

Congress of the United States
Washington, DC 20510

November 21, 2013

The Honorable Eric H. Holder, Jr.
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Attorney General Holder:

On Tuesday, November 12, 2013, the Department of Justice (the “Department” or “DOJ”) filed a proposed final judgment to settle the lawsuit against US Airways and American Airlines filed by the Department and several states to block the two airlines’ merger. Key aspects of this settlement include the divestiture of: 104 air carrier slots at Washington Reagan National Airport (“DCA”); 34 slots at LaGuardia Airport; and gates at six other airports in major cities. Under the proposed settlement, through a side agreement between the carriers and the Department of Transportation (“DOT”), the carriers would also take steps to preserve service to small communities by requiring the New American to use its commuter slots at DCA to serve Small Hub, Medium Hub, and Non-Hub airports to some degree for a limited period of time.

As the Chairmen and Ranking Members of the Committees with jurisdiction over the aviation system, we are particularly concerned with the issue of competitive service for consumers traveling to smaller communities and across the overall commercial aviation network. While the settlement’s side agreement does require the New American to use its commuter slots for service to smaller airports for a period of five years after the settlement, it does not require the company to maintain existing service – or service levels – to any specific small communities that currently receive commercial air service. As discussed below, this agreement seems to do little to protect service to small communities and rural areas, and could very well reduce competition.

In addition, the process the New American will use to divest its slots at DCA and other airports may further compound an already problematic situation for small communities. Representatives from both the combined airline and the DOJ have indicated publicly over the past week that they expect *all* of these slots to be acquired by low cost carriers (LCCs). While LCCs may increase competition on commercial air service to larger markets, they do not generally provide service to smaller communities or rural areas, as only legacy air carriers have networks that encompass these areas. The Department has acknowledged this reality in its own filings with the U.S. District Court, noting in its Amended Complaint, for example, that carriers

like Southwest and JetBlue, “while offering important competition on the routes they fly, have less extensive domestic and international route networks than the legacy airlines.” The Amended Complaint further notes that “[i]n many relevant markets, these airlines do not offer any service at all.” Accordingly, the implicit or explicit preclusion regarding which carriers can bid on the slots and gates to be divested by the newly constituted airline eliminates almost any chance in the short or long-term that overall network service to smaller communities and less populated states and regions will see direct benefit from these historically significant gate and slot divestitures.

We understand that the Department’s focus is necessarily on the proposed merger’s impact on competition. We are concerned, however, that limiting carriers from the pool of potential acquirers of the slots and gates to be divested will harm competition and reduce overall network connections for consumers.

The Department’s Competitive Impact Statement notes that the merger will “eliminate head-to-head competition between US Airways and American on numerous non-stop and connecting routes.” This reduction in competition will arguably have a greater impact on connecting flights throughout the network—including those connecting flights to smaller airports and rural states or regions—than on nonstop flights. As reflected in the Amended Complaint, while the merging airlines currently compete head-to-head for nonstop service on 17 domestic routes, they also “compete directly on *more than a thousand routes where one or both offer connecting service*, representing billions of dollars in annual revenues.” (Emphasis added.) Therefore, while any attempt to limit which carriers can compete for the slots or gates to be divested could increase competition from LCCs along certain routes serving larger destinations, it will almost certainly eliminate head-to-head competition for passengers seeking to travel to many small to medium-sized destinations.

We strongly encourage the Department of Justice, and the DOT, to take a more global view of the competition within the airline industry – including the long-term need to serve smaller and mid-sized communities – and to ensure full consideration of the needs of small communities and rural states and regions throughout the process of settling the lawsuit and supervising the implementation of the settlement agreement. In particular, we urge the DOJ to appoint a monitoring trustee to oversee the divestitures or transfers of the slots and gates in a manner that supports competition, including service to small communities and rural states and regions. To be clear, we fully anticipate that many of the slots and gates will ultimately be awarded to LCCs; we just believe the process should be open to all carriers.

Based on the foregoing, we request that you provide us with answers to the following questions by Tuesday, November 26, 2013:

1. What steps will the Department take to ensure that competition across the national airspace system, including competition for connecting service and service to smaller communities and rural states and regions, is not diminished by the merger and the divestiture of slots and gates required by the proposed final judgment?
2. Will the Department ensure that all airlines are permitted to compete for the slots and gates being divested?

3. Will the Department appoint a monitoring trustee to oversee the divestiture, and direct the trustee to make certain the slot and gate divestiture process promotes competition across the national airspace system and supports service to smaller communities and rural states and regions?

We appreciate your attention to this inquiry, and look forward to your timely responses.

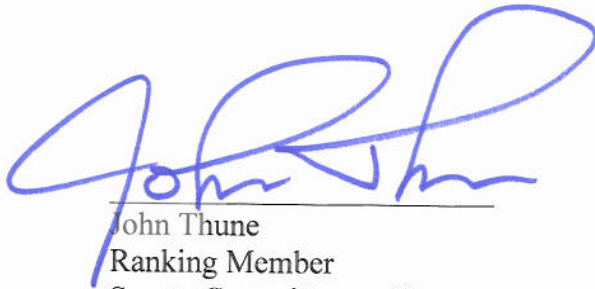
Sincerely,



John D. Rockefeller IV
Chairman
Senate Committee on Commerce,
Science, and Transportation



Bill Shuster
Chairman
House Committee on
Transportation and Infrastructure



John Thune
Ranking Member
Senate Committee on Commerce,
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Nick J. Rahall, II
Ranking Member
House Committee on
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cc: The Honorable Anthony Foxx