

Written Testimony of David Grizzle
Before
The House Transportation and Infrastructure Committee,
Subcommittee on Aviation
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My passion to see Congress embrace transformational change in air traffic control is the result of my long career in aviation – 22 years at Continental Airlines in various senior executive positions and four and a half years at the FAA, mostly as Chief Operating Officer of the Air Traffic Organization.

I firmly believe that taking air traffic control out of government and creating an independent not-for-profit is the only means to assure a more stable future for employees, a more efficient system for the users and a safer, more reliable system for consumers.

Multiple times over the last 20 years, Congress has expressed its frustration with the performance of the Federal Aviation Administration and its inability to modernize its equipment. In the *Air Traffic Management System Performance Act of 1996*, Congress found that “In many respects the Administration is a unique agency, being one of the few non-defense government agencies that operates 24 hours a day, 365 days of the year, while continuing to rely on outdated technology to carry out its responsibilities for a state-of-the-art industry.”

The 1996 Act gave the Administrator sweeping new powers to govern the Agency with less external interference, almost in a non-governmental way.

Specifically, the Administrator was to be the “final authority” in appointing officers and hiring employees and setting their compensation, all of which could be done through powers granted a year before to design a personnel management system outside of the restraints of Title 5. The Administrator was given equally broad powers with respect to acquisitions,

which could, again, be accomplished through a separately authorized acquisition management system that was to have improved the Agency's timeliness and cost-effectiveness in acquisitions by removing the FAA from the application of the Federal acquisition regulations.

To put an even finer point on its intentions, Congress provided that "except as otherwise provided for in this title, [the Administrator] shall not be required to coordinate, submit for approval or concurrence, or seek the advice or views of the Secretary or any other officer or employee of the Department of Transportation on any matter with respect to which the Administrator is the final authority."

Still not satisfied with air traffic control performance, seven years later, Congress created the Air Traffic Services Committee, a Presidential-appointed, Senate-confirmed board to oversee the system. The Committee's responsibilities included approval of ATC strategic and modernization plans and of all acquisitions over \$100,000,000. The Committee was also supposed to make budget recommendations.

As Chief Operating Officer, I was able to see vividly what came of Congress' best intentions to create a governance structure – still within the Federal government – that respected the peculiar needs of the unforgiving, critical operation of air traffic control. The results have not been favorable.

In the area of human resource management, every significant personnel matter is submitted to the Department of Transportation for review, notwithstanding the provisions of the '96 Act. 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. The FAA has

continued to undervalue human capital, resulting in our once again having a prospective shortage of controllers, technicians that lack necessary certifications and many new supervisors who have been in their jobs for over a year with absolutely no management training. And the FAA's personnel management system in both design and effect is almost indistinguishable from Title 5, from which the FAA's system was to have been separated.

Procurements continue to be grindingly slow; specifications were and continue to be inexpertly determined, and major programs, which at the time of their conception were too massive and vastly exceeded the technological visibility of their planners, continue to be behind schedule and over-budget. And this does not occur because our contractors are rapacious or our program managers unskilled. It occurs because the system was never designed to support a high-performance operation like air traffic control.

Finally, what happened to the Air Traffic Services Committee that was supposed to bring oversight from individuals highly knowledgeable, as the statute states, in the areas of large service organization management, customer service, management of large procurements, information and communications technology, and labor relations? Its vacancies have not been filled in a decade; it has not convened in years, and, therefore, certainly has not reviewed any air traffic modernization plans, approved any major acquisitions or made any budget recommendations as provided in its enabling statute. And all this despite the continuing references to this day to the Committee in the Agency's procurement manuals and the intent that the Committee would provide more business-like oversight of the air traffic control function.

The last twenty years – most of which were times of budgetary plenty – teach us that political governance cannot provide the oversight, guidance and continuity of attention necessary to support a critical and technology-intensive operation like air traffic control.

Based on my experience and the failed half-measures of the past, I believe that our only solution is one that entrusts politically unencumbered air traffic governance and stewardship to individuals who understand and value the needs of the users, employees and passengers of the system and who have a continuing interest in and appreciation for this critical operation.

In greater detail, my experience leads me to suggest the following provisions as the most likely to bring air traffic control to the level of performance that Congress has envisioned for decades.

Structure

A not-for-profit entity that has no stockholders, but is controlled by its board of directors, independent of the Federal government except for safety oversight and appeal of rates and charges, is the construct that offers the greatest assurance that air traffic control would be operated safely, efficiently and for the benefit of all of the stakeholders of the national airspace and air traffic control system. Because the new entity would be the exclusive provider of air traffic services in the United States, a non-stock corporate form reduces concerns that the operator might cut corners either in safety, employee care or access, merely for the sake of enhancing stockholder returns. It also addresses anxiety about excessive rates and charges, because there would be no value leakage from the enterprise to incentivize generating income above what is required to provide efficient access.

Board Composition

The entity should be controlled by a board of directors, whose members are designated by stakeholders who have a continuing, substantial interest in air traffic control. The board will appoint the Chief Executive Officer. The board should certainly include

representatives of users of the system who depend upon it and the employees who make it happen. It may also include representatives of other constituencies that have a substantial interest in the operation. Critically, with few exceptions, members of the board should be appointed by private stakeholders who are not pursuing any objective in their appointments other than the best interests of the enterprise and the quality of its operation – they are not political appointees. All members of the board should have a fiduciary duty to the new entity that is unencumbered by any employment or other connection with the stakeholder representative that appointed them. Most importantly, the new entity should not fall victim to inattention from its overseers, as has so frequently happened with air traffic control operations under government stewardship.

Assets

The entity must completely control its assets, most likely through a purchase, so that it is free from interference (except for safety oversight) as it makes decisions to eliminate obsolete assets and increase efficiency and performance through facility consolidation. The transaction would benefit from a provision that allows the new entity, within a short number of years, to return to the Federal government assets for which it has no practical use or with respect to which it discovers significant (such as environmental) remediation needs.

The assets acquired by the new entity should include all assets currently deployed by the FAA's Air Traffic Organization and the NextGen Organization, but also shared assets on which these organizations currently depend, and a part of the Aeronautical Center and most, if not all, of the Technology Center. All existing contracts appurtenant to the Air Traffic Organization and the NextGen Organization would become assets and liabilities of the new entity.

The price for these assets must be determined judgmentally. Because these assets are unique, there are no clear benchmarks such as book value, fair market value or replacement cost that can be used. A significant factor in determining the price will be a decision with respect to how the new entity should use its capital: for the purchase of old assets or the deployment of new assets. The entity will have access to substantial, well-priced capital because of its market position and participation in the capital markets through the issuance of both revenue- and asset-backed securities. The new entity will receive no credit support – explicit or implied – from the Federal government.

Employees

It is essential that the current employees who conduct the operations that move to the new entity not be subjected to risk and uncertainty. Their pay and benefits as well as their pension expectations should be maintained and satisfied with the new entity. The new entity will need to consider more modern benefit structures going forward, but only for future employees who will then be able to make their employment decisions based on the benefits the entity is offering at the time. The collaborative environment and processes between management and labor that have been developed in the Air Traffic Organization over the last five years must be preserved.

Revenue

Operations of the new entity should be funded principally through fees paid by users of the system, based on formulas that are transparently determined and easily calculated, which cover the operating and the financed capital costs of the new entity. In order to avoid the risk of future “double taxation,” all existing aviation taxes should sunset at the time the user fees commence to be imposed. The new entity should not rely upon the Federal government for any

financial support, except for potential fees for services rendered by the new entity. Military flights operated by the Federal government will be exempt from user fees.

Regulation

Air traffic control operations will continue to receive safety oversight from the FAA. Contemporaneously with the creation of the new entity, significant steps should be mandated to move the FAA more completely to a performance-based mode of oversight. Users would be able to appeal to the Federal government increases in rates and charges that they consider unreasonable in light of the needs and services of the new entity.

Transition

Although air traffic control constitutes a large civilian government operation, as private-sector entities go, it is not massive: each of the four major airlines in the US is at least three times the size of the air traffic control operation. Certainly, privately operating a safety-intensive enterprise of the scale of the new entity will not constitute the treading of any new ground. At the same time, because of the criticality of the new entity's safety mission, the transition from government to private control should be done over sufficient time to attend to details, discover unforeseen challenges and to permit the industry to adjust to new methods. Benchmarking against other transactions of comparable scale and complexity, a two-year transition consisting of two or more distinct phases properly balances the need for prompt change with the avoidance of organizational risk.

Conclusion

As with all transactions, the creation of a private, not-for-profit entity to conduct the critical operation of air traffic control will overwhelmingly benefit from abundant

communication, collaboration and transparency. These hearings are of tremendous value in setting an example for how transformation should occur.