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aux Etats-Unis 82909

Mr. David Traynham
Assistant Administrator
Policy, Planning and International Aviation
Federal Aviation Administration
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Washington, DC 20591

OFFICE OF THE
CHIEF COUNSEL
RULES DOCKET

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May 2, 2000

Dear Mr. Traynham,

I am writing to you in my capacity as Chairman of the Washington Aviation Assembly, a group of Embassy representatives of 27 Governments and the European Commission.

On November 29 1999, I sent you a letter related to the U.S. Government's proposal to impose overflight fees on foreign airlines, in order to get updated information on the FAA's timetable and proposals for the re-instatement of these fees.

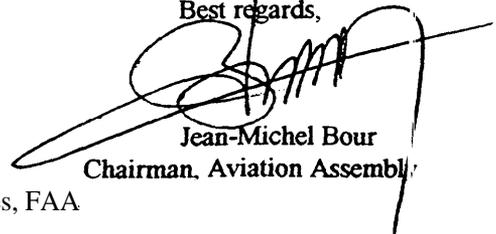
You agreed to convene a meeting on February 16, where I and other members of the Aviation Assembly urged you to pursue an early, open and substantive dialogue on the proposal. In response, we were told that the U.S. Administration was not authorized to give any information on the future rulemaking, and that no consultations could take place before publication of the proposed interim final rule. More recently, in a letter dated March 8, published in the Federal Register, the FAA stated that "while the interim final rule process is not the customary rulemaking approach used by the FAA, it is required by law for this particular rulemaking. Nevertheless I can assure you that all comments received will be fully considered by the FAA before the final rule is issued."

According to internationally agreed principles (i.e. Article 15 of the Chicago Convention), the recovery of costs for air navigation services must be fair, equitable and transparent, with prior and meaningful consultations with governments, airlines and other interested parties. These consultations are recommended by ICAO (Council declaration 9082), as well as required by the bilateral air services agreements concluded between the United States and a number of nations whose governments are represented at the Aviation Assembly.

In our view, the FAA proposal to take into account comments received after the interim final rule is published, and before the final rule is issued, does not constitute prior and meaningful consultations. Such consultations must take place before any decision is taken, and before the rule enters into effect. The use of the interim final rule process simply does not allow for prior and meaningful consultations, in particular because the rule will come into effect 60 days after its publication, which is long before any final rule that might take into consideration our comments, will be issued. The normal rulemaking process takes into account this requirement. Also, considering that the FAA still acts under the original mandate given to it by Congress, we are still unable to understand why the FAA feels obliged to use the Interim Final Rule procedure. There is no urgency or time constraint any longer that would justify the use of this exceptional procedure. The original goal of issuing and implementing a rule during fiscal year 1997 cannot be reached anymore

Consequently, we once again urge the FAA to respect the United States' international commitments and to conduct substantive consultations in a way that they can have an influence on the rule before it comes into effect.

Best regards,



Jean-Michel Bour
Chairman, Aviation Assembly

Cc : Mrs. Donna McLean, Assistant Administrator for Financial Services, FAA
Mrs. Megan Walklet, Office of Aviation Policy, State Department