



DETAILS AND PRINCIPLES REGARDING PROPOSED REVISED SERVICE CHARGES

JUNE 1, 2000

GENERAL

This document ("Details and Principles") provides additional detail to expand upon the *Notice of Revised Service Charges* issued on June 1, 2000 (the "Notice"). Under Section 36 of the *Civil Air Navigation Services Commercialization Act*, S.C. 1996, c. 20 (the "ANS Act"), NAV CANADA is required to produce a document containing more details in relation to the proposed revised charges set forth in the Notice, including a justification in relation to the charging principles set out in Section 35 of the ANS Act.

Except for the revisions proposed in the Notice, all the existing charges and related terms and conditions, as set out in earlier Announcements pertaining to charges, remain in effect.

This document sets out the following: (1) a general overview of NAV CANADA, (2) supporting information for the proposed revisions, (3) a justification of the proposal in relation to the charging principles, and (4) information regarding the Notice and on making representations to NAV CANADA.

Section 36 of the ANS Act specifies that persons interested in making representations in writing to NAV CANADA with regard to the Notice may do so by forwarding their submissions to the address set out in the Notice. Submissions must be received by NAV CANADA not later than July 31, 2000.

1. GENERAL OVERVIEW OF NAV CANADA

NAV CANADA is a non-share capital, private corporation which is responsible for the provision of civil air navigation facilities and services for aircraft in Canadian airspace or any other airspace for which Canada is responsible for providing air navigation services.

The system of governance at NAV CANADA is the result of a unique corporate structure intended to make the company a self-sustaining commercial enterprise that is accountable to its stakeholders. The Corporation is governed by a 15-member Board of Directors consisting of 10 directors nominated by stakeholders representing aviation users, bargaining agents, the federal government, 4 independent directors and the President & CEO. NAV CANADA also has an Advisory Committee elected by associate members, empowered to analyze and make reports and recommendations to the Board of Directors on any matter affecting the air navigation system.

The fundamental elements governing the mandate conferred on NAV CANADA by the ANS Act include the exclusive right to provide certain air navigation services, the ability to set and collect charges for air navigation services provided or made available by NAV CANADA or a person acting under the authority of the Minister of National Defence, and the obligation of the Corporation to provide these services. Rates of charges are set at levels sufficient to recover all costs (including debt servicing requirements and the repayment of principal), as determined in accordance with generally accepted accounting principles, to maintain a contingency reserve for unforeseen events, and to maintain appropriate credit ratings.

2. SUPPORTING INFORMATION FOR PROPOSED REVISIONS

2.1 PROPOSED EXTENSION OF THE EXISTING ADJUSTMENT IN CHARGES

The Announcement of Reduced Service Charges dated August 16, 1999, provided for reduced rates as well as a one-year adjustment representing an additional decrease in charges. This one-year adjustment expires on August 31, 2000.

The Notice proposes to extend the adjustment to December 31, 2000. This is possible because actual revenues are forecast to exceed the Company's financial requirements for the current fiscal year (September 1, 1999 – August 31, 2000) due to reduced costs and higher than expected traffic growth.

The extension of the adjustment would save customers approximately \$15 million.

The ultimate level and distribution by individual services (Terminal, Enroute, North Atlantic and International Communication) of the adjustment for the full fiscal year 2000-01 will be determined once the actual costs and revenues for fiscal year 1999-2000 are available. Should any modifications in charges be warranted, a new

Notice would be issued in the Fall for consultation and any modifications subsequently approved by the NAV CANADA Board of Directors would be communicated in an Announcement, in accordance with the ANS Act.

2.2 PROPOSED MODIFICATIONS TO TERMS AND CONDITIONS

2.2.1 PAYMENT DUE DATE AND RELATED INTEREST CHARGES

Currently, the Terms and Conditions state that:

“All charges, except for interest and administrative charges, are due and payable by the thirtieth (30th) day after the date on which the invoice is issued in respect of the charges (the “due date”).”

This means that in some cases, customers can take as much as 75 days to pay from the start of the service period. These terms are generous by normal business standards. Our collection experience has demonstrated the need to align this time frame with general commercial practice. The proposed revised wording will be:

“All charges are due by the date of the invoice (the “due date”), and payable upon receipt of invoice.”

Currently, with respect to the demand for immediate payment on overdue accounts, there is the following provision in the Terms and Conditions:

“If an operator frequently fails to pay any invoice, or any undisputed part thereof, by the normal due date, i.e., 30th day after the invoice date, NAV CANADA may demand immediate payment upon receipt of invoices with any interest on overdue accounts being calculated from the date of receipt of the invoice.”

With the proposed change in the due date definition, there is a need to replace this with the following proposed wording:

“If an operator frequently fails to pay any invoice, or any undisputed part thereof, by the 30th day following the due date, NAV CANADA may demand immediate payment upon receipt of invoices with any interest on overdue accounts being calculated commencing on the first day after the due date and continuing until all outstanding amounts are paid in full.”

With respect to interest, the Terms and Conditions now state the following:

“When payment in full is not received by the due date, interest shall be calculated daily on the amount outstanding, commencing on the first day after the due date.”

With the proposed change in the due date definition, a modification is required to maintain the current 30-day grace period to pay the invoice without interest penalty. The proposed revised wording will be as follows:

“When payment in full is not received by the 30th day following the due date, NAV CANADA shall charge interest on the amount outstanding and such interest shall be calculated commencing on the first day after the due date and continuing until all outstanding amounts are paid in full.”

2.2.2 LIMITATION OF LIABILITY CLAUSE

It is common industry practice to have a clause that limits the liability of the supplier of goods and services. Other navigation service providers as well as airlines have similar limitations of liability clauses in their service agreements with their customers.

For the purpose of transparency and clarity, NAV CANADA is proposing to include the following liability clause:

“In no event shall NAV CANADA, or any of its officers, directors, employees or affiliates, be liable to its Customer or any of its officers, directors, employees or affiliates, or to any third party for any loss of profit or revenue, loss of data, loss of income, failure to realize expected savings, or for any indirect, consequential, special, incidental, punitive or similar or other damages, whether incurred or suffered as a result of unavailability of services, delay in delivery of services, performance, non-performance, suspension, termination, negligence, breach (including fundamental breach or otherwise), or other action or inaction by NAV CANADA, or for any other reason, theory of law or equity, even if the Customer has advised NAV CANADA of the possibility of such loss or damage or NAV CANADA had knowledge of, or reasonably could have foreseen the possibility of such loss or damage.”

2.2.3 REQUIREMENT FOR AIRCRAFT OPERATORS TO IDENTIFY AIRCRAFT OWNERS

Currently, as provided for in an earlier Announcement pertaining to charges, NAV CANADA requires updated fleet information from every aircraft operator including registration marks, aircraft type and maximum permissible take-off weight. As the ANS Act provides that both the operator and owner of an aircraft are jointly and severally liable for unpaid service charges, we may require the name of the aircraft owner as well. Obviously, this information is not needed in all cases and management will only exercise this requirement if considered appropriate in a delinquent account situation.

NAV CANADA proposes to add the following provision:

“Aircraft operators may be required to provide to NAV CANADA identification of the owners of the aircraft that they operate.”

2.2.4 ADDITIONAL COLLECTION MEASURES FOR DELINQUENT ACCOUNTS

Advice to Aircraft Owners of their Joint and Several Liability:

Where the aircraft operator has significant and/or long overdue accounts with NAV CANADA, the collection process may include informing the aircraft owner of the account status because of their statutory joint and several liability. The proposed wording will also confirm our right to seek payment for overdue accounts from owners of aircraft. However, this measure will only be employed if considered necessary.

NAV CANADA proposes to include the following:

“Where an aircraft operator has significant and/or long overdue charges, NAV CANADA may contact the owner of the aircraft and advise of the operator’s overdue account status and of the owner’s joint and several liability and seek payment from the owner accordingly.”

Credit Security Arrangements:

In the exercise of its rights to seek payment from owners and/or operators of aircraft for services provided, NAV CANADA may ask for suitable security arrangements in certain circumstances such as in the case of prolonged account delinquency or when an airline operates under creditor protection. The following is proposed:

“Where an aircraft operator has significant and/or long overdue charges, NAV CANADA may seek credit security arrangements from the operator. These arrangements will include, but not be limited to, requiring the operator to furnish advance payments, an irrevocable letter of credit or refundable deposits.”

Offset of Fee Adjustments:

From time to time, we may have in place a fee adjustment as a result of revenues that are forecast to exceed the Company’s financial requirements. Where a customer has a substantial overdue account, it would be reasonable for NAV CANADA to withhold such adjustment as an offset against outstanding amounts. We are therefore proposing the following:

“Where NAV CANADA provides its customers with a fee adjustment as a result of prior revenues in excess of the Company’s financial requirements, it may withhold that adjustment to any customer who has not fully paid two or more previous consecutive invoices. However, when a customer brings his

account back up to current status, the accumulated adjustments will be credited to the customer.”

3. PRINCIPLES GOVERNING NAV CANADA’S SERVICE CHARGES

The principles governing the establishment of new charges or the revision of existing charges by NAV CANADA are set out in Section 35 of the ANS Act. Each of the principles is presented below in italics, followed by an explanation of how the Notice complies with that particular principle.

- 35 (1) (a) *Charges must be in accordance with a methodology established and published by the Corporation that is explicit and that also includes the terms and conditions affecting charges;*

The Notice, required under Section 36 of the ANS Act, has been placed on the Internet and sent to aviation associations. On the basis of this information, any person subject to NAV CANADA’s charges can calculate the amount that would be payable for a given flight. The Notice also sets out proposed modifications to the Terms and Conditions affecting charges.

- 35 (1) (b) *Charges must not be structured in such a way that a user would be encouraged to engage in practices that diminish safety for the purpose of avoiding a charge;*

For any given flight, NAV CANADA’s proposed revised charges are not structured in such a manner that safety may be affected. For example, any flight involving a jet aircraft of a given weight between two points (e.g., Ottawa and Québec City) will be subject to the same Terminal Services Charge and Enroute Charge, regardless of whether the flight is IFR or VFR.

- 35 (1) (c) *Charges for the same services must not differentiate between domestic and international flights of air carriers;*

There is no differentiation in the proposed revised charges between domestic and international flights.

- 35 (1) (d) *Charges for the same services must not differentiate among Canadian air carriers or among foreign air carriers;*

There is no differentiation in the proposed revised charges for a flight based on which domestic or foreign carrier provides the flight.

- 35 (1) (e) *Charges must differentiate between the provision of services in relation to the landing and take-off of aircraft and the provision of services in relation to aircraft in flight, and must reflect a reasonable allocation of the costs of providing the services in those circumstances;*

The charges are based on an allocation of costs among the enroute, terminal and oceanic services. The rules for the attribution of costs to the services were arrived at by considering work loads, statistics based on activity reports, management judgment and ICAO guidelines.

The accounting firm of KPMG has provided an opinion that the allocation methodology adopted by NAV CANADA reasonably reflects the way in which services are provided, is consistent with approaches used by other air navigation service providers, and is appropriate for use as a basis for establishing the costs of these services. A copy of this opinion is available upon request from NAV CANADA.

The method for determining the distribution of the existing adjustment to the charges was set out in the Details and Principles document of May, 1999. As noted in Section 2.1 above, the level and distribution by services of the adjustment for the full fiscal year 2000-01 will be updated once actual costs and revenues for fiscal year 1999-00 become available. Any modification in charges that may be warranted would then be proposed.

- 35 (1) (f) *Charges in respect of recreational and private aircraft must not be unreasonable or undue;*

The proposed revised charges reflect the need for recreational and private aircraft to contribute, along with other users, to the costs of operating the Canadian civil air navigation system. NAV CANADA believes the charges are neither unreasonable nor undue.

- 35 (1) (g) *Charges for designated northern or remote services and for services directed to be provided under subsection 24(1) must not be higher than charges for similar services utilized to a similar extent elsewhere in Canada;*

Since NAV CANADA's charges are uniform throughout Canada, northern or remote services are subject to the same charges as services utilized elsewhere in Canada.

- 35 (1) (h) *Charges must be consistent with the international obligations of the Government of Canada;*

The most relevant international obligations are the Convention on International Civil Aviation of 1944 (the “Chicago Convention”) and bilateral air services agreements between Canada and other states.

Article 15 of the Chicago Convention deals with charges for air navigation facilities, and establishes the principle that fees charged for the use of airport and air navigation services not be higher for foreign compared to domestic users engaged in similar international air services. The proposed revised charges comply with Article 15 because: (i) the charges in respect of international air services are not higher for foreign air carriers than they are for Canadian carriers engaged in similar international air services (i.e., the charges do not differentiate according to the flag of the carrier), and (ii) the charges relate to the availability or provision of air navigation services and are not imposed for the right of entry into Canadian airspace.

The proposed revised charges are also consistent with bilateral air services agreements between Canada and other states.

- 35 (1) (i) *Charges must not be set at a level that, based on reasonable and prudent projections, would generate revenues exceeding the Corporation’s current and future financial requirements in relation to the provision of civil air navigation services.*

NAV CANADA’s proposed revised charges have been set to recover the corporation’s costs, including expenses determined according to Generally Accepted Accounting Principles (GAAP) and the costs of complying with certain financial requirements, as described in detail in Subsection 35(5) of the ANS Act.

- 35 (2) *The charging methodology may recognize that the value of the services differs among users.*

NAV CANADA’s charging methodology does recognize that the value of the services differs among users.

- 35 (3) *Where the Corporation's charging methodology recognizes the value of the services and aircraft weight is used as a measure of the value of the services, the principle referred to in paragraph (1)(a) is deemed not to have been observed if aircraft weight is taken into account either directly proportionally or greater than directly proportionally.*

The International Communication Services Charges and the North Atlantic Enroute Facilities and Services Charge are levied on a per flight basis and do not take weight into account.

The Enroute and Terminal Services charges take weight into account, but less than proportionally. The Enroute Charge is based on a unit rate multiplied by the square root of aircraft weight multiplied by the distance in Canadian airspace. The Terminal Services Charge is based on a unit rate multiplied by aircraft weight raised to the 0.9 power. The Airport Service Detection Equipment Charge is based on the same formula as that for the Terminal Services Charge (but with a different unit rate).

Pursuant to Subsection 35(7), Subsection 35(3) does not apply to flat fees. The Annual and Daily Charges represent flat fees.

- 35 (4) *For the purpose of subsection (3), "weight", in relation to an aircraft, means the maximum permissible take-off weight specified in the aircraft's certificate of airworthiness or in a document referred to in that certificate.*

Weight calculations will be based on the maximum permissible take-off weight specified in the aircraft's certificate of airworthiness or in a document referred to in that certificate. For more information, please refer to the September 1999 *Customer Guide to Charges*.

4. INFORMATION REGARDING THE NOTICE AND ON MAKING REPRESENTATIONS TO NAV CANADA.

The Notice and this document are available on-line and a copy may be downloaded from NAV CANADA's Internet site (www.navcanada.ca).

Information on the existing charges is provided in the *Customer Guide to Charges*, which is also available on the Internet site.

Additional copies of the Details and Principles document may be obtained by contacting NAV CANADA:

in writing: NAV CANADA
P.O. Box 3411, Station "D"
Ottawa, Ontario
CANADA K1P 5L6
Attention: Director, Customer Relations

by e-mail: service@navcanada.ca
by facsimile: 1 - 613 - 563 - 3426
by telephone: 1 - 800 - 876 - 46934 (within North America, disregard the last digit)

Pursuant to Section 36 of the ANS Act, persons interested in making representations in writing to NAV CANADA with regard to the Notice may do so in writing to the following address:

NAV CANADA
P.O. Box 3411, Station "D"
Ottawa, Ontario
CANADA K1P 5L6
Attention: Director, Rates and Revenues

By facsimile: 1 - 613 - 563 - 7994.

Note: Representations must be received by NAV CANADA not later than the close of business on July 31, 2000.