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MEMORANDUM FOR THE RECORD

Meeting of Counsel for Certain Airlines with the Department of Transportation and the Federal Aviation Administration on the Process for Implementation of Overflight Fees

2:00 p.m., Wednesday, May 24, 2000

This meeting, held in response to a letter to the Chief Counsel of the Federal Aviation Administration (attached) and follow up telephone calls to the General Counsel of the Department of Transportation, was held in the General Counsel's Conference Room in the NASSIF Building. Participants were as follows:

Department of Transportation

Ms. Nancy McFadden	General Counsel
Mr. Neil Eisner	Assistant General Counsel for Regulations
Mr. Dale Andrews	Deputy Assistant Counsel for Litigation
Mr. Robert Klothe	Attorney-Advisor
Mr. Jeffrey Rupp	Special Counsel

Federal Aviation Administration

Ms. Donna McLean	Assistant Administrator for Financial Services
Mr. Randall Fiertz	Manager, Overflight Fees Project
Mr. Mike Chase	Manager, Airman Certification Branch
Dr. Woody Davis	Attorney-Advisor

Counsel for Certain Airlines

Mr. Greg Walden	Asiana Airlines
Mr. Robert Kneisley	Air Transportation Association of Canada
Mr. Moffett Roller	Quantas Airways
Mr. Don Hainbach	British Airways
Ms. Monique Sears	KLM Airways

SUMMARY

After initial introductions and opening/welcoming comments by Ms. McFadden, Mr. Bob Kneisley explained why a meeting with DOT and FAA had been requested in the letter from himself and the other counsel (see attachment.)

He stated that the group of counsel present was a subset of the petitioners in the case of Asiana v. FAA, and that his group had asked for the meeting to avoid further litigation concerning overflight fees. After summarizing the history of the prior litigation from his point of view, he stated that his clients wanted meaningful consultation before any overflight fee rule was issued and that his clients did not believe the FAA had authority to issue the fees using an Interim Final Rule (IFR).

Mr. Greg Walden spoke next and reviewed the wording of the Court's opinion in Asiana v. FAA and the specific language as well as the history of 49 USC 45301. Mr. Kneisley and Mr. Hainbach also discussed the history of the statute and the case. Both suggested the FAA should use a Notice of Proposed Rulemaking (NPRM) rather than an IFR to establish the fees to avoid further legal challenge.

There were several questions from OST and FAA participants to clarify the remarks noted above.

Mr. Kneisley, Mr. Walden, Mr. Roller and Mr. Hainbach responded by repeating that FAA should use an NPRM rather than an IFR. The airline counsel stated that legal challenges were certain if an IFR was used, even if all other aspects of the rule were perfect, including the cost basis of the fees. Concerns about transparency and the lack of meaningful consultation were also raised by the airline counsel.

The meeting was adjourned at approximately 3:15 p.m.

