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August 24, 2010

The President
The White House
Washington, D.C. 20500

Re: OSC File No. DI-09-2147

Dear Mr. President:

Pursuant to 5 U.S.C. § 1213(e)(3), the Office of Special Counsel (OSC) is forwarding to you an agency report and a supplemental report based on disclosures received from Mr. Randall Buxton, an Air Traffic Controller with the Department of Transportation (DOT), Federal Aviation Administration (FAA), Potomac Terminal Radar Approach Control (TRACON), Warrenton, Virginia. Mr. Buxton, who consented to the release of his name, alleged that a significant number of pilot deviations have occurred at Potomac TRACON since FAA implemented a flight pattern called the ELDEE Standard Terminal Arrival Procedure (ELDEE). He also stated that Air Traffic Controllers and Front Line Managers failed to report and investigate these pilot deviations.

On June 18, 2009, pursuant to 5 U.S.C. § 1213(c) and (d), OSC requested the Honorable Ray LaHood, Secretary of Transportation, to conduct an investigation. Secretary LaHood delegated authority jointly to the DOT Office of Inspector General and FAA's Air Traffic Safety Office to conduct the investigation. On February 26, 2010, Secretary LaHood submitted an agency report to OSC. On April 9, 2010, the agency submitted a supplemental report. As required by law, OSC is now transmitting the agency reports and Mr. Buxton's comments to you. 5 U.S.C. § 1213(e)(3).

The agency report substantiated the significant number of altitude-related pilot deviations occurring on the ELDEE arrival route, but did not substantiate that the agency failed to report, investigate, or address the safety concerns. The agency report specifically identified twenty-nine pilot deviations, occurring between December 2007, and mid-September 2009, in which pilots were below the minimum altitude as established by ELDEE arrival flight restrictions. These deviations involved instances in which pilots either entered Potomac TRACON airspace below the required 15,000 feet fix, or failed to maintain altitude at the required 15,000 feet when crossing into different fixed airspace points within the TRACON airspace. As discussed below, the agency report found that Potomac TRACON managers and controllers properly reported and investigated these deviations, with two exceptions.

The agency report also reflected that, as a result of these altitude-related pilot deviations, on April 13, 2009, representatives from the FAA, including the Potomac TRACON, the Washington Air Route Traffic Control Center, the National Air Traffic Controller Association (NATCA), three major carriers (United Airlines, Northwest Airlines, and USAir), and the Air Line Pilots Association met to discuss possible solutions regarding the increased deviations occurring in the ELDEE arrival route. The group agreed to alter certain airspace fixes in the ELDEE arrival chart, as well as to implement new phraseology for controllers to use when issuing clearances on the ELDEE procedure to ensure that flight crews do not inadvertently descend into crossing traffic. Since August 2009, as a result of these changes, the number of deviations decreased significantly in Potomac TRACON airspace. As such, the agency report concluded that the issue of pilot deviations was resolved.

Moreover, the agency report found that controllers and managers reported and investigated ELDEE pilot deviations. The agency identified only one deviation that was not reported by a controller and only one that was reported, but not subsequently investigated by management, whereas the agency report found that thirty-one deviations were addressed properly. Furthermore, the controllers, NATCA officials, and TRACON managers interviewed by agency investigators denied knowledge of deviations that were not reported or investigated.

The agency report concluded that Quality Assurance Reviews (QARs) performed by Potomac TRACON management to assess a controller's performance during pilot deviations were reasonable and did not discourage controllers from reporting deviations. The agency report also found that QARs were within standard operating procedures and that there was no evidence that these reviews had a "chilling effect" on other controllers.

In addition, upon OSC's request, on April 9, 2010, the agency submitted a supplemental report prepared by investigators from FAA's Office of Safety Quality Assurance Directorate (AJS-3). After additional on-site quality assurance audits, conducted after the OIG and FAA Air Traffic Safety Office joint investigation, AJS-3 concluded that Potomac TRACON employees did not fail to properly report and investigate pilot deviations. Moreover, the supplemental report determined that the facility's modified descent clearance protocol issued in July 2009, with an effective date of August 27, 2009, had improved arrival route compliance.

Pursuant to 5 U.S.C. § 1213(e)(1), OSC sent the agency reports to Mr. Buxton for his comments. Mr. Buxton was critical of the agency reports. He stated that Air Traffic Controllers had no confidence in management's ability to design procedures that were safe or efficient. He asserted that the investigation's conclusions allowed FAA to use the national airspace system as "an experimental playground where management can implement new procedures and routes at will and without regard to safety." Mr. Buxton also emphasized that employees' concerns were summarily dismissed and that he hoped that the ELDEE Arrival Procedure would someday be replaced. He also stated that, although the agency's supplemental report found that the number of pilot deviations decreased significantly since August 2009, it was still an unacceptable risk to the flying public. He added that the agency's attitude towards the ELDEE Arrival Procedure did

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not bode well for the implementation of NextGen, the agency's pending technological and procedural modernization initiative.

OSC has reviewed the original disclosures, the agency report, the supplemental report, and the whistleblower's comments. Based on that review, OSC has determined that the agency reports contain all of the information required by statute, and that its findings appear to be reasonable.

As required by 5 U.S.C. § 1213(e)(3), OSC has sent copies of the agency reports and the Mr. Buxton's comments to the Chairman and Ranking Member of the Senate Committee on Commerce, Science, and Transportation, and the Chairman and the Ranking Member of the House Committee on Transportation and Infrastructure. OSC has also filed copies of the agency reports and the whistleblower's comments in our public file, which is available online at www.osc.gov, and closed the matter.

Respectfully,



William E. Reukauf
Associate Special Counsel

Enclosures