FLY TOGETHER

BEFORE ARBITRATORS RICHARD BLOCH, DANA EISCHEN AND FRED HOROWITZ

In the Matter of the Seniority Integration of

THE PILOTS OF DELTA AIR LINES, INC.

and

THE PILOTS OF NORTHWEST AIRLINES, INC.

Pre-Hearing Statement on Behalf of the Delta Air Lines Merger Committee

I. Introduction

Arbitrator George Nicolau, in his decision and award issued following the seniority integration arbitration between the Federal Express and Flying Tiger pilots (DX 1),[*] made the following insightful observation:

> There are four basic lessons to be learned from those submissions; that each case turns on its own facts; that the objective is to make the integration fair and equitable; that the proposals advanced by those in contest rarely meet that standard; and that the end result, no matter how crafted, never commands universal acceptance. *Id.* at 27-28.

He repeated that observation in his decision and award following the recent arbitration between the America West and US Airways pilots (DX 2), adding these additional comments:

> It is understandable that universal acceptance is never achieved. The merged list cannot be a copy of any list that previously attained; other names now appear. Moreover, no matter the effort in minimizing unfavorable changes to career expectations, merged lists do change career expectations; it is in their nature that they do. It is equally understandable that merger committees find it difficult to reach agreement, choosing instead to turn to Boards such as this. Unlike advocates who go on to represent others in proceedings of a different nature, tomorrow and for many days thereafter merger committee members continue to fly side-by-side with those they represent. *Id.* at 19.

Mindful of his admonition, and acutely aware of the events that followed Arbitrator Nicolau's America West/US Airways award, the parties with interests in this case – the Delta Air Lines ("DAL") MEC, the Northwest Airlines ("NWA") MEC, ALPA and DAL – took unprecedented steps to break the dysfunctional seniority integration mold in an effort to facilitate a unified post-merger pilot group and to thereby

[*] DX refers to Delta Air Lines Merger Committee Exhibits. JX refers to Joint Exhibits identified in the General Rules.

unleash the mutually beneficial synergies that motivated this merger. To achieve that end, they charted a new procedural road map for pilot seniority integrations. Before even tackling the seniority integration issues, they negotiated (and subsequently ratified) a single collective bargaining agreement that will apply to both DAL and NWA pilots on the first day after the merger transaction closes. At the same time, they agreed on a speedy and compressed process for resolving the open seniority issues. The lynchpin of that process is this Panel, comprised of three experienced airline arbitrators – rather than a single arbitrator and two pilot neutrals – to maximize the prospect that the award will command the respect of both pilots groups that is vitally necessary for the merger to deliver the anticipated future benefits to all constituencies.

It falls, then, to the parties in this case to address the third prong of Arbitrator Nicolau's observation; that "the proposals advanced by those in contest rarely meet that [fair and equitable] standard." Over the long and sometimes painful history of pilot seniority integration arbitrations, merger committees have too often staked out extreme positions, making voluntary agreement impossible and creating tension and hostility between the merging pilot groups. Among the majors, the Delta pilots have been the lone exception to this pattern. In 1972, the Delta pilots reached a consensual agreement with the Northeast Airlines pilots to merge their seniority lists on a ratioed status and category basis.[1] In 1987 they did the same with the Western Air Lines pilots, again merging their

[1] A copy of the Delta/Northeast Agreement is attached as DX 3. In the simplest of terms, a status and category ratio puts together the pilots holding a status (e.g. Captain) on one aircraft type (e.g. wide body international aircraft) of one carrier with the pilots in that same status and category at the other carrier on the basis of the ratio arrived at through a count of the number of pilots in each status and category at each airline.

lists on a status and category basis.[2] Finally, in 1991, following the fragmentation of Pan American World Airlines, they merged the pilots who came to Delta with their Pan Am equipment and routes on a ratioed status and category basis.[3]

Unfortunately, as we submit this Position Statement, the Delta and Northwest Merger Representatives have been unable to reach agreement on an integrated list. But this failure of agreement will not deter the Delta pilots from continuing to pursue a fair and equitable resolution through the arbitration – one that we believe would approximate a fairly-bargained settlement and that will generate comity and solidarity within the soon-to-be-unified workforce. In this spirit, the Delta pilots will not be submitting an extreme proposal that is designed simply to give the Panel "room" in the event the Northwest pilots choose to take an extreme position.

Status and category ratios were the lynchpin in Delta's three previous mergers and they will form the basis for the Delta pilots' proposal in this case as well (the details of which will be presented during our opening case). The Delta pilots repeatedly reached voluntary agreements based on status and category ratios because they capture the essence of seniority; what seats on what aircraft did the pilots from each carrier bring, what rights did they have relative to one another with respect to those positions, and how can those relationships best be preserved following the merger in order to protect each group's reasonable pre-merger career expectations to the fullest extent possible – the fundamental objective of ALPA Merger Policy. Most particularly, since status and category are the principle determinates of what working as a pilot is all about – earning

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[2] A copy of the Delta/Western Agreement is attached as DX 4. That seniority integration agreement survived judicial challenge by a small number of disgruntled Western pilots. See *Herring v. ALPA*, 894 F.2d 1020 (9th Cir. 1989) (attached as DX 5).

[3] A copy of the Delta/Pan Am Agreement is attached as DX 6.

power – status and category ratios place pilots with comparable present and prospective earning power together on an integrated seniority list. And because that is the case, modern pilot seniority integration cases have frequently been resolved with some form of status and category ratios.

In making their case for a ratioed status and category integration, the Delta pilots intend to focus on the facts that are truly important to resolving this dispute. The Panel will not hear the Delta pilots diminish the Northwest franchise. The Panel will not hear – at least from the Delta pilots in their direct case – dire warnings of near-term (or long-term) collapse, investment bankers slicing and dicing income statements and balance sheets, or experts offering predictions about the future of air transportation and how that future would have spelled the ascendancy of one carrier and the decline of the other absent the merger. Rather, the Delta pilots' case presumes that neither Delta nor Northwest "would … sell a golden goose or purchase a white elephant," *Republic/Hughes Air West* (Bloch 1981) at 20,[4] and that the merger is advantageous for both carriers.

But that aphorism does not mean that there are not meaningful differences between the two pre-merger carriers that would have had career expectation consequences for the respective pilot groups if the merger did not occur and the airlines continue to operate separately. These differences derive primarily from the post-bankruptcy business plans, post-bankruptcy fleets and post-bankruptcy collective bargaining agreements at each airline. An additional factor the Panel must take into account is the expiration of 20 years of conditions and restrictions imposed by Arbitrator Tom Roberts when he integrated the Northwest and Republic seniority lists, in what has

[4] A copy of the *Republic/Hughes Air West* award is attached as DX 7.

been universally understood by the entire industry (including by the original parties themselves, as evidenced by their 24 post-award disputes) to be the roadmap for how *not* to resolve a seniority list integration dispute.[5] And these differences form the basis for the conditions and restrictions the Delta pilots' proposal will include.

In the Sections that follow, we set out a roadmap of the case the Delta Merger Committee will present. In making that case, we will not burden the Panel with scores of self-serving articles, testimony from pilots explaining why they believe one form of integration is better than another or pseudo-scientific efforts to show how individual pilots will be advantaged or disadvantaged twenty years from now.[6] Rather, we will focus on the most basic facts – where were these carriers when they emerged from bankruptcy, how were the post-bankruptcy business strategies going to affect pilot careers and how does our proposed solution accommodate those facts?

II. <u>Setting the Stage: The Post Bankruptcy Plans for the Two Airlines</u>

To assist the Panel in understanding this case, we begin with a sketch of the two airlines, both of which emerged separately from bankruptcy in the first half of 2007 with operational plans firmly in place. These "fresh start" bankruptcies and the two emergence plans formed the basis for two "new" airlines and – looked at together with more recent developments, including increased pressure from rising fuel prices – provide

[5] The post-Roberts' Award decisions are too voluminous to attach to this Brief. We will provide the Panel with a separate CD containing these decisions at the commencement of the hearings.

[6] When this merger is completed, there will over 12,500 pilots on the integrated seniority list. As Arbitrator Nicolau said in *America West/US Airways* "merged lists do change career expectations; it is in their nature that they do." *Id.* The Panel's task is to produce a "fair and equitable" integrated pilot seniority list that protects the respective pilot groups' pre-merger career expectations as a whole. It cannot be expected to protect identically the precise career expectation of every individual pilot on each list, and any effort to pretend that there is a scientifically precise method of doing so in an industry as fluid as the airline industry, and among a work force that has the many options and variables that pilots have, is simply misplaced.

a sound basis for the Panel to understand the stand-alone career expectations of pilots at each carrier. We begin with Delta.

A. Delta Air Lines

1. Delta's Bankruptcy and Reorganization Plan - In recent years, Delta has become the fastest growing U.S.-based international carrier, serving Europe, Central and South America, Africa and the Far East. From the first quarter of 2005 to the first quarter of 2008, Delta expanded its international capacity, measured in available seat miles ("ASMs"), by fifty percent, expanding far faster on the international side than any other U.S. carrier (by contrast, NWA's international operations grew just under three percent over the same period). Feeding DAL's fast-growing international operation is a broad domestic network, with its greatest strengths in the southeast, south central, and northeast United States. As of July 2008, Delta had over 6500 mainline pilots in active flight operations (its seniority list as of this date carried over 7300 pilots).

This transformation of DAL's operations began on September 14, 2005, when amid higher-than-expected fuel prices and the burdens of significant overleveraging, Delta joined the growing list of major US carriers that either filed for Chapter 11 bankruptcy protection (Northwest, US Airways, United) or worked out consensual out-of-court restructurings (American, Continental). In September 2006, in the midst of its bankruptcy reorganization, Delta presented a five-year plan to its Board – a plan designed to continue its strong international growth, initially through shifting wide-body equipment from domestic to international use and then through steady additions of new Boeing 777s and international-capable 757 and 737-700 aircraft. DX 8. On the domestic mainline side of the business, Delta's plan was to make offsetting cuts in capacity as the wide-bodies were shifted to international use and then to slowly but steadily increase the domestic fleet with smaller narrowbody aircraft.

Under this five-year plan, Delta planned to grow its domestic mainline fleet by eleven percent between 2007 and 2010, albeit with a shift towards smaller aircraft. On the international side, Delta would bulk up the wide-body fleet by twenty percent over the same period. All told, the plan anticipated a fourteen percent increase in mainline capacity over this period, including a significant shift in business focus to the international markets. Thus, the plan states that “[b]y 2010, international capacity grows to 41% of overall capacity versus 29% in 2006.” DX 8, at 16.

In light of this anticipated growth, the five-year plan called for steadily increasing pilot headcounts from 2007 on, with a projected count of 5,897 for year-end 2007 rising to 6,639 pilots by year-end 2010. DX 8, at 20.

2. Delta’s Implementation of its Plan - Delta emerged from Chapter 11 in May 2007, having already embarked on this business plan. By the end of 2007, Delta had added thirteen 757-200ERs, and completed the shift of nearly a dozen 767s from the domestic to the international fleet. Its international capacity, measured in ASMs, had grown thirteen percent from year-end 2006. On the domestic side, the shift of 767s from domestic to international missions had an offsetting effect, triggering a one-percent drop in domestic capacity. In terms of the pilot headcount, the total mainline force had risen to 6223 active operations pilots by year-end 2007 – ahead of the bankruptcy plan forecast for that date of 5,897.

By February 2008, Delta’s business plan remained on course, although with further commitments to grow the wide-body international fleet. Delta now planned to grow from the 90 wide-bodies with which it ended 2007 to an international wide-body fleet of 121 aircraft by the end of 2011. The airline would accomplish this through adding 16 new 777s over the period and moving 11 more 767-400s from the domestic side to the international side. DX 9.

Although rising fuel costs have, at least for now, forced Delta to scale back its planned acquisitions of 777s in the 2008-2011 period from 16 to 12, it continues to anticipate growing to 115 international wide-bodies by 2011, a planned increase of 28% over the four-year period. Consistent with this acquisition plan, Delta will add 3 new 777s this year to its fleet and will add five more next year.

The plan for the domestic mainline business also continued ahead. The February 2008 plan for the domestic mainline business was for steady growth in the domestic fleet through 2011 powered by the addition of four 757-200s, 20 737-700s and 20 MD-90s. Most recently, as fuel prices spiked, Delta has determined to scale back its projected domestic fleet from its February plan. DX 10.

Consistent with its bankruptcy business plan, Delta also continued to downsize its regional feeder operations. Delta's regional operations are conducted by a wide range of regional feeders (e.g., Comair, a Delta subsidiary; SkyWest/ASA; Mesa; and Chataqua), whose aircraft are not flown by Delta seniority list pilots. Accordingly, this regional feeder downsizing has had, and will have, no effect on the Delta mainline pilots or their seniority list. The plan as of February was to cut from the 2007 level of 492 regional feeders back to 423 by 2011, mostly through cutting the increasingly unprofitable 50 seat jets, while adding new CRJ-900s and EMB-175s. Since February, with rising fuel costs, Delta has announced plans for even deeper cuts to regional capacity.

3. The Effect on Pilot Jobs - Summing up, Delta's business plan coming out of bankruptcy was to grow its mainline business, largely through building the international side. Since emergence, Delta has continued to pursue these plans, with rapid international growth already occurring and plans for continued growth at the mainline overall through 2011, even in the face of unexpectedly high fuel costs. As of February 2008, Delta's business plan was to grow the mainline business from 445 aircraft in 2007 to 506 aircraft in 2011, a 15% increase in the number of aircraft over that period. While higher fuel prices have caused Delta to chip back the fleet forecast, the plan remains for measured growth with particular emphasis on building wide-body international flying. Of course, the addition of these aircraft to the fleet provides substantial advancement opportunities to the existing DAL pilot workforce, as well as furlough protections from anticipated new hire pilots required to fully staff this growing fleet.

B. Northwest Air Lines

Like Delta, Northwest has both a large international operation – with its major focus in the Pacific, but a meaningful Atlantic component as well – and a significant domestic business centered in the upper midwest. Northwest has not experienced meaningful growth in the past several years, either in its international or domestic mainline operations. As of July 2008, Northwest had slightly less than 4300 mainline pilots in active flight operations (its seniority list as of this date carried nearly 5200 pilots).

1. NWA's Reorganization Plan - On September 14, 2005 – the same day as Delta's bankruptcy filing – NWA filed a Chapter 11 bankruptcy petition. In a bankruptcy restructuring plan dated November 2, 2005, NWA articulated in detail its forward-

looking operational strategy, including NWA's intention to downsize its mainline fleet and optimize its network. DX 11. As we now describe, NWA's restructuring plan was different in key respects from the Delta post-bankruptcy plan. It is not the DAL pilots' position in this proceeding that the NWA business plan was better or worse than Delta's plan from a business perspective. For purposes of this proceeding, we are satisfied to stipulate that both companies had satisfactory stand-alone plans (ex-fuel) for the future. That said, these two plans – and the steps taken since the plans were implemented by the two companies – have important and contrasting ramifications for the respective pilot groups' career expectations that are central to the Panel's job of shaping a fair and equitable resolution of this case.

For the domestic mainline side of NWA's business, the restructuring plan charted a course to shrink aggressively mainline capacity, primarily by replacing what it acknowledged was its aging, fuel-thirsty and range-limited DC-9 fleet with increased small jet capacity. But that small jet capacity was not to come to the mainline. Rather, the new small jet fleet was to grow at NWA's wholly-owned and contracted regional feeder airlines to be flown by pilots not on the NWA seniority list.

Just before the bankruptcy at the end of 2004, NWA had some 367 narrow-body aircraft, of which 157 were DC-9s.[7] This 1960's design DC-9 fleet averaged 35 years of age as of the end of 2005, was the most fuel inefficient passenger aircraft operating in North America and range-limited by modern standards, and, importantly, was oversized

[7] A majority of the DC-9s were 100 seaters, with the remainder a mix of DC-9-40s (110 seats) and DC-9-50s (125 seats).

for the markets in which NWA was using it.[8] With fuel prices on the rise, NWA was determined to accelerate the replacement process.

To replace the DC-9 fleet, NWA planned to employ a new generation of seventy to one-hundred seat jets that it would purchase and fly through an affiliated start-up entity ("NewCo"), with the result that a significant amount of domestic mainline flying would shift to NewCo. During the bankruptcy, NWA VP Flight Operations David Davis described the plan this way:

> But essentially, since we need to . . . have seventy-seaters available to the Northwest network, the idea [] is that we would bring these seventy-seaters into this NewCo operation, bring the new hundred-seaters into the NewCo operation, and then the jobs would essentially be given to Northwest Airlines pilots; essentially, furloughed pilots, at first, would take these jobs. And our proposal was that they would have what are called "flow-up and flow-down rights," which is essentially they could be – they would be able to move between the NewCo operation and the mainline airline.

See DX 12 (Davis Testimony, January 18, 2006 at 2.177). The impact of this plan on jobs at NWA mainline would be significant. Davis' testimony included an exhibit showing that NewCo would generate 813 regional feeder pilot jobs by 2010 and that at least 524 mainline pilot jobs would be lost, and not replaced by regional flying, without NewCo. See DX 13, NWA Ex. 66.

In NWA's bankruptcy restructuring plan, the airline demonstrated for one "'average' DC9 market" – Minneapolis to Rapid City – how the switch in flying from DC-9s to 76-seat jets would improve profitability. See DX 11, at 65. This is what the plan showed:

[8] The restructuring plan stated that "DC9s nearing end of useful life and need replacement
-35 years old
-higher fuel prices accelerating need to replace
-DC9 lack of range capability limits growth opportunities
-A319 is not a viable replacement vs. new 70-100 seaters." See DX 11, at 60.

– MSP-RAP (Rapid City) represents an "average" DC9 market

	MSP-RAP	DC9 Fleet Avg
Seats per Departure	99	100
Load Factor	69%	68%
Avg Segment Fare	$94	$93
Stage Length	490	472

– The A319 is too large and too costly to replace the average DC9 mission like MSP-RAP

Labor Cost Reductions with $65 Oil					
		Newco			
	50-Seater	75-Seater	100-seater	DC-9	A319
Revenue	$9.6	$13.5	$15.1	$15.2	$15.5
Variable Cost	($6.2)	($7.1)	($8.7)	($11.7)	($11.4)
Fixed Cost	($2.6)	($3.4)	($3.9)	($3.1)	($5.5)
Net Contribution	$0.8	$3.0	$2.5	$0.4	($1.4)
Margin	8%	22%	17%	3%	-9%

As the analysis indicates, the profitability problems faced by NWA with the DC-9 on this route are only exacerbated with another mainline narrow-body such as the A319. In contrast, a "75-seater" flown at NewCo would produce the highest margin of any option.

To implement this element of its restructuring plan, NWA had to negotiate scope clause changes with its pilots. NWA sought adjustments that would allow it to fly small jets with up to one-hundred seat capacity at NewCo and other regional carriers. The NWA pilots resisted this proposal and insisted that aircraft above the seventy-six seat level should be flown only at the mainline. In March 2006, a compromise was reached. The pilots agreed to allow Northwest to fly up to ninety 76-seat jets at regional carriers, including NewCo. NWA agreed with its pilots that unspecified 77-110 seat aircraft would be flown at the mainline; however, these aircraft, if purchased, would be subject to a significantly lower pay scale even than the existing DC-9 pay rates which were already the lowest paid pilot jobs at NWA.[9]

Related to the agreement to allow NWA to establish NewCo, NWA and its pilots also negotiated an agreement to allow pilots furloughed from the mainline to be able to "flow down" to NewCo. DX 15.

2. Northwest's Implementation of its Plan - Since obtaining these contract changes and emerging from bankruptcy, NWA has implemented changes fully consistent with its restructuring plan. On the domestic side of its operations, two of NWA's regional carriers – Compass and Mesaba Airlines – have moved quickly to build the new 76-seat fleet. By the end of this year, Compass will have added thirty-six EMB-175s and Mesaba thirty-six CRJ-900s. Meanwhile, with fuel prices rising far above the levels anticipated in the restructuring plan, NWA has rapidly accelerated the retirement of its DC-9s. NWA had reduced the DC-9 fleet to ninety-four by the end of 2007 and by the end of this year the DC-9 fleet will be down to 61, with only twenty 100-seat DC-9-30s remaining. DX 16, at 17. The remaining DC-9s will be retired over the next several years.

With the ramp-up of the regional 76-seat operation and the DC-9 retirements, mainline domestic flying once handled by NWA's DC-9s is rapidly shifting to Mesaba and Compass. Thus, whereas in May 2007 the regional feeders' 76-seat jets handled no flights per week versus 3,392 weekly frequencies by NWA mainline DC-9s, by this November, the 76-seaters will be operating 2,398 flights per week versus just 1,814 for the DC-9s. And lest there be any doubt, this changeover is happening market-by-market.

[9] *See* DX 14. For the 77-110 seat small jet operation, in addition to the low pay rates, a few modifications to the work rules were agreed to as part of the NWA CBA. This includes a lower reserve guarantee, fewer reserve off-days, and a reduced duty hour credit trip rig.

Take the MSP-RAP market discussed in the restructuring plan. Back in October of 2002, NWA had 28 weekly frequencies, 21 flown by the DC-9 and 7 by the now-retired 69-seat Avro flown at Mesaba. By October, 2007, after emergence from bankruptcy, but before the acquisition of the 76-seaters, NWA flew a total of 21 weekly frequencies in this market: 6 with DC-9s; 7 with other NWA mainline narrow-bodies; and 8 with 50-seat jets at a regional feeder. As of November 2008, the NWA schedule for this market includes 14 frequencies for 76-seat jets; 7 frequencies for 50-seat jets; and zero mainline narrow-body frequencies.

This pattern is apparent across the NWA schedule and affects all the NWA hubs.

- MSP-DFW: In May 2007, this market had 41 weekly frequencies, 20 flown by the DC-9, 14 by other mainline narrow-bodies, and 7 by 50-seat jets at a regional feeder. By November 2008, the market still had 41 weekly frequencies, 28 of which were flown by 76-seat jets, 13 by mainline narrow-bodies other than the DC-9, and zero by the DC-9.
- MEM-MKE: In May 2007, this market had 21 weekly frequencies – all flown by DC-9s. For November 2008, the schedule still has 21 frequencies, but now 14 are flown by 76-seaters, 7 by other mainline narrow-bodies, and zero by DC-9s.
- DTW-IAD: In May 2007, this route had 27 weekly frequencies, 21 handled by the DC-9 and six by other mainline narrow-bodies. As of the November 2008 schedule, the DC-9 flies just 7 of these weekly frequencies; the balance is handled by regional feeders (13 by 76-seaters and 7 by 50-seaters).

In the top 75 DC-9 markets[10] between November 2007 and November 2008, DC-9 weekly frequencies fell by 635 from 1701 to 1066. Over the same period, 76-seat jet weekly frequencies in the same 75 markets rose by 756 from 199 to 955. The pattern is clear: the DC-9s are going away and their flying is being directly replaced by 76-seat jets

[10] The measurement period for determining NWA's top 75 DC-9 markets, as measured by weekly frequencies, was June 2005 through May 2007. These 75 markets account for 75% of NWA's DC-9 flying overall.

flown by non-NWA seniority list pilots (or furloughed flow-down NWA seniority list pilots) at the regional feeders.

Significantly, NWA has made no moves of any kind to add new 77-110 seat aircraft at the mainline. The airline has no announced plans of any sort for acquiring such aircraft. Rather, NWA's method for replacing the mainline DC-9s is to service their missions with the combination of EMB-175s at Compass and long-range, two-class CRJ-900 aircraft at Mesaba.

With the spike in oil prices, NWA has also made other recent cutbacks in its mainline domestic fleet. Most recently, on June 18, 2008, NWA announced that it would "remove 14 Boeing 757 and Airbus narrow-body aircraft from its fleet." DX 10. With these changes, NWA's domestic mainline fleet will drop from 295 at year-end 2007 to 248 at the end of 2008 (DX 16) – with the remaining 61 DC-9 retirements yet to come.

NWA's plan for its international business presents a somewhat rosier picture for its pilots, although significant uncertainty remains about the growth path on that side as well. Currently, NWA flies its international operations with a combination of twenty-eight aging 747s and thirty-two recently-acquired A-330s (which replaced NWA's obsolete DC-10s) and to a lesser degree with a portion of its 757-200 fleet. The cargo side of the business is operated with a fleet of ten 747-200 freighters. The passenger business uses the sixteen remaining 747-400s, two 747-200s (for MAC charters) and the new A-330s.

Over the past three years, NWA's international business as a whole has been nearly stagnant, growing less than one-percent per year from first quarter 2005 through first quarter 2008. Over the next several years, NWA hopes to expand its international passenger operations with the acquisition of eighteen new Boeing 787 Dreamliners on order. On the other hand, its cargo business is struggling to hold its own after losing its major customer this year and under pressure of older fuel-inefficient, 3 crew member 747-200 aircraft and a slowing cargo market.

a. The international cargo operation - Northwest's cargo business faces several significant challenges. First, in late 2007, NWA's largest cargo customer, DHL, gave notice that it would end its contract with NWA in 2008. The DHL cargo contract accounts for the flying of many of the 747-200 freighters and terminates officially in October. As of this date, Northwest has not developed business to replace this lost opportunity and the prospects are not good. Second, NWA faces increasing competition from competitors with higher payload, more fuel efficient, 2-seat crew cargo aircraft. Increasingly, the business is dominated by cargo operators with 747-400 freighters, which have greater range than NWA's fleet of aging 747-200 freighters which must make time-consuming and expensive intermediate refueling stops at Anchorage. Competitors like Fed Ex, UPS, Polar, plus many new Asian cargo carriers, operate 747-400 freighters that have greater capacity and use 21% percent less fuel per block hour than NWA's 747-200 freighters, plus they do not require a flight engineer position. In June of this year NWA pulled its daily service from Guangzhou, China citing high fuel costs and waning demand. NWA's 747-200 cargo fleet will be down from 14 aircraft originally to ten this year, and NWA's total block hours operated by the aircraft have fallen by nearly half since August 2005.

In the face of this competition and the age and inefficiency of its fleet, together with the loss of its primary customer DHL, a slowing overall air cargo market and much higher-than-planned fuel prices, NWA is being forced toward earlier retirements for the cargo fleet of 747-200 freighters. In the bankruptcy restructuring plan, NWA anticipated that it would be forced to retire the thirteen freighters in the near future; however, no dates were set. DX 11, at 70. This year, faced with multiple challenges in the cargo business, NWA determined to retire three of its 747-200 freighters, reducing the fleet to ten. While no more retirements have been announced, the writing is on the wall - the 747-200 freighters will soon be gone.[11]

The question is what replaces them – if indeed NWA continues as the only US major combination carrier of several (AA, UA, PA, TW) that formerly operated main deck freighters. If NWA chooses to remain in the cargo business, the most likely answer is its existing 747-400s, which could be converted from passenger to freight operations, bringing NWA's cargo fleet into greater parity with its competition. In this connection, NWA Cargo President Tom Bach stated in May 2008 that the airline would eventually replace the 747-200 freighters with Northwest's 747-400s now in passenger service. See DX 17.

b. The international passenger operation - In its bankruptcy restructuring plan, NWA announced its intention to use a fleet of eighteen new Boeing 787s – which it hoped to bring on board between late 2008 and 2010 – to rationalize its Pacific passenger operations, both through improving economics on existing Pacific routes flown by 747s and by adding new markets to over fly the Narita, Japan hub. DX 11. Unfortunately,

[11] In the bankruptcy, NWA VP Davis testified that " we have a relatively old fleet of cargo aircraft that are going to need to be replaced, if not this – if not by 2010 then soon thereafter." DX 12 (Davis Testimony, January 18, 2006 at 2.216).

continuing production problems at Boeing are causing ongoing delays in the 787 rollout, pushing back NWA's planned deliveries.[12] It now appears that NWA would not see its first 787 until sometime in late 2010. When the 787s do arrive, it is unclear to what extent the new aircraft would be used to add new capacity or, alternatively, replace 747-400s that have been retired or moved to the cargo operation; the most likely outcome, envisioned in the bankruptcy restructuring plan, would be some combination of the two.

3. The Effect on NWA Pilot Jobs -Taking the domestic mainline and international picture together, it is apparent that 2008 has brought a dramatic downsizing to NWA's mainline fleet and its pilot requirements. With the loss of 47 domestic narrow-bodies and one 747-200, the overall fleet has declined this year by 48 aircraft or around fourteen percent, more in crew seat terms. Next year will likely see the retirement of more DC-9s and 747-200 freighters. All of this means many fewer pilot jobs at the mainline. The aircraft losses for 2008 alone will mean that, as the year ends, NWA needs over 500 fewer active pilots than it did when the year began. Next year, there will likely be more aircraft retirements and thus more surplus pilots. Additionally, the new age 65 retirement rule further exacerbates the problem by delaying natural attrition within the pilot group. Finally, with the 787 production delays, any hope that the new Dreamliners would plug this near-term gap – in part or whole – have now evaporated. NWA, on a stand-alone basis, would almost certainly face large layoffs.

In recognition of this reality, on June 28th the NWA pilots and NWA entered into a "Layoff Protection Package" in an attempt to forestall these furloughs. The recital to the agreement states: "WHEREAS, the parties desire to find creative ways to reduce the

[12] The 787 has not yet flown, been certificated, or demonstrated it's economic or service reliability. Further, a current IAM strike at Boeing has shut down production for an indeterminate time.

expected overstaffing problem."[13] DX 18. The Agreement itself provides for a combination of lower monthly flying hours, special leaves, and early retirement options to soak up the unneeded pilots. But this furlough mitigation agreement drops dead on the date that the merger becomes official.[14] Thus, as of the date of the merger, NWA's excess pilot situation will have to be resolved by the merged entity, making the tail end of the NWA seniority list a very exposed place to be.

* * *

As described above, both NWA and Delta went through Chapter 11 proceedings beginning in September 2005 and exiting in Spring 2007. Both came out of those proceedings with well-defined stand-alone plans for the future. Both carriers have actively pursued those plans over the past 18 months, with some adjustments to account for the spike in fuel prices and other market conditions. And while each airline appears to have a viable stand-alone plan, the two carriers are not identically situated in terms of pilot career expectations.

Coming out of the bankruptcy, Delta planned for rapid expansion of its wide-body international flying and steady growth in the mainline operation as a whole. In 2008 – by any standard a tough year – Delta will have added the first three of the 12 to 16 777s it will bring on board by 2011 and will have held steady its overall mainline fleet of just

[13] That the overstaffing problem would, but for the LOA, result in furloughs is starkly apparent from the unusual "benefit" offered to those who accept special leaves. The provision provides: "For purposes of unemployment compensation, a participant will be reported to the applicable state unemployment office as being on 'voluntary leave of absence in lieu of layoff of junior employee' and the Company will not contest any award of unemployment compensation made to the participant by the state." DX 18, Section C(7)(e).

[14] This occurs because the two pilot groups have already negotiated and ratified a joint collective bargaining agreement that will take effect on that date and that agreement does not include the layoff protection language. Also, the furlough mitigation agreement, by its own terms, states that certain of its terms, such as the provisions for lower monthly maximums, drop dead as of the corporate closing. DX 18, Section A(1)(a).

over 440 planes. Its pilot group has been expanding and would continue to do so on a stand-alone basis.

By contrast, NWA came out of Chapter 11 looking to retire a large part of its fleet over the next several years and move much of its small-market domestic operation to Compass, Mesaba and other regional feeder airlines. Since emergence, events have conspired both to speed these retirements and delay the arrival of the wide-body 787s. In 2008 alone, NWA's fleet has downsized by 48 aircraft, reducing by more than 500 the number of active pilots required to fly the mainline operation.

For the Panel, the expectations that each pilot group brings to the merger are critical to fashioning a fair and equitable seniority list. Based on these facts, the Delta pilot group will be proposing conditions and restrictions which, when combined with a status and category list, are designed to deal with two facets of the pilot groups' contrasting expectations. First, we will be seeking to cabin the furlough risk currently faced by the NWA pilot group, so that it does not unfairly fall on the shoulders of the Delta pilot group. Second, we will be proposing to protect each pilot group's reasonable pre-merger expectations of increased wide-body international flying – whether from new 777s on the Delta side or Dreamliners on the Northwest side.

III. Other Factors that the Panel Must Take Into Account in Determining What is and What is Not a Fair and Equitable Seniority List

There are two additional background considerations that require description – the different pre-merger collective bargaining agreements ("CBAs") for each pilot group (and the effect of those agreements on the pilots' career expectations) and the unique attributes of each pilot group's existing seniority lists. We turn first to the CBAs.

A. The Collective Bargaining Agreements. To begin with, ALPA Merger Policy could not be clearer that the Panel is to "carefully weigh *all* the equities *inherent in their merger situation*," *see* ALPA Merger Policy at Part 1.G.5 (JX A) (emphasis added), including the contract improvements that one pilot group will gain due to the merger. *See, e.g.*, *America West and US Airways* (DX 2, at 25) (taking into account in balancing the equities the gains to US Airways pilots from America West's higher pay rates and better work rules); *Federal Express/Flying Tigers* at 40-41 (DX 1, at 41) ("it is the FTL pilots who have gained in terms of pay, working conditions and job security. That, as well as the great differences in expectations, must be taken into account.").

NWA pilots come to the merger with significantly lower pay rates in their pre-merger CBA than those the Delta pilots had bargained in theirs. For example,

- the top-step (twelfth-year) pre-merger rate for a Delta 777 pilot is $191.13 per hour versus a top-step pre-merger rate for a NWA 747-400 captain of $179.34 or for a 747-200 captain of $170.62;
- the top-step (twelfth-year) pre-merger rate for a Delta 757 captain is $159.98 per hour versus a top-step pre-merger rate for a NWA 757 captain of $144.42;
- the top-step (twelfth-year) pre-merger rate for a Delta 737-800 captain is $153.42 per hour versus a top-step pre-merger rate for a NWA A-320 captain of $139.00.

These differences will all be erased as of the date of corporate closing of the merger, because the pilot groups have already negotiated and ratified a new joint collective bargaining agreement (the "JCBA") that will take effect on that date. JX C-3. Under the terms of that JCBA the NWA pilots will gain the full benefit of these higher DAL pay rates, as their rates rise to match those that the Delta pilots brought with them. The new rates for the NWA aircraft will look like this:

Rank		**Equipment**	**Year 12**
CA	Old New %	747-400	179.34 191.13 6.57%[15]
CA	Old New %	747	170.62 187.50 9.89%
CA	Old New %	787	164.79 183.10 11.11%
CA	Old New %	A330	161.51 180.54 11.78%
CA	Old New %	757	144.42 159.98 10.78%
CA	Old New %	A320	139.00 148.03 6.50%
CA	Old New %	DC-9	125.53 138.05 9.97%
CA	Old	Average	9.51%

Doing the math, the huge value of these changes to the NWA pilots is apparent. The increases for the NWA pilots average 9.51%, or roughly $15 per hour (10% of $150 per hour) for captains and $10 per hour for first officers (10% of $100 per hour). Assuming a pilot is paid for 1000 hours in a year, these increases amount to a raise of

[15] The percentage increase reflected in this chart for 12th year captains in each aircraft type is identical to the percentage increases for each captain pay step on those aircraft. Some of the percentage increases for first officer steps are higher.

$10,000 to $15,000 per pilot per year. This is a significant wage increase. More importantly, it is the equivalent in value of an immediate upgrade for each pilot from one category of equipment to the next highest equipment. For example, under NWA's pre-merger CBA, a captain would get a $17 per hour increase when upgrading from the 757 to the A-330. Following the merger, without benefit of any upgrade, the same 757 captain will receive an immediate $15.57 increase just because the merger occurred. Given that the NWA pilots' pre-merger CBA was not amendable until 2011 (and building in a conservative 18 months for Section 6 negotiations), this "rate acceleration" benefit will continue for at least four years. Assuming all NWA pilots were at least in their twelfth year (an overestimate, but not a gross one[16]), those increases would amount to over $200 million ($12.50/hr. x 1000 hours/year x 4500 pilots x 4 years) for the pilot group as a whole, without the benefit of a single aircraft upgrade.

In addition to these general across-the-board increases, over 10% of the NWA pilots will see immediate and future wage increases well beyond those provided simply by going to the DAL rates. Under the NWA contract, a pilot on furlough did not accrue longevity for step increases. Thus, for example, NWA pilot Ujhazy, seniority number 4969 – who was hired on August 27, 2001, furloughed on September 22, 2001 and recalled on July 3, 2007 – currently is a 2nd year FO flying the DC-9 for pay table purposes at the hourly rate of $58.06. In contrast, under the DAL contract – and under the joint contract that will cover both pilot groups – pilots accrue longevity while on furlough. Thus, on the day the merger closes, pilot Ujhazy will not only obtain the benefit of the DAL FO rates for flying the DC-9, he will instantly become a 8th year FO

[16] While not all NWA pilots are in their twelfth year, well over half are. Thus, while the total benefit to the NWA pilot population may more likely be in the neighborhood of $160 million, the point is the same.

at a rate of $90.39 - a 32% increase over his NWA rate for flying the same equipment he presently flies solely as a consequence of obtaining longevity credit while on furlough. Under the NWA contract, Ujhazy would have had to hold a DC 9 CA position to earn as much as he will now earn as a DC 9 FO – there is no NWA equipment on which a 2nd year NWA FO earns $90.36 per hour.[17]

B. The History of the Seniority Lists at the Two Carriers. The Panel is not writing on a clean slate when it considers this integration; a fair and equitable list and accompanying conditions and restrictions will have to take note of the unique history of each pilot group's list, particularly the impact of any prior integrations. At the outset of this brief, we described the three prior agreed-upon integrations at Delta, each performed using a ratio by status and category. As a result, the Delta pilot list is not ordered by date-of-hire. Rather, Northeast, Pan Am and Western pilots are interspersed across the list in the places that were determined through the application of the agreed-upon status and category ratios. Those agreements have operated smoothly and without substantial controversy for 35 years.

The NWA list, in contrast, has been the subject of constant controversy and is still deeply affected by the aftermath of the Roberts award, notwithstanding that its conditions and restrictions expired two-and-one-half years ago. As the Panel likely knows, the Roberts award created a date-of-hire list with a series of conditions and restrictions that ran from November 6, 1989, the date of the award, through January 1, 2006. These conditions and restrictions essentially walled off the flying and equipment that each

[17] Ujhazy actually achieves a 56% increase over his NWA rate when the rate increase is taken into account. Not every NWA pilot who was furloughed will receive as large an increase as will Ujhazy, but nearly 600 will receive some benefit from this longevity bump in addition to the increase arising from going to DAL rates.

group brought to the merger, with the result that the Republic ("Green Book") pilots, whose airline was purely a domestic operation, were almost entirely fenced out of all wide-body flying. As a result, despite holding very senior positions on the merged NWA seniority list, these former Republic pilots were effectively prevented from exercising their seniority to bid and be awarded international wide-body Captain positions, to which their seniority would entitle them absent the conditions and restrictions, until January 1, 2006. On the flip side, more junior pre-merger NWA ("Red Book") pilots bid into the 747s and DC-10s.

Since January 1, 2006, when these conditions and restrictions finally expired, the Green Book pilots became eligible to bid their seniority on the entire fleet. However, they cannot simply bump Red Book pilots out of their captain seats on the higher paying equipment. That's not allowed. Rather, even after the expiration of the Roberts' conditions and restrictions, the Green Book pilots have to wait for one of two occurrences before they can exercise their senior bidding rights. First, if there is a vacancy on a better piece of equipment – either because of a pilot retirement or the arrival of a new airplane – they can bid that vacancy. Second, if they are displaced from their existing seat (e.g., because of aircraft being taken out of the fleet), they have the right to bump anywhere their seniority will permit.

Slowly but surely, and one by one, the Green Book pilots are attempting to exercise their seniority fully (becoming "Green Book healthy"), but this process is far from finished.[18] Several hundred Green Book pilots remain marooned in lower paying

[18] The Red Book pilots have fought this result tenaciously. Even after the Roberts conditions and restrictions lapsed, they prosecuted a dispute under the Award's dispute-resolution process – the 24th such dispute since the Award was issued. In that case, the Red Book pilots argued that a Green Book pilot

equipment than they could hold if afforded the opportunity to bid. These pilots have looked forward to the arrival of the 787s (known at NWA as the "Greenliner") as the mechanism to finally provide the wide-body bidding opportunities they seek. But the 787s keep getting pushed back, as explained above.

The challenge for the Panel in this case is to keep the effects of the Red Book/Green Book legacy within the NWA pilot group from being resolved at the expense of the Delta pilots' career expectations. The Delta pilots' proposal will achieve that result.

III Constructive Notice

Before closing, we turn to one last point that, unfortunately, remains unresolved. That is, what should the Constructive Notice date be and how should that Constructive Notice date affect these pilot groups?

"Constructive Notice" and "Constructive Notice Pilots" are shorthand terms for a fairly simple concept that has engendered substantial dispute in pilot seniority integration cases. In its simplest form, the Constructive Notice Doctrine is a construct for establishing a "bright line" test to determine which pilots hired by two separate but merging airlines should be treated as though they had been hired by the merged airline and should therefore be assumed to have understood that their career expectations were solely those as pilots of the *merged* carrier rather than the *separate* carriers who actually hired them. The doctrine presumes that the bright line date is normally the date the merge is publicly announced. Constructive Notice pilots are typically placed in their

displaced as a result of aircraft retirements may not bump a more junior Red Book pilot from his existing seat. Arbitrator Eischen denied their claim in a decision issued on August 29, 2008. See DX 19.

date-of-hire order below all other pilots (no matter how those other pilots are integrated) from the two merging airlines.

Were we writing on a clean slate, there is a strong argument to be made that the Constructive Notice Doctrine is without analytically sound support, because pilots hired after a merger announcement but before a merger closing cannot really be presumed to know that their careers will be solely dependent on the fortunes of a merged carrier. Announced mergers are subject to substantial uncertainties of final consummation. Department of Justice anti-trust approval, international route transfer approval, shareholder approval, sometimes bankruptcy court approval and the vagaries of closing a complex financial transaction[19] can scuttle an airline merger announced months earlier. United announced a merger with US Airways in 1999 that was never consummated. Northwest announced a planned acquisition of the Trump Shuttle and Midway in 1991 and neither of those transactions occurred. But despite these uncertainties, arbitrators have looked to the merger announcement date as the bright line date for assessing pilot expectations; as a general matter, pilots hired on one side of a merger announcement date are treated differently from those hired on the other side.

Despite the seeming simplicity of this principle, stating it in general terms often fails to resolve disputes between pilot groups over some number of pilots who come to their respective carriers close in time to the merger announcement date. In short, facts get in the way of pure principle. Thus, for example, in *Northwest/Republic* (Roberts 1981) (DX 20), Arbitrator Roberts held that pilots in three classes commencing after the merger announcement date should be included in the integrated list because their classes

[19] Often merger agreements have "substantial material adverse effects" provisions that allow merger partners or investors to crater a transaction at the last moment, sometimes by paying a breakup fee and sometimes not.

had "by then been established." *Id.* at 8. In *Saturn/TIA* (Feller 1977) (DX 21), Arbitrator Feller held that four TIA pilots who were technically "hired" after the merger announcement date should be treated as having been hired before that date because they had been "scheduled for hire and training before" the announcement but were delayed because of "a sharp and temporary cut-back in operations." *Id.* at 18. In *Pan Am/National* (Gill 1981) (DX 22), Arbitrator Gill concluded that nine National pilots whose hire dates were after the merger announcement should nevertheless be treated as not having constructive notice and should be integrated along with the other pilots on both lists because a) at least one of the nine pilots "had been notified by the Company before [the merger announcement date] to come and be processed for appointment," b) "all of the other 8 in the group of 9 were above him on the National pre-merger seniority list;" and c) the seniority list of each separate carrier could not be rearranged.[20] That being the case, Arbitrator Gill concluded that those nine pilots should be treated as though they did not have constructive notice of the merger.[21] *Id.* at 53-54.

This case is no exception to the rule that the unique facts of each case must be taken into account when deciding who is and who is not a Constructive Notice pilot. Here are the facts:

1. In early 2008, Delta made a determination to hire about 400 new pilots to staff the new flying it intended to begin in the summer of 2008. DX 24. This new flying

[20] That command remains in ALPA Merger Policy (JX A) today. See Part 3, Section A: "No integrated list shall be constructed which would change the order of the flight deck crew members on their own respective seniority lists."

[21] To be sure, Arbitrator Bloch did not reach that same conclusion in *Alaska/Jet America* (Bloch 1989). DX 23, at 16 n.18. However, in that case, Mr. Bloch concluded that the facts in PanAm/National and Saturn/TIA "are in certain respects dissimilar [to the Alaska/Jet America facts]." Moreover, he concluded that reaching the result requested by the Alaska pilots would have had the effect of "granting as much as a year's seniority to an admitted new hire over pilots who had already been working." That is not the case here. As we set out in text, all pilots in "dispute" began working for their respective airlines at roughly the same time.

was entirely unrelated to the NWA merger, which had not yet been agreed to in principle or announced.

2. The DAL and NWA merger was announced on April 14, 2008.
3. As of April 14, 31 DAL pilots whose names appear on the July 1, 2008 DAL Seniority List (JX B-1) (Nos. 7354 through 7364) and who were hired as a result of the staffing decision described above had been told by Delta that they had been approved for training and had been sent a commitment letter confirming that fact. A sample copy of the "OK to train" communication, the commitment letter and Delta's log showing the relevant dates are attached hereto as DX 25, 26 and 27 respectively. These pilots actually began class on April 21, 2008. (These pilots are referred to hereafter as the "DAL April 21 Pilots").
4. Additionally, as of April 14, 2008 another 14 pilots whose names appear on the July 1, 2008 DAL Seniority List (Nos. 7365 through 7382) and who were hired as a result of the same staffing decision had received notice that they had been approved for training but had not yet been sent a commitment letter. See DX 27 (Log). These pilots began class on May 5, 2008. (These pilots are referred to hereafter as the "DAL May 5 Pilots").
5. Four pilots whose names appear on the July 1, 2008 DAL Seniority List (Nos. 7368, 7371, 7375 and 7378) and who were hired as a result of the staffing decision received their approval for training one or two days after the merger was announced. (These pilots are referred to hereafter as the "4 Additional DAL Pilots").

6. Meanwhile, at Northwest, the NWA MEC had negotiated a "flow-through" agreement for Northwest and Mesaba pilots that, in its simplest terms, permitted NWA pilots who might be furloughed to flow down to Mesaba and permitted Mesaba pilots to flow up to the NWA seniority list to fill Northwest vacancies. The flow-through agreement, by its terms, permitted Mesaba to "hold back" Mesaba pilots who were eligible to flow up to NWA for a period of time.[22] DX 28. The flow up agreement further provided that Mesaba pilots who were held back would be treated by Northwest as having a NWA system seniority and employment date on the date that the pilot would have commenced class but for the hold back, rather then the date the pilot was actually placed on the NWA payroll and began training.

7. At least seven pilots on the NWA July 1, 2008 Seniority List (JX B-1) (Mark Herman (SN 5098), Ronald Curtis (SN 5099), Peter Kovach (SN 5132), Jeffrey Dahlen (SN 5133), Benson Granberg (SN 5134), Stephen Lavick (SN 5163) and Joseph Lesko (SN 5166)) are "held back" Mesaba pilots. While the list reflects that their hire dates at NWA are prior to April 14, 2008, the fact is that they were not even *told* they were hired at NWA or assigned a class date until after April 14 and did not go on the NWA payroll or commence training until after April 14, 2008. (These pilots are referred to hereafter as the "Mesaba Hold Back Pilots").

[22] The hold back period was three months for line pilots, nine months for instructor pilots and (as a result of a subsequent interest arbitration before Richard Kasher) nine months for check airmen.

The following chart reflects the relevant facts.

NAME	SN	STATED DOH	DATE NOTIFIED	PAYROLL AND CLASS DATE
Herman	5098	Feb. 11, 2008	April 21, 2008	May 5, 2008
Curtis	5099	Feb. 11, 2008	April 21, 2008	May 5, 2008
Kovach	5132	March 10, 2008	May 23, 2008	June 9, 2008
Dahlen	5133	March 10, 2008	May 23, 2008	June 9, 2008
Granberg	5134	March 10, 2008	May 23, 2008	June 9, 2008
Lavick	5163	April 7, 2008	Unknown	Jan. ?, 2009
Lesko	5164	April 7, 2008	May 23, 2008	June 9, 2008

See DX 29.

8. Whatever the propriety of assigning the Mesaba Hold Back Pilots a hire date prior to April 14, 2008 vis-à-vis other NWA pilots on a stand-alone NWA seniority list, that hire date assignment has implications for mergers with other airlines. That is so because ALPA Merger Policy (Part I, Section E.4) specifically provides that for merger purposes "[t]he date of hire shall be the date upon which a pilot first appears upon the Company's payroll as a pilot and also begins initial operational training required to perform such duties in airline operations."

* * *

What does all this mean for this case? It is the DAL Merger Committee's strong view that all pilots on both carriers' July 1, 2008 Seniority Lists should be treated identically for purposes of this proceeding. That is, none should be treated as though they had constructive notice of the merger before they began employment at either Northwest or Delta. There is a strong basis in the decided cases and in logic for treating all pilots in that manner on these facts. Whatever might be said about what the DAL April 21 Pilots and the DAL May 5 Pilots "knew" about their future when they actually began ground school or simulator training on April 21 and May 5, it is identical to what the Mesaba Hold Back Pilots knew when they actually became NWA pilots by beginning their training on May 5 and after.

Aside from the force of the decided cases and of logic, any result that treats the DAL April 21 and May 5 Pilots as Constructive Notice pilots but allows the Mesaba Hold Back Pilots - who began work at the same time (or later) than these DAL pilots - flies directly in the teeth of ALPA Merger Policy's clear and unequivocal direction that, whatever else might be the case for purposes other than a merger, in the context of a merger the only date of hire that may be assigned to a pilot is "the date upon which a pilot *first appears upon the Company's payroll as a pilot and also begins initial operational training* required to perform such duties in airline operations." ALPA Merger Policy, Part 1, Section E.4 (JX A) (emphasis added). And since the order of pilots on their separate seniority lists may not be changed, the only rational way to reconcile these circumstances is to treat the Mesaba Hold Back Pilots and the DAL April 21 and May 5 Pilots as pilots who are not Constructive Notice pilots but rather as pilots who will be integrated by this Panel's award.

CONCLUSION

The Delta Merger Committee's direct case will expand upon the points made in this Pre-Hearing Statement and will submit to the Panel a comprehensive proposed integration methodology based on status and category ratios and accompanying conditions and restrictions that will meet ALPA Merger Policy's Fair and equitable standard that is fully substantiated by these (and other) facts.

Respectfully submitted,

/s/______________________

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Dated: September 29, 2008