the Pilot Neutrals becomes unable or unwilling to serve on the Arbitration Board to resolve such disputes, the Chairman, after consultation with the Parties, shall decide how to proceed. In any such arbitration, if there is a dispute between the methodology contained in the Award and the accompanying Integrated Seniority List or any other list purportedly using such methodology, the Seniority List prevails.

Dated: May 1, 2007

George Nicolau, Chair

In the Matter of the Seniority Integration of

The Pilots of US Airways, Inc.

and

The Pilots of America West Airlines, Inc.

The ALPA Arbitration Board
George Nicolau, Chairman
Captain James P. Brucia, Pilot Neutral
Captain Stephen Gillen Pilot Neutral

CONCURRING AND DISSENTING OPINION

Having been chosen to serve in the capacity of a Pilot Neutral under the provisions of ALPA Merger Policy in the above referenced matter, I have elected to confirm my concurrence with most matters decided upon by the Arbitration Board while dissenting from the decision of my fellow members of the Board on one important aspect of the Award.

The two pilot groups involved in this merger had marked similarities but they also had wildly disparate issues separating them. The similarities were manifested in the areas of compensation for the narrow body aircraft that both airlines utilized, route structure and work rules and many other lesser items. However, there were some glaring dissimilarities. The US Airways pilots brought with them long haul International flying and routes and the associated wide body aircraft to perform that flying. America West had no similar flying, routes or aircraft. The Chairman's wisdom and experience dealt with these and many other issues in a fair and equitable manner. The one aspect of the Award where I differ with my fellow members of the Board is in the area of credit that should be given to a pilot based on date of hire and the pilot's resulting length of service.

As noted in "The Background" section of the Award, US Airways had a significant number of pilots on furlough at the time the merger was announced while America West had none. The most senior furloughed US Airways pilot (Colello) was hired in 1988 and had accrued 16.4 years of service as of the date of announcement of the merger. He was furloughed in 2003. Below Colello, there were over 440 pilots on furlough with at least 15 ½ years of tenure and well over 12 years of credited length of service. The remaining furloughees (not including the CEL pilots) had at between 5 years and 15 years of tenure and from 1 ½ to 6 years of service.

The junior 305 pilots on the America West seniority list all had less than 2 years of service when the merger was announced on May 19,2005. In fact, the bottom 150 pilots on the America West list were hired less than 1 year before the announcement. I do not agree with the Board's decision, in the particular circumstances of this case, to integrate only working pilots as of the date announcement, leaving all those on furlough at that date on the bottom of the combined seniority list. As a consequence of the Boards decision, America West pilot Odell, who was hired less than 2 months before the merger was announced, has been placed immediately senior to US Airways pilot Colello who was hired more than 16 years earlier and who had over 16 years of credited length of service. I disagree with this placement, which disregards Colello's substantial service time.

There is no dispute in this case that the US Airways pilots as a group are considerably older than the pilots on the America West list. The record is replete with discussion by both committees relating to age-related attrition, with both groups claiming entitlement to advance in seniority as a result of age-based attrition. The Board did not adequately take into account the realities of the "new" airline, the return of furloughees that has already taken place and the much greater rate of age-based attrition at US Airways as compared to the rate at America West. The vast amount of age-related attrition that has occurred within the US Airways pilot group caused the recall of over 300 US Airways pilots between March 2006 and the first week of January of this year. The pace of recalls is brisk and has continued. During the hearings we learned that additional recalls were taking place and there was testimony that stated at the current pace it was possible that all US Airways pilots would receive recall notices before the end of 2007.

At a minimum, it is my opinion that the US Airways pilots, who had already received notice of their opportunity to return to work from furlough, should have received some consideration for the substantial time they have already invested in their airline. In the event that the "new" company again decided to furlough pilots in the near future, conditions and restrictions could have been used to insure a measure of protection for the junior America West pilots to protect them from furlough for some period of time. In fact such a restriction was part of the US Airways Pilot's integration proposal in this case. I believe that this approach would have better balanced the equities that each pilot group brought to this merger.

Finally I would like to a reaffirm my opinion that the Chairman Nicolau demonstrated exceptional judgment and wisdom working through many very difficult and challenging issues including the disparate aircraft types, routes, compensation systems, and pilot staffing formulas to mention just a few. It has been a privilege to work together with Chairman Nicolau and Captain Gillen on this Opinion and Award.

Dated: May 1, 2007

Captain James P Brucia
Pilot Neutral