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Le Conseiller aux Transports

FAA-00-7018-35

Mr. David Traynham
Assistant Administrator
Policy, Planning and International Aviation
Federal Aviation Administration
800, Independence Avenue, S.W.
Washington, DC 20591

June 28, 2000

Dear Mr. Traynham:

I am writing to you in my capacity as Chairman of the Washington Aviation Assembly, to convey to you the position of Aviation Assembly members on the procedure followed by FAA to impose overflight fees on foreign carriers and express their views regarding the public meeting which is scheduled on June 29, 2000.

The FAA recently issued an Interim Final Rule establishing fees for FAA air traffic and related services for certain aircraft that transit U.S.-controlled airspace but neither take off nor land in the United States. This regulation, which was made available on the DOT docket management system on June 2, 2000, was only published in the Federal Register on June 6.

Without any other decision by DOT, this regulation will be effective on August 1, and comments will be received on or before October 4, 2000. Furthermore, the regulation announced that a public meeting will be held on June 29.

Since the FAA first sought to establish these fees in 1996, members of the Aviation Assembly have made clear their view that the procedure of the Interim Final Rule, which was imposed by Congress for budgetary reasons, was not appropriate. This procedure does not allow for appropriate consultations and information. It does not comply with international commitments of the United States, under the Chicago Convention, as well as bilateral air services agreements concluded between the United States and a number of nations whose governments are represented in the Aviation Assembly.

We consider that consultations can only have significance if there is a sufficient exchange of accurate information between experts to make a determination as to whether the fees proposed are just, reasonable and non-discriminatory, and if there is a possibility for the administration to take into account the comments and views expressed by all interested parties to, if necessary, change the rule before it enters into force.

This will not be the case, as such exchange and consultations would not take place within a period of less than 60 days after the publication of the rule.

The public meeting which will be held on June 29 may be required under domestic law, but our governments do not consider it as a substitute for formal consultations, as recommended by the ICAO council, and required by bilateral agreements.

This meeting will be followed, on June 30, by a half-day conference on the status of implementing the FAA's cost accounting system. Information on this system is especially important for carriers and experts to appreciate the fairness, equity and transparency of the fees.

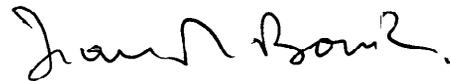
We are surprised by the fact that participants to the public meeting will have to wait until the day after the meeting to get accurate and precise information on the accounting system. This diminishes the value of the public meeting.

Considering that without the necessary information on the accounting system, the public will not be in position to raise valuable questions and concerns on the new fees system, we think that it could not in any way be considered as fulfilling the international obligations of the FAA.

In a démarche delivered to the Department of State on June 5, 2000, after the release of the Interim Final Rule (see attached), we expressed the view of a large majority of the States represented in the Aviation Assembly that exchange of views and consultations can not take place within a period of 60 days. This is more and more valid, as 26 days have already passed, without any move from the FAA to enter into consultations with foreign governments, and as the public meeting on June 29 could not be considered as a substitute for such consultations.

Accordingly, I would like to reiterate our request for an extension of the comment period and a delay of the implementation of the Interim Final Rule until significant and comprehensive consultations with all parties concerned have been achieved. We consider that, at least, the rule could not be implemented before the end of the comment period, that is October 4, 2000, and request that the attached démarche be put into the docket.

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

AVIATION ASSEMBLY

Washington, D.C. June 5, 2000

The Embassies of Australia, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Iceland, Ireland, Italy, Japan, Korea, Luxembourg, the Netherlands, New Zealand, Norway, Portugal, Spain, Sweden, Switzerland, the United Kingdom and the Commission of the European Union present their compliments to the Department of State and have the honor to refer the Department on behalf of their governments, to the Interim Final Rule published on June 2, 2000, establishing new "Fees for Air Traffic Services for Certain Flights Through U.S.-Controlled Airspace".

Already three years ago, the Governments expressed their concerns to the Department of State in a demarche dated May 23, 1997 about the FAA's decision to proceed by way of an Interim Final Rule, instead of a proposed rule. The latter would have allowed for appropriate consultations and information, and ensured the compliance with international commitments of the United States, under the Chicago Convention, as well as bilateral air services agreements concluded between the United States and a number of nations whose governments are party to this note.

Although not contesting the principle of recovering the costs of Air Navigation Services by means of relevant fees, the Governments recall that, according to internationally agreed principles, this should be done in a fair, equitable and transparent manner, with prior and meaningful consultations with governments, airlines and other interested parties.

The governments note that the previous rule, introduced on March 20, 1997, has been overturned by the U.S. Court of Appeals of the District of Columbia, stating that the FAA's allocation of fixed and common costs violated the statutory directive and that the fees should be directly related to the agency cost of providing services. This confirms that the previous rule was prepared and enacted without appropriate consultations and consideration of parties involved.

It was understood that the FAA at that time had a statutory mandate to proceed quickly, because U.S. Congress sought rapid action from the agency to begin recovering costs of services provided during fiscal year 1997. Now, almost 3 years have passed. It is the governments' opinion that the FAA should have revert to the normal procedure, under the APA (5 U.S.C. § 553), and publish a proposed rule.

The governments would like to remind the Department of State that their representatives had urged the FAA to pursue an early, open and substantive dialogue on its future proposal. This led to a special briefing session held on February 25, 1999, and an informal meeting with FAA Assistant Administrator, Mr. David Traynham, held almost a year later on February, 16, 2000. At these occasions FAA representatives indicated that they were open to consultations with all interested parties, and they will be ready to take into account views expressed during the comment period.

The governments would like to reiterate that under procedures recommended by the International Civil Aviation Organization, and under many of the bilateral agreements between the United States and most of the nations whose governments are party to this Note, advanced consultations are required prior to the effectiveness of the Interim final Rule. These consultations can only have significance if there is a sufficient exchange of accurate information between experts to make a determination as to whether the fees proposed are just, reasonable and non-discriminatory. Such exchange and consultations can not take place within a period of 60 days, as announced in the Interim Final Rule.

Consequently, the Governments request that, in order to honor its international obligations, the United States extend the comment period and delay the implementation of the Interim Final Rule until significant and comprehensive consultations with all parties concerned have been achieved.

The Governments further request the State Department to draw to the attention of the Department of Transportation and the Federal Aviation Administration the contents of this Note.

The Embassies avail themselves of the opportunity to renew to the Department of State the assurance of their highest consideration.