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## Air Traffic Control Reform: Frequently Asked Questions

The Aviation Innovation, Reform, and Reauthorization Act Offers Opportunity for Needed Modernization

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The air traffic control reforms contained in the Aviation Innovation, Reform, and Reauthorization (AIRR) Act (H.R. 4441), recently introduced by the chairman of the Committee on Transportation and Infrastructure, Rep. Bill Shuster (R-Pa.), comprise the most significant aviation reform since the Airline Deregulation Act of 1978. The AIRR Act offers a unique opportunity to implement a badly needed modernization of America's air traffic control system. Congress and the administration should seize it.

The United States is the last developed country in the world to provide air navigation services via its national aviation safety regulator. Others have at the very least separated air traffic control into an independent government agency, while many have opted for transferring duties to nonprofit corporations. There is even one rate-regulated, for-profit, air navigation service provider in the United Kingdom.

To date, one of the most successful models is offered by Nav Canada, a nonprofit corporation created in 1995 that took control of Canada's air traffic control system the following year.<sup>1</sup> The ATC Corporation that would be created by the AIRR Act is modeled on Nav Canada.

As one would expect, there are many questions on this important policy proposal and below are some answers to frequently asked questions about air traffic control corporatization.

**What is the problem with the status quo?** Years of delay and billions of dollars in cost overruns have plagued the Federal Aviation Administration's (FAA) failed attempts to modernize air traffic control. Currently, U.S. air traffic control is provided by the FAA's Air Traffic Organization, which still relies on technologies and facilities created in the 1960s. This failure threatens to severely limit the growth of air travel over the coming decades. That in turn will lead to increased air traffic congestion, more flight delays and cancellations, wasted fuel, higher air fares, and lost economic activity.

The FAA has been attempting to implement a much-needed 21<sup>st</sup> century modernization, known as the Next Generation Air Transportation System, or NextGen, with little success and massive cost overruns since 2003.<sup>2</sup> NextGen aims to harness new technologies and

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modern practices, especially shifting from ground-based radar flight surveillance to a satellite-based GPS surveillance system, which would greatly increase system efficiency.

In 2012, the Government Accountability Office found that half of the 30 core NextGen components were delayed and 11 suffered cost overruns totaling \$4.2 billion.<sup>3</sup> A comprehensive review conducted by the National Research Council of the National Academies released in April 2015 harshly criticized the FAA's attempts at NextGen implementation, charging that "'NextGen' has become a misnomer."<sup>4</sup> Multiple reports released in 2015 and 2016 by the Department of Transportation's Office of Inspector General confirm that the longstanding bureaucratic problems at the FAA means the agency is likely unable to modernize air traffic control and that ongoing attempts to do so will result in significant costs.<sup>5</sup>

The need for reform cannot be overstated. The United States is the last large developed country to have not separated air traffic control from its aviation safety regulator. The FAA is a safety regulator, but it sees the Air Traffic Organization as an extension of that mission, rather than an air navigation service provider. In essence, when it comes to air traffic control, the FAA is charged with regulating itself. The FAA's risk-averse agency culture has led to a loss of both technical and management expertise, too many overseers, and a lack of customer focus.<sup>6</sup>

***How would the new ATC Corporation operate?*** Two decades ago, to great success, Canada spun off its government air traffic control agency into an independent, nongovernmental nonprofit called Nav Canada. The AIRR Act charters a new nonprofit, called the ATC Corporation, to replace the FAA's Air Traffic Organization as the nation's air navigation service provider. This corporation would be customer-focused and governed by aviation stakeholders from airlines, recreational general aviation, aviation unions, and the Department of Transportation. The Act requires the FAA to complete this "transfer in a systematic and orderly manner that ensures continuity of safe air traffic services"<sup>7</sup> on October 1, 2019.<sup>8</sup>

Following enactment of the AIRR Act, the Secretary of Transportation will assemble a nominating membership board for the purpose of selecting the board of directors. It will consist of the Secretary and representatives of the mainline air carriers (likely Airlines for America), the controllers' union (the National Air Traffic Controllers Association), noncommercial general aviation (likely the Aircraft Owners and Pilots Association), an airline pilots' union (the Air Line Pilots Association), commercial general aviation (likely the National Business Aviation Association), and aerospace manufacturers (likely the Aerospace Industries Association).<sup>9</sup> The principal organizations represented on the nominating board will be determined by the Secretary of Transportation no more than 30 days following enactment.<sup>10</sup>

The ATC Corporation will be governed by a 13-seat board of directors.<sup>11</sup> The composition of the board will be as follows:

- The CEO of the ATC Corporation;

- Two directors appointed by the Secretary to act in the public interest;
- Four directors nominated by the nominating member representing mainline carriers;
- Two directors nominated by the nominating member representing noncommercial general aviation;
- One director nominated by the nominating member representing the controllers' union;
- One director nominated by the nominating member representing the largest airline pilots' union;
- One director nominated by the nominating member representing business general aviation; and
- One director nominated by the nominating member representing aerospace manufacturers.<sup>12</sup>

The initial board of directors will be subject to the approval of the two directors appointed by the Secretary.<sup>13</sup> Subsequent appointments are subject to the approval of the board,<sup>14</sup> except for the two directors who are appointed by the Secretary.<sup>15</sup> Directors representing the principal organizations may not be employees of those organizations.<sup>16</sup> Board members each serve terms of three years.<sup>17</sup>

The AIRR Act also establishes an advisory board to the ATC Corporation's board of directors. Some stakeholders not guaranteed membership on the board of directors will be guaranteed membership on the advisory board of U.S. citizens, with membership limited to 15 seats.<sup>18</sup> Members must include representatives from commercial airports, unmanned aircraft system operators and manufacturers, "appropriate labor organizations," the Department of Defense, and "small communities."<sup>19</sup>

Instead of relying on the existing federal aviation taxes, the ATC Corporation will be allowed to set and collect its own charges and fees. All charges and any changes are subject to the approval of the board of directors.<sup>20</sup> The charging principles are to be consistent with the International Civil Aviation Organization's "Policies on Charges for Air Navigation Services," 9<sup>th</sup> ed. (2012), which, in a nutshell, requires that fees be set based on properly allocable costs that are proportional to system use.<sup>21</sup> If it wishes to prevent a change in the fee schedule, Congress has 90 days from publication to issue a joint resolution of disapproval that the president must sign or Congress override if the president were to veto.<sup>22</sup>

Cost-based user charges will be collected under these principles. Piston aircraft, noncommercial turbine-engine aircraft, and remote air taxis are exempt from these charges.<sup>23</sup> That means hobby pilots and other noncommercial aircraft will be exempted—no doubt an effort to bring powerful stakeholders that had previously expressed skepticism with air traffic control reform over to the pro-reform side.

Failure to pay the fees assessed by the ATC Corporation does not threaten an aircraft operator's ability to access the airspace, but can lead to penalties.<sup>24</sup> The AIRR Act confers a private right of action on the ATC Corporation to sue to collect charges and penalties within two years of nonpayment.<sup>25</sup>

Once the ATC Corporation is up and running, the FAA will provide arm's length safety oversight.<sup>26</sup> Accountability is reinforced by the ability of private citizens and governments to sue the ATC Corporation, which may be held liable to both civil and criminal law.<sup>27</sup>

***What happens to aviation excise taxes that previously funded the FAA's Air Traffic Organization?*** Aviation taxes are the jurisdiction of the House Ways and Means and Senate Finance Committees. However, the thinking of the AIRR Act's proponents is to abolish most of the federal aviation taxes, perhaps leaving one to support the Airport Improvement Program. Nearly two-thirds of the FAA's budget is dedicated to air traffic control, so aviation taxes could easily be slashed following reform.

***Who opposes these reforms?*** The opposition is led by Delta Air Lines and the National Business Aviation Association (NBAA), as well as some government employee unions, Democratic politicians, the Naderite advocacy group Public Citizen, and the highly popular left-leaning news and commentary website The Daily Kos. However, the union representing air traffic controllers, the National Air Traffic Controllers Association, has endorsed the AIRR Act and the nonprofit model.

Left-liberal Democrats and unions are opposed for ideological reasons, believing against all evidence that not only must air traffic control be provided by the government, but that it must be provided by the national aviation safety regulator. Perversely, due to the FAA's inability to modernize its 1960s air traffic control system, the degraded quality of service of air travel may lead some travelers to switch to more dangerous modes of transportation, such as driving.

The business interests opposed to air traffic control reform object on rent-seeking grounds. Delta has stated it opposes reform claiming it "would result in costly organizational disruptions, silos, and new barriers to implementing operational improvements that are already proving to be successful."<sup>28</sup> This view runs contrary to those of the aviation research and management communities, and of every other U.S. airline. Delta recently resigned its membership in Airlines for America largely over the latter's support for reform.<sup>29</sup>

Delta then released a report claiming air traffic control costs and taxes increased in Canada following the government's divestiture.<sup>30</sup> However, to support these claims, Delta conflated Ontario's fuel tax with Nav Canada's air traffic control fees and failed to note that when adjusted for inflation, Nav Canada's air traffic control fees are today around one-third lower than taxes they replaced in the 1990s.

In reality, Delta's opposition to air traffic control reform appears to be motivated primarily by its well-known ability to secure political favors. Delta Senior Vice President for Flight Operations Steve Dickson recently explained to a travel writer that Delta's opposition is due in part to the company's belief that government officials are easier to influence than those that would be employed by the ATC Corporation.<sup>31</sup>

The National Business Aviation Association registers its "strong opposition against any legislation that would enact user fees and strip Congress of its role in protecting

unencumbered access to the air traffic system.”<sup>32</sup> This is understandable, given that the corporate jet and turboprop aircraft operators represented by NBAA historically pay a far lower share of taxes than the share of air traffic control services they consume. An analysis of Fiscal Year 2013 data found that business jet and turboprop aircraft account for 9-11 percent of air traffic control system use, yet pay just 0.6 percent of the tax revenue that supports the system.<sup>33</sup>

A customer-driven system will likely do away with this government favoritism, but fees for normal commercial air travel for the rest of us will likely be lower in the long run. As noted, in Canada, the service charges are approximately one-third lower than the taxes they replaced 20 years ago.<sup>34</sup> However, corporate jet owners and operators will pay more under a user- and cost-based fee structure. Yet, they will directly benefit from the reduced congestion and technology modernization that will be attainable under a private nonprofit air navigation service provider.

*This report was updated to reflect the most recent legislative activity on February 16, 2016.*

## Notes

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<sup>1</sup> Robert W. Poole, Jr., “Perspective on Nav Canada’s First 20 Years,” Reason Foundation Air Traffic Control Newsletter #129, January 20, 2016, <http://reason.org/news/show/air-traffic-control-newsletter-129#a>.

<sup>2</sup> Marc Scribner, “ERAM Deployed Five Years Late, NRC Blasts FAA on NextGen Delays,” Competitive Enterprise Institute blog, May 4, 2015, <https://cei.org/blog/eram-deployed-five-years-late-nrc-blasts-faa-nextgen-delays>.

<sup>3</sup> U.S. Government Accountability Office, “Air Traffic Control Modernization: Management Challenges Associated with Program Costs and Schedules Could Hinder NextGen Implementation,” Report to Congressional Committees, February 2012, <http://www.gao.gov/assets/590/588627.pdf>.

<sup>4</sup> National Research Council, *A Review of the Next Generation Air Transportation System: Implications and Importance of System Architecture*, eds. David E. Liddle and Lynette I. Millett, Washington, D.C.: The National Academies Press, 2015, <http://www.nap.edu/catalog/21721/a-review-of-the-next-generation-air-transportation-system-implications>.

<sup>5</sup> U.S. Department of Transportation, “Air Traffic Control Operations,” Office of Inspector General website, <https://www.oig.dot.gov/oversight-areas/aviation/air-traffic-control-operations>.

<sup>6</sup> Poole, “Organization and Innovation in Air Traffic Control,” Reason Foundation Policy Study 431, January 2014, [http://reason.org/files/air\\_traffic\\_control\\_organization\\_innovation.pdf](http://reason.org/files/air_traffic_control_organization_innovation.pdf).

<sup>7</sup> Aviation Innovation, Reform, and Reauthorization Act, H.R. 4441, 114<sup>th</sup> Congress (2016), Sec. 211 (proposing to amend 49 U.S.C. § 90302(a)).

<sup>8</sup> Ibid. (proposing to amend 49 U.S.C. § 90101(a)(8)).

<sup>9</sup> Ibid. (proposing to amend 49 U.S.C. § 90305(a)).

<sup>10</sup> Ibid. (proposing to amend 49 U.S.C. § 90305(b)).

<sup>11</sup> Ibid. (proposing to amend 49 U.S.C. § 90306(a)).

<sup>12</sup> Ibid. (proposing to amend 49 U.S.C. § 90306(b)).

<sup>13</sup> Ibid. (proposing to amend 49 U.S.C. § 90306(c)(1)).

<sup>14</sup> Ibid. (proposing to amend 49 U.S.C. § 90306(c)(2)).

<sup>15</sup> Ibid. (proposing to amend 49 U.S.C. § 90306(c)(3)).

<sup>16</sup> Ibid. (proposing to amend 49 U.S.C. § 90306(e)(2)).

<sup>17</sup> Ibid. (proposing to amend 49 U.S.C. § 90306(g)(2)).

<sup>18</sup> Ibid. (proposing to amend 49 U.S.C. § 90308(c)(1)).

<sup>19</sup> Ibid. (proposing to amend 49 U.S.C. § 90308(c)(2)).

<sup>20</sup> Ibid. (proposing to amend 49 U.S.C. § 90311(b)).

<sup>21</sup> Ibid. (proposing to amend 49 U.S.C. § 90311(c)(1)).

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- <sup>22</sup> Ibid. (proposing to amend 49 U.S.C. § 90311(h)).
- <sup>23</sup> Ibid. (proposing to amend 49 U.S.C. § 90311(c)(4)–(5)).
- <sup>24</sup> Ibid. (proposing to amend 49 U.S.C. § 90311(d)).
- <sup>25</sup> Ibid. (proposing to amend 49 U.S.C. § 90311(e)).
- <sup>26</sup> Ibid. (proposing to amend 49 U.S.C. § 90501).
- <sup>27</sup> Ibid. (proposing to amend 49 U.S.C. § 90310(a)(5)–(6)).
- <sup>28</sup> Steve Dickson, “Privatizing Air Traffic Organization threatens customer service,” Delta Air Lines website, September 28, 2015, <http://news.delta.com/op-ed-privatizing-air-traffic-organization-threatens-customer-service>.
- <sup>29</sup> Trebor Banstetter, “Delta to immediately end A4A membership,” Delta Air Lines website, October 29, 2015, <http://news.delta.com/delta-immediately-end-a4a-membership>.
- <sup>30</sup> Delta Air Lines, “The Costs of Privatizing Air Traffic Control and How it Will Impact Airline Travelers,” February 1, 2016, <http://news.delta.com/sites/default/files/The%20Costs%20of%20Privatizing%20Air%20Traffic%20Control.pdf>.
- <sup>31</sup> Brett Snyder, “Across the Aisle from Delta’s SVP of Operations on Why Privatizing Air Traffic Control Would Be Bad,” The Cranky Flier, November 23, 2015, <http://crankyflier.com/2015/11/23/across-the-aisle-from-deltas-svp-of-operations-on-why-privatizing-air-traffic-control-would-be-bad/>.
- <sup>32</sup> National Business Aviation Association, “Call to Action: Help Fight FAA Privatization, User Fees,” June 24, 2015, <https://www.nbaa.org/membership/letters/2015/20150625-no-privatize-atc.php>.
- <sup>33</sup> David Weingart, “Summary of ATO Cost and Activity Data,” Transportation Research Board of the National Academies, Air Traffic Control Symposium on Organizational Reform Options, July 7, 2015, <http://onlinepubs.trb.org/onlinepubs/sp/ATFReform/Weingart.pdf>. For a 2007 analysis from the Department of Transportation’s Office of Inspector General with similar findings, see Honorable Calvin L. Scovel III, “FAA’s Financing Proposal,” Testimony before the Committee on Transportation and Infrastructure Subcommittee on Aviation, United States House of Representatives, March 21, 2007, [https://www.oig.dot.gov/sites/default/files/FAA\\_Financing\\_Testimony\\_Final.pdf](https://www.oig.dot.gov/sites/default/files/FAA_Financing_Testimony_Final.pdf).
- <sup>34</sup> Nav Canada, “Overview of Service Changes,” January 2015, <http://www.navcanada.ca/EN/products-and-services/Documents/Service%20Charges-Eng.pdf>.