

**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 John Engler, President, Business Roundtable

From Chairman Thune

Question 1. 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 memo raised important concerns that should be addressed in any enabling legislation. However, it appears the authors of the memo were unclear on a central concept related to the creation of a new, not-for-profit entity to operate the air traffic control system. That is that the new ATC entity should be required perform air traffic control services *in accordance with performance standards and other rules and regulations promulgated from time to time by the FAA*. The new entity would not set the regulations; it would apply the regulations that are promulgated by the FAA just as airlines apply the regulations of the FAA with respect to the use of electronic devices on board. The new entity's conduct falls squarely within the "ministerial" exception to the private non-delegation doctrine.

Similarly, the new entity would not have enforcement power. When there are infractions, the new entity would report the infraction to the FAA, which would then decide if and how enforcement is undertaken.

Finally, as is a common practice with government-sanction monopolies (like electric utilities), all of its fee assessments would be appealable to the DOT or some other governmental entity.

Question 2. 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 a new model be better than the way the government currently finances such facilities?

Answer. As far as transferring existing assets to the new entity, the enabling legislation will need to determine whether the new entity should pay a fee to acquire the assets and, if so, who should set that fee. The Secretary of Transportation may be best positioned to make such an assessment.

As for financing of future facilities, infrastructure and equipment, the new entity would possess many advantages over the current system.

Today, the federal government finances multi-year capital investment programs through annual appropriations. This model is not followed by most state governments nor by the private sector, and for good reason. When massive programs, which are predicated on a particular long-term

funding expectation, collide with inconsistent and unpredictable federal appropriations, as illustrated by the recent sequester, the result is a jagged mismatch of funding and program needs in every single year and a constant acceleration and then dead-stop of program implementation. And there is no room or budget authority to buffer this mismatch with funds from the operating budget, which is already overextended keeping obsolete systems operational. The FAA's top priority will always be to maintain and operate the current system. That is why systems being installed today incorporate technology specified a decade ago, and these will already be outdated when NextGen comes fully online, hopefully in 2025.

Under the proposed model, technology investments would be guided by an organization that is committed to consistent, incremental technology improvements. Technology development would be predictably financed – because the entity would be able to issue bonds in the capital markets – with assurance that all systems would be compatible and incorporate proven state-of-the-art technology.

Question 3. 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 noted in my previous response, the current system is unpredictable. The new funding system would be designed to be inherently stable. It would be funded by user fees to cover operating and financing costs, and capital expenditures would be funded through bonds issued in the capital markets. This would enable new technology, such as NextGen, to be more quickly built-out and delivered at a predictable date.

Question 4. What are the implications of reform for smaller rural airports, which may or may not have any commercial air service? Why is reform beneficial for small and rural communities?

Answer. Under the current system, smaller and rural airports are the first to see services cut when budgets are tight. For example, under the recent sequestration, in March 2013 FAA proposed to close 149 contract towers which were providing air traffic control services to smaller and rural airports. While Congress acted to avert the closures in special legislation, the fact remains that in a tight budget, these are the first services likely to be cut – not because they are unimportant, but their closure is simply a quick way to generate cash.

Under a potential not-for-profit operator of the new system, as discussed in the hearing, the new entity would have multiple bottom lines defined in the enabling legislation. Profitability should not be the only bottom line. One of those missions should be to maintain and expand access to air traffic control services. This could be easily achieved under the new model. A commitment to remote tower technology (currently outside the budget capability of the FAA) and other technical innovations would increase operational capacity, stimulate economic development, and improve safety for smaller and rural airports across the country.

The new proposed model is a boon for small communities.

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. We expect a transition would need to be built into enabling legislation that might last for two years, with distinct milestones to be achieved during the transition period. The transition could be handled largely the way a major corporation would handle the spin-off of a major division. The most important aspect would be to identify the new leadership and exactly which assets would transfer to the new entity.

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, and we would support doing so. Business Roundtable does not support privatization of the system as that word is generally understood. Specifically, the creation of a for-profit corporation to run the system would be detrimental to users, particularly to the general aviation sector. That is why the proposal under discussion is to create a federally-chartered not-for-profit entity to operate the system, with FAA continuing to regulate the system, ensuring safety. This separation of operation and regulation into two separate entities is now considered a best practice internationally for maintaining the safety of air navigation systems. The enabling legislation for this new, not-for-profit entity, should ensure that one of its core missions is to maintain and expand access to air traffic control services – not limit those services to those with the greatest ability to pay. Further, we believe there are ways the legislation could ensure that general aviation does not see a significant change in the overall amount of financial support it is required to provide to maintain the ATC system. Finally, general aviation should also be represented on the board governing the new entity, ensuring that this mission is achieved, and the board should be designed to ensure that no one user group – including airlines – would be represented by a majority of the board.

Question 2. In your written testimony, you noted that the U.S. has lost its global leadership in aviation because we are falling behind when it comes to our air traffic control system and the technology we use. Can you provide the committee with some examples of how technology has advanced in private sector oriented ATC systems?

Answer. The Canadian system, the second-largest air traffic control system in the world which is operated by a not-for-profit corporation, NavCanada, provides the best example. Touch-screen automated route tracking technology developed by NavCanada is now sold around the world, while US controllers are still printing paper strips inserted in little plastic holders passed from controller to controller to keep track of each plane in the sky. Also, NavCanada is a principal investor and lead strategic partner in the Aireon satellite-based ADS-B technology, which the FAA has not been able to afford to embrace. NavCanada, like US corporations that are technology-driven service enterprises, value incremental technology improvement. Because of the nature of the US federal procurement system, the FAA is stuck making generational leaps every twenty to thirty years, and those leaps tend to fall short of the mark.