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U.S. Department of Transportation Dockets  
Docket No. FAA-99-5927 - 35  
400 Seventh Street SW  
Room Plaza 401  
Washington, DC 20590

Re: *Commercial Air Tour Limitation In The Grand Canyon  
National Park Special Flight Rules Area*

Dear Sir or Madam,

On behalf of both *Windrock Aviation, L.L. C.*, and *Air Grand Canyon, Inc.*, the following comments are being submitted in re: the above-referenced, proposed rule making.

I. As Regards *Windrock Aviation, L.L. C. Directly*:

COMMENT:

**Windrock** Aviation, L.L.C., (hereafter "Windrock"), has been operating as a certificated scenic tour operator at the Grand Canyon National Park since 1994, and continues to function as a certificated scenic tour operator, today. While a small operator, **Windrock** has undertaken a substantial financial investment in order to engage in the scenic tour business at the Grand Canyon National Park. However, during the "Base Year," as stated within the NPRM, and defined as that period from May, 1997, through April, 1998, **Windrock** flew no scenic tours. As a result, **Windrock** is not listed as one of the scenic tour businesses to which an "allocation" would be made under the NPRM as currently structured.

While there is provision within the NPRM for certificate holders to request modification of the allocation, the NPRM states specifically that the FAA will not consider increasing an initial allocation because of changes in consumer demand *or the fact that the base year was not a busy year, operationally*. As a result, the effect of the NPRM, as to **Windrock**, would be to revoke their certificate and put them out of business.

RECOMMENDATION:

**Windrock** believes that their circumstance, although indicative of further problems with the NPRM, is unique. Therefore, **Windrock** would propose that, in the case of **Windrock**, and as **Windrock** is such a small scenic tour operator at the Grand Canyon National Park, another year is utilized as the "Base Year," without reducing that number of flights from the total number of flights "allocated" from the remaining air tour operators, and **Windrock** be allowed to remain in business.

II. As Regards The Provisions Of The NPRM Generally.

A. The "Standard" for determining "Substantial Restoration Of Natural Quiet" Remains So Subjective As To Be Incapable Of Review.

COMMENT:

While use of the term "voodoo science" has been applied to the point of abstraction in regard to the issue of overflights at the Grand Canyon National Park, the NPRM once again illustrates that the government's monitoring methods and determination of a noise problem, generally, is so subjective as to make it incapable of review and substantiation. Highly credible and previously disclosed acoustic reports indicate that "substantial restoration" has already occurred at the GCNP, and yet, according to the NPRM, Secretaries **Peña** and **Babbitt** have decided that such is not the case. Therefore, not surprisingly, according to the NPRM;

"... The policy decision of GCNP is that a substantial restoration requires that 50% or more of the park achieve 'natural quiet' (i.e. no aircraft audible) for 75-100 percent of the day. That level of 'quiet' does not exist today in the park, *in spite of past actions to limit noise.*"

Further, the NPRM goes on to state that even with these most recent proposed changes, "substantial restoration" would only increase to 41 percent, thereby, of course, leaving open the door to further and greater limitations being imposed on those wishing to, *or limited to*, seeing the GCNP **from** the air.

Such a position is so subjective and obviously self-serving that it is ridiculous. At each and every stage of the process of shutting down access to the GCNP, the government's position has been that the change then being made was the change that was expected to result in "substantial restoration," or it would not have been made. Even so, as soon as one set of changes was incorporated, the government's conclusion was that things were not appreciably improved, and in fact appeared to be getting worse. Based upon the government's own "post-remedy evaluations," it appears that the more that is done, the worse things become.

RECOMMENDATION:

It would be the recommendation of *Air Grand Canyon, Inc.*, and *Windrock Aviation, L.L. C.*, that the government discontinue the process of implementing modification after modification, followed by the pretense of scientific study by employees of the government. No one doubts that following such “study”, the government will claim failure in regard to the substantial restoration of natural quiet, and require further modification. In their place, the issue of monitoring and evaluating “substantial restoration,” should be given over to a neutral, non-governmental entity, with substantial expertise in the area of acoustics, whose determinations as to whether the mandates of PL 100-9 1 had been reached would be binding upon both the government and the tour operators. By doing this, the tour operators would lose their ability to claim that there was no scientifically based validation for the determinations preceding the next round of industry-ending modifications, and the government would be able to avoid the “Waco-esque” atmosphere that is beginning to develop around the issue of why it is that everything that has been done to the detriment of the scenic tour industry, and at the direction of the government, to this point, has only made things worse.

- B. The “Use Or Lose” Provision Of The NPRM Cuts Directly Against Any Purported Claim That The Ultimate Goal Of These Rules Is To Restore Natural Quiet To The GCNP.

COMMENT:

If the issue is reduction of noise, why would the government be interested in punishing an air tour operator that does not use his allocation for 180 days? This portion of the NPRM makes no logical, financial, or “noise reduction” sense. It also makes no sense in light of the fact that the “Peak” flying season is being proposed to be either three (3) or five (5) months long, which leaves either a seven (7) or nine(9) month “non-peak” season when the likelihood of flying air tours is recognized as being marginal.

Ultimately, however, if the operator is not using his allocation, he is not making noise over the GCNP.

Even though the NPRM states that not using their allocation for 180 days would result in either the allocation being re-distributed to the other tour operators, or simply done away with, the only possible purpose behind demanding that an air tour operator fly scenic tours during a period when it was otherwise financially inappropriate to do so, *especially where the purported intent of the rule making was to reduce flights and, ergo, aircraft noise above the GCNP*, would be so that the government could “retire” that allocation.

In fact, it is highly possible, and may well be financially expedient, for an individual operator to utilize his entire "non-peak" allocation during the first month of the "non-peak" season, and delay using any of his "peak" allocation until a month after that season starts, and lose his allocation when all he is doing is staffing and planning his tours around when he can make money under the rules as they now exist.

Despite protestations to the contrary, each scenic tour operator who will have an "allocation" made to them based upon their prior performance at GCNP is the possessor of a vested and protectable interest in that allocation. That interest might be modifiable and, ultimately, extinguishable, but the government's delineation of those who "qualify" for allocation, by implication, recognizes the "interest" a small and exclusive group has in the scenic tour use of the GCNP airspace. Clearly, one of the reasons that further hearings would be required before the SFRA is modified again, as is stated within the NPRM, is in order to see that the requirements of Due Process are met before an interest is impacted upon.

RECOMMENDATION:

As the stated purpose of PL 100-91, is to substantially restore natural quiet to the GCNP. That being the case, the taking away of "allocation" that has not been used for 180 days by any scenic tour operator, is inconsistent with both the rights of the tour operators and the stated purpose of PL 100-91. Therefore, *Air Grand Canyon, Inc.*, and *Windrock Aviation, L. L. C.*, would recommend that the provisions of the NPRM purporting to divest any scenic operator of his allocation if he does not fly a scenic flight for 180 days be dropped.

- C. The Application Of Rigid Time Frames For "Peak" And "Non-Peak" Tour Periods Is Inappropriate.

COMMENT:

Comment has been requested on the issue of how "peak" and "non-peak" tour periods should be calculated. Apparently up for consideration is whether the "peak" period should be a five month season or three month season, or whether there should be no "peak / non-peak" delineation. Clearly recognized within this provision is the fact that a) the tour season at the GCNP is extremely limited, time wise, and b) that it would behoove the operators to shift all of their allocation to the busier "Summer season." Equally clear, is the fact that the government is going to place some sort of "allocation shifting" limits on the use of that allocation by the tour operators.

RECOMMENDATION:

*Air Grand Canyon, Inc.*, and *Windrock Aviation, L.L. C.*, would propose that, due to the uncertainty of both the weather and tourism, generally, a five month period be utilized to distinguish “peak” and “non-peak” seasons. *However*, and as a caveat to the issue of seasonal caps, it would be recommended that each operator be allowed to shift ten (10) percent of his “non-peak” allocation to the first and last month of the “peak” season in the event the operator should determine that doing so would better utilize his allocation.

This accomplishes several things. First, it allows the operator to compensate for weather problems and tourism volume fluctuations. Second, it allows the operator to utilize, and plan for the utilization of allocation which might otherwise be lost during a substantial and protracted Winter period. Third, it keeps the “non-peak” allocation from being used during the busiest ‘peak’ months, thereby avoiding the air corridor “congestion” issues that the NPRM anticipates would occur in the event that the operator was allowed to shift all of his allocation to the busiest Summer months.

Finally, it does no harm to the GCNP.

- D. Limitations Being Proposed On The Alienation Of Allocation Destroy The Value Of The Existing Scenic Air Tour Businesses And The Establishment Of New Scenic Tour Businesses.

COMMENT:

Pursuant to the NPRM, severe limitations are placed upon the alienation of an operator’s allocation. This makes no sense, as the number of flights allocated are the number of flights that will be *flown, regardless of who flies them*. By placing this sort of constraint upon the alienation of allocation by an operator, and then requiring that operator, as has been addressed above, to fly during any 180 day period or lose its allocation, the NPRM works a substantial disservice to the investment made by the scenic tour operators. Effectively, the implementation of these provisions limiting the transfer of allocation destroys the value of the business that is entitled to make its profits from the allocation it is otherwise allowed. Additionally, these provisions, along with the provisions of the NPRM limiting the number flights that can be flown, generally, severely impact on the ability of those who might otherwise attempt to establish a profitable business in the flying of scenic tours at the GCNP.

However, the economic impact of neither of these issues was raised within the economic impact statements made within the NPRM.

Page Five - 09/03/99

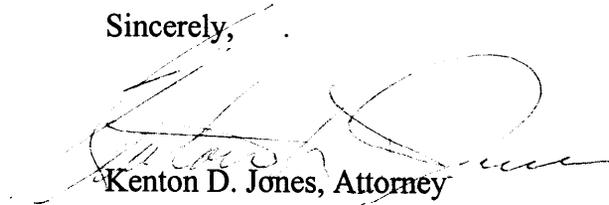
*Comment to NPRM*

Letter to Department Of Transportation

RECOMMENDATION:

*Air Grand Canyon, Inc.*, and *Windrock Aviation, L.L. C.*, recommend that any limitations on alienation of allocation be dropped **from** the NPRM, and that **free** market capitalism be allowed to control what each individual operator does with the allocation to which he is entitled.

Sincerely,

A handwritten signature in black ink, appearing to read "Kenton D. Jones", written over a horizontal line.

Kenton D. Jones, Attorney

*Air Grand Canyon, Inc.*

*Windrock Aviation, L.L. C.*