

**SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION:
QUESTIONS FOR THE RECORD**

**HEARING ON
FAA REAUTHORIZATION: AIR TRAFFIC CONTROL MODERNIZATION AND REFORM
TUESDAY, MAY 19, 2015**

Questions for the Honorable Byron Dorgan, Senior Policy Advisor, Arent Fox LLP

From Chairman Thune

Question 1. Senator Dorgan, some argue that a significant air traffic control reform effort is not necessary and that government-focused changes are sufficient to improve the air traffic control system. But more than 15 years ago, Congress made a substantial change that gave the FAA broad relief from federal personnel and procurement rules. What are the major impediments that have prevented the FAA from utilizing these authorities to achieve faster progress on NextGen's programs?

Answer. What we found through our work with the Eno Center for Transportation NextGen Working Group was that while the FAA was given the authority to be exempt from federal personnel and procurement rules, in practice the FAA did not take advantage of this authority. A GAO report from 2003 ("National Airspace System: Reauthorizing FAA Provides Opportunities and Options to Address Challenges") concluded that this was both because the FAA improperly managed implementation, and also because other government agencies with oversight roles acted as a barrier to full implementation.

Question 2. As you may know, a legal memorandum by the Congressional Research Service was recently made public that outlined certain constitutional concerns with separating the Air Traffic Organization from the FAA. What is your assessment of the legal issues that might arise from making a transition to a new governance structure, and how might they be addressed?

Answer. The CRS memorandum is based on the premise that the new entity would be "establishing air traffic control procedures, similar to those currently existing in FAA Order JO7110.65V". This would mean that the new entity would be making the rules, while simultaneously operating the system. This, however, is not what has been proposed. What I, and stakeholders proposing bold reform, envision for a reform air traffic control system, is that the new system will be comprised of two entities. The first entity would be the new provider, which will operate the system. The second entity would be the FAA, which will regulate the operator from a safety standpoint. We do not want a system where the new regulator creates its own rules. The rule-making process is a governmental prerogative and should remain so.

It will always be necessary to ensure that any new governance structure complies with all legal issues, and these should not be taken lightly. But compliance can certainly be accomplished within a reformed air traffic control structure, including the ones we have proposed.

Question 3. How might a new air traffic control organization finance and acquire the billions of dollars of existing air traffic control facilities, infrastructure, and equipment? Why would that

model be better than the way the government currently finances such facilities?

Answer. This new organization would finance itself, similar to airports. It would issue bonds that would be paid over time by the revenues it would collect from its customers. This model would be a significant improvement to the one currently in place. This new entity would allow capital planning over several years, instead of the current system where the FAA relies on annual appropriations from Congress that may or may not come in time, and are unpredictable in times of fiscal constraint. For example, FAA recently finished the deployment of a long awaited new computer system, the En Route Automation Modernization (ERAM), which replaced the 40-year old HOST system. ERAM was \$370 million over budget, from which \$40 million can be attributed to the budget sequester. With proper capital planning, those costs overruns due to budget uncertainty will be less likely to happen.

Additionally, this model would be better for at least one other reason. The current model depends on annual Congressional appropriations, which creates an incentive for the FAA to only request funding for projects that are most likely to get funded, regardless of their effectiveness in improving safety or efficiency. In a new model like what we envision, where the stakeholders have a strong role in governing the system, projects would be chosen not because they are more likely to be funded by Congress, but because it would they make sense to the national airspace system and its users to implement those projects.

Question 4. How does a standalone, commercialized air traffic control model address concerns about funding stability, continuity of operations, and the confidence among users regarding prospects for accelerating NextGen benefits in a way that cannot be achieved by more reforms within the government?

Answer. As the Mineta Commission stated in 1997, the FAA has “too many cooks” – USDOT, White House, Congress, etc. – making accountability and authority “too diffused to run a 24 hour-a-day, high technology, rapidly changing operating system for a major commercial industry”. That is unlikely to change if air traffic control remains part of FAA. By being a standalone entity, regardless if a government corporation or a nonprofit organization model is selected, the air traffic control provider will have the ability to focus on its core mission of providing safe, efficient, and cost-effective, air traffic control to commercial airlines, as well as business and general aviation, instead of having to dedicate a significant portion of its resources to please all these “cooks”.

Question 5. Approximately how long might the transition to a new air traffic control model take? What are some of the lessons learned from the transition experience in other countries around the world to ensure smooth and seamless transition?

Answer. How the transition takes place and how long it takes must be negotiated between the different parties involved, including the new provider, the FAA, and Congress. Three things that should be thoroughly considered beforehand are 1) whether the FAA has a safety regulation structure in place to effectively oversee the safety of the safety, 2) how to transition from financing from the Airport and Airway Trust Fund to user fees (in Canada, for example, user fees were imposed after two years), and 3) how employees are moved from federal workers to the new entity.

Lessons from other countries show us that we need to ensure that all relevant parties are involved

in the transition process. Everyone will have different expectations as to what the system should look like after it is created. That is why the stakeholder involvement we propose for the governance of the system is so important. By having users governing the system, the transition can be made smoother.

For example, in the Eno NextGen Working Group Final Report we discuss the case of Canada. In this case, the main transition issues identified regarded the culture change required of the management cadre inherited from government and in the high wage expectations of certain labor groups. The first issue resulted from differences in the new corporate culture at NAV CANADA, which as an independent company was different from the government institution it replaced. Negotiated retirements and layoffs, along with the ability for some employees to return to the public sector, helped ameliorate this problem. As for the demand for salary increases, this was a result of a number of years without them under Transport Canada, the government agency that was responsible for air traffic control, much like the FAA is today in the United States. In fact, one of the reasons unions were in support of the move to a non-profit model was because their salaries had been frozen for a number of years. When NAV CANADA was created, unions began demanding salary increases to make up for those years. The good financial situation of NAV CANADA following its creation allowed for deals to eventually be reached with the unions.

From Senator Fischer

Question 1. I have read the concerns expressed by the general aviation community regarding “commercialization” or “privatization” of the air traffic control (ATC) system. Do you believe there is a way for us to reform this system to ensure safety, efficiency, and innovation, while protecting the concerns of general aviation?

Answer. Yes, I do believe that is possible. First of all, both the federal government and general aviation will play a role in the governance of the air traffic control provider, protecting the public interest, namely of those communities where general aviation is essential. As we envision a governance system where no single stakeholder will have the majority, the presence of general aviation and the federal government will help shape the development of the air traffic control system going forward. The FAA and Congress could also intervene, where necessary, by regulating the air traffic control provider and mandating certain minimum requirements of operation that it must comply with.

Moreover, an independent air traffic control provider would likely be better suited to offer new technologies that would increase services available to general aviation users. For example, the independent Swedish air traffic control provider is already operating “remote towers,” where a tower in an airport control traffic in more than one airport, using high-definition cameras and other technologies to offer these services remotely. The Irish and German systems have also recently awarded contracts to implement remote towers in their countries. This technology allows air traffic control services to be offered where it would otherwise be uneconomical to offer them (hundreds of airports around the nation do not have any sort of air traffic control built on site). The FAA is testing this technology in Virginia in a pilot project, but many of these types of FAA pilot projects never leave the prototype stage, either because the FAA lacks the resources or the nimbleness to implement them. With an independent provider, it is more likely that such innovations could be offered that could ultimately expand services available to smaller and rural communities.

Question 2. Senator, in your written testimony you compared the FAA's ATC system to the Federal Railroad Administration, noting that the FRA does not provide dispatching services for freight and passenger trains, but has a core mission of focusing on safety. Could you explain how, not only efficiency and innovation, but most importantly the mission of safety might be compromised due to our current ATC system?

Answer. First of all, we have to thank the men and women at the FAA that made the current national airspace system the safest in the world. This is a tremendous achievement that should never be downplayed. However, we should not rest on our laurels, we should make sure that we are able to maintain and improve these amazing levels of safety going forward.

One way in which other countries have done so is by separating the provision of air traffic control from its safety regulation. This has shown to improve accountability, eliminate conflicts of interest by having the same entity regulating itself, allowing both the provider and the safety regulator to focus on their core mission. In fact, ICAO, the UN agency for international aviation, has, since the early 2000s, recommended this functional separation as a way to improve safety outcomes. A recent study commissioned by the FAA and produced by MITRE, concluded that "the separation of the [ATC provider] from the CAA [Civil Aviation Authority] was reasonably successful" and that "MITRE did not discover any views that the system prior to separation was preferred." An increased focus on safety, from both regulator and the ATC provider, was found to be one benefit that the separation provided. By creating a standalone ATC provider, while retaining the FAA as the safety regulator, we would be achieving this very important goal of separating these two functions.