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Testimony

**STATEMENT OF AIRLINES FOR AMERICA
BEFORE THE
U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE**

REVIEW OF ATC REFORM PROPOSALS

FEBRUARY 10, 2016

Airlines for America would like to congratulate the Committee for the years of work that have gone into the pending Federal Aviation Administration (FAA) reauthorization legislation that is the subject of this hearing. The Committee has energetically sought the views of a wide range of stakeholders in preparing the legislation. We are particularly grateful for the thorough, focused efforts of the Committee in developing what is clearly a very sensible legislative plan to modernize our nation's air traffic control system. Those efforts will yield immense benefits for air travelers, shippers, airlines and the communities that they serve, aviation community employees and the national economy. Acceptance of the status quo, in sharp contrast, would consign those who depend on civil aviation to the limitations, frustrations and inefficiencies that we have repeatedly experienced with air traffic management over the last few decades. That would be an intolerable outcome for a country that has historically been regarded as the worldwide leader in aviation.

Given this, we can clearly discern today what good public policy demands: adoption of the transformation of our nation's air traffic control system that the bill promises.

OVERVIEW

The air traffic control system is the over-arching factor in the airline business. U.S. airlines on average operate 27,000 flights, carry 2 million passengers and transport 50,000 tons of cargo every day. The ATC system directly affects their ability to deliver these vital services. This means that the ripple effect of inefficiencies and capacity constraints in the ATC system's performance can be broad and costly.

An optimally functioning ATC system is therefore indispensable to the wellbeing of our industry and our nation's economy. Airlines, their employees, the air traffic control workforce and airline customers have everything to gain from workable ATC reform. They over time will suffer grievously and increasingly if the system is not fundamentally improved. That is the unmistakable reality that we confront today.

We, and most other stakeholders, understand the pressing need to improve the ATC system. This, it bears emphasizing, is not unexplored territory. That need has been identified, analyzed and discussed for decades. In fact, at this point it's safe to say that this topic has been

thoroughly pureed. We know what the problem is and how to pursue effective long-term improvements. We also know the benefits to stakeholders of having a system that fully embraces available technology and facilitates the introduction of future technology, and, in doing so, enhances safety.

Regrettably, though, the United States is not in the front ranks of those air traffic service providers that are capitalizing on available technology. That deficiency needs to change promptly.

THE PARTICULARS

We know what needs to be done: ATC reform has been debated and analyzed in the United States for decades while being successfully implemented in other countries. For years, there has been widespread recognition among U.S. policymakers and stakeholders of the need for modernization of air traffic control services. This recognition is thoroughly bipartisan. Modernization is not about politics; it is about formulating and implementing sound public policy for all who depend on air service. There is a long string of reports from presidentially appointed aviation commissions, the Department of Transportation Inspector General (IG), the Government Accountability Office (GAO) and independent private-sector experts that all have found that the FAA has not met expectations on delivering NextGen.¹ It is important to keep in mind that the reference points for most of these studies have been congressional legislation that has been specifically intended to instruct and enable the FAA to further modernize.

The takeaway from those studies is that the problem is not FAA leadership or the air traffic control workforce. Instead, it is the limitations of the funding and governance structures under which air traffic management must function today. Those are basic structural flaws that over time will only worsen. But they are soluble. Experience in other countries clearly teaches us that. We, however, need to act now; these problems will not correct themselves.

While there have been some signs of progress in recent years in implementing NextGen, numerous IG and Government Accountability Office reports have documented FAA's ongoing challenges with implementing and delivering benefits from new technologies. As an example that has been well documented, ERAM was originally scheduled for completion in 2010 and finished more than \$400 million over budget. Data Communications is scheduled to be deployed in selected towers in 2016 and in the FAA's en route centers in 2019. In contrast, NAV CANADA began deploying controller-pilot data link communications in its area control centers in 2011 and completed that rollout in 2014.

Importantly, one of the key issues for NextGen in the current governance and funding structure is funding uncertainty. As GAO notes:

“Both the aviation stakeholders and FAA officials we interviewed regard budget uncertainty as a challenge for FAA. Forty-three [out of 76] stakeholders raised budget uncertainty as a difficulty for FAA's ability to continue operation of an efficient ATC

¹ Federal commissions have identified the need for modernization for decades. For example, the National Commission to Ensure a Strong, Competitive Airline Industry, chaired by former Virginia Governor Gerald Baliles (1983); National Civil Aviation Review Commission, chaired by former Secretary of Transportation Norman Mineta (1997); and Report of the White House Commission on Aviation Safety and Security (“the Gore Commission”)(1997) .

system and/or implementation of NextGen....Stakeholders also indicated that the current budgetary conditions—the fiscal year 2013 budget sequestration (the across-the-board cancellation of budgetary resources) along with the associated employee furloughs and the October 2013 government shutdown—have made FAA’s funding less predictable. In turn, this can make it difficult for FAA to run a 24/7 operation and maintain the ATC system as part of the transition to NextGen. FAA senior management generally agreed with the stakeholders’ perspective that unpredictable budgets make planning and managing the ATC system and NextGen programs difficult and result in delays and inefficiencies.”²

Thus, taken as a whole, the current situation is a continuation of persistent shortcomings in implementing air traffic management improvements that are key to benefiting air travelers and shippers. As noted above, a variety of reports – including those from governmental monitors – have catalogued those problems and the drag on modernization that they produce.

We know how to fix the problem. Fortunately, nearly every developed country around the world has embarked on modernization. Their experiences are informative but we are not proposing a wholesale adoption of any one model. We support examining all the lessons learned in these initiatives and creating a unique U.S. service provider that reflects the particular needs of our operating environment.

In addition, Congress has previously enacted legislation that fundamentally reconfigured the responsibilities of federal agencies with civil aviation functions to produce long-lasting, far more effective entities. This gives us additional confidence that today’s initiative can be achieved. For example, Congress in 1958 shuttered the Civil Aeronautics Administration, which had resided since 1940 in the Department of Commerce, and replaced it with the Federal Aviation Agency (now the FAA).³ Congress in 1967 removed the accident investigation responsibility from the Civil Aeronautics Board and transferred it to the newly created National Transportation Safety Board.⁴

These were sweeping realignments at the time. Congress, to its credit, recognized in each instance that the status quo was unacceptable and that basic functions dealing with civil aviation needed to be realigned to best serve the public interest. It enacted legislation that accomplished those necessary realignments. Aviation in this country is immeasurably better off because of Congress’ far-sightedness. These legislative actions demonstrate that an indispensable function can be shifted and flourish.

We do not advocate “privatization.” We are not advocating to privatize the air traffic control system. This will not be a profit-making endeavor. As long-time U.S. Senator Byron Dorgan cogently wrote late last year: “Anyone arguing that ATC reform is about ‘privatizing’ or creating a ‘profit-making’ enterprise doesn’t understand the issue or doesn’t want you to understand it. The proposal is to establish a *federally chartered, non-profit organization* representing **all** stakeholders, including the federal government.”⁵ To be crystal clear, we do not support the

² GAO, “Air Traffic Control System: Selected Stakeholders’ Perspectives on Operations, Modernization, and Structure,” September 2014, GAO-14-770, at 14, <http://www.gao.gov/products/GAO-14-770>.

³ https://www.faa.gov/about/history/brief_history/.

⁴ <http://www.nts.gov/about/history/pages/default.aspx>.

⁵ <http://thehill.com/sponsored/content/263239-5-things-you-need-to-know-about-air-traffic-control-reform> (emphasis added).

creation of a for-profit private entity and realize that all users of the system must be recognized. Period.

Reform will make our exceptionally safe system even safer. One of the biggest benefits of reform is to allow the FAA to focus on our shared highest priority: safety. The FAA's own study done in 2014 by the MITRE Corporation, which investigated six large foreign civil aviation authorities that had changed their organizational structures, found that separating the air traffic organization from its regulator either maintained or improved safety.⁶

This common result from those separations should not be surprising. ATC reform will allow the FAA to concentrate on what it does best, regulate safety. Those advocating that a separation of the regulator and operator will have an adverse effect on safety are wrong. There is no inherent reason to tie the two functions together. They should be conducted at arm's length. Every other modal administration at the Department of Transportation operates that way, the FAA should be no different.

Funding and governance reform will ensure that the vagaries of federal funding do not shut-down air traffic control services. More than most, this Committee knows that the current funding and governance system subjects the ATC operation and modernization efforts to government-wide budget reductions and shutdowns.⁷ Lest we forget:

- In July 2011, the lapse in FAA's authorization caused the FAA to stop work on numerous projects including NextGen modernization projects.
- In April 2013, the government-wide sequester caused the FAA to furlough air traffic controllers resulting in massive delays throughout the ATC system and the cancellation of hundreds of flights, impacting hundreds of thousands of passengers.
- In October 2013, the government shutdown again resulted in many FAA employee furloughs.

These are sobering reminders. Our industry depends on the provision of air traffic services on a 24 hours-a-day, 7 days-a-week basis by a monopoly service provider. There is no alternative, there is no substitute service provider. We need an ATC system that is not subject to funding uncertainties and vagaries that disrupt travel for the 2 million people who fly every day and impede ongoing modernization projects. We also need an ATC system that enjoys access to a multi-year, predictable source of funding of capital projects. Moreover, the air traffic control workforce deserves a stable funding environment in which they can perform their indispensable services.

The bill's broad stakeholder governance sets the stage for greater accountability.

Opponents have suggested this change in governance benefits only the major airlines. That is wrong. Let's be clear: This bill benefits anyone who flies. In any kind of plane. The new entity should be governed by a stakeholder board that would be accountable to **all** users of the system. To further that fundamental duty, the board of directors themselves should have

⁶ MITRE, "CAA International Structures," October 2014, at 7. The MITRE report also notably concluded that "[t]here are no cases where ANSP [Air Navigation Service Provider] separation was reversed and MITRE did not discover any views that the system prior to separation was preferred." *Id.* at 3.

⁷ GAO reviewed this longstanding issue in a report issued two months ago. See GAO, "Aviation Finance: Observations of the Effects of Budget Uncertainty on the FAA," Report GAO-16-198R, Publicly Released December 8, 2015, <http://www.gao.gov/products/GAO-16-198R>.

complete fiduciary responsibility to the new ATC non-profit entity and be prohibited from financial or employment ties to any given stakeholder.

This bill will make NextGen a reality instead of an unrealized dream. Time has shown that Congress cannot “fix” NextGen through annual appropriations bills, the FAA Reauthorization bill or additional oversight. These measures have not worked and we need to acknowledge that forthrightly. Over the past few decades, Congress has held scores of hearings and directed GAO and the DOT IG to investigate the FAA’s chronically troubled implementation of NextGen. We cannot continue to spend billions of dollars in an environment that does not produce—and shows no promise of producing—the outcomes that Congress has directed and we know that can be achieved.

The GAO has encapsulated the state of affairs with respect to NextGen. It has said that:

“In a review of 30 major ATC acquisition programs, all of which will contribute to the transition to NextGen, GAO found that costs for 11 of the 30 programs have increased from their initial estimates by a total of \$4.2 billion and 15 programs experienced delays. The 11 acquisitions that experienced cost increases account for over 60 percent of FAA’s total acquisition costs (\$11 billion of \$17.7 billion) for the 30 programs. The 15 acquisitions that experienced schedule delays, of which 10 also had cost increases, ranged from 2 months to more than 14 years and averaged 48 months.”⁸

DOT’s IG echoed that description more generally when he said that “since its inception a decade ago, FAA’s progress in implementing NextGen has not met the expectations of Congress and industry stakeholders, and key modernization efforts have experienced significant cost increases and schedule delays.”⁹

We thus know where we are today and it is unacceptable:

- One can simply look at the most recent DOT IG audit of air traffic modernization. It indicates that over the past two decades, Congress has enacted legislation aimed at making the FAA a performance-based organization that would improve air traffic services and expedite modernization.¹⁰ While the FAA has completed several reorganizations and implemented cost-cutting measures, its budget continues to grow significantly while air traffic facility productivity declined.¹¹ That is a disturbing and unsustainable trend.

⁸ GAO, “Air Traffic Control Modernization: Management Challenges Associated with Program Costs and Schedules Could Hinder NextGen Implementation,” February 2012, GAO-12-223, at 1, <http://www.gao.gov/assets/590/588627.pdf>.

⁹ Office of Inspector General, U.S. Department of Transportation, “FAA Made Limited Progress in Implementing NextGen Provisions of the FAA Modernization and Reform Act of 2012,” AV-2014-027, January 28, 2014, at 2, <https://www.oig.dot.gov/library-item/28825>.

¹⁰ Office of Inspector General, U.S. Department of Transportation, “FAA Reforms Have Not Achieved Expected Cost, Efficiency and Modernization Outcomes,” AV-2016-015, January 15, 2016, <https://www.oig.dot.gov/library-item/32908>.

¹¹ *Id.* at 5.

- The FAA's own numbers tell us that delays and cancellations cost our economy and our customers \$30 billion every year. A 2013 United States Travel Association (USTA) report concluded delays and cancellations drove demand down by 8 percent and prompted passengers to avoid 38 million domestic air trips costing the American economy \$85 billion and 900,000 jobs. This is what the status quo delivers to airline customers.

Scalability is not a problem. The shift to the restructured air traffic management system that the bill calls for will not mean that existing resources and facilities will be cast aside and a new system built from scratch. On the contrary, existing assets will be employed. There should be no misunderstanding about that. We will not suffer from a resource "hole" on day one.

Another basic misconception needs to be dispelled. For reasons that we do not understand, some critics of the comparability of the modernization accomplishments of other nations' air traffic management systems and the proposed changeover of the U.S. system cite concerns about the differences in "scalability" or "scale of operations" as reasons why they are incomparable. It is true that the U.S. air traffic control system is the largest and most complex in the world. Those characteristics, however, are not impediments to modernizing it. Instead, the preeminence and sophistication of our system are reasons why we can be confident that we have the wherewithal to handle the transition to a new paradigm and accommodate future growth under it.

The transition phase. The transition to a new management and funding arrangement will be hard work. That is to be expected. The success of that transition will depend on thorough preparation that includes the involvement of all users and the commitment of all stakeholders to make the transition successful.

CONCLUSION

Change is hard. Ask those who led efforts to deregulate our industry in 1978. Following that work, air travel is now widely accessible, affordable and safer than it has ever been. We can make that kind of sweeping change now for air traffic control. The rest of the developed world has shown us the way.

We know what we have to do. And we know how to do it. We therefore urge Congress to promptly enact the bill.