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September 29, 2003

LATE COMMENT

Ms. Mai T. Dinh
Acting Assistant General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, DC 20463

Re: Notice of Proposed Rulemaking: Candidate Travel.

Dear Ms. Dinh:

The National Business Aviation Association, Inc., ("NBAA") based in Washington, DC, is a not-for-profit, nonpartisan 501(c)6 corporation dedicated to the success of the business aviation community. The Association represents the aviation interests of over 7,300 companies that own or operate general aviation aircraft as an aid to the conduct of their business, or are involved with some other aspect of business aviation. NBAA member companies earn annual revenues approaching $5 trillion dollars – a number that is about half the U.S. gross domestic product – and employ more than 19 million people worldwide.

We submit these comments on behalf of our members in response to the Commission's Notice of Proposed Rulemaking: Campaign Finance, 68 *Fed. Reg.* 50481 (August 21, 2003) ("NPRM"). Many of our member companies currently provide transportation to candidates in Federal elections, their agents, or persons traveling on their behalf, not as a revenue generating operations, but incidental to their primary businesses.

Facilitate the Process for Value Determination and Reporting.

Our members are primarily concerned that no matter which valuation mechanism is selected or when payment is required in connection with a campaign traveler's transportation, that valuation and timing must be clear and easily ascertainable.

The NBAA applauds the Federal Election Commission's efforts to create a uniform payment scheme covering transportation of campaign travelers on either government or private aircraft and other conveyances. As part of creating that scheme, our members, and the campaign travelers themselves, need a straightforward process which will enable them to determine, account for, and report the value of the travel provided. They need to be able to do this without employing a host of accountants or lawyers. Such a uniform system will promote parity among campaign travelers, simplify compliance, and facilitate Commission oversight of that compliance.

In addition to creating a clear process, the NBAA requests that the Commission clarify that it is the aircraft owner or operator who is responsible for determining and reporting the

value of the travel to the Commission. Since the risk of making an illegal campaign contribution is born by the provider of the transportation, it makes sense that the transportation provider has full authority in determining the value of the transportation.

Introduction of a New Term,"Normal Use" of an Aircraft, Is Unnecessary and Will Be Difficult to Administer; Primary Business of the Provider is a Better Criteria to Accomplish the Goals of the Statute.

The NBAA recognizes the need to broaden the scope of the Commission's rules governing the rates and timing of payment for transportation by campaign travelers to include travel on aircraft, and other means of transportation, owned by individuals, partnerships, and other entities in addition travel provided on aircraft owned by corporations and labor unions. However, with regard to air travel, we believe the scope should continue to focus on the provider of the air transportation and the primary business of that provider rather than the "normal use" of a particular aircraft.

We recommend this because it often may be difficult to determine the "normal use" of a particular aircraft. This results from the variety of structures under which aircraft are owned and operated. Let us provide a few examples:

- Many aircraft are jointly owned 1/, co-owned, and operated under time-sharing 2/ and interchange agreements. 3/

- It is quite common for corporations that use their aircraft only for company business to lease their aircraft, when not in use, to other entities. Sometimes, those other entities employ the aircraft in providing commercial transportation services.

- Often business aircraft are leased for particular operations or particular periods of time.

Thus, in order to use "normal use" as the critical criteria, "normal use" would have to be clearly defined in a myriad of circumstances. For example, transportation providers would need to

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1/ A joint ownership agreement means an arrangement whereby one of the registered joint owners of an airplane employs and furnishes the flight crew for that airplane and each of the registered joint owners pays a share of the charge specified in the agreement. 14 C.F.R. § 91.501(c)(3).

2/ A time sharing agreement means an arrangement whereby a person leases his airplane with flight crew to another person, and no charge is made for the flights conducted under that arrangement other than those specified by FAA regulation. 14 C.F.R. § 91.501(c)(1).

3/ An interchange agreement means an arrangement whereby a person leases his airplane to another person in exchange for equal time, when needed, on the other person's airplane, and no charge, assessment, or fee is made, except that a charge may be made not to exceed the difference between the cost of owning, operating, and maintaining the two airplanes 14 C.F.R. § 91.501(c)(2).

know how far they would need to look back to determine the number of hours the aircraft was flown in commercial service versus the number of hours flown on company business. The rules would need to clarify whether "normal use" referred only to that provider's use of the aircraft or for all operators of the particular aircraft. The rule would need to clarify whether the "normal use" pertained only to use by the transportation provider or included use by additional operators. The rule would need to explain how "normal use" will be determined if the provider is leasing the aircraft, either for particular flights or for a period of time.

Using "normal use" to determine whether an aircraft can be used to provide transportation to a campaign traveler creates an additional difficulty for transportation providers and campaign travelers. For example, if a trip is planned in a particular aircraft which is normally used for non-commercial travel, but that particular aircraft becomes unavailable on the day of travel due to a mechanical or other problem, it may be difficult or impossible for the intended transportation provider to substitute another aircraft operated by that provider. If, instead of focusing on the "normal" use of a particular aircraft, the focus remained on the primary business of the transportation provider to determine whether transportation could be provided, that provider could substitute aircraft if a problem arose with little or no inconvenience to itself or the campaign traveler.

We recommend that instead of introducing a new concept and creating a complex set of rules to determine the "normal use" of particular aircraft, the Commission's rule focus upon the provider of the transportation and use the FAA's long established primary business test to determine whether transportation provider would be covered by the proposed rule. Under that test, so long as air transportation is not the primary business of the provider, any aircraft used by that provider would be covered by the rule.

In-Kind Contribution Has Limited Benefits

The Commission has asked for comments on whether an entity providing transportation to a campaign traveler could make an in-kind contribution of that transportation rather than receive payment for it. In many cases, the value of transportation provided by air transportation exceeds the FEC's limits on in-kind contributions. NBAA believes that use of a provision allowing in-kind contributions for air transpiration would have limited use by primarily small aircraft owners providing air transportation on relatively short routes.

Alternative B Provides the Greatest Consistency

As noted above, NBAA members are most concerned that the valuation of campaign travel be easy to calculate and that the related recording and reporting requirements be easy to comply with. However, of the reimbursement alternatives suggested in the proposed rule, the NBAA favors Alternative B. Our Association favors this alternative because it is consistent with the rules for Members of Congress. This consistency will reduce the burden on our members and on campaign travelers to understand and comply with the rules and to make calculations particularly on trips involving both current Members of the House or Senate and campaign travelers on a single flight. Alternative B also seems to be the most "fair" because it is the best approximation of the value to a campaign traveler of a particular flight.

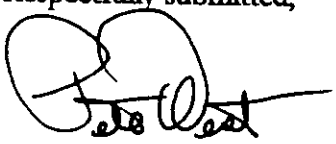
Additional Matters.

The Commission has specifically asked for input as to whether the campaign traveler should pay for deadhead or positioning flights. We believe that based on principles of fairness, consistency, and ease of oversight, campaign travelers should not be required to pay for deadhead or positioning flights. The campaign traveler has no control over where an aircraft travels before he steps on that aircraft. The focus of these rules should be to the value of the benefit received by the campaign traveler. In addition, if positioning must be paid for, the rule will have to clarify the basis for valuation. The rule will have to determine whether the distance measured should be from the operator's home base to the place where the campaign traveler boards, or between boarding and the last place the aircraft touched ground. If the actual positioning of the aircraft is used, the transportation provider will have tremendous flexibility over the distance involved. Oversight will be complicated as the Commission may be required to determine whether a previous flight had a legitimate business purpose or whether it was designed simply to reduce the cost of positioning to the campaign traveler.

We are concerned that the proposed definition of "service provider" does not provide flexibility for aircraft owners and lessees that commit to providing air transportation and whose aircraft becomes unavailable. In these cases, the aircraft owner or lessee would charter a different aircraft to satisfy the mission requirements of that flight. The proposed definition of "service provider" could limit the ability of an aircraft owner or lessee to provide the transportation, even if it is not with that entity's aircraft.

NBAA, on behalf of its more than 7,300 members appreciates the opportunity to share these comments with you regarding the issues raised by the NPRM. To be as helpful as possible on the issues raised herein, we request an opportunity to testify if a public hearing is held on these proposed rules.

Respectfully submitted,



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