UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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

PROPOSED FINAL JUDGMENT

WHEREAS, Plaintiffs United States of America ("United States") and the States of Arizona, Florida, Tennessee and Michigan, the Commonwealths of Pennsylvania and Virginia, and the District of Columbia ("Plaintiff States") filed their Complaint against Defendants US Airways Group, Inc. ("US Airways") and AMR Corporation ("American") on August 13, 2013, as amended on September 5, 2013;

AND WHEREAS, the United States and the Plaintiff States and Defendants, by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against or admission by any party regarding any issue of fact or law;

AND WHEREAS, Defendants agree to be bound by the provisions of the Final Judgment pending its approval by the Court;

AND WHEREAS, the essence of this Final Judgment is the prompt and certain divestiture of certain rights or assets by the Defendants to assure that competition is not substantially lessened;

AND WHEREAS, the Final Judgment requires Defendants to make certain divestitures for the purposes of remedying the loss of competition alleged in the Complaint;

AND WHEREAS, Defendants have represented to the United States and the Plaintiff States that the divestitures required below can and will be made, and that the Defendants will later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the provisions below;

NOW THEREFORE, before any testimony is taken, without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is ORDERED, ADJUDGED, AND DECREED:

I. JURSIDICTION

This Court has jurisdiction over the subject matter of and each of the parties to this action. The Complaint states a claim upon which relief can be granted against Defendants US Airways and American under Section 7 of the Clayton Act as amended (15 U.S.C. § 18).

II. DEFINITIONS

As used in the Final Judgment:

A. "Acquirer" or "Acquirers" means the entity or entities, approved by the United States in its sole discretion in consultation with the Plaintiff States, to which Defendants may divest all or specified parts of the Divestiture Assets.

B. "American" means Defendant AMR Corporation, its parents, successors and assigns, divisions, subsidiaries, affiliates, partnerships and joint ventures; and all directors, officers, employees, agents, and representatives of the foregoing. As used in this definition, the terms "parent," "subsidiary," "affiliate," and "joint venture" refer to any person or entity in which American holds, directly or indirectly, a majority (greater than 50 percent) or total ownership or control or which holds, directly or indirectly a majority (greater than 50 percent) or total ownership or control in American.

C. "Associated Ground Facilities" means the facilities owned or operated by Defendants and reasonably necessary for Acquirer(s) to operate the Divested Assets at the relevant airport, including, but not limited to, ticket counters, hold-rooms, leased jet bridges, and operations space.

D. "DCA Gates and Facilities" means all rights and interests held by Defendants in the gates at Washington Reagan National Airport ("DCA") described in Exhibit A and in the Associated Ground Facilities, up to the extent such gates and Associated Ground Facilities were used by Defendants to support the use of the DCA Slots.

E. "DCA Slots" means all rights and interests held by Defendants in the 104 slots at DCA listed in Exhibit A, consisting of two air carrier slots held by US Airways at DCA and 102 air carrier slots held by American at DCA, including the JetBlue Slots.

F. "Divestiture Assets" means (1) the DCA Slots, (2) the DCA Gates and Facilities, (3) the LGA Slots, (4) the LGA Gates and Facilities, and (5) the Key Airport Gates and Facilities.

G. "JetBlue Slots" means all rights and interests held by Defendants in the 16 slots at DCA currently leased by American to JetBlue Airways, Inc., listed in Exhibit A.

H. "Key Airport" means each of the following airports: (1) Boston Logan International Airport; (2) Chicago O'Hare International Airport; (3) Dallas Love Field; (4) Los Angeles International Airport; and (5) Miami International Airport.

I. "Key Airport Gates and Facilities" means all rights and interests held by Defendants in two gates at each Key Airport as described in Exhibit C. The term "Key Airport Gates and Facilities" includes Associated Ground Facilities, up to the extent such facilities were used by Defendants to support the gates described in Exhibit C.

J. "LGA Gates and Facilities" means all rights and interests held by Defendants in the gates at New York LaGuardia Airport ("LGA") described in Exhibit B and Associated Ground Facilities up to the extent of such gates and Associated Ground Facilities were used by Defendants to support the use of the LGA Slots.

K. "LGA Slots" means the 34 slots at New York LaGuardia Airport ("LGA") listed in Exhibit B, consisting of the Southwest Slots and 24 additional slots held by American or US Airways.

L. "Slot Bundles" means groupings of DCA Slots and LGA Slots, as determined by the United States in its sole discretion in consultation with the Plaintiff States.

M. "Southwest Slots" means the 10 slots at LGA currently leased by American to Southwest Airlines, Inc. listed in Exhibit B.

N. "Transaction" means the transaction referred to in the Agreement and Plan of Merger among AMR Corporation, AMR Merger Sub, Inc., and US Airways Group, Inc., dated as of February 13, 2013.

O. "US Airways" means Defendant US Airways Group, Inc., its parents, successors and assigns, divisions, subsidiaries, affiliates, partnerships and joint ventures; and all directors, officers, employees, agents, and representatives of the foregoing. For purposes of this definition, the terms "parent," "subsidiary," "affiliate," and "joint venture" refer to any person or entity in which US Airways holds, directly or indirectly, a majority (greater than 50 percent) or total ownership or control or which holds, directly or indirectly, a majority (greater than 50 percent) or total ownership or control in US Airways.

III. APPLICABILITY

A. This Final Judgment applies to Defendants and all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

B. If, prior to complying with Section IV and V of this Final Judgment, a Defendant directly or indirectly sells or otherwise disposes of any of the Divestiture Assets, it shall require the purchaser of the Divestiture Assets to be bound by the provisions of this Final Judgment. Defendants need not obtain such an agreement from the Acquirer(s) of the assets divested pursuant to this Final Judgment.

IV. DIVESTITURES

A. Subject to any necessary approval of the Federal Aviation Administration, Defendants are ordered and directed to divest the DCA Slots and LGA Slots to Acquirers

in a manner consistent with this Final Judgment within ninety (90) calendar days after the later of (1) completion of the Transaction or (2) the United States providing Defendants a list of the Acquirers and Slot Bundles.

B. Subject to any necessary approval of the relevant airport operator, Defendants are ordered and directed to transfer the DCA Gates and Facilities as necessary to Acquirers of the DCA Slots within ninety (90) days after completion of the divestiture of the DCA Slots.

C. Subject to any necessary approval of the relevant airport operator, Defendants are ordered and directed to transfer the LGA Gates and Facilities as necessary to Acquirer(s) of the LGA Slots within ninety (90) days after completion of the divestiture of the LGA Slots.

D. Subject to any necessary approval of the relevant airport operator, Defendants are ordered and directed to divest the Key Airport Gates and Facilities to Acquirer(s) in a manner consistent with this Final Judgment within 180 calendar days after the later of (1) completion of the Transaction or (2) the United States providing Defendants a list of the Acquirers.

E. All proceeds from the transfer of the DCA Slots and the LGA Slots are for the account of Defendants. Defendants agree to use their best efforts to divest the Divestiture Assets as expeditiously as possible. The United States in its sole discretion, may agree to one or more extensions of each of the time periods specified in Sections IV.A. – IV.D., not to exceed sixty (60) calendar days in total for each such time period, and shall extend any time period by the number of days during which there is pending any objection under

Section VI of this Final Judgment. The United States shall notify the Court of any extensions of the time periods.

F. The Court orders the divestiture of the DCA Slots and DCA Gates and Facilities to proceed as follows:

1. Defendants shall offer to divest the 16 JetBlue Slots to JetBlue Airways, Inc., by making permanent the current agreement between JetBlue and American to exchange the JetBlue Slots for slots at John F. Kennedy International Airport;

2. Defendants shall divest in Slot Bundles to at least two Acquirers the other 88 DCA slots listed in Exhibit A, together with any of the JetBlue Slots not sold to JetBlue pursuant to paragraph IV.F.1. above;

3. Defendants shall either (a) sublease to Acquirers of the DCA Slots, the DCA Gates and Facilities on the same terms and conditions pursuant to which the Defendants currently lease the DCA Gates and Facilities or, (b) with the consent of the United States, pursuant to an agreement with the airport operator, relinquish the DCA Gates and Facilities to the airport operator to enable the Acquirer to lease them from the airport operator on terms and conditions determined by the airport operator, and shall make best efforts to obtain any consent or approval from the relevant airport operator for the divestitures required by this paragraph;

4. Following the divestiture of the DCA Slots, if requested by an Acquirer, Defendants shall lease the DCA Slots from the Acquirer for no consideration for a period not to exceed 180 calendar days. Defendants shall

continue to operate the DCA Slots during this lease-back period at a level sufficient to prevent the DCA Slots from reverting to the Federal Aviation Administration pursuant to 14 C.F.R. § 93.227. The lease-back period may be extended at the sole discretion of the Acquirer(s), with the approval of the United States, in consultation with the Plaintiff States.

G. The Court orders the divestiture of the LGA Slots and LGA Gates and Facilities to proceed as follows:

1. Defendants shall offer to divest the ten Southwest Slots to Southwest Airlines, Inc.;

2. Defendants shall divest in Slot Bundles to Acquirer(s) the other 24 LGA slots listed in Exhibit B, together with any of the Southwest Slots not sold to Southwest pursuant to Paragraph IV.G.1. above;

3. Defendants shall either (a) sublease to the Acquirer(s) of the LGA Slots, the LGA Gates and Facilities on the same terms and conditions pursuant to which the Defendants currently lease the LGA Gates and Facilities or, (b) with the consent of the United States, pursuant to an agreement with the airport operator, relinquish the LGA Gates and Facilities to the airport operator to enable the Acquirer to lease them from the airport operator on terms and conditions determined by the airport operator, and shall make best efforts to obtain any consent or approval from the relevant airport operator for the divestitures required by this paragraph;

4. Defendants shall make reasonable best efforts to facilitate any re-locations necessary to ensure that the Acquirer(s) can operate from contiguous

gates at LGA to the extent such relocation does not unduly disrupt Defendants' operations.

5. Following the divestiture of the LGA Slots, if requested by the Acquirer(s), Defendants shall lease the LGA Slots from the Acquirer for no consideration for a period not to exceed 180 calendar days. Defendants shall continue to operate the LGA Slots during this lease-back period at a level sufficient to prevent the LGA Slots from reverting to the Federal Aviation Administration pursuant to 71 Fed. Reg. 77,854 (Dec. 27, 2006), as extended by 78 Fed. Reg. 28, 279 (Oct. 24, 2013). The lease-back period may be extended at the sole discretion of the Acquirer(s), with the approval of the United States, in consultation with the Plaintiff States.

H. The Court orders the divestiture of the Key Airport Gates and Facilities, to proceed as follows:

1. Defendants shall either (a) lease to the Acquirers the Key Airport Gates and Facilities on the same terms and conditions pursuant to which the Defendants currently lease the Key Airport Gates and Facilities, or (b) with the consent of the United States, pursuant to an agreement with the airport operator, relinquish the Key Airport Gates and Facilities to the airport operator to enable the Acquirer to lease them from the airport operator on terms and conditions determined by the airport operator;

2. Defendants shall make best efforts to obtain any consent or approval from the relevant airport operator for the transfer(s) required by this Section;

3. With respect to the Divestiture Assets at Boston Logan International Airport, Defendants shall make reasonable best efforts to facilitate any re-locations necessary to ensure that the Acquirer(s) can operate from contiguous gates at the Key Airport, to the extent such relocation does not unduly disrupt Defendants' operations.

I. In accomplishing the divestiture ordered by this Final Judgment, Defendants promptly shall make known, by usual and customary means, the availability of the Divestiture Assets to Acquirer(s). Defendants shall inform any such person contacted regarding a possible purchase of the Divestiture Assets that they are being divested pursuant to this Final Judgment and provide that person with a copy of this Final Judgment. Defendants shall offer to furnish to all prospective Acquirers, subject to customary confidentiality assurances, all information and documents relating to the Divestiture Assets customarily provided in a due diligence process except such information or documents subject to the attorney-client privileges or work-product doctrine. Defendants shall make available such information to the United States at the same time that such information is made available to any other person.

J. As part of their obligations under paragraph IV.I. above, Defendants shall permit prospective Acquirers of the Divestiture Assets to have reasonable access to: (i) personnel; (ii) the physical facilities of the Divestiture Assets to make reasonable inspections; (iii) all environmental, zoning, and other permit documents and information; and (iv) all financial, operational, or other documents and information customarily provided as part of a due diligence process.

K. Defendants shall warrant to the Acquirer(s) that each asset will be operational on the date of transfer.

L. Defendants shall not take any action that will impede in any way the permitting, operation, or divestiture of the Divestiture Assets.

M. Defendants shall warrant to the Acquirer(s) that there are no material defects in any environmental, zoning or other permits obtained or controlled by Defendants pertaining to the operation of the Divestiture Assets, and that following the sale of the Divestiture Assets, Defendants will not undertake, directly or indirectly, any challenges to the environmental, zoning, or other permits relating to the operation of the Divestiture Assets.

N. Unless the United States otherwise consents in writing, the divestiture pursuant to Section IV or V shall include the entire Divestiture Assets, and shall be accomplished in such a way as to satisfy the United States, in its sole discretion, in consultation with the Plaintiff States, that the Divestiture Assets can and will be used by the Acquirer(s) as part of a viable, ongoing business, engaged in providing scheduled air passenger service in the United States. Divestiture of the Divestiture Assets may be made to Acquirers, provided that in each instance it is demonstrated to the sole satisfaction of the United States, in consultation with the Plaintiff States, that the Divestiture Assets will remain viable and the divestiture of such assets will remedy the competitive harm alleged in the Complaint. The divestiture, whether pursuant to Section IV or Section V of this Final Judgment, shall be:

1. made to an Acquirer(s) that, in the United States' sole judgment, in consultation with the Plaintiff States, has the intent and capability (including the

necessary managerial, operational, technical and financial capability) to compete effectively in the business of providing scheduled airline passenger service; and

2. accomplished so as to satisfy the United States in its sole discretion, in consultation with the Plaintiff States, that none of the terms of any agreement between an Acquirer(s) and Defendants gives Defendants the ability unreasonably to raise the Acquirer's costs, to lower the Acquirer's efficiency, or otherwise to interfere in the ability of the Acquirer(s) to effectively compete.

V. APPOINTMENT OF TRUSTEE TO EFFECT DIVESTITURE

A. If Defendants have not divested the Divestiture Assets within the time periods specified in Sections IV.A. – IV.D., Defendants shall notify the United States and the Plaintiff States of that fact in writing. Upon application of the United States, the Court shall appoint a Divestiture Trustee selected by the United States, in consultation with the Plaintiff States, and approved by the Court to divest the Divestiture Assets in a manner consistent with this Final Judgment.

B. After the appointment of a Divestiture Trustee becomes effective, only the Divestiture Trustee shall have the right to sell the Divestiture Assets, including any arrangements related to Associated Ground Facilities. The Divestiture Trustee shall have the power and authority to accomplish the divestiture to an Acquirer(s) acceptable to the United States in its sole discretion, in consultation with the Plaintiff States, at such price and on such terms as are then obtainable upon reasonable effort by the Divestiture Trustee, subject to the provisions of Section IV, V, and VI of this Final Judgment, and shall have such other powers as this Court deems appropriate.

C. Subject to Section V.E. of this Final Judgment, the Divestiture Trustee may hire at the reasonable cost and expense of Defendants any investment bankers, attorneys, or other agents, who shall be solely accountable to the Divestiture Trustee, reasonably necessary in the Divestiture Trustee's judgment to assist in the divestiture.

D. Defendants shall not object to a sale by the Divestiture Trustee on any ground other than the Divestiture Trustee's malfeasance. Any such objections by Defendants must be conveyed in writing to the United States, the Plaintiff States and the Divestiture Trustee within ten (10) calendar days after the Divestiture Trustee has provided the notice required under Section VI.A.

E. The Divestiture Trustee shall serve at the cost and expense of Defendants, pursuant to a written agreement with Defendants on such terms and conditions as the United States approves, in consultation with the Plaintiff States, and shall account for all monies derived from the sale of the assets sold by the Divestiture Trustee and all costs and expenses so incurred. After approval by the Court of the Divestiture Trustee's accounting, including fees for its services and those of any professionals and agents retained by the Divestiture Trustee, all remaining money shall be paid to Defendants and the trust shall then be terminated. The compensation of the Divestiture Trustee and any professionals and agents retained by the Divestiture Trustee shall be reasonable in light of the value of the Divestiture Assets and based on a fee arrangement providing the Divestiture Trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished, but timeliness is paramount.

F. Defendants shall use their best efforts to assist the Divestiture Trustee in accomplishing the required divestiture. The Divestiture Trustee and any consultants,

accountants, attorneys, and other persons retained by the Divestiture Trustee shall have full and complete access to the personnel, books, records, and facilities of the business to be divested, and Defendants shall develop financial and other information relevant to such business as the Divestiture Trustee may reasonably request, subject to reasonable protection for trade secret or other confidential research, development, or commercial information. Defendants shall take no action to interfere with or to impede the Divestiture Trustee's accomplishment of the divestiture.

G. After its appointment, the Divestiture Trustee shall file monthly reports with the United States, the Plaintiff States, and the Court setting forth the Divestiture Trustee's efforts to accomplish the divestiture ordered under this Final Judgment. To the extent such reports contain information that the Divestiture Trustee or Defendants deem confidential, such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address, and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring any interest in the Divestiture Assets, and shall describe in detail each contact with any such person. The Divestiture Trustee shall maintain full records of all efforts made to divest the Divestiture Assets.

H. If the Divestiture Trustee has not accomplished the divestiture ordered under this Final Judgment within six (6) months after its appointment, the Divestiture Trustee shall promptly file with the Court a report setting forth (1) the Divestiture Trustee's efforts to accomplish the required divestiture, (2) the reasons, in the Divestiture Trustee's judgment, why the required divestiture has not been accomplished, and (3) the

Divestiture Trustee's recommendations. To the extent such reports contain information that the Divestiture Trustee deems confidential, such reports shall not be filed in the public docket of the Court. The Divestiture Trustee shall at the same time furnish such report to the Defendants and to the United States, which shall have the right to make additional recommendations consistent with the purpose of the trust. The Court thereafter shall enter such orders as it shall deem appropriate to carry out the purpose of the Final Judgment, which may, if necessary, include extending the trust and the term of the Divestiture Trustee's appointment by a period requested by the United States.

VI. NOTICE OF PROPOSED DIVESTITURES

A. Within two (2) business days following execution of a definitive divestiture agreement, Defendants or the Divestiture Trustee, whichever is then responsible for effecting the divestitures required herein, shall notify the United States and the Plaintiff States, of any proposed divestitures required by Section IV or V of this Final Judgment. If the trustee is responsible, it shall similarly notify Defendants. The notice shall set forth the details of the proposed divestitures and list the name, address, and telephone number of each person not previously identified who offered or expressed an interest in or desire to acquire any ownership interest in the Divestiture Assets, together with full details of the same.

B. Within fifteen (15) calendar days of receipt by the United States of such notice, the United States, in its sole discretion, in consultation with the Plaintiff States, may request from Defendants, the proposed Acquirer(s), any other third party, or the Divestiture Trustee, if applicable, additional information concerning the proposed divestitures, the proposed Acquirer(s), and any other potential Acquirer(s). Defendants

and the Divestiture Trustee shall furnish any additional information requested to the United States within fifteen (15) calendar days of receipt of the request, unless the parties otherwise agree.

C. Within thirty (30) calendar days after receipt of the notice, or within twenty (20) calendar days after the United States has been provided the additional information requested from Defendants, the proposed Acquirer(s), any third party, and the trustee, whichever is later, the United States, in consultation with the Plaintiff States, shall provide written notice to Defendants and/or the Divestiture Trustee, stating whether it objects to the proposed divestitures. If the United States provides written notice that it does not object, the divestitures may be consummated, subject only to the Defendants' limited right to object to the sale under Section V.D. of this Final Judgment. Absent written notice that the United States does not object to the proposed Acquirer(s) or upon objection by the United States, a divestiture proposed under Section IV or Section V shall not be consummated. Upon objection by Defendants under Section V.D., a divestiture proposed under Section V shall not be consummated unless approved by the Court.

VII. MONITORING TRUSTEE

A. Upon the filing of this Final Judgment, the United States may, in its sole discretion, in consultation with the Plaintiff States, appoint a Monitoring Trustee, subject to approval by the Court.

B. The Monitoring Trustee shall have the power and authority to monitor Defendants' compliance with the terms of this Final Judgment, and shall have such powers as this Court deems appropriate. The Monitoring Trustee shall be required to

investigate and report on the Defendants' compliance with this Final Judgment and the Defendants' progress toward effectuating the purposes of this Final Judgment.

C. Subject to Section VII.E of this Final Judgment, the Monitoring Trustee may hire at the cost and expense of Defendants, any consultants, accountants, attorneys, or other persons, who shall be solely accountable to the Monitoring Trustee, reasonably necessary in the Monitoring Trustee's judgment.

D. Defendants shall not object to actions taken by the Monitoring Trustee in fulfillment of the Monitoring Trustee's responsibilities under this Final Judgment or any other Order of this Court on any ground other than the Monitoring Trustee's malfeasance. Any such objections by Defendants must be conveyed in writing to the United States, the Plaintiff States, and the Monitoring Trustee within ten (10) calendar days after the action taken by the Monitoring Trustee giving rise to the Defendants' objection.

E. The Monitoring Trustee shall serve at the cost and expense of Defendants, pursuant to a written agreement with Defendants on such terms and conditions as the United States, in consultation with the Plaintiff States, approves. The compensation of the Monitoring Trustee and any consultants, accountants, attorneys, and other persons retained by the Monitoring Trustee shall be on reasonable and customary terms commensurate with the individuals' experience and responsibilities. The Monitoring Trustee shall, within three (3) business days of hiring any consultants, accountants, attorneys, or other persons, provide written notice of such hiring and the rate of compensation to Defendants.

F. The Monitoring Trustee shall have no responsibility or obligation for the operation of Defendants' businesses.

G. Defendants shall use their best efforts to assist the Monitoring Trustee in monitoring Defendants' compliance with their individual obligations under this Final Judgment. The Monitoring Trustee and any consultants, accountants, attorneys, and other persons retained by the Monitoring Trustee shall have full and complete access to the personnel, books, records, and facilities relating to compliance with this Final Judgment, subject to reasonable protection for trade secret or confidential research, development, or commercial information or any applicable privileges. Defendants shall take no action to interfere with or to impede the Monitoring Trustee's accomplishment of its other responsibilities. The Monitoring Trustee shall, within three (3) business days of hiring any consultants, accountants, attorneys, or other persons, provide written notice of such hiring and the rate of compensation to Defendants.

H. After its appointment, the Monitoring Trustee shall file reports every ninety (90) days, or more frequently as needed, with the United States, the Plaintiff States, the Defendants and the Court setting forth the Defendants' efforts to comply with their individual obligations under this Final Judgment. To the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court.

I. The Monitoring Trustee shall serve until the completion of the divestitures required by Sections IV and V of this Final Judgment, including any lease back period pursuant to Section IV.F.5. or IV.G.5.

VIII. FINANCING

Defendants shall not finance all or any part of any purchase made pursuant to Section IV or V of this Final Judgment. For purposes of this Section VIII, subleasing shall not be regarded as financing.

IX. ASSET PRESERVATION

Until the divestiture required by this Final Judgment has been accomplished, Defendants shall take all steps necessary to comply with the Asset Preservation Stipulation and Order entered by this Court. Defendants shall take no action that would jeopardize the divestiture ordered by this Court.

X. AFFIDAVITS

A. Within twenty (20) calendar days of entry of the Court entering the Asset Preservation Order and Stipulation in this matter, and every thirty (30) calendar days thereafter until the divestiture has been completed under Section IV or V, Defendants shall deliver to the United States and the Plaintiff States an affidavit as to the fact and manner of its compliance with Section IV or V of this Final Judgment. Each such affidavit shall include the name, address, and telephone number of each person who, during the that first twenty (20) calendar days or, thereafter, the preceding thirty (30) calendar days, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Divestiture Assets, and shall describe in detail each contact with any such person during that period. Each such affidavit shall also include a description of the efforts defendants have taken to solicit buyers for the Divestiture Assets, and to provide required information to prospective Acquirers, including the limitations, if any, on such

information. Assuming the information set forth in the affidavit is true and complete, any objection by the United States to information provided by Defendants, including limitation on information, shall be made within fourteen (14) calendar days of receipt of such affidavit.

B. Within twenty (20) calendar days of the Court entering the Asset Preservation Order and Stipulation in this matter, Defendants shall deliver to the United States an affidavit that describes in reasonable detail all actions defendants have taken and all steps Defendants have implemented on an ongoing basis to comply with Section IX of this Final Judgment. Defendants shall deliver to the United States an affidavit describing any changes to the efforts and actions outlined in Defendants' earlier affidavits filed pursuant to this section within fifteen (15) calendar days after the change is implemented.

C. Defendants shall keep all records of all efforts made to preserve and divest the Divestiture Assets until one year after such divestiture has been completed.

XI. COMPLIANCE INSPECTION

A. For the purposes of determining or securing compliance with this Final Judgment, or of any related orders such as any Asset Preservation Order, or of determining whether the Final Judgment should be modified or vacated, and subject to any legally recognized privilege, from time to time authorized representatives of the United States Department of Justice, including consultants and other persons retained by the United States, shall, upon written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to Defendants, be permitted:

(1) access during Defendants' office hours to inspect and copy, or at the option of the United States, to require Defendants to provide hard copy or electronic copies of, all books, ledgers, accounts, records, data, and documents in the possession, custody, or control of Defendants, relating to any matters contained in this Final Judgment; and

(2) to interview, either informally or on the record, Defendants' officers, employees, or agents, who may have their individual counsel present, regarding such matters. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by Defendants.

B. Upon the written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, Defendants shall submit written reports or response to written interrogatories, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this section shall be divulged by the United States to any person other than an authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by Defendants to the United States, Defendants represent and identify in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and Defendants mark each pertinent

page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then the United States shall give Defendants ten (10) calendar days notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

XII. NO REACQUISITION

Defendants shall not reacquire any interest in any part of the Divestiture Assets divested under this Final Judgment during the term of this Final Judgment. Nothing in this Final Judgment shall prevent Defendants from engaging in trades, exchanges, or swaps involving Divestiture Assets with an Acquirer, provided such arrangements do not increase Defendants' percentage of slots operated or held or gates operated or held at the airport in question, except that, consistent with industry practice, Defendants may temporarily operate slots for periods of no more than two consecutive months at the request of the Acquirer. Nothing in this Section XII shall prevent Defendants from acquiring additional slots, gates or facilities, other than the Divestiture Assets, at DCA, LGA or the Key Airports subject to the notification requirement in Section XIII.A. Nothing in this Section shall prevent Defendants from cooperating in gate or facility re-locations in the ordinary course of the airport operator's business, including re-locating to the Divestiture Assets, provided the Acquirer of those gates is offered alternative gates and Associated Ground Facilities from the airport operator.

XIII. NOTIFICATION OF FUTURE TRANSACTIONS

A. Unless such transaction is otherwise subject to the reporting and waiting period requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, 15 U.S.C. § 18a (the "HSR Act"), Defendants shall not acquire any interest in

any slot at DCA that was in use at the completion of the Transaction without providing notice to the United States at least thirty (30) calendar days prior to the acquisition, provided however that this reporting requirement shall not apply to transactions that do not result in an increase in Defendants' percentage of slots operated or held at DCA. Defendants shall maintain a record of any non-reportable transactions and shall provide such record to the United States promptly upon request.

B. Any notification provided pursuant to Section XIII.A. above shall be provided in the same format as required by the HSR Act, and shall include the names of the principal representatives of the parties to the transaction who negotiated the agreement and any management or strategic plans discussing the proposed transaction. If within the 30-day period after notification the United States makes a written request for additional information regarding the transaction, Defendants shall not consummate the proposed transaction or agreement until thirty (30) calendar days after submitting all such additional information. Early termination of the waiting periods in this paragraph may be requested and, where appropriate, granted in a similar manner as applicable under the requirements and provisions of the HSR Act and rules promulgated thereunder.

C. All references to the HSR Act in this Final Judgment refer to the HSR Act as it exists at the time of the transaction or agreement and incorporate any subsequent amendments to the HSR Act.

XIV. BANKRUPTCY

For purposes of Section 365 of the Bankruptcy Reform Act of I978, as amended, and codified as 11 U.S.C. §§ 101 et. seq. (the "Bankruptcy Code") or any analogous provision under any law of any foreign or domestic, federal, state, provincial, local,

municipal or other governmental jurisdiction relating to bankruptcy, insolvency or reorganization ("Foreign Bankruptcy Law"), (a) no sublease or other agreement related to the Divesture Assets will be deemed to be an executory contract, and (b) if for any reason a sublease or other agreement related to the Divesture Assets is deemed to be an executory contract, the Defendants shall take all necessary steps to ensure that the Acquirer(s) shall be protected in the continued enjoyment of its right under any such agreement including, acceptance of such agreement or any underlying lease or other agreement in proceedings under the Bankruptcy Code or any analogous provision of Foreign Bankruptcy Law.

XV. RETENTION OF JURISDICTION

This Court retains jurisdiction to enable any party to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to ensure and enforce compliance, and to punish violations of its provisions.

XVI. EXPIRATION OF FINAL JUDGMENT

Unless this Court grants an extension, this Final Judgment shall expire ten (10) years from the date of its entry.

XVII. PUBLIC INTEREST DETERMINATION

Entry of this Final Judgment is in the public interest. The parties have complied with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16, including making copies available to the public of this Final Judgment, the Competitive Impact Statement, and any comments thereon and the United States' responses to comments. Based upon the record before the Court, which includes the Competitive

Impact Statement and any comments and response to comments filed with the Court, entry of this Final Judgment is in the public interest.

Date: _____

Court approval subject to procedures of the
Antitrust Procedures and Penalties Act,
15 U.S.C. § 16

The Honorable Colleen Kollar-Kotelly
United States District Judge

EXHIBIT A
DCA SLOTS

JetBlue Slots (currently held by American)

1284	1040	1018	1012	1025	1200
1034	1334	1013	1058	1172	1221
1014	1217	1097	1174		

Additional American Air Carrier Slots

1090	1144	1570	1321	1425	1445
1521	1585	1092	1159	1274	1296
1493	1496	1044	1051	1667	1233
1322	1341	1616	1138	1139	1271
1430	1464	1547	1272	1351	1481
1506	1525	1611	1381	1420	1480
1641	1662	1104	1342	1543	1666
1208	1286	1299	1345	1388	1422
1620	1117	1121	1167	1312	1460
1473	1624	1625	1628	1364	1411
1561	1646	1074	1100	1202	1380
1405	1499	1276	1292	1353	1396
1634	1441	1475	1492	1503	1559
1587	1623	1008	1606	1575	1642
1122	1216				

US Airways Air Carrier Slots

1070	1066

DCA Gates

Up to five (5) gates from among Gates 24, 26, 28, 30 and 32, if necessary.

EXHIBIT B
LGA SLOTS

Southwest Slots (currently held by American)

3351	2101	3335	3422	3665	3314
2215	3045	2120	3312		

American LGA Slots

3189	3068	2139	2147	3236	2222
2096	2075	3784	2033	3841	2008
3594	3671	3380	3258	3282	3080
2032	2230	3013	2166	2111	3826

LGA Gates

Up to two contiguous gates on Concourse C currently leased by American at LGA.

EXHIBIT C
KEY AIRPORT GATES

Boston Logan International Airport

Two gates that Defendants currently lease or two gates that Defendants would be entitled to occupy following any relocation of gates and facilities at the direction of Massport.

Chicago O'Hare International Airport

Gates L1 and L2. Defendants, at their own expense, will reconfigure Gate L2A, L2B, and L2C, as follows: Gate L2A will be restored to a mainline gate by (a) removing the gate at L2B, (b) moving the gate podium that currently serves Gate L2C south, creating one additional bay for gate L2A, and restriping the tarmac. Defendants will retain their interest in Gate L2C.

Dallas Love Field

Gates currently leased by American at Dallas Love Field, or which American will be entitled to occupy following completion of construction of the Love Field Modernization Program.

Los Angeles International Airport

Gates 31A and 31B in Terminal 3.

Miami International Airport

Two gates currently leased by US Airways in Terminal J.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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

COMPETITIVE IMPACT STATEMENT

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act ("APPA" or "Tunney Act"), 15 U.S.C. § 16(b)-(h), Plaintiffs United States of America ("United States") files this Competitive Impact Statement relating to the proposed Final Judgment submitted on November 12, 2013, for entry in this civil antitrust matter.

I.

NATURE AND PURPOSE OF THE PROCEEDING

On August 13, 2013, the United States and the States of Arizona, Florida, Tennessee, Texas, the Commonwealths of Pennsylvania and Virginia, and the District of Columbia ("Plaintiff States") filed a civil antitrust Complaint seeking to enjoin the proposed merger of

Defendants US Airways Group, Inc. ("US Airways") and AMR Corporation ("American").[1] The Complaint alleges that the likely effect of this merger would be to lessen competition substantially for the sale of scheduled air passenger service in city pair markets throughout the United States, and in the market for takeoff and landing authorizations ("slots") at Ronald Reagan Washington National Airport ("Reagan National") in violation of Section 7 of the Clayton Act as amended, 15 U.S.C. § 18.

On November 12, 2013, the United States filed a proposed Final Judgment designed to remedy the harm to competition that was likely to result from the proposed merger. The proposed Final Judgment, which is explained more fully below, requires the divestiture of slots, gates, and ground facilities at key airports around the country to permit the entry or expansion of airlines that can provide meaningful competition in numerous markets, eliminate the significant increase in concentration of slots at Reagan National that otherwise would have occurred, and enhance the ability of low-cost carriers to compete with legacy carriers on a system-wide basis.

As set forth in the proposed Final Judgment, the Defendants are required to divest or transfer to purchasers approved by the United States, in consultation with the Plaintiff States:

- 104 air carrier slots[2] at Reagan National and rights and interests in any associated gates or other ground facilities, up to the extent such gates and ground facilities were used by Defendants to support the use of the divested slots;
- 34 slots at New York LaGuardia International Airport ("LaGuardia") and rights and interests in any associated gates or other ground facilities, up to the extent such gates and ground facilities were used by Defendants to support the use of the divested slots; and
- rights and interests to two airport gates and associated ground facilities at each of the following airports: Chicago O'Hare International Airport ("ORD"), Los Angeles

[1] Michigan joined the group of Plaintiff States on September 5, 2013; Texas withdrew from the lawsuit on October 1, 2013 after reaching a settlement with the Defendants. References to Plaintiff States include Michigan and exclude Texas.

[2] Slots at Reagan National are designated as either "air carrier," which may be operated with any size aircraft, or "commuter," which must be operated using aircraft with 76 seats or less.

International Airport ("LAX"), Boston Logan International Airport ("BOS"), Miami International Airport ("MIA"), and Dallas Love Field ("DAL").

The Reagan National and LaGuardia slots will be sold in bundles, under procedures approved by the United States, in consultation with the Plaintiff States.

Trial in this matter is scheduled to begin on November 25, 2013. Plaintiffs and Defendants have filed an Asset Preservation Order and Stipulation providing that: (1) Defendants are bound by the terms of the proposed Final Judgment, (2) the litigation will be stayed pending completion of the procedures called for by the APPA, and (3) the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

II.

DESCRIPTION OF THE EVENTS GIVING RISE TO THE ALLEGED VIOLATION

A. *The Defendants and the Proposed Transaction*

US Airways 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.

American 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. 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.

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.

B. *The Competitive Effects of the Transaction*

1. Relevant Markets

Domestic scheduled air passenger service is a relevant product market within the meaning of Section 7 of the Clayton Act. Because air travel offers passengers significant time savings and convenience over other forms of travel, 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.

City pairs are relevant geographic markets within the meaning of Section 7 of the Clayton Act. 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 switch to flights between other cities in response to a small but significant and non-transitory fare increase.

Passengers traveling within city pairs have different preferences for factors such as nonstop service, the flexibility to purchase tickets or change plans at the last minute and, in cities served by more than one airport, the ability to fly in to or out of the airport most convenient to their home or intended destination. 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.

Slots at Reagan National Airport also constitute a relevant market within the meaning of Section 7 of the Clayton Act. 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. To serve Reagan National, a carrier must have "slots," which are government-issued rights to take off and land. Reagan National is one of only four airports in the country requiring federally-issued slots. Slots at Reagan National are highly valued, 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.

2. Competitive Effects

As alleged in the Complaint, this merger would combine two of the four major "legacy" carriers, leaving "New American," Delta, and United as the remaining major national network carriers.[3] Those three carriers would have extensive national and international networks, connections to hundreds of destinations, established brand names, and strong frequent flyer reward programs. In contrast to the legacy carriers, other carriers (hereinafter referred to as "low-cost carriers" or "LCCs"), such as Southwest Airlines ("Southwest"), JetBlue Airways ("JetBlue"), Virgin America, Frontier Airlines, and Spirit Airlines, have less extensive networks and tend to focus more heavily on lower fares and other value propositions. Southwest carries the most domestic passengers of any airline, however, its route network is limited compared to the four current legacy carriers, especially to significant business-oriented markets. Although the

[3] Two carriers—Hawaiian Airlines and Alaska Air—are technically "legacy" carriers, as they have operated interstate service since prior to deregulation and rely on hub-and-spoke networks, but each operates in a narrow geographic region.

LCCs serve fewer destinations than the legacy airlines, they generally offer important competition on the routes that they do serve.

This merger would leave three very similar legacy airlines—Delta, United, and the New American. By further reducing the number of legacy airlines and aligning the economic incentives of those that remain, the merger would make it easier for the remaining legacy airlines to cooperate, rather than compete, on price and service. Absent the merger, US Airways and American, as independent competitors, would have unique incentives to disrupt coordination that already occurs to some degree among the legacy carriers. US Airways' network structure provides the incentive to offer its "Advantage Fares" program, an aggressive discounting strategy aimed at undercutting the other airlines' nonstop fares with cheaper connecting service. American, having completed a successful reorganization in bankruptcy, would have the incentive, and indeed, it has announced the intention to undertake significant growth at the expense of its competitors. The merger would diminish these important competitive constraints.

The merger would also entrench the merged airline as the dominant carrier at Washington Reagan National Airport, where it would control 69 percent of the take-off and landing slots. The merger would eliminate head-to-head competition between American and US Airways on the routes they both serve from the airport and would effectively foreclose entry or expansion by other airlines that might increase competition at Reagan National.

Finally, the merger would eliminate head-to-head competition between US Airways and American on numerous non-stop and connecting routes.

3. Entry and Expansion

New entry, or expansion by existing competitors, would be unlikely to prevent or remedy the merger's likely anticompetitive effects absent the proposed divestitures. Operational barriers

limit entry and expansion at a number of important airports. Four of the busiest airports in the United States—including Reagan National and LaGuardia—are subject to slot limitations governed by the FAA. The lack of availability of slots is a substantial barrier to entry at those airports, especially for low-cost carriers. Slots at these airports are concentrated in the hands of large legacy airlines that have little incentive to sell or lease slots to those carriers most likely to compete aggressively against them. As a result, slots are expensive, difficult to obtain, and change hands only rarely.

Access to gates can also be a substantial barrier to entry or expansion at some airports. At several large airports, a significant portion of the available gates are leased to established airlines under long-term exclusive-use leases. In such cases, a carrier seeking to enter or expand would have to sublease gates from incumbent airlines.

In addition to operational constraints, new entrants and those seeking to expand must overcome the effects of corporate discount programs offered by dominant incumbents; loyalty to existing frequent flyer programs; a less well-known brand; and the risk of aggressive responses to new entry by the dominant incumbent carrier. However, especially in large cities, low-cost carriers have demonstrated some ability to overcome those disadvantages with the help of lower costs, when they are able to obtain access to the necessary airport facilities.

III.

EXPLANATION OF THE PROPOSED FINAL JUDGMENT

The Complaint alleges several ways that the elimination of US Airways and American as independent competitors will result in harm to consumers. As things stand today, each carrier places important competitive constraints on the other large network carriers. US Airways undercuts the nonstop fares of legacy carriers through its Advantage Fares program. American

had planned to fly more planes. The Complaint alleges that the merger will diminish New American's incentives to maintain these strategies and increase its incentives to coordinate with the other legacy carriers rather than compete. The Complaint also alleges harm resulting from increased slot concentration at DCA.

The proposed remedy seeks to address both the harm resulting from increased slot concentration at DCA and the broader harms alleged in the Complaint by requiring the divestiture of an unprecedented quantity of valuable facilities at seven of the most important airports in the United States. The access to key airports made possible by the divestitures will create network opportunities for the purchasing carriers that would otherwise have been out of reach for the foreseeable future. Those opportunities will provide increased incentives for those carriers to invest in new capacity and expand into additional markets.

The proposed remedy will not create a new independent competitor, nor does it purport to replicate American's capacity expansion plans or create Advantage Fares where they might otherwise be eliminated. Instead, it promises to impede the industry's evolution toward a tighter oligopoly by requiring the divestiture of critical facilities to carriers that will likely use them to fly more people to more places at more competitive fares. In this way, the proposed remedy will deliver benefits to consumers that could not be obtained by enjoining the merger.

The divestiture of 104 air carrier slots at Reagan National and 34 slots at LaGuardia will not only address the localized competitive concerns at those airports, but will deliver substantial additional benefits. American and US Airways currently compete head-to-head on two routes from Reagan National (Raleigh-Durham and Nashville) and one route from LaGuardia (Charlotte). In addition, JetBlue and Southwest offer service on a limited number of routes at these airports through use of slots leased from American on terms that could be renegotiated or

cancelled by the New American.[4] Through the remedy, Southwest and JetBlue will have the opportunity to obtain permanent access to the slots they are currently leasing from American, and those LCCs and others will have the opportunity to acquire more slots at DCA and at LGA as well. This will allow them to provide greatly expanded service on numerous routes, including new nonstop and connecting service to points throughout the country.

Similarly, gate divestitures at O'Hare (ORD), Los Angeles (LAX), Boston (BOS), Dallas Love Field (DAL), and Miami (MIA) would expand the presence of potentially disruptive competitors at these strategically important airports located throughout the country.[5] ORD and LAX, two of American's major hubs, are among the most highly congested airports in the country, and competitors have historically had difficulties obtaining access to gates and other facilities at those airports to be able to enter or expand service. The divestitures will give competing carriers an expanded foothold at these important airports in the center of the country and the west coast, respectively. Likewise, there is limited ability to enter or expand at BOS; the divestitures will provide relief there. Although access issues at Miami are not as acute as at the other airports, the proposed Final Judgment also ensures that a carrier seeking to enter or expand at Miami will have access to two of the gates and associated ground facilities currently leased by US Airways.

The proposed Final Judgment also includes divestitures at Dallas Love Field, an airport near American's largest hub at Dallas-Fort Worth International Airport ("DFW"). Gates at DFW are readily available, but Love Field, which is much closer to downtown Dallas, is highly gate-

[4] JetBlue and American currently engage in an exchange in which JetBlue trades 24 slots at New York's JFK International Airport to American in exchange for American trading 16 slots at Reagan National to JetBlue. Southwest currently leases ten slots from American at LaGuardia.

[5] We estimate that each gate can support between eight and ten round trips per day and thus, two gates at each of these key airports will provide for commercially viable and competitive patterns of service for the recipients of the divested gates.

constrained. Although today operations at Love Field are severely restricted under current law,[6] those restrictions are due to expire in October 2014, at which point Love Field will have a distinct advantage versus DFW, particularly in serving business customers. The divestitures will position a low-cost carrier to provide vigorous competition to the New American's nonstop and connecting service out of DFW.

Past antitrust enforcement demonstrates that providing LCCs with access to constrained airports results in dramatic consumer benefits. In 2010, in response to the United States' concerns regarding competitive effects of the proposed United/Continental merger, United and Continental transferred 36 slots, three gates and other facilities at Newark to Southwest. Southwest used those assets to establish service on six nonstop routes from Newark, resulting in substantially lower fares to consumers. For example, average fares for travel between Newark and St. Louis dropped 27% and fares for travel between Newark and Houston dropped 15%. In addition, Southwest established connecting service to approximately 60 additional cities throughout the United States.

The proposed remedy will require the divestiture of almost four times as many slots as were divested at the time of the United/Continental merger, plus gates and additional facilities at key airports throughout the country. In total, the divestitures will significantly strengthen the purchasing carriers, provide the incentive and ability for those carriers to invest in new capacity, and position them to provide more meaningful competition system-wide.

A. *The Divestiture of Slots at Reagan National*

Section IV.F of the Proposed Final Judgment requires that the New American permanently divest 104 air carrier slots at Reagan National, two of which shall be slots currently

[6] Under legislation known as the Wright Amendment, airlines operating out of Love Field may not operate nonstop service on aircraft with more than 56 seats to any points beyond Texas, New Mexico, Oklahoma, Kansas, Arkansas, Louisiana, Mississippi, Missouri or Alabama.

held by US Airways and the remainder from American, including 16 slots American currently leases to JetBlue in exchange for slots at John F. Kennedy International Airport. New American will offer to make the slot exchange with JetBlue permanent. The remaining 88 slots (plus any of the 16 traded slots that JetBlue declines) will be divided into bundles, taking into account specific slot times to ensure commercially viable and competitive patterns of service for the recipients of the divested slots. New American will divest these slot bundles to at least two different carriers approved by the United States in its sole discretion, in consultation with the Plaintiff States.

In addition, New American will either sublease or transfer to the purchaser of any Reagan National slots, gates and other ground facilities (*e.g.*, ticket counters, hold-rooms, leased jet bridges, and operations space), up to the extent such gates and facilities were used by Defendants to support the use of the divested slots, on the same terms and conditions pursuant to which the New American currently leases those facilities.

Following the divestiture of the Reagan National slots, if requested by the purchasers, Defendants shall lease back the slots for no consideration for a period not to exceed 180 calendar days, or as may be extended at the request of the purchaser, with the approval of the United States, in consultation with the Plaintiff States. The value of this rent-free lease back will naturally be reflected in the purchase price of the slots. A transfer of this magnitude will naturally entail a transition period for both the acquirers and the Defendants. The lease-back provisions are designed to allow purchasers sufficient time to institute new service while incentivizing them to establish that service reasonably quickly.

B. *The Divestiture of Slots and Facilities at LaGuardia*

Section IV.G of the Proposed Final Judgment requires that New American permanently divest 34 air carrier slots at LGA. New American will offer to divest to Southwest on commercially reasonable terms the 10 slots Southwest currently leases from American. The United States will identify the remaining 24 slots to be divested taking into account specific slot times to ensure commercially viable and competitive patterns of service for the recipients of the divested slots. The 24 slots (in addition to any of the 10 leased slots that Southwest declines) will be divided into bundles and divested to carriers approved by the United States in its sole discretion, in consultation with the Plaintiff States.

In addition, New American will either sublease or transfer to the purchaser of any LaGuardia slots gates and other ground facilities (*e.g.*, ticket counters, hold-rooms, leased jet bridges, and operations space), up to the extent such gates and facilities were used by Defendants to support the use of the divested slots, on the same terms and conditions pursuant to which the New American currently leases those facilities. With respect to gates, New American will make reasonable best efforts to facilitate any gate moves necessary to ensure that the purchasing carrier can operate contiguous gates.

Following the divestiture of the LaGuardia slots, if requested by the purchasers, Defendants shall lease back the slots for no consideration for a period not to exceed 180 calendar days, or as may be extended at the request of the purchaser, with the approval of the United States, in consultation with the Plaintiff States. The value of this rent-free lease back will naturally be reflected in the purchase price of the slots. A transfer of this magnitude will naturally entail a transition period for both the acquirers and the Defendants. The lease-back

provisions are designed to allow purchasers sufficient time to institute new service while incentivizing them to establish that service reasonably quickly.

C. *The Divestiture of Gates at Other Key Airports*

Section IV.H of the Proposed Final Judgment requires that New American will transfer, consistent with the practices of the relevant airport authority, to another carrier or carriers approved by DOJ in its sole discretion, in consultation with the Plaintiff States, all rights and interests in two gates, to be identified and approved by DOJ in its sole discretion, in consultation with the Plaintiff States, and provide reasonable access to ground facilities (e.g., ticket counters, baggage handling facilities, office space, loading bridges) at each of: ORD, LAX, BOS, MIA, DAL on commercial terms and conditions identical to those pursuant to which the gates and facilities are leased to New American. New American will make reasonable best efforts to facilitate any gate moves necessary to ensure that the transferee can operate contiguous gates.

D. *Divestiture Trustee*

In the event the Defendants do not accomplish the divestitures as prescribed by the proposed Final Judgment, Section V of the proposed Final Judgment provides that the Court will appoint a Divestiture Trustee selected by the United States, in consultation with the Plaintiff States, to complete the divestitures. If a Divestiture Trustee is appointed, the proposed Final Judgment provides that the Defendants will pay all costs and expenses of the Divestiture Trustee. After his or her appointment becomes effective, the Divestiture Trustee will file monthly reports with the Court and the United States setting forth his or her efforts to accomplish the divestiture.

E. *Monitoring Trustee*

Section VII of the proposed Final Judgment permits the United States, in consultation with the Plaintiff States, to appoint a Monitoring Trustee, subject to approval by the Court. If a

Monitoring Trustee is appointed, the proposed Final Judgment provides that the Defendants will pay all costs and expenses of the Monitoring Trustee. After his or her appointment becomes effective, the Monitoring Trustee will file reports with the Court and the United States every ninety days or more frequently as needed setting forth the Defendants' efforts to comply with the terms of the Final Judgment.

F. *Prohibition on Reacquisition*

Section XII of the proposed Final Judgment prohibits the merged company from reacquiring an ownership interest in the divested slots or gates during the term of the Final Judgment. The proposed Final Judgment will not prevent New American from engaging in short-term trades or exchanges involving the divested slots at Reagan National or LGA for scheduling purposes.

G. *Future Transactions*

The proposed Final Judgment requires Defendants to provide advance notification of any future slot acquisition at Reagan National by the merged company, regardless of whether the transaction meets the reporting thresholds set forth in the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, 15 U.S.C. § 18a (the "HSR Act"). The proposed Final Judgment further provides for waiting periods and opportunities for the United States to obtain additional information analogous to the provisions of the HSR Act.

H. *Stipulation and Order Provisions*

Defendants have entered into the Stipulation and Order attached as an exhibit to the Explanation of Consent Decree Procedures, which was filed simultaneously with the Court, to ensure that, pending the divestitures, the Divestiture Assets are maintained. The Stipulation and

Order ensures that the Divestiture Assets are preserved and maintained in a condition that allows the divestitures to be effective.

IV.

REMEDIES AVAILABLE TO POTENTIAL PRIVATE LITIGANTS

Section 4 of the Clayton Act, 15 U.S.C. § 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. § 16(a), the proposed Final Judgment has no prima facie effect in any subsequent private lawsuit that may be brought against Defendants.

V.

PROCEDURES AVAILABLE FOR MODIFICATION OF THE PROPOSED FINAL JUDGMENT

The United States and Defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the Federal Register, or the last date of publication in a newspaper of the summary of this Competitive Impact Statement, whichever is later. All comments received during this period

will be considered by the United States Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to the Court's entry of judgment. The comments and the response of the United States will be filed with the Court. In addition, comments will be posted on the U.S. Department of Justice, Antitrust Division's internet website and, under certain circumstances, published in the Federal Register.

Written comments should be submitted to:

William H. Stallings
Chief, Transportation, Energy & Agriculture Section
Antitrust Division
United States Department of Justice
450 Fifth Street, N.W., Suite 8000
Washington, DC 20530

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI.

ALTERNATIVES TO THE PROPOSED FINAL JUDGMENT

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits against the Defendants. The United States could have continued the litigation and sought preliminary and permanent injunctions against the proposed merger. However, the proposed Final Judgment avoids the time, expense, and uncertainty of a full trial on the merits. Moreover, the United States is satisfied that the divestiture of assets described in the proposed Final Judgment is an appropriate remedy. The proposed relief will facilitate entry and expansion by low-cost carriers at key slot-constrained and gate-constrained airports, thereby enhancing the ability of the purchasing carrier(s) to provide meaningful competition to New American and other legacy carriers.

VII.

STANDARD OF REVIEW UNDER THE APPA
FOR THE PROPOSED FINAL JUDGMENT

The Clayton Act, as amended by the APPA, requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty-day comment period, after which the court shall determine whether entry of the proposed Final Judgment "is in the public interest." 15 U.S.C. § 16(e)(1). In making that determination, the court, in accordance with the statute as amended in 2004, is required to consider:

> (A) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and
>
> (B) the impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. § 16(e)(1)(A) & (B). In considering these statutory factors, the court's inquiry is necessarily a limited one as the government is entitled to "broad discretion to settle with the defendant within the reaches of the public interest." *United States v. Microsoft Corp.*, 56 F.3d 1448, 1461 (D.C. Cir. 1995); *see generally United States v. SBC Commc'ns, Inc.*, 489 F. Supp. 2d 1 (D.D.C. 2007) (assessing public interest standard under the Tunney Act); *United States v. InBev N.V./S.A.*, 2009-2 Trade Cas. (CCH) ¶ 76,736, 2009 U.S. Dist. LEXIS 84787, No. 08-1965 (JR), at *3, (D.D.C. Aug. 11, 2009) (noting that the court's review of a consent judgment is limited and only inquires "into whether the government's determination that the proposed

remedies will cure the antitrust violations alleged in the complaint was reasonable, and whether the mechanism to enforce the final judgment are clear and manageable.").[7]

As the United States Court of Appeals for the District of Columbia Circuit has held, under the APPA a court considers, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See Microsoft*, 56 F.3d at 1458-62. With respect to the adequacy of the relief secured by the decree, a court may not "engage in an unrestricted evaluation of what relief would best serve the public." *United States v. BNS, Inc.*, 858 F.2d 456, 462 (9th Cir. 1988) (citing *United States v. Bechtel Corp.*, 648 F.2d 660, 666 (9th Cir. 1981)); *see also Microsoft*, 56 F.3d at 1460-62; *United States v. Alcoa, Inc.*, 152 F. Supp. 2d 37, 40 (D.D.C. 2001); *InBev*, 2009 U.S. Dist. LEXIS 84787, at *3. Courts have held that:

> [t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is "*within the reaches of the public interest*." More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.

Bechtel, 648 F.2d at 666 (emphasis added) (citations omitted).[8] In determining whether a proposed settlement is in the public interest, a district court "must accord deference to the

[7] The 2004 amendments substituted "shall" for "may" in directing relevant factors for a court to consider and amended the list of factors to focus on competitive considerations and to address potentially ambiguous judgment terms. *Compare* 15 U.S.C. § 16(e) (2004), *with* 15 U.S.C. § 16(e)(1) (2006); *see also SBC Commc'ns*, 489 F. Supp. 2d at 11 (concluding that the 2004 amendments "effected minimal changes" to Tunney Act review).

[8] *Cf. BNS*, 858 F.2d at 464 (holding that the court's "ultimate authority under the [APPA] is limited to approving or disapproving the consent decree"); *United States v. Gillette Co.*, 406 F. Supp. 713, 716 (D. Mass. 1975) (noting that, in this way, the court is constrained to "look at the overall picture not hypercritically, nor with a microscope, but with an artist's reducing glass"). *See generally Microsoft*, 56 F.3d at 1461 (discussing whether "the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest'").

government's predictions about the efficacy of its remedies, and may not require that the remedies perfectly match the alleged violations." *SBC Commc'ns*, 489 F. Supp. 2d at 17; *see also Microsoft*, 56 F.3d at 1461 (noting the need for courts to be "deferential to the government's predictions as to the effect of the proposed remedies"); *United States v. Archer-Daniels-Midland Co.*, 272 F. Supp. 2d 1, 6 (D.D.C. 2003) (noting that the court should grant due respect to the United States' prediction as to the effect of proposed remedies, its perception of the market structure, and its views of the nature of the case).

Courts have greater flexibility in approving proposed consent decrees than in crafting their own decrees following a finding of liability in a litigated matter. "[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.'" *United States v. Am. Tel. & Tel. Co.*, 552 F. Supp. 131, 151 (D.D.C. 1982) (citations omitted) (quoting *United States v. Gillette Co.*, 406 F. Supp. 713, 716 (D. Mass. 1975)), *aff'd sub nom. Maryland v. United States*, 460 U.S. 1001 (1983); *see also United States v. Alcan Aluminum Ltd.*, 605 F. Supp. 619, 622 (W.D. Ky. 1985) (approving the consent decree even though the court would have imposed a greater remedy). To meet this standard, the United States "need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms." *SBC Commc'ns*, 489 F. Supp. 2d at 17.

Moreover, the court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its Complaint, and does not authorize the court to "construct [its] own hypothetical case and then evaluate the decree against that case." *Microsoft*, 56 F.3d at 1459; see also *InBev*, 2009 U.S. Dist. LEXIS 84787, at *20 ("the 'public interest' is not to be measured by comparing the violations alleged in the complaint

against those the court believes could have, or even should have, been alleged"). Because the "court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place," it follows that "the court is only authorized to review the decree itself," and not to "effectively redraft the complaint" to inquire into other matters that the United States did not pursue. *Microsoft*, 56 F.3d at 1459-60. As this Court confirmed in *SBC Communications*, courts "cannot look beyond the complaint in making the public interest determination unless the complaint is drafted so narrowly as to make a mockery of judicial power." *SBC Commc'ns*, 489 F. Supp. 2d at 15.

In its 2004 amendments, Congress made clear its intent to preserve the practical benefits of utilizing consent decrees in antitrust enforcement, adding the unambiguous instruction that "[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene." 15 U.S.C. § 16(e)(2). The language wrote into the statute what Congress intended when it enacted the Tunney Act in 1974, as Senator Tunney explained: "[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process." 119 Cong. Rec. 24,598 (1973) (statement of Senator Tunney). Rather, the procedure for the public interest determination is left to the discretion of the court, with the recognition that the court's "scope of review remains sharply proscribed by precedent and the nature of Tunney Act proceedings." *SBC Commc'ns*, 489 F. Supp. 2d at 11.[9]

[9] *See United States v. Enova Corp.*, 107 F. Supp. 2d 10, 17 (D.D.C. 2000) (noting that the "Tunney Act expressly allows the court to make its public interest determination on the basis of the competitive impact statement and response to comments alone"); *United States v. Mid-Am. Dairymen, Inc.*, 1977-1 Trade Cas. (CCH) ¶ 61,508, at 71,980 (W.D. Mo. 1977) ("Absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should . . . carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances."); S. Rep. No. 93-298, 93d Cong., 1st Sess., at 6 (1973) ("Where the public

VIII.

DETERMINATIVE DOCUMENTS

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

Respectfully submitted,

/s

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interest can be meaningfully evaluated simply on the basis of briefs and oral arguments, that is the approach that should be utilized.").

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

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

SUPPLEMENTAL STIPULATED ORDER

WHEREAS, Plaintiff States of Arizona, Florida, Tennessee and Michigan, the Commonwealths of Pennsylvania and Virginia, and the District of Columbia ("Plaintiff States") filed their Complaint against Defendants US Airways Group, Inc. ("US Airways") and AMR Corporation ("American") on August 13, 2013, as amended on September 5, 2013;

AND WHEREAS, the Plaintiff States and Defendants, by their respective attorneys, have consented to the entry of this Supplemental Stipulated Order without trial or adjudication of any issue of fact or law, and without this Supplemental Stipulated Order constituting any evidence against or admission by any party regarding any issue of fact or law;

AND WHEREAS, Defendants agree to be bound by the provisions of this Supplemental Stipulated Order pending its entry by the Court;

AND WHEREAS, Defendants have represented to the Plaintiff States that the commitments required below can and will be made, and that the Defendants will later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the provisions below other than those set forth in this Supplemental Stipulated Order;

NOW THEREFORE, before any testimony is taken, without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is ORDERED, ADJUDGED, AND DECREED:

I. JURSIDICTION

This Court has jurisdiction over the subject matter of and each of the parties to this action. The Complaint states a claim upon which relief can be granted against

Defendants US Airways and American under Section 7 of the Clayton Act as amended (15 U.S.C. § 18).

II. DEFINITIONS

A. Unless otherwise indicated, defined terms have the meaning ascribed to them in the Proposed Final Judgment filed simultaneously herewith.

B. "New American" or "the New American" means the merged entity after the Transaction has closed.

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III. APPLICABILITY

A. This Supplemental Stipulated Order applies to Defendants and all other persons in active concert or participation with any of them who receive actual notice of this Supplemental Stipulated Order by personal service or otherwise.

IV. HUBS

A. Following completion of the merger, and until the third anniversary of the date on which a Stipulation and Final Judgment incorporating these terms, both customary in form, are filed with the Court (the "Effective Date"), New American will maintain in a manner generally consistent with historical operations its hubs at Charlotte Douglas International Airport, John F. Kennedy International Airport, Los Angeles International Airport, Miami International Airport, Chicago O'Hare International Airport, Philadelphia International Airport, and Phoenix Sky Harbor International Airport.

V. COMMUNITIES

Following completion of the merger, and until the fifth anniversary of the Effective Date, New American will provide daily scheduled service (holidays excepted) from one or more of its hubs to each airport in each of the Plaintiff States set forth in this Section V that had scheduled daily service (holidays excepted) by either American or US Airways at the time of the commencement of the Litigation, except for service that is discontinued as the result of the slot and facilities divestitures required as a condition to completing the merger:

State	Code	Airport
Arizona	FLG	FLAGSTAFF
	PHX	PHOENIX
	TUS	TUCSON INT'L
	YUM	YUMA
Florida	DAB	DAYTONA BEACH
	EYW	KEY WEST
	FLL	FT. LAUDERDALE INT'L
	GNV	GAINESVILLE
	JAX	JACKSONVILLE INT'L
	MCO	ORLANDO INT'L
	MIA	MIAMI INT'L
	MLB	MELBOURNE KENNEDY
	PBI	WEST PALM BEACH INT'L

	PNS	PENSACOLA REGIONAL
	RSW	FORT MYERS REGIONAL
		SARASOTA/BRADENTON
	SRQ	BRADENTON
	TLH	TALLAHASSEE MUNICIPAL
	TPA	TAMPA INTERNATIONAL
	VPS	VALPARAISO / FT WALTON BEACH
Michigan	AZO	KALAMAZOO KAL/BTLCRK
	DTW	DETROIT WAYNE CO
	FNT	FLINT BISHOP
	GRR	GRAND RAPIDS KENT CTY
	MQT	MARQUETTE
	TVC	TRAVERSE CITY
Pennsylvania	ABE	ALLENTOWN BETHLEHEM
	AVP	WILKES-BARRE/SCRANTON
	ERI	ERIE INTL
	IPT	WILLIAMSPORT
	MDT	HARRISBURG INTL
	PHL	PHILADELPHIA PA/WILM'TON INT'L
	PIT	PITTSBURGH INT'L

	SCE	STATE COLLEGE
Tennessee	BNA	NASHVILLE METRO
	CHA	CHATTANOOGA LOVELL
	MEM	MEMPHIS INTL
	TRI	TRI-CITY AIRPORT MUNICIPAL
	TYS	KNOXVILLE TYSON
Virginia	CHO	CHARLOTTESVILLE ALBEMARLE
	DCA	WASHINGTON NATIONAL
	IAD	WASHINGTON DULLES
	LYH	LYNCHBURG
	ORF	NORFOLK INTL
	PHF	HAMPTON INTL
	RIC	RICHMOND/WMBG INT'L
	ROA	ROANOKE MUNICIPAL

VI. FORCE MAJEURE

A. New American shall not be deemed in violation of this Supplemental Stipulated Order if it fails to comply with the provisions in Sections IV and V herein due to force majeure events including, without limitation, strikes, boycotts, labor disputes, embargoes, acts of God, acts of the public enemy, acts of a governmental authority, terrorism, riots, rebellion, sabotage, quarantine restrictions, lockouts, war, epidemics,

volcanic eruptions, wild fires, or extraordinary security requirements ("Force Majeure"). Should any such Force Majeure occur, New American will provide notice to the Plaintiff States as soon as reasonably practicable, and provide documentation of the circumstances as reasonably requested by the Plaintiff States. In addition, to the extent the Force Majeure is of limited duration, New American will resume its obligations hereunder as soon as reasonably practicable.

VII. Material Adverse Change

A. In the event of a material adverse change in demand, the competitive environment, or New American's cost to comply with any of the obligations of Sections IV or V of this Supplemental Stipulated Order, defendants will, unless otherwise ordered by the Court, be relieved of such obligation after 30 days prior notice by Defendants to the Plaintiffs and 20 days prior notice by Defendants to the Court.

B. Notice to the Court, under this Section, Section VII, will be satisfied by a motion filed in accordance with the rules of the Court then in effect. Notice to all Plaintiffs will be satisfied by service by overnight courier addressed to

Office of the Attorney General
Commonwealth of Pennsylvania
Antitrust Section
Strawberry Square, 14th Floor
Harrisburg, PA 17120

Attention: Chief, Antitrust Section

VIII. ENFORCEMENT

If one or more of the Plaintiff States believes that this Supplemental Stipulated Order has been violated, they may apply to the court for an order of contempt. Before doing so, such Plaintiff State or States must give the New American notice of its belief that the Supplemental Stipulated Order has been breached and a reasonable opportunity for the New American to cure any alleged violation or violations; the New American must be in breach for more than 90 days or announced changes to one of its hubs or communities served that indicate that it will be in breach for more than 90 days. If the court finds that the New American has breached this Supplemental Stipulated Order, the court may order any remedy appropriate to cure the New American's breach including specific performance or other equitable relief, the award of damages, other compensation and penalties and costs and attorney's fees.

IX. COMPLIANCE

One (1) year after the entry of this Supplemental Stipulated Order, annually for the next five years on the anniversary of the entry of this Supplemental Stipulated Order, at other times as Plaintiff States may require, New American shall provide a verified written report to the Plaintiff States setting forth in detail the manner and form in which it has complied and is complying with this Supplemental Stipulated Order.

X. FEES AND COSTS

New American shall pay to the Plaintiff States their reasonable costs and attorney's fees incurred in connection with the Litigation in the aggregate amount of $1.75 million. These costs and fees shall reimburse the cost and fees of the Offices of Attorney General of the Plaintiff States. The portion of this payment representing costs

shall be used to reimburse their costs. The portion of this payment representing fees shall be used for continued Public Protection and Antitrust Enforcement purposes except that the payment to the District of Columbia shall be paid to the 'D.C. Treasurer' and used in accordance with District of Columbia law. The Plaintiff States shall designate to the Defendants a Plaintiff State that shall receive the fees and costs covered by this section and such Plaintiff State shall redistribute these funds to the other Plaintiff States.

XI. RETENTION OF JURISDICTION

This Court retains jurisdiction to enable any party to this Supplemental Stipulated Order to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Supplemental Stipulated Order , to modify any of its provisions, to ensure and enforce compliance, and to punish violations of its provisions.

XII. EXPIRATION OF FINAL JUDGMENT

Unless this Court grants an extension, this Supplemental Stipulated Order shall expire five (5) years from the date of its entry.

IT IS SO ORDERED by the Court, this _____ day of _____, 2013.

BY THE COURT:

Colleen Kollar-Kotelly, U.S.D.J.

15086888.2.LITIGATION