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Air Traffic Control Reform 2017: Frequently Asked Questions

The 21st Century Aviation Innovation, Reform, and Reauthorization Act Offers Opportunity for Needed Modernization

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The air traffic control reforms contained in the 21st Century Aviation Innovation, Reform, and Reauthorization (21st Century AIRR) Act (H.R. 2997), recently introduced by House Transportation and Infrastructure Committee Chairman Bill Shuster (R-Pa.), comprises the most significant aviation policy reform since the Airline Deregulation Act of 1978. The 21st Century 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. Many have at the very least separated air traffic control into an independent government agency, while others have opted for transferring duties to nonprofit corporations. There is even one rate-regulated, for-profit, air navigation service provider in the United Kingdom.¹

To date, perhaps the most successful model is offered by Nav Canada, a nongovernmental nonprofit corporation created in 1995. It took control of Canada's air traffic control system the following year.² The American Air Navigation Services Corporation that would be created by the 21st Century AIRR Act is modeled on Nav Canada.

As one would expect, there are many questions on this important policy proposal, and beneficiaries of the subsidized status quo are opposed. Below are some answers to frequently asked questions about air traffic control corporatization.

What is wrong with the status quo? The need for reform cannot be overstated. The United States is the last large developed country that has not separated air traffic control from its aviation safety regulator. The Federal Aviation Administration (FAA) is a safety regulator, but it sees air traffic control as an extension of that mission. 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, to too many overseers, and to a lack of customer focus.³

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Years of delay and billions of dollars in cost overruns have plagued the FAA's failed attempts to modernize air traffic control. Currently, U.S. air traffic control is provided by the FAA's Air Traffic Organization, which relies on technologies and facilities developed 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, lost economic activity, and lost opportunity for Americans to travel.

The FAA has been attempting to implement a much-needed 21st century modernization, known as the Next Generation Air Transportation System, or NextGen, with little success and massive cost overruns since 2003.⁴ NextGen aims to harness new technologies and 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 (GAO) found that half of the 30 core NextGen components were delayed and 11 suffered cost overruns totaling \$4.2 billion.⁵ A 2016 GAO report found little improvement, noting:

[Six operations-focused] NextGen activities that FAA originally envisioned for the mid-term have been deferred beyond 2030 because, according to FAA officials, the activities are not needed or are infeasible—either technically or operationally. FAA officials explained that these applications are not in progress, and may be continually deferred, redefined, or never implemented.⁶

A comprehensive review by the National Research Council of the National Academies, published in April 2015, harshly criticized the FAA's attempts at NextGen implementation, charging that “‘NextGen’ has become a misnomer.”⁷ Multiple reports by the Department of Transportation's Office of Inspector General, released in 2015, 2016, and 2017, confirm that the FAA's long-standing bureaucratic problems make the agency unable to modernize air traffic control, and that ongoing attempts to do so will result in significant costs.⁸

How would the new American Air Navigation Services Corporation operate? Two decades ago, Canada successfully spun off its government air traffic control agency into an independent, nongovernmental nonprofit called Nav Canada. Today, Nav Canada is widely recognized as the most advanced and efficient air navigation service provider, leading the world on digital communications and satellite surveillance.⁹ When Nav Canada's latest proposed rate reductions and refunds take effect in September 2017, its inflation-adjusted user fees will be 45 percent lower than the aviation taxes they replaced two decades ago.¹⁰ It has not raised its service charges in 13 years.¹¹

The 21st Century AIRR Act charters a new nonprofit, called the American Air Navigation Services 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 such as airlines, 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”¹² on October 1, 2020.¹³

Following enactment of the 21st Century AIRR Act, the Secretary of Transportation will assemble nomination panels for the purpose of selecting the board of directors. They will consist of representatives of large passenger air carriers, cargo air carriers, regional passenger air carriers, noncommercial general aviation, business aviation, the controllers’ union, airports, and commercial pilots’ unions.¹⁴ The principal organizations represented on the nominating board will be determined by the Secretary of Transportation no more than 30 days following enactment.¹⁵

The American Air Navigation Services Corporation will be governed by a 13-seat board of directors. The composition of the board will be as follows:

- The CEO of the American Air Navigation Services Corporation;
- Two directors appointed by the Secretary of Transportation;
- One director each nominated by:
 - The large passenger air carrier nomination panel;
 - The cargo air carrier nomination panel;
 - The regional passenger air carrier nomination panel;
 - The general aviation nomination panel;
 - The business aviation nomination panel;
 - The air traffic controller union nomination panel;
 - The airport nomination panel;
 - The commercial pilot union nomination panel; and
- Two directors nominated and selected by the other directors.¹⁶

The initial board of directors will be subject to the approval of the two directors appointed by the Secretary of Transportation.¹⁷ Subsequent appointments are subject to the approval of the board, except for the two directors who are appointed by the Secretary.¹⁸ Directors representing the principal organizations hold a fiduciary duty to the corporation and may not be employees or agents of those organizations represented as stakeholders on the board.¹⁹ With the exception of the CEO, board members prior to transfer each serve terms of two years.²⁰ Following the transfer, board members, other than the CEO, each serve terms of five years.²¹

The 21st Century AIRR Act also establishes an advisory board to the American Air Navigation Services Corporation’s board of directors. Some stakeholders not guaranteed membership on the board of directors will be guaranteed membership on the advisory board, with membership limited to 15 seats.²² Members must include representatives from:

- Air carriers;
- General aviation;
- Business aviation;
- Commercial service airports;
- Operators and manufacturers of commercial unmanned aircraft systems;

- “[A]ppropriate labor organizations;”
- The Department of Defense; and
- “[S]mall communities.”²³

Instead of relying on existing federal aviation taxes, the American Air Navigation Services Corporation will be allowed to set and collect its own charges and fees. All service charge proposals are subject to approval by the board of directors.²⁴ The Secretary of Transportation will then review the board’s charges and solicit public comments for a 30-day period.²⁵ No more than 15 days following the last day of the comment period, the Secretary must either approve or disapprove the charging proposal.²⁶ If the Secretary fails to issue an approval or disapproval, the proposed charges go into effect.²⁷

The charging principles are to be consistent with the International Civil Aviation Organization’s “Policies on Charges for Air Navigation Services,” 9th ed. (2012), which, in a nutshell, requires that fees be set based on properly allocable costs that are proportional to system use.²⁸ Cost-based user charges will be collected under these principles. Small noncommercial aircraft, helicopters, air taxis, air tours, and agricultural aircraft will be exempt from these fees.²⁹

Failure to pay the fees assessed by the American Air Navigation Services Corporation does not threaten an aircraft operator’s ability to access the airspace, but can lead to penalties.³⁰ The 21st Century AIRR Act confers a private right of action on the American Air Navigation Services Corporation to sue to collect charges and penalties within two years of nonpayment.³¹

Once the American Air Navigation Services Corporation is up and running, the FAA will provide arm’s length safety and environmental oversight. Accountability will be reinforced by the ability of private citizens and governments to sue the American Air Navigation Services Corporation, which may be held liable under both civil and criminal law.³²

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. They should abolish most of the federal aviation taxes. Approximately two-thirds of the FAA’s budget is dedicated to air traffic control operations and modernization, so aviation taxes could easily be slashed following reform.

Who opposes these reforms? The opposition is led by the National Business Aviation Association (NBAA), some government employee unions, and some progressive Democratic politicians. However, the union representing air traffic controllers, the National Air Traffic Controllers Association, has endorsed the nonprofit model proposed in the 21st Century AIRR Act.

Some left-liberal Democrats and unions are opposed for ideological reasons, insisting that not only must air traffic control be provided by the government, but that it must be provided by the national aviation safety regulator.³³ That governance model has long been recognized as a dangerous conflict of interest by the International Civil Aviation Organization.

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.

Air traffic control reform need not be a partisan issue. Numerous former Democratic members of Congress and aviation officials from the Obama and Clinton administrations strongly support corporatizing air traffic control.

The business interests opposed to air traffic control reform object on rent-seeking grounds. 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," as it has for decades.³⁴ This is understandable, given that the corporate jet and turboprop aircraft operators represented by NBAA historically pay a far lower share of aviation 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 to 11 percent of air traffic control system use, yet pay just 0.6 percent of the tax revenue that supports the system.³⁵

A customer-driven system would do away with this government favoritism for wealthy air travelers, making fees for normal commercial air travel lower in the long run. As noted, in Canada, the service charges are projected to soon be 45 percent lower than the taxes they replaced 20 years ago.³⁶ Corporate jet owners and operators would pay more under a cost-based user fee structure, but they would directly benefit from the reduced congestion and technology modernization that will be achievable under a private nonprofit air navigation service provider. This has taken place in Canada, where NBAA's counterparts at the Canadian Business Aviation Association have said their "experience with Nav Canada has been positive" in the two decades since reform.³⁷ Yet, importantly, this legislation exempts all noncommercial aircraft from any user fees, including corporate jets.

Notes

¹ NATS, "Facts, Stats & Reports," <http://www.nats.aero/news/facts-stats-reports/>.

² 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>.

³ 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.

⁴ 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>.

⁵ 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>.

⁶ U.S. Government Accountability Office, "Next Generation Air Transportation System: Information on Expenditures, Schedule, and Cost Estimates, Fiscal Years 2004 — 2030," Report to Committee on Transportation and Infrastructure, House of Representatives, November 2016, <http://www.gao.gov/assets/690/681111.pdf>.

⁷ 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>.

⁸ U.S. Department of Transportation, “Aviation,” Office of Inspector General website, accessed June 21, 2017, <https://www.oig.dot.gov/oversight-areas/aviation>.

⁹ Scribner, “Congress, Trump Administration Must Prioritize Air Traffic Control Reform,” Competitive Enterprise Institute Blog, December 12, 2016, <https://cei.org/blog/congress-trump-administration-must-prioritize-air-traffic-control-reform>.

¹⁰ Nav Canada, “Notice of Revised Service Charges,” May 2017, <http://www.navcanada.ca/EN/products-and-services/Pages/Notice%20-%20EN%20-%20May%2030%20Posted.pdf>; Nav Canada, “Fact Sheet,” May 2017, <http://www.navcanada.ca/EN/products-and-services/Pages/Fact%20Sheet.pdf>.

¹¹ Ibid.

¹² 21st Century Aviation Innovation, Reform, and Reauthorization Act, H.R. 2997, 115th Congress (2017), Sec. 211 (to be codified at 49 U.S.C. § 90302(a)).

¹³ Ibid., (to be codified at 49 U.S.C. § 90101(a)(8)).

¹⁴ Ibid., (to be codified at 49 U.S.C. § 90305(b)).

¹⁵ Ibid., (to be codified at 49 U.S.C. § 90305(c)).

¹⁶ Ibid., (to be codified at 49 U.S.C. § 90306(b)).

¹⁷ Ibid., (to be codified at 49 U.S.C. § 90306(c)(1)(B)).

¹⁸ Ibid., (to be codified at 49 U.S.C. § 90306(c)(2)).

¹⁹ Ibid., (to be codified at 49 U.S.C. § 90307(a)–(b)).

²⁰ Ibid., (to be codified at 49 U.S.C. § 90306(e)(1)).

²¹ Ibid., (to be codified at 49 U.S.C. § 90306(e)(2)).

²² Ibid., (to be codified at 49 U.S.C. § 90310(c)(1)).

²³ Ibid., (to be codified at 49 U.S.C. § 90310(c)(2)).

²⁴ Ibid., (to be codified at 49 U.S.C. § 90313(b)).

²⁵ Ibid., (to be codified at 49 U.S.C. § 90313(c)(1)).

²⁶ Ibid., (to be codified at 49 U.S.C. § 90313(c)(2)(A)(i)–(ii)).

²⁷ Ibid., (to be codified at 49 U.S.C. § 90313(c)(2)(B)).

²⁸ Ibid., (to be codified at 49 U.S.C. § 90313(d)(2)).

²⁹ Ibid., (to be codified at 49 U.S.C. § 90313(d)(7)).

³⁰ Ibid., (to be codified at 49 U.S.C. § 90313(f)(2)).

³¹ Ibid., (to be codified at 49 U.S.C. § 90313(f)(3)).

³² Ibid., (to be codified at 49 U.S.C. § 90312(a)(5)–(6)).

³³ Peter DeFazio and Rick Larsen, “The case against privatizing the nation’s air traffic control system,” *The Hill*, May 10, 2017, <http://thehill.com/blogs/pundits-blog/transportation/332684-the-case-against-privatizing-the-nations-air-traffic>.

³⁴ 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>.

³⁵ 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 Hon. 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.

³⁶ Nav Canada, “Notice of Revised Service Charges”; Nav Canada, “Fact Sheet.”

³⁷ Kristine Owrn, “U.S. looks to Canadian model as it debates air-traffic-control privatization,” *Financial Post*, February 1, 2016, <http://business.financialpost.com/transportation/u-s-looks-to-canadian-model-as-it-debates-air-traffic-control-privatization/wcm/94ff645c-7010-4a92-be71-51f1a452ac23>.