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1	<i>Mr. Houston</i>	<i>8/27/60</i>	<i>HLG</i>
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Remarks: APPROVED FOR RELEASE <input type="checkbox"/> DATE: 23-Sep-2009 <i>Larry - Did you see this? What is your opinion? Can we deal with this. Except Thurs.</i>			
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<i>A.M. V</i>			<i>20 July</i>
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Mr. Warfield

28 JUNE 66

MEMORANDUM OF MEETING WITH F.A.A.

SUBJECT: Federal Aviation Agency Jurisdiction
over Air America's Foreign Operations

June 28, 1966, a meeting was held at the Federal Aviation Agency to discuss the extent of the Federal Aviation Agency's jurisdiction over operations conducted by Air America outside the United States and its territories and possessions. In attendance were Mr. John H. Shaffer from the FAA Office of International Affairs, Messrs. C. A. McKay and James W. Leslie from FAA Flight Standards, Messrs. James B. Minor and A. W. Lalle from the FAA Office of General Counsel, and Messrs. George A. Doole, Jr., and James H. Bastian from Air America.

The meeting first took up the extent of Air America's existing and past FAA authority. It was pointed out that Air America currently holds Air Carrier Operating Certificate No. 602 issued by the FAA under Part 121 of the Federal Aviation Regulations. This certificate covers Air America's scheduled air service in the Ryukyus Islands. Air America's other operations, involving flights with both small and large aircraft (over 12,500 pounds maximum certified takeoff weight) entirely within a foreign country or between two or more foreign countries, have generally been considered outside the jurisdiction of the FAA. Air America in the past has held a Commercial Operator's Certificate issued by the FAA on which was listed its large United States-registered aircraft. Air America's Commercial Operator's Certificate IR-1(c) was cancelled by the FAA on July 1, 1964, at the time the Air Carrier Operating Certificate was issued for the scheduled Ryukyus service.

The FAA Office of General Counsel indicated that they are now of the opinion that all of Air America's operations, wherever conducted (except those conducted solely within a foreign country) and irrespective of the size of the aircraft operated, are under FAA regulatory jurisdiction and should be covered by an appropriate FAA Certificate. This opinion is based upon FAA's interpretation of "air commerce" as defined by the Federal Aviation Act of 1958. The FAA readily admitted the Act is not clear on this point, and a Court may well determine that FAA does not have such broad jurisdiction. However, the FAA, apparently as a matter of policy, has decided to exercise such jurisdiction and feels that Air America, along with all other carriers similarly situated, should be required to comply in principle by obtaining an FAA Certificate even though it may also be granted an exemption from most of the regulatory requirements. It was reported that this subject was first raised by the FAA office in Honolulu and that the FAA's attention had been called to our operation by U.S. AID/-Saigon. (The FAA has also talked to Continental.)

The FAA recognizes that compliance with all of the provisions of its regulations, which regulations were not designed for the type operation conducted by Air America, would be burdensome and in many cases impossible to meet. The FAA recommended that Air America seek an amendment extending its current FAA Air Carrier Operating Certificate to all of Air America's operations, thereby subjecting all of such operation to the requirements of the Federal Aviation Regulations. In the latter connection the FAA indicated that exemptions would be readily granted from those requirements which impose a burden or interfere with operations in support of government activities conducted outside the United States or its possessions and territories.

It was pointed out by Air America that even with the broadest type of exemption from the requirements of Parts 121 and 135 and other provisions of the Federal Aviation Regulations, the subjecting of Air America's foreign operations to FAA jurisdiction would by its very nature result in substantial additional burdens and restrictions on operations. Although FAA's expressed desire is only to establish the principle of jurisdiction over such air service without in any way restricting or interfering with its operations, there undoubtedly will be a feeling of responsibility on the part of certain departments of FAA, either now or in the future, to enforce to the maximum extent possible the duly promulgated regulations from which it is now proposed that Air America's operation be exempt. The only way to be free of any possible future limitations or restrictions on operations would be to continue the status quo or, alternatively, for FAA to grant an exemption from the requirement of obtaining an FAA Certificate for foreign operations. As to the former suggestion, FAA's position was that the Federal Aviation Act does cover Air America's foreign operations and FAA may be criticized if they failed to exercise that jurisdiction; and as to the latter, they feel that such an exemption is too broad, would set an undesirable precedent and may be beyond the authority of the Administrator.

The meeting concluded with FAA urging that Air America file an amendment to its FAA Certificate for FAA authority to conduct the contract services now being operated by Air America (and thereby recognize FAA jurisdiction over such operations), and at the same time seek an exemption from those provisions of the Federal Aviation Regulations which may prove a restriction on those operations. It was again strongly suggested by Air America that the very assertion of jurisdiction over Air America's unique operations and the requirement for Air America to obtain exemption from the multitude of regulations designed primarily for United States operations would in itself create not only a serious limitation on Air America's ability to perform but over the long term would undoubtedly require Air America to revert to foreign-registered aircraft to conduct its operations or other expedients. Air America stressed its intentions

to follow safe operating practices as it has in the past and its desire to cooperate with the FAA and comply with its regulations in every way practicable; however, the establishment of jurisdiction over Air America's foreign "bush-type" operations, even just as a matter of principle, would impose serious limitations on Air America's ability to perform many of the services required and in Air America's opinion would set the stage for more serious problems in the future with assertion of more and more regulatory control once the principle is established.

James H. Bastian