

Cited Problems with the Current Air Traffic Control System and Concerns about Changing the Organizational Structure

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Introduction and Overview

In various publications, conferences, Congressional Hearings and other venues, a range of problems with the organization and operation of the U.S. air traffic control system have been identified. Some of these problems are related to the current organizational structure of air traffic control. For example, the current air traffic control system is operated by a traditional government agency that is part of the Federal Aviation Administration, the same agency that is responsible for the safety and regulation of aviation in the United States. Also, while part of the funding for air traffic control comes from dedicated taxes paid into the Airport and Airways Trust Fund, part of the funding also comes from the general fund so that the funding of air traffic control is subject to the Congressional budget process and cycle. As a result, some believe that FAA tends to view Congress as its customer rather than the users of the air traffic control system.

In response to these and other problems listed below, there have been proposals that the organizational structure of air traffic control be changed and that it be separated from the rest of the Federal Aviation Administration and funded without reliance on the Congressional budget process and cycle. Often, these proposals compare the U.S. approach to how air traffic control is organized and funded in other countries. In response to these proposals, concerns have been raised about problems that might arise from changing the current organizational structure and about the appropriateness of comparing the U.S. air traffic control system with those in other countries.

The purpose of this paper is to provide an overview of the problems that have been cited with the air traffic control system and of the concerns that have been raised about changing the organizational structure. For each problem and concern, some public statements made by participants and observers of the system are listed to provide some detail. In the interests of keeping the paper brief, the list of statements is in no way comprehensive. Rather, it is intended to be representative. Similarly, the list of problems and concerns is not comprehensive but is intended to cover the most commonly cited points. No attempt was made analyze or assess the relative importance or the validity of the problems and concerns listed. For each statement and concern, the statements are listed in chronological order starting with the most recent.

In brief, the following problems or types of problems were raised. Some comments that provide more detail on each of these issues are found in the next section.

1. Funding
 - a. Uncertainty of Funding in a Political Environment
 - b. Lack of a Capital Budget
 - c. Structure of Taxes used to Fund Airport and Airways Trust Fund (AATF)

2. Micromanagement of FAA Operations
3. Inadequate Stakeholder Engagement
4. FAA Management and Procurement Processes
5. FAA's Organizational Culture
6. Federal Workforce Restrictions
7. Self Regulation
8. Strained Relations between Management and Labor

Also in brief, the concerns or types of concerns about changing the current organizational structure are listed below and what some have said about these issues is found in the last section. Clearly, some of these concerns would be relevant only to a specific type of new organizational structure while others are argued to apply to any restructuring.

1. Different Size and Scale of the U.S. Air Traffic Control System
2. Achieving Financial Self Sufficiency
3. Capital Investment Incentives
4. Equitable Treatment of Airspace Users
5. Privatization Eliminates Cross-Subsidy
6. Labor and the Right to Strike
7. Inadequate Political Insulation
8. Corporate Liability
9. Coordination with Military, Law Enforcement, and Emergency Services
10. Safety and the Profit Motive

Problems with the Current Air Traffic Control System

General

Today, all users of ATC are beholden to a World War II-era, radar-based system that, while safe, is inefficient and delay ridden. (FAA Reauthorization: Air Traffic Control Modernization and Reform, Statement of Jeffery A. Smisek, Chairman of the Board, President and CEO, United Airlines, before the United States Senate Commerce Committee May 19, 2015, testifying as Chairman of the Board for the trade association, Airlines for America)

The problem is the structural mismatch between the nature of air traffic control and the way the federal government manages it. Simply stated, air traffic control is a 24/7, capital intensive, high-tech service business trapped in a regulatory agency that is constrained by federal procurement and budget rules, burdened by a flawed financing system, and micro-managed by Congress and the Office of Management and Budget. (Dorothy Robyn, Subcommittee on Aviation, Committee on Transportation and Infrastructure, Hearing on "Options for FAA Air Traffic Control Reform," March 24, 2015)

The review concluded that FAA's air traffic control system was "constantly hamstrung by budget, personnel, and procurement restrictions." (Vice President Al Gore, From Red Tape to Results: Creating a Government that Works Better and Costs Less, Report of the National Performance Review (Washington, DC: USGPO, 1993), p. 60.)

Funding

Uncertainty of Funding in a Political Environment

The system's reliance on annual appropriations and the vagaries of the political process make long-term planning for system capitalization and management of the agency's footprint difficult, and probably more costly. (Statement of Chairman John Thune, Senate Hearing: FAA Reauthorization: Air Traffic Control Modernization and Reform, May 19 2015)

The lack of a stable, predictable funding stream means that the FAA has had to prioritize the basic maintenance and repairs that ensure current operations over maintaining safety redundancies and making improvements to the system. (Testimony of Paul M. Rinaldi, President, National Air Traffic Controllers Association, AFL-CIO (NACTA), Before the Senate Committee on Commerce, Science, and Transportation Regarding Federal Aviation Administration (FAA) Reauthorization: Air Traffic Control Modernization and Reform, May 19, 2015)

The federal budgetary process prevents FAA from pursuing the kind of incremental technology refreshment that is standard procedure in technology driven enterprises. (Testimony for the Record, Governor John Engler, President, Business Roundtable, United States Senate Committee on Commerce, Science and Transportation, Hearing on "FAA Reauthorization: Air Traffic Control Modernization and Reform", May 19, 2015)

In recent years, funding uncertainties resulting from sequestration, government shutdowns, and short-term reauthorization extensions have hindered the FAA's ability to efficiently perform our mission and have impeded our ability to commit to long-term investments. (Statement of Michael P. Huerta, Administrator, Federal Aviation Administration, before the Senate Committee on Commerce, Science, and Transportation, on Federal Aviation Administration (FAA) Reauthorization: Air Traffic Control Modernization and Reform, May 19, 2015.)

Sequestration forced the FAA to cut its Operations budget, resulting in furloughs for FAA employees. Those cuts also led the FAA to institute a hiring freeze between March 2013 and December 2013. The FAA training academy in Oklahoma City was closed for most of 2013 as a result of sequestration, so the FAA has not been able to keep up with the pace of attrition. (Testimony of Paul M. Rinaldi, President, National Air Traffic Controllers Association, AFL-CIO (NACTA), Before the Senate Committee on Commerce, Science, and Transportation Regarding Federal Aviation Administration (FAA) Reauthorization: Air Traffic Control Modernization and Reform, May 19, 2015)

Three years of federal budget disputes have included the FAA's decision in April 2013 to furlough 10 percent of its air traffic controller workforce and nearly close 149 contract towers to meet sequester driven budgetary cuts; the partial shutdown of the FAA in August 2011; and schedule delays and cost overruns that continue to plague FAA's modernization and NextGen implementation efforts. ... The United States is the only developed country whose ATC system can become a political football, frequently held hostage to federal budget disputes like the sequester, which threatens not only the ongoing operations of the ATC system, but also the successful implementation of NextGen. (Chairman Frank LoBiondo (RNJ), Subcommittee on Aviation, Committee on Transportation and Infrastructure, Hearing on "Options for FAA Air Traffic Control Reform," March 24, 2015)

The cuts also prevented the FAA from hiring new trainees to replace those certified controllers who retire, thus adding stress to an already understaffed workforce – the FAA Academy was shuttered for nearly a full year due to the sequestration cuts and the government shutdown. (Paul Rinaldi, Subcommittee on Aviation, Committee on Transportation and Infrastructure, Hearing on “Options for FAA Air Traffic Control Reform,” March 24, 2015)

FAA funding is tied to annual appropriations and multiyear authorizations that can suffer delays or cuts due to political wrangling, making it difficult to carry out long-range planning. (CRS Report R43844 “Air Traffic Inc.: Considerations Regarding the Corporatization of Air Traffic Control,” by Bart Elias, January 5, 2015, Page 2)

FAA has begun establishing a Fatigue Risk Management System, including a working group involving controllers, management, and experts in fatigue. However, under recent budget cuts, FAA has effectively eliminated the Fatigue Risk Management System program’s capability of monitoring for fatigue concerns proactively and of investigating whether recent initiatives to reduce fatigue risks are providing the intended benefits. (*The Federal Aviation Administration’s Approach for Determining Future Air Traffic Controller Staffing Needs*, Board on Human-Systems Integration, Division of Behavioral and Social Sciences and Education, Transportation Research Board, Special Report 314, National Research Council (Washington, D.C.: National Academies Press, 2014), Pages 6-7)

The commission found that FAA was severely limited by its dependence on a political and unpredictable budgetary process ... and a “pay-as-you-go” approach to major capital investments rarely seen in the business world. (The National Commission to Ensure a Strong Competitive Airline Industry, Change, Challenge, and Competition: A Report to the President and Congress (Washington, DC: USGPO, 1993).

Lack of a Capital Budget

Trying to deploy multi-billion, multi-decade, investments in technology with a budget that is appropriated year-by-year, like the FAA is subject to, is next to impossible. (Written Testimony of Senator Byron Dorgan Before The Senate Committee on Commerce, Science & Transportation, May 19, 2015)

Lack of a stable funding stream makes planning for multi-year projects almost impossible. As a result, we have seen significant delays and inefficiencies in modernization. (Testimony of Paul M. Rinaldi, President, National Air Traffic Controllers Association, AFL-CIO (NACTA), Before the Senate Committee on Commerce, Science, and Transportation Regarding Federal Aviation Administration (FAA) Reauthorization: Air Traffic Control Modernization and Reform, May 19, 2015)

What the FAA is trying to do is to fund a \$20 billion capital modernization effort out of annual and unpredictable cash flow. This makes no business sense, as my CEO membership would tell you. Most other transportation sectors issue long-term revenue bonds to finance large capital modernization—including airports, pipelines, railroads, and even bridges and interstate highways. But bonding is something the FAA cannot do. Our federal government simply does not have a capital budget. (Testimony for the Record, Governor John Engler, President, Business Roundtable, United States Senate Committee on Commerce, Science and Transportation, Hearing on “FAA Reauthorization: Air Traffic Control Modernization and Reform”, May 19, 2015)

Unlike states and corporations, the federal government does not have a capital budget; federal investment in capital must be fully funded up-front, out of annual appropriations. Stated differently, the federal budget makes no distinction between spending on consumption and investment. This is a major challenge when it comes to maintaining and upgrading a capital-intensive system such as air traffic control. (Dorothy Robyn, Subcommittee on Aviation, Committee on Transportation and Infrastructure, Hearing on “Options for FAA Air Traffic Control Reform,” March 24, 2015)

As with other government agencies dealing with large infrastructure projects, FAA managers face strong pressures to overestimate the benefits, underestimate the costs and downplay the risks in order to sell the projects to decision makers in the first place. (Statement of Mark M. Hansen, Professor of Civil and Environmental Engineering, University of California, Berkeley, before the Senate Committee on Finance (July 12, 2007) cited by Dorothy Robyn, Subcommittee on Aviation, Committee on Transportation and Infrastructure, Hearing on “Options for FAA Air Traffic Control Reform,” March 24, 2015).

FAA lacks a dedicated budget for long-term capital expenditures and has no independent access to financial markets to fund such investments (CRS Report R43844 “Air Traffic Inc.: Considerations Regarding the Corporatization of Air Traffic Control,” by Bart Elias, January 5, 2015, Page 2)

Structure of Taxes used to Fund the Airport and Airways Trust Fund (AATF)

Ideally, the funding mechanism for such a critical piece of infrastructure should achieve three goals. First, it should encourage efficient behavior on the part of users as well as the service provider (economic efficiency). Second, it should recover most or all of the revenue needed to support the continued operation and expansion of the system (revenue adequacy). Finally, it should be equitable. The existing funding mechanism fails on all three counts. (Dorothy Robyn, Subcommittee on Aviation, Committee on Transportation and Infrastructure, Hearing on “Options for FAA Air Traffic Control Reform,” March 24, 2015)

Because the taxes collected are linked to the number of passengers (and the price of their tickets), a small aircraft contributes significantly less than a large one, even though it costs the air traffic control system about the same amount to serve them. ... Turbine-powered business aircraft, which pay a fuel tax, contribute even less relative to the burden they impose. In addition to being inequitable, this creates another market-distorting subsidy to small aircraft. (Dorothy Robyn, Subcommittee on Aviation, Committee on Transportation and Infrastructure, Hearing on “Options for FAA Air Traffic Control Reform,” March 24, 2015)

General aviation (GA) accounts for 38 per-cent of ATC operations but pays only 1.7 percent of AATF user fees. (The Federal Aviation Administration’s Approach for Determining Future Air Traffic Controller Staffing Needs, Transportation Research Board Special Report 314)

Micromanagement of FAA Operations

Moreover, because Congress holds the purse, FAA decisions regarding facilities, investment, and staffing and pay are all subject to interference. Members opposed to the loss of jobs in their district have long blocked large-scale consolidation of the FAA’s aging and inefficient facilities—a much-needed step that would save the system hundreds of millions of dollars a year. Appropriators routinely give the agency less money than it requests for some programs and

more for others, based in part on lobbying by private contractors. (Dorothy Robyn, Subcommittee on Aviation, Committee on Transportation and Infrastructure, Hearing on “Options for FAA Air Traffic Control Reform,” March 24, 2015)

Whether a change in compensation, the appointment of senior management, the extension of a controller contract or the restoration of pay for employees following the furloughs of 2011 and 2013, the Department, and often other government entities, reviewed our decisions, and they were always delayed, frequently modified and sometimes reversed. (David Grizzle, Subcommittee on Aviation, Committee on Transportation and Infrastructure, Hearing on “Options for FAA Air Traffic Control Reform,” March 24, 2015)

Inadequate Stakeholder Engagement

This inadequate budgetary process also causes FAA management to cater primarily to Congress and OMB as its customers, rather than to the more appropriate airspace users, passengers, and shippers. As a result, today’s FAA tends to be quite slow in responding to the needs of airspace users. (Testimony for the Record, Governor John Engler, President, Business Roundtable, United States Senate Committee on Commerce, Science and Transportation, Hearing on “FAA Reauthorization: Air Traffic Control Modernization and Reform”, May 19, 2015)

Because it relies on appropriated funds, the FAA has historically viewed Congress rather than aircraft operators as its customer. ... Congressional micromanagement of the FAA is doubly harmful because it crowds out much needed input from airlines and other aircraft operators—the air traffic control system’s real customers. (Dorothy Robyn, Subcommittee on Aviation, Committee on Transportation and Infrastructure, Hearing on “Options for FAA Air Traffic Control Reform,” March 24, 2015)

NextGen’s top-down, technology-driven planning process lacked the kind of bottom-up feedback from users that only market signals provide. (Dorothy Robyn, Subcommittee on Aviation, Committee on Transportation and Infrastructure, Hearing on “Options for FAA Air Traffic Control Reform,” March 24, 2015)

Inadequate stakeholder engagement in planning and executing technological and procedural initiatives has resulted in approaches that have not fully met users’ expectations. (CRS Report R43844 “Air Traffic Inc.: Considerations Regarding the Corporatization of Air Traffic Control,” by Bart Elias, January 5, 2015, Page 2)

FAA Management and Procurement Processes

The FAA has consistently been slow to implement modernization plans and update the numerous systems that comprise U.S. ATC. (Written Testimony of Senator Byron Dorgan before The Senate Committee on Commerce, Science & Transportation, May 19, 2015)

FAA has failed to keep its equipment modernized for the entirety of its history, including during times of budgetary plenty. (Testimony for the Record, Governor John Engler, President, Business Roundtable, United States Senate Committee on Commerce, Science and Transportation, Hearing on “FAA Reauthorization: Air Traffic Control Modernization and Reform”, May 19, 2015)

As a government agency, the FAA is simply not set up to determine risks, pursue the most cost efficient investments, manage people to produce results, reward excellence, or punish incompetence like a normal business. (Chairman Bill Shuster (RPA), Committee on Transportation and Infrastructure, Hearing on “Options for FAA Air Traffic Control Reform,” March 24, 2015)

FAA management and procurement processes have proven inadequate for meeting equipment and facilities modernization needs, leading to lengthy delays, cost overruns, and failures to fully achieve stated objectives; (CRS Report R43844 “Air Traffic Inc.: Considerations Regarding the Corporatization of Air Traffic Control,” by Bart Elias, January 5, 2015, Page 2)

The commission found that FAA was severely limited by a cumbersome procurement system. (The National Commission to Ensure a Strong Competitive Airline Industry, Change, Challenge, and Competition: A Report to the President and Congress (Washington, DC: USGPO, 1993)

FAA’s Organizational Culture

Because the ATO is embedded in a very conservative safety regulatory agency, its organizational culture is basically the same – risk-averse and status-quo-oriented. ... Funding, governance, and culture – all three need to be fixed. But the greatest of these is culture. (“Culture Is Key to ATC Reform by Robert Poole, Aviation Week & Space Technology/May 25 – June 7, 2015, page 70)

The FAA and the United States rightly pride themselves on a devotion to safety and an excellent safety record to match. At the same time, a conservative safety culture can affect how quickly process and technological change can happen—a challenge in an arena where technologies change rapidly. Such a culture may inhibit the adoption of new technologies or increased automation that could potentially result in net improvements in both safety and efficiency. (A Review of the Next Generation Air Transportation System: Implications and Importance of System Architecture, David E. Little and Lynette I. Millett, Editors, Committee to Review the Enterprise Architecture, Software Development Approach, and Safety and Human Factor Design of the Next Generation Air Transportation System, National Research Council, (Washington, D.D.: National Academies Press, Pre-Publication Draft, 2015, page 38)

According to panelists, the key cultural factor impeding modernization has been resistance to change. Such resistance is a characteristic of FAA personnel at all levels, panelists said, and management, in the experience of some panelists, is more resistant than employees who may fear that new technologies will threaten their jobs. (“National Airspace System, Experts’ Views on Improving the U.S. Air Traffic Control Modernization Program,” GAO Panel, GAO-05-333SP, April 2005, page 6)

Federal Workforce Restrictions

And, the FAA will always face challenges attracting and retaining the talent needed to drive major technological change when it must compete with cutting edge businesses in the private sector. (Statement of Chairman John Thune, Senate Hearing: FAA Reauthorization: Air Traffic Control Modernization and Reform, May 19 2015)

Federal workforce restrictions have encumbered FAA’s ability to recruit and maintain highly qualified air traffic controller and technical personnel, particularly in high-cost areas; (CRS Report R43844 “Air Traffic Inc.: Considerations Regarding the Corporatization of Air Traffic Control,” by Bart Elias, January 5, 2015,Page 2)

Self Regulation

No other agency within USDOT both operates and regulates a transportation service. For example, the Federal Railroad Administration regulates railways and issues grants, but does not manage train dispatching. The National Highway Traffic Safety Administration regulates the

safety of motor vehicles, but does not set speed limits or control traffic lights. Separation allows each organization to focus on their core mission and avoid potential internal conflicts of interest. (Written Testimony of Senator Byron Dorgan before the Senate Committee on Commerce, Science & Transportation, May 19, 2015)

Finally, the combination of the air traffic control operator and its regulator within the same government agency – as we have today – is not beneficial to safety and results in a confusion of roles and responsibilities, loss of transparency and accountability, and greater frustration for users when they try to make the system work. It has also created an organizational culture that resists innovation. (Testimony for the Record, Governor John Engler, President, Business Roundtable, United States Senate Committee on Commerce, Science and Transportation, Hearing on “FAA Reauthorization: Air Traffic Control Modernization and Reform”, May 19, 2015)

In the past 20 years, 50 countries have successfully separated their ATC service from the aviation safety regulator. (Chairman Bill Shuster (RPA), Committee on Transportation and Infrastructure, Hearing on “Options for FAA Air Traffic Control Reform,” March 24, 2015)

The governance of air traffic control is flawed in another way: the FAA’s dual mission—as both operator and regulator of the air traffic control system—poses a potential conflict of interest. In every other area of aviation (e.g., the manufacture of aircraft and the operation of airlines), the FAA has no operational role, acting instead as an independent regulator. Independent regulation is no less desirable in the case of air traffic control, where the fundamental issue of how much space to maintain between planes involves a tradeoff between safety and airspace capacity. (Dorothy Robyn, Subcommittee on Aviation, Committee on Transportation and Infrastructure, Hearing on “Options for FAA Air Traffic Control Reform,” March 24, 2015)

The four countries we reviewed have separated their air traffic control functions from the safety oversight and regulatory functions. (Matthew Hampton, Subcommittee on Aviation, Committee on Transportation and Infrastructure, Hearing on “Options for FAA Air Traffic Control Reform,” March 24, 2015)

Strained Relations between Management and Labor

Strained relations between management and labor have, at times, impeded progress in developing new air traffic technologies and procedures (CRS Report R43844 “Air Traffic Inc.: Considerations Regarding the Corporatization of Air Traffic Control,” by Bart Elias, January 5, 2015, Page 2)

Concerns About Changing the Organizational Structure

Different Size and Scale of the U.S. Air Traffic Control System

While there may be benefits to the Canadian model, NACTA is uncertain if that model is scalable to the size, complexity, and diversity of our airspace. For example, the United States controls 132 million flights annually (2012), compared to 12 million in Canada in an area a fraction of the size of the United States’ NAS. The United States has 21 centers compared to seven in Canada, and 315 towers compared to 42. Lack of a stable funding stream makes planning for multi-year projects almost impossible. As a result, we have seen significant delays and inefficiencies in modernization. (Testimony of Paul M. Rinaldi, President, National Air Traffic Controllers Association, AFL-CIO (NACTA), Before the Senate Committee on Commerce, Science, and Transportation Regarding Federal Aviation Administration (FAA) Reauthorization: Air Traffic Control Modernization and Reform, May 19, 2015)

The United States has the largest and most complex air transportation system in the world. ATO controls more than 2.5 times the airspace of the United Kingdom—the largest airspace of the four ANSPs we examined. The United States also has more operations than all of the foreign ANSPs we examined, and has a larger general aviation community. (Matthew Hampton, Subcommittee on Aviation, Committee on Transportation and Infrastructure, Hearing on “Options for FAA Air Traffic Control Reform,” March 24, 2015)

None of the ANSPs in other countries are comparable to FAA in terms of their size or complexity. (“Air Traffic Inc.: Considerations Regarding the Corporatization of Air Traffic Control,” CRS, R43844, January 5, 2015, Page 13)

Achieving Financial Self Sufficiency

Congressional reluctance to accept aviation user fees leaves unanswered the question of how a corporatized or privatized air traffic control system would be funded. (“Air Traffic Inc.: Considerations Regarding the Corporatization of Air Traffic Control,” CRS, R43844, January 5, 2015, Page 8)

GAO also expressed skepticism that the proposed corporation could achieve financial self-sufficiency, pointing to Amtrak as an example of a corporatized government agency that had responded to financial problems by deferring maintenance and putting off equipment upgrades. (U.S. General Accounting Office, Air Traffic Control: Observations on Proposed Corporation, GAO/T-RCED-94-210, May 12, 1994.)

Capital Investment Incentives

The NATS model requires an outside regulator to ensure that the rates charged by the air traffic control provider are appropriate. We know from decades of experience with rate-of-return utility regulation that the regulated entity has an incentive to over-invest in capital so as to expand its rate base. (Dorothy Robyn, Subcommittee on Aviation, Committee on Transportation and Infrastructure, Hearing on “Options for FAA Air Traffic Control Reform,” March 24, 2015)

Equitable Treatment of Airspace Users

Congress should not abdicate, relegate, delegate or outsource its responsibility in the areas of aviation taxes and fees. Nor should it abdicate or delegate its responsibility to ensure non-discriminatory access to airports and airspace. ... It is difficult to see how a combination of self-interested industry representatives would really exercise taxation and access authority in a way that best serves the public, rather than their best commercial self-interest. (Statement of the National Business Aviation Association, Ed Bolen, President and CEO, before the Committee on Commerce, Science & Transportation, U.S. Senate regarding “FAA Reauthorization: Air Traffic Control Modernization and Reform, May 19, 2015)

One concern is that a different funding model could be a deterrent to General Aviation (GA), which is sensitive to changes in services and generally uses facilities that have lower traffic volumes. Lack of a stable funding stream makes planning for multi-year projects almost impossible. As a result, we have seen significant delays and inefficiencies in modernization. (Testimony of Paul M. Rinaldi, President, National Air Traffic Controllers Association, AFL-CIO (NACTA), Before the Senate Committee on Commerce, Science, and Transportation Regarding Federal Aviation Administration (FAA) Reauthorization: Air Traffic Control Modernization and Reform, May 19, 2015)

Equitable treatment of all airspace users could be an important concern under a corporate air traffic services model. This would especially be the case if certain airspace users, such as airlines, were to own a significant portion of the entity's voting shares or to control a large proportion of the seats on the corporate board. Absent restrictions, such an entity could potentially favor commercial airline traffic over general aviation traffic, or could put a new passenger air carrier at a disadvantage by making its planes fly less favorable routings than competitors. (CRS Report R43844 "Air Traffic Inc.: Considerations Regarding the Corporatization of Air Traffic Control," by Bart Elias, January 5, 2015, p. 28)

General aviation groups expressed concern over the airlines' influence on the USATS board. Turning over control to a board dominated by airline interests was likened to "privatizing ... highways, then turning over control to the truckers," who would give little consideration to the needs of automobile drivers. (Phil Boyer, "President's Position: Black Thursday," AOPA Pilot, February 1994, p. 2.)

Privatization Eliminates Cross-Subsidy

A not-for-profit model must still be cost-conscious and may be forced to diminish services to rural areas because they do not offer high returns. Lack of a stable funding stream makes planning for multi-year projects almost impossible. As a result, we have seen significant delays and inefficiencies in modernization. (Testimony of Paul M. Rinaldi, President, National Air Traffic Controllers Association, AFL-CIO (NACTA), Before the Senate Committee on Commerce, Science, and Transportation Regarding Federal Aviation Administration (FAA) Reauthorization: Air Traffic Control Modernization and Reform, May 19, 2015)

That argument (users should pay the full cost of every good or service they consume) works best for situations in which there are not larger externalities of desirable public benefits from the system. Where such benefits exist, cross subsidy affords a way to minimize the total degree to which the public sector (general taxpayers) must subsidize a public service. Air transportation is a national asset, as we have realized once more in the wake of September 11th. Cross subsidy helps to strengthen it. Privatization will seriously weaken it. (Elliott Sclar, Pitfalls of Air Traffic Control Privatization, Columbia University and the HDR Management Consulting Group, Report Commissioned by the National Air Traffic Controllers Association, February 2003, p. 24).

Labor and the Right to Strike

Labor organizations representing FAA employees, however, are prohibited from calling a strike, work stoppage, or slowdown, or organizing a picket that disrupts operations. ... In contrast, corporations and labor organizations representing employees outside of government are generally covered under the labor provisions of Title 29 U.S.C., and in particular Chapter 7—Labor-Management Relations, of that title. In general, those provisions allow for lawful strikes or lock-outs as a measure of last resort once collective bargaining obligations have been met. (CRS Report R43844 "Air Traffic Inc.: Considerations Regarding the Corporatization of Air Traffic Control," by Bart Elias, January 5, 2015, p. 27)

Inadequate Political Insulation

In the U.S. context, a government corporation would not be as politically insulated as it is elsewhere. For evidence of that, one need look no further than the U.S. Postal Service, whose

efforts to close facilities have been continually thwarted. (Dorothy Robyn, Subcommittee on Aviation, Committee on Transportation and Infrastructure, Hearing on “Options for FAA Air Traffic Control Reform,” March 24, 2015)

Corporate Liability

Under current law, FAA is covered under the Federal Torts Claims Act (28 U.S.C. §§1346(b), 2671-2680), which defines the conditions under which tort claims involving property damage or loss, personal injury, or loss of life can be brought against federal agencies and employees.⁶² Under the Federal Tort Claims Act, the United States may not be held liable, although there are several exceptions. In contrast, a private company could be held liable under a much broader array of scenarios under certain state and federal laws as well as under civil torts. (CRS Report R43844 “Air Traffic Inc.: Considerations Regarding the Corporatization of Air Traffic Control,” by Bart Elias, January 5, 2015, p. 28)

Coordination with Military, Law Enforcement, and Emergency Services

Coordination with military and law enforcement, and homeland security agencies such as Customs and Border Protection and the U.S. Coast Guard, would be important considerations to assure access to airspace surveillance data that may be collected or stored by the corporation. Such data could be important for law enforcement and homeland security functions, particularly monitoring of airspace activities in proximity to U.S. borders and over territorial waters. (CRS Report R43844 “Air Traffic Inc.: Considerations Regarding the Corporatization of Air Traffic Control,” by Bart Elias, January 5, 2015, p. 29)

Safety and the Profit Motive

Concerns over potential conflicts between safety and profit have been a central theme of criticisms of a corporate or private approach. (CRS Report R43844 “Air Traffic Inc.: Considerations Regarding the Corporatization of Air Traffic Control,” by Bart Elias, January 5, 2015, p. 27)