



Jim DeYoung
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January 15, 2020

Judith Ross
NATS/CAA regulatory appeal
Competition and Markets Authority
The Cabot
25 Cabot Square
London
E14 4QZ
United Kingdom

Re: Letter in Support of IATA's Submission to the CMA Challenging NERL's
Determination of Price Controls

Dear Ms. Ross:

United Airlines, Inc. ("United") is a licensed provider of airline services between the United States ("US") and the United Kingdom ("UK") and other countries around the world. United currently serves 3 destinations in the UK from its various US hubs. Currently, United operates approximately 33,500 flights within UK-controlled airspace annually.

United is a member of the International Air Transport Association ("IATA"), which is the world's leading association of international aircraft operators with 290 member airlines from 120 countries. IATA's purpose is to represent, lead, and serve the global airline industry.

IATA is challenging the decision of NATS (En Route) plc (commonly called "NERL") to increase charges purportedly to account for the cost of implementing Space-Based Automatic Dependent Surveillance - Broadcast ("ADS-B") technology in its air traffic control operations (the "Data Charge"). United's direct interest flows from both its member status in IATA and the fact that United itself will bear the burden of paying NERL's Data Charge, if upheld. United respectfully submits this letter to have its views considered and to support IATA's submission to the UK Competition and Markets Authority ("CMA").

As discussed in IATA's submission, NERL recently advised relevant stakeholders about the revised air navigation charges, effective 1 January 2020. More specifically, NERL seeks to impose two charges on all aircraft operators: (1) a "core" charge in the amount of £56.04 for air traffic services; and (2) a Data Charge for ADS-B data in the amount of £31.64 for flying across the North

Atlantic Crossing Zone. Thus, NERL seeks to impose revised charges in the amount of £87.68 per flight, approximately a 60% increase compared to 2019 rates.

United joins and supports IATA's challenge of the exorbitant Data Charge that NERL seeks to impose on airspace users. In particular:

- When considering the implementation of new technology, airlines would expect an Air Navigation Service Provider ("ANSP") such as NERL to conduct a fair assessment of the technology and potentially viable alternatives. However, it appears that NERL did not properly consider alternatives to ADS-B prior to announcing the Data Charge. Instead, NERL announced the new onerous Data Charge for use of ADS-B that airlines, and potentially the traveling public, will bear. NERL also has not shown how the amount of the Data Charge is properly related to operational costs associated with the use of ADS-B technology. United submits that NERL should provide a fair and transparent analysis of any data surveillance technology (including alternatives) and the associated charges it seeks to impose prior to implementing any such charge.
- Public reports show that NATS Services Ltd. ("NSL"), a sister company of NERL, has a 10% shareholder interest in Aireon, a profit-seeking entity. NERL has entered into a contract with Aireon for the ADS-B surveillance services that NERL seeks to mandate in UK airspace. The financial stake that NERL's sister company has in Aireon appears to create a conflict of interest between the implementation of Aireon's surveillance technology in the UK and the inequitable Data Charge that NERL seeks to impose on airspace users.
- NERL and Aireon have not disclosed their contract for ADS-B data surveillance services to airspace users. However, Aireon's general contract principles with ANSPs have been disclosed in a similar proceeding before the Canadian Transportation Agency ("CTA"). The CTA proceeding challenges the decision of NAV CANADA (another ANSP with a financial stake in Aireon) to increase charges for the use of ADS-B technology in its air traffic control operations. Based upon the CTA proceeding, we believe that Aireon has entered into several long-term, exclusive, non-arm's length contracts with ANSPs such as NERL. Such contracts for the mandated use of ADS-B technology provide no incentives for either ANSPs or Aireon to be innovative or competitive with alternative technology providers or to offer reduced charges to airspace users. We respectfully request that the CMA consider the terms of the contract between NERL and Aireon for a determination of whether such disincentives exist, which would harm both airspace users and the traveling public.
- IATA also contends in its submission that Aireon's contracts with ANSPs include a locked percentage increase of approximately 3% per year. If the contract between NERL and Aireon includes such an annual increase, NERL may seek to impose considerable additional charges each year on airspace users. NERL has not provided any justification to airspace users for future increases. If locked annual increases are included in the contract



between NERL and Aireon, we submit that the increases are not justified and further highlight evidence of a conflict of interest associated with the mandated use of Aireon's ADS-B surveillance technology.

In light of the above, United supports IATA's submission to the CMA and requests that NERL be ordered to (1) cancel the Data Charge, and (2) refund any Data Charge that aircraft operators have paid in excess of the previous charges.

Thank you for your consideration of this matter.

Sincerely,

[Redacted signature]

James DeYoung
Vice President
Network Operations Control