BEFORE THE
DEPARTMENT OF TRANSPORTATION
TRANSPORTATION SECURITY ADMINISTRATION
WASHINGTON, D.C.

Interim Rule on	:	
	:	Docket TSA-2002-11334
	:	
Aviation Security Infrastructure fees	:	
	:	

COMMENTS OF
AIR 2000 LIMITED

Communications with respect to this document should be addressed to:

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Interim Rule on Aviation Security Infrastructure fees	:	Docket TSA-2002-11334

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Air 2000 Limited, a charter airline of the United Kingdom, appreciates the opportunity to comment on the Interim Final Rule on the Aviation Security Infrastructure Fee issued on February 20, 2002 (the "Rule"). Air 2000 remains concerned that the U.S. is imposing additional administrative costs and burdens on its own airlines and those of foreign nations at a time when the aviation industry can least bear them. The Air Transport Association ("ATA") is correct that "civil aviation is a national security issue" and "the responsibility for providing and funding aviation security rests with the federal government." (ATA Comments in this docket, dated March 18, 2002.) In Air 2000's view, requiring U.S. and foreign airlines to bear security costs defeats the goal of restoring U.S. and world tourism and travel to their pre-September 11 levels. To the extent the U.S. seeks to impose any costs for security, however, the basis for and reasonableness of those fees must be fully transparent.

With respect to the specific structure and requirements of the Rule, Air 2000 raises the following concerns:

1. **The Infrastructure Fee is Premature Because No Cost Estimate Has Been Prepared.** Air 2000 objects to the methodology used by the Transportation Security Administration ("TSA") to calculate the security infrastructure fees and believes that the Rule exceeds the authority granted to the Department by the Aviation and Transportation Security Act ("ATSA"). That statute requires the Department to "ensure that the fees are reasonably related to [TSA's] costs of providing services rendered" (49 U.S.C. § 44940(b)) and to estimate its costs before imposing any fee on air carriers. (49 U.S.C. § 44940(a)(2)(A).) Yet, as ATA has pointed out, the Rule omits any estimate of TSA's costs or economic analysis. (ATA Comments at 3.) Rather than follow the mandate in ATSA, TSA bases the security infrastructure fee on aggregate costs that were incurred by individual airlines in 2000. TSA has failed to show that the previous costs incurred by individual airlines provide a reasonable basis for estimating future federal costs. On its face, moreover, TSA's reliance on aggregated costs of airlines as a basis for the infrastructure fee is unreasonable because it ignores economies of scale. The aggregated costs approach is fatally flawed because individual airlines are frequently forced to pay excess capital equipment and personnel costs to meet their own security needs. By consolidating buying power and performance responsibility in the federal government, security costs should drop significantly. Security costs at London Gatwick dropped by around 30% several years ago when airport authorities

were able to consolidate separate staffing functions and rationalise equipment used by individual airlines within the airport environment. Similar cost savings should be achieved by rationalisation of the disparate security functions and capital equipment needs now undertaken by the federal government agency TSA. Because the Department has failed to comply with the statutory mandate to estimate its costs, its imposition of infrastructure fees is premature.

2. **Appendix A is Unworkable for Air 2000**. Air 2000 cannot provide the information required by proposed Appendix A because the airline did not aggregate the costs it paid for security screening at U.S. airports during the year 2000. Those amounts were included with other costs that are unrelated to U.S. security. The cost categories on proposed Appendix A do not correspond to cost categories used by Air 2000. Rather, Air 2000 (and other charter airlines) divide their costs into the following two categories: direct operating costs and fixed overhead costs. Direct operating costs include such items as handling and landing fees, fuel, overflight and navigation charges, catering, crew flying allowance, engineering provisions, variable license costs. Fixed operating costs include such items as salaries, aircraft lease costs, building and services, insurance and corporate charges. Air 2000's security manager for its flights serving the U.S. is responsible for security issues involving the 77 other countries served by Air 2000. Air 2000 has no records on, and cannot determine the portion of his salary related to U.S. security. Additionally, as ATA explains at page 6 of its comments, many airline employees performed screening functions in addition to other security and

non-security functions. For example, Air 2000 local agents at U.S. points are employed to provide a range of supervisory services, of which monitoring security screening is only a small portion of their job description. Air 2000 has no records on, and cannot determine the portion of their salary related to their security function.

3. **The Cost of Completing Appendix A is Prohibitive**. Even assuming Air 2000 could complete proposed Appendix A, the cost and man-hours to complete proposed Appendix A would be prohibitive during a time when the airline industry is still trying to recover from the tragic events of September 11, when the focus must remain on operational delivery. Requiring airlines to devote precious personnel resources to such a task would unfairly, and unwisely, burden airlines and prevent them from devoting sufficient resources to maintaining their service and operations.

4. **TSA Should Not Require Airlines to Pay for Costs TSA Has Not Assumed**. The reason for imposing the infrastructure fee is "to help defray TSA's costs of providing . . . security services." Since TSA has not yet assumed some screening functions and foreign airlines are not being reimbursed for those functions, cost data for those functions should be excluded from the calculation of the infrastructure fee. Basing the infrastructure fee on costs for fees which the airlines are currently providing is not only inconsistent with the intent of ATSA but would also force airlines to pay for those services twice (once to perform the services themselves and again by paying TSA for those same services).

5. **Foreign Airlines Should Not Be Required to Pay for U.S. Marshals Unless They Are Assigned to Foreign Aircraft.** Air 2000 understands that part of the infrastructure fees will be used to provide sky marshals to U.S. carriers. If so, sky marshals should be offered to foreign airlines for flights serving the U.S. If the plan is to limit use of U.S. marshals to flights operated by U.S. carriers, then the cost of this activity should not be financed by fees generated from foreign airlines. Under no circumstances should foreign airlines be required to subsidize the use of U.S. marshals on U.S. aircraft.

6. **ATA's Revised Appendix A.** While ATA's Revised Appendix A is an improvement over the current Appendix A, Air 2000 would have great difficulty completing even that form. For example, Air 2000 had no costs for the Year 2000 corresponding to items 1-14 on the ATA form and paid nothing for external screening in the U.S. or for equipment and capital expenses related to security. Moreover, substituting ATA's revised form cannot cure the fundamental problem of the proposed infrastructure fee. The security costing mechanism will remain fatally flawed until it correctly and transparently assesses TSA's true costs and then applies those costs to users in a fair and equitable manner.

CONCLUSION

Air 2000 urges TSA not to impose the infrastructure fee until TSA completes its own thorough and transparent cost analysis. Once TSA's costs are determined in this manner, fees for individual airlines should be allocated using a

formula that requires them to pay in proportion to their use of TSA screening facilities and personnel.

Respectfully submitted,

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Eddie Redfern

April 2, 2002