

**ADMINISTRATION'S PROPOSAL TO REAUTHORIZE  
THE FEDERAL AVIATION ADMINISTRATION  
(PART II)**

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**HEARING**

BEFORE THE

SUBCOMMITTEE ON AVIATION OPERATIONS,  
SAFETY, AND SECURITY

OF THE

COMMITTEE ON COMMERCE,  
SCIENCE, AND TRANSPORTATION

UNITED STATES SENATE

ONE HUNDRED TENTH CONGRESS

FIRST SESSION

—————  
MARCH 8, 2007  
—————

Printed for the use of the Committee on Commerce, Science, and Transportation



U.S. GOVERNMENT PRINTING OFFICE

79-905 PDF

WASHINGTON : 2013

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ONE HUNDRED TENTH CONGRESS

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**ADMINISTRATION'S PROPOSAL TO  
REAUTHORIZE THE FEDERAL AVIATION  
ADMINISTRATION (PART II)**

THURSDAY, MARCH 8, 2007

U.S. SENATE,  
SUBCOMMITTEE ON AVIATION OPERATIONS, SAFETY AND  
SECURITY,  
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,  
*Washington, DC.*

The Subcommittee met, pursuant to notice, at 9:34 a.m. in room SR-253, Russell Senate Office Building. Hon. John D. Rockefeller IV, presiding.

**OPENING STATEMENT OF HON. JOHN D. ROCKEFELLER IV,  
U.S. SENATOR FROM WEST VIRGINIA**

Senator ROCKEFELLER. This hearing will come to order. And, we don't have, we don't have a lot of time, but we don't have a lot of members, but we have the two most important members.

[Laughter.]

Senator ROCKEFELLER. Except when Danny and Trent come in. And so, we would welcome your testimony, Senator Inhofe.

**STATEMENT OF HON. SENATOR JAMES M. INHOFE,  
U.S. SENATOR FROM OKLAHOMA**

Senator INHOFE. Now?

Senator ROCKEFELLER. Yes.

Senator INHOFE. Good, good.

[Laughter.]

Senator INHOFE. Thank you, Mr. Chairman, and Senator Stevens, I'm really glad you're here because I have a few references to Alaska that I'll make during the course of this presentation.

And I appreciate your letting me go first, we have an Armed Services hearing that I'm supposed to be attending.

Well, I do thank you for letting me share my thoughts with you on what they're referring to as the Next Generation Air Transportation System Financing Reform Act. It's been my experience over the years, that every time you raise taxes, you call it reform. And I think this is no exception.

Now, as you know, certainly Senator Stevens knows, probably a little bit more than you do, Mr. Chairman, and I have a little bit of experience when it comes to——

Senator ROCKEFELLER. About taxes? I'm not so sure he does.

[Laughter.]

Senator INHOFE. Well, on the transportation—I was Chairman of the Environment and Public Works—

Senator ROCKEFELLER. Would you proceed as politely as you can with your testimony.

[Laughter.]

Senator INHOFE. I'm sorry? All right.

Well, anyway, I'll skip that part then.

[Laughter.]

Senator INHOFE. But I do want you to know that I also have a background in aviation, a lot of people are not aware of that, I'm currently still a flight instructor, an active commercially, instrument-rated pilot. This is my 50th year of flying. And I would say to you, and some of my friends in general aviation, that—I would ask the question, how much do you think it cost to get a license when I got my license? Either one of you want to venture a guess?

Senator ROCKEFELLER. No.

Senator INHOFE. All right—it was \$32.00. It took 8 hours, \$4 an hour, and that was for an instructor, an airplane and fuel. So, things have changed.

Now, I'm not only interested in the proposal before you in my capacity as a United States Senator, but that is, in my State of Oklahoma, we're the home of a major airline's maintenance facility, and another major airline's reservation facility, and we have a very vibrant general aviation community.

So, as a user of the system myself, I think I'm somewhat qualified to comment on the proposed changes. I believe this is the third time in my Congressional career that a user-fee system has been proposed to fix our aviation infrastructure, and I say "fix" in quotations.

Each time I have strongly opposed it, and will do so again today. The United States has the safest and most efficient air transportation system in the world, moving more aircraft and more people than the rest of the world combined.

About 10 years ago, I flew a small, general aviation airplane, an old beat-up Cessna 414 around the world, recreating the flight of Wiley Post. It was on the 60th anniversary of his flight around the world. And so I went through Canada, and Goose Bay and Greenland, and Iceland and over to Great Britain and Berlin, Moscow, across Siberia and then into the State of Alaska. And during that time, I learned what other systems were, and it made me appreciate our system. And, I can assure you, from firsthand experience, that our aviation system is second-to-none, and it's not broken.

Congress is being asked to dismantle the time-tested aviation financing system for reasons that I'm not really sure. The need to keep improving our air traffic control system, to increase safety and expand capacity, is without question. But, I fail to understand how this proposed user-fee system will achieve that goal.

User fees, in the form of excise taxes, are the appropriate and cost-efficient way for all aviation users to support the system, in my opinion. Despite what some believe, our aviation infrastructure is inherently governmental, and thus maintaining the historic level of General Fund contributions to the system is critical, and Congressional oversight is essential.

I've seen credible analysis that indicates that the Administration's proposal will result in less money, not more money, for aviation. I think someone's going to testify to that, and I've seen that proposal.

Furthermore, because the fees can be adjusted by an unaccountable board, it would be impossible to accurately predict what the fees would be for users of the system. So, when we talk about, "What's this going to cost?" There's no way to analyze that with the information we have right now.

Congressional management and oversight of the FAA spending and programs is needed to protect the users. And again, as I read the proposals, these fees can be adjusted at the discretion of the Administrator and an outside board, without Congressional oversight.

I've reviewed the Administration's cost-accounting study, and seriously questioned their results—in particular, the 360 percent increase in fuel taxes for general aviation. I think it's totally unacceptable. And, I know what's behind it—it's this attitude that there are so few pilots out there, you can hit them with something like this, and they'll just have to pay it, because they don't have the political clout to do it.

I'd like to see what would happen if you wanted to have a 360 percent increase on automobile taxes. Then they'd get your attention.

In 2006, the Aircraft Owners and Pilot's Association, the AOPA, did a survey of its members, and found that 88 percent of them—if they had to have this 70 cent increase—would either stop flying altogether, or dramatically reduce their flying. Now, that would have quite an effect on the revenue that would be derived from that.

We nearly killed the general aviation industry, by uncontrolled tort claims, but thankfully, due to the work of this Subcommittee, and quite frankly, of me and of Senator Nancy Kassebaum, Congress passed in 1994, and President Clinton signed into law, the General Aviation Revitalization Act, that was an 18-year repose proposition. And that bill, alone Mr. Chairman, as you well know, changed us from a major importer to a major exporter of small aircraft and aircraft parts.

General aviation now contributes over \$100 billion annually to the economy, and accounts for 1.3 million high-skilled, high-wage jobs in professional services and manufacturing.

Furthermore, it's one of the few U.S.-based industries that actually makes a positive contribution to our balance in trade, which didn't used to be the case. Why we'd consider destroying that is beyond my understanding. Make no mistake, if this proposal is adopted, there will be a dramatic, immediate, negative effect on general aviation, and on our economy.

For 27 consecutive years, I've attended the Air Venture in Oshkosh, Wisconsin—this is the largest air gathering anywhere in the world, even has more people than the Paris Air Show, or the ones you and I have gone to many times, Senator Stevens. And contrary to some of the people's belief, general aviation is not composed of fat cats. If you go there, and you watch the people, and you see, these are people who are single issue people—I understand that, I'm

among that community, I suppose—but these are people who are in a variety of levels of the economy, and you go and you see the enthusiasm these people have, it's very, very exciting. I wish more members would get up there and see what kind of people are involved in general aviation.

General aviation is also critical to small business viability, and a critical transportation means for many of the Nation. In fact, 70 percent of all general aviation flight hours are for business. This includes, but is not limited to, farming, ranching, search and rescue, firefighting, law enforcement, news, traffic, weather and so forth—70 percent. As a former small businessman, I know that increased operating costs can not always be passed onto the customer, and certainly they can't in this case.

Now, in addition to increased fuel taxes, the FAA Proposal will subject all users of the system to substantial increases in fees for aircraft registration, airmen certificates, medical certificates, certificates for flight school, and training centers, certificates for repair states and maintenance facilities and schools and all of that. Now, you know, so you're talking about a huge tax increase, in addition to that one that we can actually measure, and that would be a 360 percent tax increase on just the fuel.

Now, though I don't currently have the pleasure of serving on the Commerce Committee, I did serve on the relevant Committee in the House, and believe strongly that both Committees play a critical role in keeping our aviation system the best in the world. I merely ask you not to give up the right and responsibility to oversee that system, by abdicating that role to an unaccountable outside board. As I read the proposal, that's what it appears to be.

As you draft your bill, I would urge you to consider that the current system and many of the proposed system upgrades are designed for commercial and airline operations. General aviation is only an incremental user in that system. Stifling general aviation by imposing a crippling tax increase may help with congestion, because there are a lot of people who are not going to be flying anymore.

We know that we're talking about imposing a 360 percent increase on fuel, but we're also imposing a tax that we can't really measure at this time.

I mean I—you know, I look at Senator Stevens up there, and remember when I was flying around the world, Senator Stevens, coming down from Fairbanks, Alaska, straight south on that river—tell him to listen.

Senator LOTT. Was that the Kenai?

Senator INHOFE. Yes, there we go.

Senator STEVENS. Oh, that guy.

Senator INHOFE. Senator Stevens, I was talking about, toward the end of my flight around the world, when I was coming down from Fairbanks, replicating the Wiley Post flight, I looked over there and I saw almost every little home has a little lake, a little pontoon—how are you going to go back and explain to these people that we're imposing a 360 percent increase in their taxes, and even more than that?

A vibrant general aviation industry is an important part of our overall aviation innovation. General aviation has been, and continues to be, the incubator for cutting-edge aviation technology.

I can remember—one of the planes that I own right now is one that is a composite—that was all done through experimenting in people's garages—but this picture right here of the airplanes I own, that happens to be an experimental. And that experimental is doing things right now, and people are now copying that—not just general aviation, but others, military and others—seen the technology that was born in somebody's garage.

So, while some may be eager to point out that general aviation is not paying its fair share, I believe that an even-handed examination of the facts demonstrates that's not true. Any changes to the current system needs to encourage and maintain general aviation, and not unnecessarily destroy it by imposing unreasonable and unfair taxes upon us.

So, as you work on reauthorization, take the idea of user fees off the table, then the debate can occur on any changes and adjustments that may need to be made. And I would like to have, hope that you would take those fees off the table as we have in the past. I've worked with all of the sectors of the aviation community before, and while there may not always be agreement on all points, I do believe there is a way to reach consensus on a deal to benefit everyone.

So, I thank you for listening to my views, and they come from the heart. I regretted it when John Glen retired from the Senate, because that kind of left me as the last one who really has a hands-on understanding of aviation, and I hope you look into what its real contributions are to our economy, and the American way of life, and freedom of choice.

Thank you, Mr. Chairman.

Senator ROCKEFELLER. Thank you, Senator Inhofe, very much.

And, our second panel consists of Mr. Steve Alterman, who is the President of the Cargo Airline Association; Mr. Pat Forrey, President of the National Air Traffic Controllers Association; Mr. Chip Barclay, President of the American Association of Airport Executives; Mr. Jim May, President and CEO of Air Transport Association of America; and also, Mr. Ed Bolen, President and CEO, National Business Aviation Association.

Gentlemen, we welcome all of you. And, Mr. Alterman, why don't you start off, sir, since you're the first person I named?

Mr. ALTERMAN. Thank you very much.

Senator ROCKEFELLER. And I genuinely welcome everybody here. I hope this is going to be a short hearing, and I'm hopeful that what we will get from this hearing, since you are the people who kind of run your operations and your organizations, that we will begin to get some dialogue between you—about ways that we can work on FAA problems, financing problems. My only position on financing, and I think it's shared by Senator Lott, is that the status quo cannot stand. Other than that, we are open, waiting to hear what your suggestions are, in a communal way. So, this may end up in some kind of a Quaker meeting, I have no idea, in the meantime, Mr. Alterman—

Senator STEVENS. Could we put our opening statements in the record, please?

Senator ROCKEFELLER. I'm sorry, I apologize, Senator Stevens, for that. Absolutely. And I actually didn't want to have any opening statements, so we could go right to that, and I apologize. Please.

**STATEMENT OF STEPHEN A. ALTERMAN, PRESIDENT,  
CARGO AIRLINE ASSOCIATION**

Mr. ALTERMAN. Mr. Chairman, members of the Committee, good morning. My name is Steve Alterman, I'm President of the Cargo Airline Association. Our Association represents those who operate all-cargo aircraft, and others with interest in the all-cargo supply chain, in the air cargo supply chain.

We are an integral member of the air transportation community, but we are somewhat unique. We exist to serve our customers, and provide overnight service to virtually any place in the United States and around the world. That means we do a lot of flying at night, and off-peak hours. So, we do have a somewhat unique operation.

We are one of the fastest-growing segments of the community. The FAA estimates that we will grow domestically, 3.1 percent, and internationally, 6.3 percent over the next decade or so, and in order to provide the service that is demanded by our customers, we are absolutely dependent on our modern air traffic system that provides the flexibility for growth. We simply cannot afford to continue to manage traffic with the technology that was basically invented to fight World War II, and matured in the 1950s, that's radar. We must build a system using technology and procedures necessary to address the shortfalls in capacity, and this modernization of the current system must, therefore, be the major priority as we move forward.

Moreover, modernization of the system exists for reasons other than simply addressing capacity. Operational procedures using satellite-based technology will yield more efficient operations, less noise, less fuel burn, reduction in aircraft emissions, and those cannot be overlooked, and neither can the potential safety enhancements that will result with the provision of better and more timely information to both pilots and controllers.

Since air cargo is expected to continue to be a major growth element in the system, we have a significant stake in the modernization effort, and we strongly believe the effort to modernize must not be delayed, and Congress needs to move forward this year to ensure that the programs fundamental to a modernized system are both authorized and funded.

Moving to the real subject of the hearing, and that's the proposal—the reauthorization of the FAA. The FAA did release its proposal on February 14, and while the FAA over the past months and year has made significant strides toward modernization especially in the area of identifying ADS-B technology as the building block, we're concerned that the proposed legislation doesn't really lay out a comprehensive, next-generation plan. Until the details of this plan are known, it's very difficult to assess the specific funding required. And yet, the proposal keys almost solely on funding.

We think, to some extent, this puts the process backward, and we need to answer some questions before we go forward. The questions revolve around the precise nature and cost of the system, what cost savings would be realized, what are the benefits to users, and whether the system needs to be purchased, or perhaps, leased.

With respect to the funding question—I think there are certain fundamental elements. First, the U.S. aviation system—and I think all of us would agree—is a system that benefits all citizens and drives the Nation’s economy. We absolutely need a robust, Federal, General Fund contribution, at least at historic levels. We’re disappointed that the proposal does not grant that.

Second, whatever funding mechanism you decide upon, it should be fair, and the obligations fairly allocated. As a basic principle, we do not believe that any industry segment should subsidize any other industry segment, but we should all pay for our use of the system.

From the all-cargo perspective, we currently pay a 6.25 percent air waybill tax, plus a 4.3 cent per gallon fuel tax, and that results in our paying of just over 100 percent of the, of our system use. We don’t expect any relief for that portion that exceeds 100 percent, but neither should we be forced, or expected, to pay more than our current share that does represent 100 percent use.

This result can be accomplished by simply retaining the current funding mechanism for the air transportation of cargo, or by ensuring that any new system applicable to us does not unfairly impact our industry segment. We also firmly believe that it is absolutely necessary to fund research and development, research and development becomes tomorrow’s facilities and equipment—we can’t skimp on that.

With respect to the funding proposal, the FAA, we are not happy with it. We cannot support any proposal that gives unfettered authority to the FAA Administrator, with virtually no oversight, and no possibility for judicial review.

We are also very concerned that it appears the user-fee system envisioned by the FAA, will require a complicated and costly new bureaucracy, simply to assess and collect the fees. The added costs of establishing and maintaining this bureaucracy is very difficult to justify, when there may be other, less costly ways of doing this.

I might point out that we all get letters requesting charitable contributions every once in a while, and I always ask when I get that, what portion of money—if I contribute—will actually go to the intended recipient, and what will go to administrative costs? I have the same problem with the FAA proposal. If we’re going to—the funds are not unlimited, and those funds that go there, should go to modernization, not to fund another bureaucracy.

Thank you very much. I would be glad to answer any questions.  
[The prepared statement of Mr. Alterman follows:]

PREPARED STATEMENT OF STEPHEN A. ALTERMAN, PRESIDENT,  
CARGO AIRLINE ASSOCIATION

Good morning. My name is Steve Alterman and I am the President of the Cargo Airline Association, the nationwide organization representing the interests of the all-cargo air carrier industry, as well as other businesses and entities with a stake in the air cargo supply chain. (A list of current members is attached).

### **The All-Cargo Industry**

Although an integral part of the air transportation community, the all-cargo segment is unique, with operating characteristics different from other segments, resulting in substantially different air transportation system use and relatively less stress on system resources. Since our only mission is to provide our worldwide customers and shippers with end-to-end transportation services, a large percentage of our flights are during nighttime hours, thus allowing us to meet time-definite demands and to offer expedited delivery throughout the Nation and the world.<sup>1</sup> We currently pay for slightly over 100 percent of our share of air traffic system use through a combination of a 6.25 percent air waybill tax and 4.3 cents per gallon fuel tax.<sup>2</sup>

The air cargo industry is one of the fastest growing segments of our commercial aviation marketplace, with growth rates of 3.1 percent domestically and 6.3 percent internationally expected over the next decade.<sup>3</sup> In order to continue to provide the time-definite service that our shippers and the world economy demand, we are dependent on a modern air traffic management system that provides the flexibility for growth in the coming years. We simply cannot afford to continue to manage traffic with technology (radar) designed in the first instance to fight World War II. Rather, we must build a system using the technology and procedures necessary to address the shortfalls in capacity that will occur as future demand continues to grow. *The modernization of our current system must therefore be the major priority in the ongoing FAA Reauthorization effort.*

Modernization of the system is critical for reasons other than simply addressing future capacity. Operational procedures using satellite-based technology will yield more efficient operations, resulting in less noise and less fuel burn, thereby reducing aircraft engine emissions. These environmental benefits cannot be overlooked. Nor can the potential safety enhancements that will result with the provision of better and more timely information to both pilots and controllers.

Since air cargo is expected to continue to be a major growth element in this system, we have a significant stake in the modernization effort now underway. We strongly believe the effort to modernize must not be delayed and Congress needs to move this year to ensure that the programs fundamental to a modernized system are both authorized and funded.

### **The Reauthorization Debate**

On February 14, 2007, the FAA released its long-awaited legislative plan for dealing with both the programmatic and financing elements of the Next Generation System. Unfortunately, this proposal provides more questions than answers, and the Cargo Airline Association cannot support the FAA proposal in its present form.

While the FAA has, over the past few months, made significant strides toward modernization (especially in the area of making the decision to use ADS-B technology as the next generation surveillance tool), we are concerned that the proposed legislation does not contain a comprehensive Next Generation plan. Until the details of this plan are known, it is difficult to assess the funding required. Yet the FAA proposal focuses almost exclusively on the financing element and not on the details of the system. To some extent, therefore, we are putting the cart before the horse and need to step back to ensure that the right questions are being asked.

These questions revolve around the precise nature and associated costs of the Next Generation system, what cost savings the FAA would realize from this modernization, the costs and benefits to the user community and whether the modernized system should be purchased or leased. Only after these issues are, at least preliminarily, addressed should there be a debate over how to fund the system, including whether the current system is adequate or whether a different system is necessary or appropriate.

When funding questions are addressed, we believe the following principles and considerations should be paramount.

*First*, the U.S. aviation system is a national asset that benefits all citizens and drives the nation's economy. The consequences of a sub-par system are constrained economic growth and diminished U.S. competitiveness in the world marketplace. Congress has historically recognized these facts by providing a General Fund contribution in excess of 20 percent of the FAA Budget. We are disappointed that the President's Budget and the FAA legislative proposal not only provide a smaller percentage of General Fund contribution for Fiscal Year 2008, but actually envision a

<sup>1</sup> Such nighttime operations are clearly "off-peak" and result in an efficient use of system resources.

<sup>2</sup> See Air Cargo Airlines System Use Analysis, SH&E, 2006.

<sup>3</sup> U.S. Department of Transportation, Federal Aviation Administration, FAA Aerospace Forecasts, Fiscal Years 2006-2017.



decrease in funding for 2009 and 2010. With the need for significant infrastructure investments in the coming years, this Federal contribution should increase, not decrease.

*Second*, whatever funding mechanism is ultimately decided upon, Congress should ensure that industry funding obligations are fairly allocated. As a basic principle, no industry segment should be forced to subsidize any other segment. From the all-cargo perspective, where under the current system cargo industry members pay a 6.25 percent air waybill tax plus a 4.3 cent per gallon fuel tax, studies indicate that our industry segment pays somewhat more than 100 percent of our system use. This is before taking into account that much of our use of the system is at off-peak times—meaning that not only do we place a relatively low burden on the system but, by spreading operations over 24 hours, we also enhance the system's overall efficiency. While we do not expect any relief for that portion of our system use that exceeds 100 percent, neither should we be expected to pay any more than our current share in order to make up for the shortfall in contributions from other industry segments. This equitable result can be accomplished by simply retaining the current funding mechanism for the air transportation of cargo or by ensuring that any new system applicable to us does not unfairly impact our industry segment.

*Third*, we strongly believe that Congress should support the funding necessary for Research and Development in an amount adequate to develop the necessary “out-year” modernization products. As a practical matter, today's R&D provides tomorrow's Facilities and Equipment, and any funding gaps in this area will seriously impede the modernization effort. This issue is of special concern in light of the reprioritization of NASA R&D funding to concentrate on future space travel and “de-prioritize” short and mid-term aeronautics research. A specific area of R&D concern is the research necessary to address growing environmental concerns.

*Finally*, and perhaps most importantly, we have serious concerns with the specific user fee proposal set forth in the FAA's February 14 proposal. Even if it is determined that the current excise tax system must be completely overhauled, we cannot support a new structure that gives the FAA Administrator virtually unfettered authority to set the level and structure of fees at will, with little or no Congressional oversight and no provisions for judicial review. While the proposed Bill does list user-related factors that the Administrator might take into consideration in setting user fees, all of these elements are discretionary and need not be used. Such authority would clearly eliminate any incentive for the FAA to cut costs<sup>4</sup> or restrain future cost increases since fees could always be raised to cover unnecessary agency spending.

Moreover, it appears that the user fee system envisioned by the FAA proposal will require a complicated and costly bureaucracy simply to assess and collect the fees. The added costs of establishing and maintaining this bureaucracy cannot be justified, especially when other, simpler, options may be available. At the least, these other options should be explored before committing to any proposed user fee scheme.

The Cargo Airline Association and its member companies are committed to working with Congress, the FAA and colleagues in the aviation community to arrive at an equitable system that meets the needs of all aviation interests. While the proposed FAA Bill is a useful beginning of the debate, it must not be viewed as a viable final product.

Thank you very much.

<sup>4</sup>Indeed, without any detail in the proposed Bill, we have no idea of what expenses can be eliminated in a modernized system.



**THE CARGO AIRLINE ASSOCIATION**  
*The Voice of the Air Cargo Industry*

#### MEMBERSHIP LIST

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Kalitta Air	Ypsilanti, MI
Kitty Hawk Inc.	Dallas, TX
USA Jet Airlines, Inc.	Belleville, MI

##### AIRPORT ASSOCIATE MEMBERS

Ft. Wayne International Airport	Ft. Wayne, IN
Louisville International Airport	Louisville, KY
Memphis-Shelby County Airport Authority	Memphis, TN
New Orleans International Airport	New Orleans, LA

##### OTHER ASSOCIATE MEMBERS

Aviation Facilities Company, Inc.	McLean, VA
Bristol Associates, Inc.	Washington, DC
Campbell-Hill Aviation Group	Alexandria, VA
Keiser & Associates	Oakland, CA

\* Member, Board of Directors

Senator ROCKEFELLER. Interesting comparison. And I thank you very much, Mr. Alterman. Very, very much.

Now, we turn to Mr. Pat Forrey, the President of the National Air Traffic Controllers Association. Welcome.

#### **STATEMENT OF PATRICK FORREY, PRESIDENT, NATIONAL AIR TRAFFIC CONTROLLERS ASSOCIATION**

Mr. FORREY. Chairman Rockefeller, Ranking Member Lott, Vice Chairman Stevens, on behalf of the 15,000 air traffic safety professionals that make up the National Air Traffic Controllers Association, I want to thank you for inviting me to testify here today.

I know I was invited here to discuss the Administration's FAA reauthorization proposal, however, my workforce is having a troubled time, concentrating on user-fees and NextGen, due to the dis-

traction associated with our ongoing labor disputes and contract disputes.

NATCA has been shut out of the development of vital modernization equipment, which the GAO cites as a major reason for billions of dollars of cost overruns. We have been shut out of the development of a new staffing plan, which fails to staff to traffic, and instead staffs to budget. And we are largely shut out of the Agency's reauthorization proposal, which includes an ill-advised user-fee system, and other precursors to privatization of the safest and most efficient air traffic control system in the world.

But most frustrating to my membership and I is the fact that we were even shut out of any possibility of good-faith negotiations on our own contract last year. In July 2005, the FAA unilaterally imposed work rules on 11 NATCA bargaining units, consisting of many aviation-safety related professionals, including operations engineers, aviation safety engineers, aircraft certification engineers, test pilots, nurses, lawyers, drug abatement, and others.

Although the FAA continually refers to a contract, the truth is that the safety-related professionals NATCA represents are not working under a contract, but working under imposed pay and work rules. Let me be clear, no labor law considers imposed work rules to be a contract. Morale among FAA employees is extremely low, retirements are far exceeding FAA's planning, fatigue among those employees remaining is a major concern, and these are all direct effects of the imposed work rules and pay system.

In 2003, according to the FAA Administrator's Fact Book, there were 15,691 air traffic controllers. At the end of 2006, there were 14,206, and of the 14,000 working today, almost 2,000 of them are trainees, and not fully certified.

At the same time, by no means by coincidence, operational errors are on the rise at the FAA's busiest facilities, including Atlanta-Hartsfield, and Southern California TRACON. As an air traffic controller with the FAA for 23 years, I can assure you that those 1,485 controllers would make a significant difference in the level of safety in the sky—1,485 controllers would eliminate the need for mandatory 6-day work-weeks, forced overtime, the fatigue and the burn-out felt by overstuffed, overworked controllers throughout the country.

Without a concerted effort to attract experienced controllers and retain our current workforce, the ATC system will continue to lose controllers, and that will mean flight delays, runway incursions, increased chances of aviation disasters.

Controllers are leaving the workforce at a rate of exactly three per day, since the start of this current fiscal year. At the current pace, the number of controller losses would be 1,095 by the end of the year—that's 150 more, more than the FAA has projected.

It's likely that those controllers are retirement-eligible, will choose to leave the system, unless something can be done to keep them, like returning to the negotiations table under fair conditions, and with the intentions of reaching a mutually agreeable contract.

It's important to note that the FAA is not currently hiring air traffic controllers, they're hiring trainees. It takes an average of 3 years for a trainee to become fully certified. The staffing plan re-

leased by the FAA just yesterday is the Agency's latest smoke-and-mirrors screen.

With traffic increased since 1998, and no significant deployment of new ATC equipment, I see no justification for a decrease in the controller staffing levels. When we lose veteran controllers, we are moving from the on-the-job instructors that assist the development of new hires. Trainees become controllers by plugging in and working air traffic alongside veteran, certified controllers. With the pool of instructors continually shrinking, the length of time it takes for trainees to become fully certified, and able to work traffic, will continue to increase.

The gap—that gap from the day a veteran controller retires, to the day their replacement reaches full certification level, is where we have the most reason to worry about the Agency's continued ability to maintain the margin of safety in the system, by ensuring that redundancy. Our greatest challenge today is maintaining the margin of safety, knowing the level of redundancy has become whittled away to its bare minimum. We need more eyes watching the sky.

The FAA's Air Traffic Organization has stated they are considering structured staffing to deal with shortages to train new hires. Unfortunately, this will mean air traffic facilities will be staffed with less-than-experienced controllers, only partially certified. Currently, FAA projections are that by 2010, 40 percent of the air traffic control workforce will have less than 4 years of experience on the job. And that's without figuring in the 50 percent failure rate at facilities such as the New York TRACON, according to the FAA's Eastern Regional Administrator, Doug Murphy.

I have often—with aviation contributing \$640 billion a year to the American economy, representing 4.5 percent of the U.S. GDP and accounting for over 9 million jobs, it is increasingly important that inefficiencies be eliminated in the system.

As Transportation Secretary Mary Peters recently said, "If we continue along the current path, estimates are that by 2022, congestion in our skies will cost the Nation \$22 billion each year in lost economic activity." Yet, the FAA has failed to plan for the retirements that are 26 years in the making.

In fact, the Agency has recently admitted that the work rules imposed on this workforce is actually exacerbating the retirement wave, and the understaffing epidemic. The rampant understaffing of facilities across the country will mean increased delays, and unnecessarily increased risks.

It is urgent that we get back to the table, because we are losing these controllers, at three a day. It is urgent we stop the bleeding, stop pushing out veteran controllers that are needed to help train the new ones, and work the airspace. It is urgent that we include language to fix the negotiation process, and FAA reauthorization, so that we have collective bargaining rights in the next round of negotiations. It is urgent we not wait for reauthorization to open up the current imposed contract, because the system can't handle the current tidal wave of retirements. The bleeding must be stopped, and it can be stopped by getting back to the table.

It is urgent that we put the imposed work rules and pay system behind us, and be allowed to concentrate on the pressing need to modernize the system, and meet the demands of the future.

At this time, I would like to ask that the Committee enter into the record a letter written by Congressman Jim Oberstar, Chairman of the House Transportation and Infrastructure Committee, and Congressman Jerry Costello, Chairman of the House Aviation Subcommittee, which articulates the need—the urgent need—to attach language to the Iraqi supplemental, to get us back to the table, and help stabilize air traffic control system.

Senator ROCKEFELLER. It is done.

[The information previously referred to follows:]

HOUSE COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE  
SUBCOMMITTEE ON AVIATION  
*March 6, 2007*

Hon. DAVID R. OBEY,  
Chairman,  
Committee on Appropriations,  
Washington, DC.

Dear Chairman Obey:

We understand that several members of your Committee are urging that the Emergency Supplemental Appropriations bill for FY 2007 include a provision to change the grossly unfair bargaining process between the Federal Aviation Administration (FAA) and its air traffic controllers, which has resulted in the unilateral imposition of pay and work rules on this critical safety workforce. We strongly support including such a provision in the Emergency Supplemental.

On April 6, 2006, the FAA declared an impasse in its contract negotiations with the National Air Traffic Controllers Association (NATCA) and sent the dispute up to Congress under a provision that FAA argued gave it the right to unilaterally impose its contract terms if Congress did not act within 60 days. FAA imposed its last offer on the controllers in June 2006. This unilateral decision has had a harmful impact on the workforce, including an acceleration of retirements. According to NATCA, veteran controllers are currently retiring at a rate of more than three per day since the end of Fiscal Year 2006.

FAA's interpretation of the law gives it an inherent, unfair advantage to impose its contract terms on its employees. Such a one-sided process has been an impediment to good faith negotiations that could have led to a voluntary contract.

Air traffic controllers are working under a contract they neither chose nor ratified. To restore collective bargaining for our Nation's nearly 15,000 controllers and to preserve safety, we strongly support including a provision in the Emergency Supplemental Appropriations bill for FY 2007 that would bring both sides back to the table and force binding arbitration.

Thank you for your attention to this request.

Sincerely,

JAMES L. OBERSTAR,  
*Chairman.*

JERRY F. COSTELLO,  
*Chairman,*

Subcommittee on Aviation.

cc: Hon. NANCY PELOSI  
Hon. STENY H. HOYER  
Hon. JAMES E. CLYBURN  
Hon. JOHN P. MURTHA

Mr. FORREY. Once again, I thank you for this opportunity to testify, and look forward to answering any questions you may have.

[The prepared statement of Mr. Forrey follows:]

PREPARED STATEMENT OF PATRICK FORREY, PRESIDENT,  
NATIONAL AIR TRAFFIC CONTROLLERS ASSOCIATION

There are tens of thousands of Federal Aviation Administration employees working without a contract including many employees represented by NATCA, PASS, and AFSCME, who are working without contracts for their respective bargaining units.<sup>1</sup> In July 2005, the FAA unilaterally imposed work rules on 11 NATCA bargaining units consisting of many aviation safety professionals, including Operations Engineers, Aviation Safety Engineers, Aircraft Certification Engineers, Test Pilots, Nurses, Lawyers, Drug Abatement Inspectors, and others. On September 3, 2006, the FAA used that same tactic and imposed work rules and a two-tier pay scale on air traffic controllers. Currently the NATCA-represented aviation safety professionals do not have a contract with the FAA and air traffic controllers are working under imposed work and pay rules without a contract. Although the FAA continues to tell the big lie that there is a contract, that doesn't make it true.

It is axiomatic that in order to form a contract the parties must have a meeting of the minds. NATCA and the FAA did not and do not have a meeting of the minds over the terms and conditions of employment for the three Air Traffic Controller bargaining units. Instead the FAA unilaterally implemented its last proposal, forcing employees to work under imposed work and pay rules rather than a contract. The FAA did the same thing for in July 2005 for 11 non-Air Traffic Controller bargaining units. There is no contract for these bargaining units either. No labor law considers imposed work rules to be a contract. In fact, unilateral implementation is a form of economic warfare not unlike a strike or lockout in the private sector.<sup>2</sup>

Morale among FAA employees is extremely low. Retirements are far exceeding FAA's planning. Fatigue among those employees remaining is a major concern. A lack of trust between employees and their supervisors creates additional tension. Decisions based upon the desire to display authority rather than based upon safety needs or common sense have become pervasive. Thousands of grievances are awaiting disposition. The failure of FAA to reach agreement with the unions that represent its employees has caused urgent safety concerns.

Congress must act now to alleviate these problems by requiring the FAA to return to the bargaining table with NATCA. The current law is unclear. Unless the process is changed and clarified, FAA will have no motivation to reach agreement, and it will, unfortunately, once again fail to reach agreement. Congress must act to send the FAA back to the table, provide a clear impasse procedure, similar to the process that has been consistently successful for the United States Postal Service for over

<sup>1</sup>In fact, over the past 5 years, only one Union, the National Association of Air Traffic Specialists (NAATS), has reached a collective bargaining agreement with the FAA and shortly thereafter nearly all of the employees in its Flight Service Station (FSS) bargaining unit were separated from service or transferred to other parts of the Agency when their work was contracted out. FAA subsequently moved unsuccessfully to void the agreement for the remaining employees in Alaska when it petitioned the Federal Labor Relations Authority to decertify the NAATS FSS Alaska bargaining unit.

<sup>2</sup>When an impasse in bargaining is reached, the duty to bargain is not terminated but only suspended. *NLRB v. Tex-Tan*, 318 F.2d 472 (5th Cir. 1963). However, the fact of impasse enables the employer to make unilateral changes in working conditions that are "not substantially different or greater than any which the employer . . . proposed during negotiations." *Atlas Tack Corp.*, 226 NLRB 222, 227 (1976), enfd. 559 F.2d 1201 (1st Cir. 1977).

Impasse, in effect, temporarily suspends the usual rules of collective bargaining, by enabling the interjection of new terms and conditions into the employment relationship even though no agreement was reached through the proscribed collective bargaining process. As the Supreme Court in *Charles D. Bonanno Linen Service v. NLRB*, observed:

"As a recurring feature in the bargaining process, impasse is only a temporary deadlock or hiatus in negotiations 'which in almost all cases is eventually broken, through either a change of mind or the application of economic force.' Furthermore, an impasse may be 'brought about intentionally by one or both Parties as a device to further, rather than destroy, the bargaining process.' 454 U.S. 404, 412 (1981)."

In short, the impasse doctrine is designed, in part, to allow an employer to exert unilateral economic force by establishing new terms and conditions of employment as set out in the employer's bargaining proposals. However, the impasse is always viewed as a temporary circumstance, and the impasse doctrine allowing implementation of employer proposals is legitimated only as a method for breaking the impasse. The Parties, thus, remain obligated to continue their bargaining relationship and attempt to negotiate an agreement in good faith. The impasse doctrine, therefore, is not a device to allow any party to continue to act unilaterally or to engage in the disparagement of the collective bargaining process. *NLRB v. Crompton-Highland Mills*, 337 U.S. 217, 224 (1949). In the instant dispute, even *assuming arguendo* that the Parties reached impasse, FAA has interpreted its unilateral implementation as a contract, rather than a means of pressuring NATCA into reaching a contract. It has, in the Supreme Court's language, disparaged the entire process of collective bargaining.

30 years, preserve the rights to ratification and agency head review, and provide jurisdiction for the Federal Courts to hear disputes and enforce the law.<sup>3</sup>

### Statutory Background

On November 15, 1995, Congress enacted Section 347 of the 1996 Department of Transportation Appropriations Act,<sup>4</sup> directing the FAA to develop and implement a new personnel management system, to address “the unique demands on the Agency’s workforce.” Section 347(b) specifically stated that Chapter 71 of Title 5 of the U.S. Code would not apply to the new personnel management system, except for the prohibition of the right to strike in § 7116(b)(7).<sup>5</sup>

On March 28, 1996, the FAA issued a new Personnel Management System (PMS), organized in chapters addressing Staffing, Compensation, Performance Management, Training, Labor Relations, and Executive Systems. Chapter V, Labor Relations provided:

#### *Employee Rights*

The FAA, all FAA employees, and all labor organizations representing FAA employees shall have the same rights, and be subject to the same responsibilities and limitations, as are available to all Federal agencies, employees, and labor organizations under 5 U.S.C. Chapter 71.

On March 29, 1996, Congress passed the House Joint Resolution 170,<sup>6</sup> which amended Section 347 of the 1996 DOT Appropriations Act, to require the applicability of Chapter 71 of Title 5, relating to labor-management relations, to the FAA’s new PMS.

On October 9, 1996, Congress enacted the Air Traffic Management System Performance Improvement Act of 1996,<sup>7</sup> (the 1996 FAA Act) to establish a procedure for “developing and making changes to the personnel management system initially implemented by the Administrator . . . on April 1, 1996. . . .”<sup>8</sup> The FAA Act requires FAA to negotiate with its employees’ exclusive collective bargaining representatives over any changes to the FAA PMS, and to engage in mediation if such negotiations do not produce an agreement. However, if negotiations end in an impasse, the 1996 FAA Act “provide for the Administrator to transmit its proposals, along with the bargaining representative’s objections, to Congress. Proposed changes to the PMS will not take effect until sixty days after the Agency’s submission to Congress.”<sup>9</sup> At the same time Congress stipulated that all labor-management agreements then in effect were to remain in effect until their expiration dates.<sup>10</sup>

In 2000, Congress codified the provisions of House Joint Resolution 170 by adding subsection (g)(2)(C) to 49 U.S.C. Section 40122 to specify that Chapter 71 of Title

<sup>3</sup>Currently the Federal Courts do not have jurisdiction over these disputes. This is distinguished from the attempt to change the personnel regulations in the Department of Homeland Security. Under its statute (5 U.S.C. § 9701(a) (Supp. II 2002)), DHS was to create a new system through the issuance of regulation (70 FR 5272, Feb. 1, 2005 codified at 5 C.F.R. Part 9701), making it subject to Federal Court jurisdiction under the Administrative Procedures Act. When the courts reviewed DHS’ proposed regulations it found that the Department had exceeded its scope by effectively eliminating collective bargaining, among other things. *Nat’l Treasury Employees Union v. Chertoff (Chertoff I)*, 385 F.Supp. 2d 1 (D.D.C. 2005), and *Nat’l Treasury Employees Union v. Chertoff (Chertoff II)*, 394 F.Supp.2d 137 (D.D.C. 2005), enfd 452 F.3d 839 (D.C. Cir. 2006).

However, not unlike what has occurred in the negotiations between FAA and the Unions that represent its employees, the United States Court of Appeals for the District of Columbia Circuit wrote in enforcing the *NTEU v. Chertoff* cases, “the regulations effectively eliminate all meaningful bargaining over fundamental working conditions (including even negotiations over procedural protections), thereby committing the bulk of decisions concerning conditions of employment to the Department’s exclusive discretion. In no sense can such a limited scope of bargaining be viewed as consistent with the Act’s mandate that DHS ‘ensure’ collective bargaining rights for its employees.” *Id.* at 844. Similar to DHS, the FAA reserved to its own discretion all of the newly negotiable subjects under 49 U.S.C. 40122(a) in its last, best offer to NATCA, effectively nullifying the first section of the law, where negotiations are provided for, even though it relied upon the next section to unilaterally implement such discretion.

<sup>4</sup>Pub. L. 104–50, § 347, 109 Stat. 460 (1995).

<sup>5</sup>*Id.* at § 347(b).

<sup>6</sup>Pub. L. 104–122, 110 Stat. 876 (1996).

<sup>7</sup>Pub. L. 104–264, Title II, 110 Stat. 3227 (1996).

<sup>8</sup>49 U.S.C. § 40122(a).

<sup>9</sup>*Id.*

<sup>10</sup>49 U.S.C. § 40122(f).

5, “relating to labor-management relations” would apply to the FAA PMS.<sup>11</sup> Yet, the statute still remains unclear as to how bargaining impasses are to be resolved.<sup>12</sup>

#### Air Traffic Controllers Dispute

NATCA and FAA began negotiations for a successor to the 2003 two-year extension to the Collective Bargaining Agreement in July of 2005. During those negotiations and NATCA did not reach agreement with FAA. In fact, FAA from the beginning of the process, until the end, failed to adjust its proposals on pay and several other issues, believing that if it failed to reach agreement, it would submit its final proposal to Congress, Congress would not act, and after 60 days it could unilaterally impose its last best offer on the employees. Rather than engaging in collective bargaining, the result was a *fait accompli*. FAA would engage in what is referred to as surface bargaining<sup>13</sup> until it found an opportunity to end negotiations, submit its proposal to Congress, and unilaterally implement.

After 9 months of meeting, on April 5, 2006, the day FAA unilaterally declared impasse in negotiations, NATCA presented a new proposal for Pay, Article 108. FAA’s Rick Duscharme inquired about whether this was NATCA’s “best and final offer,” presumably meaning last, best offer. NATCA’s Barry Krasner responded that he didn’t want it to be considered that, that he didn’t see a lot of movement, and wanted to see movement from the FAA. FAA’s Joe Miniace responded that he would reject or accept the proposal after looking at it during lunch. Previously the shortest time period between a Union pay proposal and an FAA response was approximately 6 weeks: December 7, 2005 (NATCA’s second proposal on pay) to January 25, 2006 (FAA’s third proposal on pay). On April 5, Miniace’s statement that a response could be generated while reviewing the Union’s proposal during lunch serves as a further indication that FAA’s intention to declare impasse on April 5, regardless of the proposals was a *fait accompli*. The conversation that followed further emphasized the FAA’s premeditation:

MINIACE. We’re taking a very hard look at your proposal. I will take exception with your number, as soon as our folks are finished.

KRASNER. You’re not finished. You don’t know that you’ll take exceptions.

MINIACE. I think your clarifications make it even lower. I will ensure it gets the due consideration it deserves during our lunch, so we can plug in another number that you clarified today that we had not figured in. We’ll be able to do that.

KRASNER. That doesn’t sound like, it sounds a little, we’ll give it due consideration it deserves during lunch. . . .

As part of the pay proposal package, NATCA also tendered a new proposal on Article 106, Duration.

<sup>11</sup> Pub. L. 106–181, Title III, § 307(a), 114 Stat. 124 (2000).

<sup>12</sup> When FAA and NATCA failed to reach agreements over terms and conditions of employment for 11 bargaining units, NATCA filed a formal Request for Assistance on July 8, 2003 with the FSIP (Case No. 03 FSIP 144). PASS filed similar formal Requests for Assistance on various dates in July 2003 (Case Nos. 03 FSIP 149, 150, 151, and 157). The FAA filed statements of position with the Panel on September 22, 2003, asserting that the Air Traffic Management System Performance Act of 1996 completely divested the Panel of any jurisdiction over the impasses. After soliciting legal positions from all of the parties, on January 9, 2004, the Panel declined to address the impasses “because it is unclear whether the Panel has the authority to resolve the Parties’ impasse[s]. . . . This determination to decline to assert jurisdiction is made without prejudice to the right of either party to file another request for assistance if the underlying threshold question is resolved in the appropriate forum consistent with the Union’s interpretation of the applicable statutory provisions.”

NATCA and PASS filed Civil Action No. 04–0138 in the United States District Court for the District of Columbia on January 30, 2004. The District Court ruled that it did not have jurisdiction to hear the underlying claim. *Nat’l Air Traffic Controllers Assn. v. FSIP*, 2005 WL 418016 (D.D.C. 2005). The United States Court of Appeals for the District of Columbia Circuit agreed that it did not have jurisdiction to resolve the complaint on the merits. Instead it deferred to the Unfair Labor Practice processes within the Federal Labor Relations Authority’s auspices. *Nat’l Air Traffic Controllers Assn. v. FSIP*, 437 F.3d 1256 (D.C. Cir. 2006). Yet, the FLRA does not have any background in issues involving Title 49. This creates an inherent problem.

<sup>13</sup> The FLRA has not ruled on surface bargaining, however the National Labor Relations Board has significant case law on the subject. In *Teamsters Local 515 v. NLRB*, 906 F.2d 719 (D.C. Cir. 1990) the U.S. Court of Appeals for the D.C. Circuit reiterated some of the factors that the Board will consider in determining whether bad-faith bargaining had occurred. These include among others: unreasonable bargaining demands that are consistently and predictably unpalatable to the other party, unilateral changes in mandatory subjects of bargaining, and insistence to impasse on non-mandatory subjects of bargaining, all of which are present in the bargaining dispute between NATCA and FAA evidencing the Agency’s design to frustrate a bargaining agreement.



On April 5, 2006, NATCA also provided a U-3 proposal on Article 36 Pay Administration. FAA never responded to this proposal, yet declared impasse that same day. NATCA also provided FAA with formal requests for declarations of non-negotiability on several articles. FAA rejected Articles 116 Child Care Subsidy and 143 Student Loan Repayments “on (their) merits.” Regarding Article 150, Facility ATC Levels, FAA’s Joe Miniace responded, “We will respond to 150. We’ll respond to all of them. I’m making no other statement on Article 150 for the record.”

NATCA then presented a proposal on Article 38 Overtime and provided FAA with a formal request for a declaration of non-negotiability for that article since FAA had previously made unsolicited statements regarding the negotiability of portions of that proposal. NATCA provided proposals on Article 24 Annual Leave and Article 28 Holidays. FAA then presented a proposal on Article 106 Duration and the Parties broke for lunch.

After lunch FAA presented a proposal on Article 108 Pay. FAA also made new proposals on Article 18 Controller-in-Charge, which NATCA has alleged to constitute bad faith bargaining, and Article 33 Position Rotation and Relief Periods. FAA termed both proposals as their “best and final” offers.

FAA then proposed Article 28 Holidays and gave planned speeches regarding impasse.

DUCHARME. Let me address one issue—it’s been a hell of a process. Aside from the stuff in pay and upgrades and demotions, I want to thank you and Bob for your efforts and professionalism and I want to acknowledge the rest of the team. Based on what we’ve exchanged today, I see no value in reentering into mediation. I’m not the FAA Administrator, I don’t see it. It’s our intention to forward all of our outstanding articles to Congress as an impasse package. If there are any articles that you think we can work, the door is always open. If we can reach agreement on these articles, great. It’s not my call. I believe we’re at impasse, based on what we’ve seen today and I see no point in exchanging paper. I wanted a voluntary agreement. I acknowledge your team, but I’m disappointed that it didn’t work out. I think we’re done.

MINIACE. I want to acknowledge this team as well, ours as well as yours. I don’t think I’ve worked with a more professional group ever. We knew this would be hard and difficult. We came to a stall, went to mediation for 4 weeks. There’s some fundamental issues we just can’t get over. Because of the philosophical differences between the Union and the Agency—particularly on the long term goals of the Agency—they’re going to be issues that remain between us. Rick said our intent is to take this through its process, which would be a congressional process. You said your pay proposal would be your congressional proposal. I think more mediation at this point is not in the cards. But I, too, extend an offer that we will continue to talk through any process if we can narrow the issues and complete the issues during this period of time, I think we’d be better people for it. The door is absolutely open on that. On behalf of the FAA, I feel that the Agency is declaring impasse.

### **No Impasse**

It is NATCA’s position that since Federal Mediation and Conciliation Service Mediator Kurt Saunders did not certify impasse nor release the Parties, and since the Parties provided each other with new proposals on April 5, some within minutes of the FAA’s unilateral declaration of impasse, the Parties were not at impasse on April 5, nor have they subsequently reached impasse. Furthermore, since the state of impasse requires that the Parties reach impasse over the entirety of the negotiations, the fact that there were ongoing discussions on April 5 over nearly all of the outstanding subjects precludes the finding of impasse over those subjects where no proposals were exchanged on April 5, and even those subjects where the Parties had not made any movement in some time.<sup>14</sup>

Impasse is a bilateral process, not just the cutting off of negotiations by one party.<sup>15</sup> In the instant dispute, the FAA terminated negotiations immediately upon providing NATCA with substantively different proposals than had been provided previously on nearly every subject other than pay, which did not substantially

<sup>14</sup> Former NATCA President John Carr announced to the news media that negotiations had broken down several days prior to April 5, however that was due to the FAA wishing to terminate mediation at that time. It was also prior to NATCA developing its April 5 proposals. Moreover, since FAA provided new proposals on April 5, and NATCA had no opportunity to respond to those proposals before FAA unilaterally declared impasse, it is impossible to determine whether or not the Parties could have bridged the gap on those subjects.

<sup>15</sup> VA, VAMC and AFGE Local 85, 32 FLRA 855, 874 (1988) (ALJ Decision-Findings of Fact #13).

change at any point during negotiations. Further, NATCA had, earlier in that day, provided FAA with substantively different proposals than had been offered previously.

Moreover, if there are subjects or proposals of questionable negotiability, it is not proper to proceed with impasse resolution procedures until the FLRA can determine the negotiability. In *Commander Carswell AFB and AFGE*,<sup>16</sup> the Authority held that interest arbitrators and the FSIP may apply settled case law determinations of negotiability when a proposal's language is substantially similar to one previously found negotiable or non-negotiable. Further, the Authority held, when it is a matter of first impression, it is inappropriate for any other third party empowered to resolve the impasse to resolve the issue. That responsibility is within the exclusive jurisdiction of the FLRA. The Authority has consistently upheld *Carswell* even as a two member panel.<sup>17</sup> The FLRA is currently only two members since President Bush has not nominated a Democrat to fill the third and final position.

Since the negotiability of the Union's proposals have not yet been determined by the Authority, the Parties never reached a state of impasse. The Authority has ruled that where the Union's proposal has been ruled to be negotiable, it only requires that the Parties' return to the table to negotiate over that proffer. It does not require the third-party impasse adjudicator or other impasse body to accept the Union's proposal, nor does it establish that the Parties are at impasse. In *POPA v. FLRA*,<sup>18</sup> the Court of Appeals for the D.C. Circuit found that, "The Agency's refusal to bargain cannot be construed as an impasse which the arbitrator could rightfully resolve. The Agency's refusal to bargain was premised not merely on a disagreement with the proposals, but on a threshold claim that the proposals were not negotiable. So long as these negotiability issues remained unresolved, coupled with the Parties' resulting failure to negotiate over the merits of the proposals, there could be no impasse on the merits. Thus, there was nothing to be considered by the interest arbitrator, for it is well-established that an interest arbitrator cannot resolve negotiability issues."

#### **The Agency Cannot Grant Itself Discretion Over Mandatory Subjects of Bargaining**

NATCA has argued that FAA's proposal to grant itself discretion over wages, facility classification, and other matters, constitutes a waiver of NATCA's right to bargain over working conditions. The Authority has ruled that such waivers are permissive subjects of bargaining and both the Authority and Board are clear that neither the Employer nor the Union may bargain to impasse over permissive subjects or proposals.<sup>19</sup> The U.S. Court of Appeals for the D.C. Circuit ruled on a similar matter for private sector negotiations in *McClatchy Newspapers v. NLRB*.<sup>20</sup> Summarizing the Board's opinion the Circuit writes, "In the Board's view this case was less about impasse than statutory waiver: an employer who proposes unlimited management discretion over wages is really proposing that the Union waive its statutory right to be consulted about wage changes. That is fine, the Board reasoned—if the Union agrees. *But impasse, by definition a lack of agreement, could not substitute for consent.*" (emphasis added).<sup>21</sup> As the Circuit wrote in *McClatchy Newspapers*, in the instant dispute, it seems "somewhat anomalous to refer to the institution of a new wage regime as 'implementation of terms'" since here like in *McClatchy Newspapers*, the Employer's proposal has no terms.

The Circuit even went on to see value in the question of whether or not bargaining to impasse over this wholly discretionary matter (waiver) constitutes true impasse, but did not reach the question since it was not in the Board's holding.<sup>22</sup> NATCA, however, does make the argument that the Parties were not at impasse, so it is incumbent upon the Authority to answer this question. In *McClatchy Newspapers* this is even further supported since certain clauses could not be implemented

<sup>16</sup> 31 FLRA 620 (1988).

<sup>17</sup> See: *NTEU and U.S. Dept. of Homeland Security, Customs and Border Protection*, 61 FLRA 729 (2006) and *U.S. Department of the Air Force, Davis-Monthan Air Force Base, Tucson, Arizona and Local 2924, AFGE*, 05 FSIP 104 (2005).

<sup>18</sup> 26 F.3d 1148, (D.C. Cir. 1994).

<sup>19</sup> NATCA is not arguing that wages and the classification of facilities are permissive subjects. They are clearly mandatory subjects under 49 U.S.C. 40122(a). However, the waiver of the right to bargain is a permissive subject. Under the Statute, FAA can neither bargain to impasse over the permissive subject of waiver, nor implement total discretion over mandatory subjects, including wages.

<sup>20</sup> 321 NLRB 1386, 1391 (1996), enfd. 131 F.3d 1026 (D.C. Cir. 1997), cert. denied 524 U.S. 937 (1998).

<sup>21</sup> *Id.* at 1028.

<sup>22</sup> *Id.* at 1030.

specifically because they are over permissive subjects. While not specifically applicable in the Federal sector under the 5 U.S.C. 71, the Board's treatment of the no-strike clause is entirely applicable to the overall concept argued by NATCA. "The Board has held that because the right to strike is 'fundamental,' it cannot be relinquished by employees except by consent—which implies a specific contractual waiver."<sup>23</sup>

*McClatchy Newspapers* clearly identifies the problem with the FAA's inappropriate unilateral implementation. The Circuit found circumstances identical to those in the instant dispute. "Rather than merely pressuring the Union, implementation might well irreparably undermine its ability to bargain. Since the Union could not know what criteria, if any, petitioner was using to award salary increases, it could not bargain against those standards; instead, it faced a discretionary cloud."<sup>24</sup> The Board's interpretation highlights FAA's predetermined strategy when it wrote, "*the present case represents a blueprint for how an employer might effectively undermine the bargaining process while at the same time claiming that it was not acting to circumvent its statutory bargaining obligations.*" (emphasis added).<sup>25</sup>

The Board's decision in *Mail Contractors of America and Des Moines Area Local, American Postal Workers Union*,<sup>26</sup> reinforces NATCA's position. In adopting the ALJ's decision, the Board agreed that "an employer may not compel a Union to grant it unlimited discretion on important mandatory subjects of bargaining even after bargaining to overall impasse. In addition, to allow an employer to do so unjustifiably affects the balance of power between labor and management and thereby undermines an important goal of the Act of encouraging the parties to reach a collective-bargaining agreement. This is so because, as this case shows, there are occasions when an employer may desire unlimited discretion on a mandatory subject of bargaining and may seek in bargaining to persuade a Union to relinquish its right to bargain over the matter. In order to do so a Union may seek concessions from the employer on other conditions of employment. But if an employer can relegate to itself this discretion a Union's bargaining strength is diminished and the likelihood of reaching an agreement is decreased. . . . Certainly the Act, which was enacted for the purpose of 'encouraging the practice and procedure of collective bargaining,' forbids such a result."<sup>27</sup>

As NATCA has argued FAA's goal was not to reach agreement; it intended to reach impasse and unilaterally implement a vested right of full discretion over pay, facility classification, and other matters to itself with no duty to bargain, something abhorrent to the Statute itself. As in *Mail Contractors of America*, it would not be unreasonable to believe that the Union would have sought other concessions (*i.e.*, retaining the *status quo ante* pay bands and work rules) and agreed to the Agency's discretion on future annual raises and increases to the bands. However, the Agency instead had no desire to reach agreement. Its intention was to grant itself full discretion through a manipulation in the process, while not conceding on any particular issue. The Agency's actions are antithetical to the definition of collective bargaining as well as the Statute.

#### **Ratification Required To Form Contract**

NATCA's position has always been that it has a right to ratify the contract once a complete agreement has been reached or the appropriate impasse procedure has been determined by the FLRA and has been concluded by the appropriate body. On May 12, 2005, the date the Parties agreed to the ground rules for negotiations, NATCA provided notice to the FAA regarding its Constitutional requirement to ratify as a precondition to a binding final agreement between the Parties. Specifically, the letter from Barry Krasner, NATCA Chief Negotiator, to Melvin Harris, then FAA Chief Negotiator, stated:

Although not specifically addressed in the Parties' Memorandum of Agreement Concerning Ground Rules Governing the Conduct of Negotiations of a successor collective bargaining agreement, dated, May 12, 2005, the Union provides the following notice to the Agency. The ratification of a tentatively agreed upon contract by NATCA's membership is a precondition to a final and binding agreement between the Parties. In the event the membership rejects the tentative contract, NATCA will notify the Agency that the membership has failed to ratify the contract. The Agency is obligated to resume negotiations with NATCA. NATCA will be willing to meet and resume negotiations in order to complete

<sup>23</sup> *Id.*

<sup>24</sup> *Id.* at 1032.

<sup>25</sup> *Id.*

<sup>26</sup> 347 NLRB No. 88 (Aug. 31, 2006).

<sup>27</sup> *Id.* ALJ decision at 7.

our contract negotiations should a ratification of a tentative contract fail. The Agency's right to Agency Head Review is only triggered by execution of agreement, a condition not effective until ratification is complete.

Furthermore, the Parties have had a past practice for all other collective bargaining over term contracts that NATCA's Constitution and Standing Rules require ratification by the membership. The Parties have never deviated from that practice.

In the instant dispute FAA provided NATCA with a final offer on April 5, 2006, and immediately and unilaterally declared impasse without NATCA having the opportunity to respond to the proposals. Simultaneous with its declaration of impasse and in evidence of its predetermined posture to not reach agreement, FAA improperly submitted its proposals to Congress. NATCA has filed Unfair Labor Practice Charges over the improper submission to Congress, but the FLRA does not have expertise regarding Title 49 of the United States Code, so it is unclear how it will resolve the issue, if at all. Since NATCA disagrees with the FAA's use of Congress as the appropriate impasse procedure, NATCA cannot submit the FAA's imposed agreement for ratification or risk acquiescence to the FAA's improper impasse procedure. Only after a clear and final impasse procedure is completed would a full and complete collective bargaining agreement be ripe for a ratification vote by NATCA's membership.

In *SSA and AFGE Council 220*,<sup>28</sup> the Authority adopted the ALJ's decision that provided that the Union's right to ratification need not be expressed in ground rules as long as, as in the instant dispute, the Union provides the Agency with notice of the ratification as a precondition to a final and complete agreement between the Parties and does not waive its right to ratification. In the instant dispute NATCA's past practice has been to require ratification as a precondition to a complete agreement and NATCA provided FAA with a letter to that effect the same date as the ground rules were agreed to.

Senator ROCKEFELLER. Thank you very much, Mr. Forrey. Thank you.

Now, we have Mr. Chip Barclay, and we welcome you, sir. And you are the President of the American Association of Airport Executives, on behalf of the American Association of Airport Executives, and the Airport Legislative Alliance.

**STATEMENT OF CHARLES "CHIP" M. BARCLAY, A.A.E.,  
PRESIDENT, AMERICAN ASSOCIATION OF AIRPORT  
EXECUTIVES; ON BEHALF OF THE AIRPORT LEGISLATIVE  
ALLIANCE**

Mr. BARCLAY. Thank you, Mr. Chairman.

Senator ROCKEFELLER. That's a large title.

Mr. BARCLAY. Mr. Chairman and members of the Committee, it's always a privilege to testify before the Commerce Committee, and I thank you for that opportunity.

I'd like to just make three very brief points in addition to what's in our written testimony.

The first is that our members are concerned about their ability to meet future demand in this system with adequate airport capacity. One of their particular challenges is the 7–10 year time-frame it takes to go from planning to implementation of any major project at airports. Some even take longer than that. So, we are planning right now and are in various stages of projects to meet capacity needs far into the future.

And regardless of the challenges that we, or anyone faces, the fact is what's coming at our system is growth in passengers that's going to be equal to one-third of what we currently have of people flying today being added to the system. It's the equivalent of adding the population of the United States to the system within 8

<sup>28</sup> 46 FLRA 1404, 1415 (1993) (ALJ Decision).

years from now. And, those of you traveling through airports at crowded times know that the capacity isn't currently there to handle that kind of passenger growth. But we absolutely have to handle it because of the impacts it will have on aviation gridlock and our economy in general, if we don't.

So, we're here seeking the Committee's help in order to meet those capacity needs, at airports in particular, but on behalf of the entire industry for the ATC system as well.

The second point is that the existing dollars for financing major capital development at airports have been absolutely ravaged by construction inflation costs. This is not the consumer inflation that's been moderate, that most of us are familiar with. Construction inflation in the last 3 years has increased 26.5 percent. It's over 8 percent a year recently, and I know a number of members of the Committee know this firsthand.

And, as a result of that and the need to meet these growing demands of the system, we are recommending to the Committee significant increases over what the Administration plan calls for both airport improvement program funds and for the limit on Passenger Facility Charges. Specifically, we're recommending \$3.8 billion for AIP with annual increases and a \$7.50 cap on the Passenger Facility Charge with indexing for future inflation costs out into the future. That would be up from the \$4.50 cap that was set back in the year 2000.

Both of these fees are needed in the system. We do have a network of airports—smaller airports rely more on AIP for their funding, large airports more on PFCs. But this is the right way to look, we think, at airports is as a system. Virtually all of the passengers who depart at a small airport have the end of their destination at a large airport somewhere in the system. Many of the people getting on airplanes at large airports are bound for small airports. So, we need to look on this as a network and we've found in the past that when you have a bottleneck anywhere in that network, it quickly cascades pain, delay and problems throughout the entire airport system.

So, looking at both of those fees as part of a needed system that helps all there, we think, is the right way to view the system.

And the final point I'd like to make is that we don't agree with the Administration's funding proposal to both cut AIP dramatically and use a very narrow form of funding for future airport development costs. Our argument would be for the Committee to continue with its historic view of aviation, user fees, and the Trust Fund. This Committee authored the bill in 1969 that was set up to collect fees from users and have them go first to capital needs in the system both air traffic control and airport improvements, in order to meet future demand—and second, if there were funds remaining, to go to FAA operations, which prior to that time had been 100 percent funded by the General Fund.

The Administration's plan would—in our view—turn that around, and put FAA operations and the desire to make a smaller General Fund contribution first. Capital needs of both air traffic control and airports come second, and we would not recommend that to the Committee.

Finally, I'd like to say that we would like to work with the Committee on stronger, small community air service provisions which—I know the panel knows very well.

Thank you, Mr. Chairman, I look forward to working with the Committee and the staff.

[The prepared statement of Mr. Barclay follows:]

PREPARED STATEMENT OF CHARLES “CHIP” M. BARCLAY, A.A.E., PRESIDENT, AMERICAN ASSOCIATION OF AIRPORT EXECUTIVES; ON BEHALF OF THE AIRPORT LEGISLATIVE ALLIANCE

Chairman Rockefeller, Ranking Member Lott and members of the Senate Commerce Subcommittee on Aviation Operations, Safety and Security, thank you for inviting me to appear before your subcommittee to discuss the Administration's proposal to reauthorize the Federal Aviation Administration (FAA). I am testifying today on behalf of the American Association of Airport Executives (AAAE) and the Airport Legislative Alliance (ALA).

AAAE represents the thousands of men and women who manage primary, commercial service, reliever and general aviation airports throughout the country. The ALA, representing America's airport system, is comprised of airports of all sizes from across the country that have come together to address Federal legislative and regulatory matters on behalf of the industry. A roster of ALA members is included at the end of my testimony.

As we begin the debate on the next FAA reauthorization bill, I would like to thank the members of this subcommittee who played a key role in the last two FAA reauthorization bills: H.R. 1000, the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR-21) and H.R. 2115, *Vision 100—Century of Aviation Authorization Act*. During consideration of those two bills, lawmakers agreed to increase the cap on Passenger Facility Charges (PFCs) from \$3.00 to \$4.50 and steadily increase AIP funding from approximately \$2.5 billion in Fiscal Year 2000 (FY00) to \$3.7 billion in FY07.

The aviation system has faced many challenges since Congress passed AIR-21 7 years ago. Despite the temporary downturn that occurred after September 11th, passenger levels, flight delays, airport capital needs and construction costs continue to rise. To help airports keep pace with increasing capacity and financial demands, we urge you to increase the PFC cap to \$7.50 and increase AIP funding to \$3.8 billion in FY08. By continuing the trend of increasing funding for airport capital development projects established in AIR-21 and *Vision 100*, this subcommittee can help to improve safety, increase capacity and reduce delays at airports around the country.

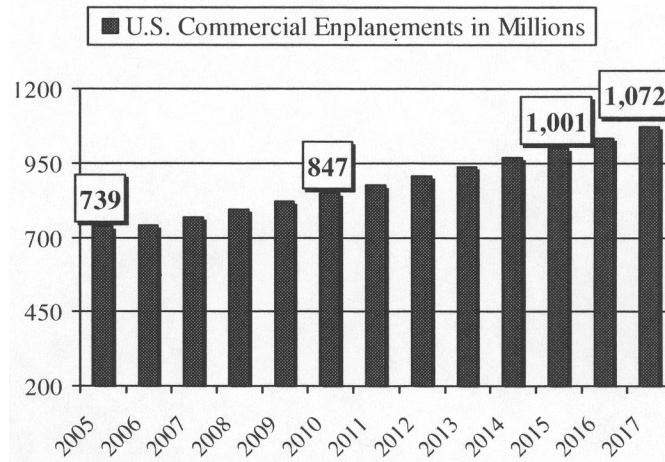
In addition to increasing funding for airport capital development projects, another top priority for AAAE and the ALA is to help small communities that are struggling to retain and attract new commercial air service. During consideration of AIR-21 and *Vision 100*, this subcommittee extended a helping hand to small communities suffering from infrequent air service and high airfares. We look forward to working with you to build on those successful efforts during consideration of the next FAA reauthorization bill.

#### **Increasing Demand, Delays and Airport Capital Needs**

*Increasing Demand:* About a year ago, the FAA released its Aerospace Forecast for 2006 to 2017. The forecast indicated that the number of passengers flying in the United States was about 6 percent higher in 2005 than it was before the terrorist attacks on 9/11 and 7.1 percent higher than 2004. The FAA is also predicting that passenger enplanements will increase from approximately 739 million in 2005 to more than one billion passengers in 2015 at an average annual increase of 3.1 percent.

## Increasing Passenger Demand

(Source: FAA Aerospace Forecast 2006-2017)



Former Secretary of Transportation Noman Y. Mineta, commented on these projections and the need to increase capacity when he spoke at the FAA Forecast Conference on February 28, 2006. “And looking at this year’s aviation forecast, it is clear that we had better prepare to expand capacity if we are going to keep from being snowed under by gridlock and congestion,” Mineta said.

The demand for air cargo is also growing. The FAA is predicting that total Revenue Ton Miles—or the measurement of moving one ton of cargo one mile—will increase from 39.2 billion in 2005 to 71.7 billion in 2017. This is an average of 5.2 percent per year. To handle that increased load, the number of cargo aircraft is expected to increase from just over 1,021 in 2005 to 1,345 in 2017, which is an increase of 31.7 percent.

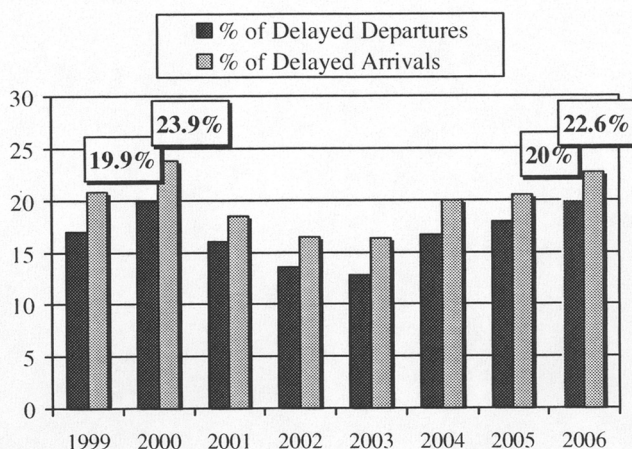
More regional jets and Very Lights Jets (VLJs) will be filling the skies, too. The FAA is predicting that the number of regional jets will increase from 1,758 to 2,819 by 2017, an average annual increase of 4 percent per year. When Nicholas A. Sabatini, the Associate Administrator for Aviation Safety at the FAA, testified before the Senate Commerce Committee in September, he mentioned that 5,000 VLJs will likely be operating by 2017.

*Increasing Delays:* Flight delays are also on the rise. According to the Bureau of Transportation Statistics (BTS), 22.6 percent of all flights between January and December of 2006 arrived at their gates 15 minutes or more after their scheduled arrival time. That’s a 2.1 percent increase from 2005, and it’s nearly as high as the record delays that occurred in 2000 when 23.86 percent of all flights arrived at their gates behind schedule.

BTS also tracks the number of flights that leave their gates on-time. Between January and December 2006, almost 20 percent of all flights left their gates 15 minutes or more after their scheduled departure time. That’s more than a 2 percent increase from the previous year and it’s even higher than the delays that occurred in 2000 when 19.9 percent of all flights left their gates late. In other words, delays measured in both arrivals and departures are close to or have actually exceeded the 2000 levels when one in four flights was delayed canceled or diverted.

## Increasing Number of Delays

(January to December/Source: BTS)



*Increasing Airport Capital Needs:* As the number of passengers and aircraft in the aviation system increase, airport capital needs continue to rise. In 2004, the FAA issued a report entitled, "Capacity Needs in the National Airspace System." The report examined which of the busiest 35 airports in the FAA's Operational Evolution Plan will be able to meet future demand. It indicates that plans to increase capacity at 15 airports "are not enough to keep up with projected levels of demand" by 2013. By 2020, "18 airports are identified as likely needing additional capacity." Given the time it takes to bring airport infrastructure projects to completion, it is critical that we act now to address this situation.

Late last year, the FAA also released its National Plan of Integrated Airport Systems (NPIAS) for 2007 to 2011. The report indicates that there will be \$41.2 billion of AIP4-eligible projects during the next 5 years—or approximately \$8.24 billion per year. This is 4 percent higher than the \$39.5 billion that FAA estimated for AIP-eligible construction projects for 2005 to 2009. Additionally, in its letter of transmittal of the draft bill, referring to the 4 percent increase over the previous report, the Administration states, "we believe that this figure is understated."

The NPIAS identifies 3,431 airports that are eligible to receive AIP grants. According to the report, 27 percent of the planned development is to bring airports up to current design standards, and 21 percent is for capacity-related projects. Another 17 percent of the planned development is for replacing or rehabilitating airport facilities such as pavement and lighting systems.

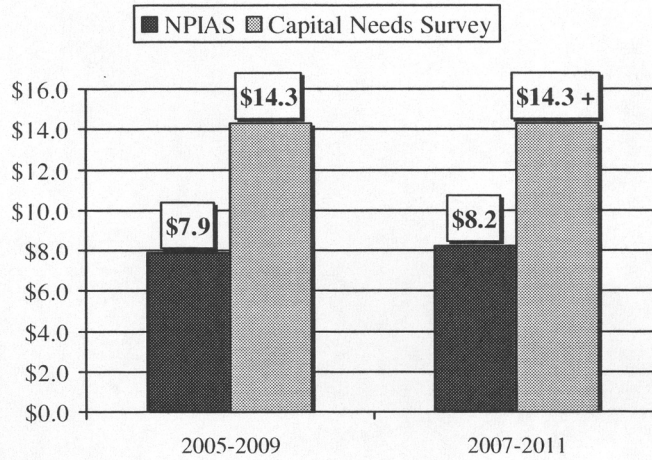
Airports rely on a number of sources for airport capital development projects. The overwhelming majority of funds come from airport bonds, AIP and PFCs. However, the FAA acknowledges in the report that "the NPIAS includes only planned development that is eligible to receive Federal grants under the AIP. . . . It does not include development eligible under the Passenger Facility Charge program but ineligible under the Federal grant program, such as gates and related areas."

The Airport Capital Development Needs Survey, prepared by Airports Council International—North America (ACI-NA), also indicates that there are significant airport capital needs. The survey determined that airports will need \$87.5 billion between 2005 and 2009—or approximately \$14.3 billion per year. Unlike the NPIAS, however, the Airport Capital Development Needs Survey includes projects that are AIP-eligible *and* those that airports intend to fund with other revenue including PFCs and airport bonds.



### Airport Capital Needs

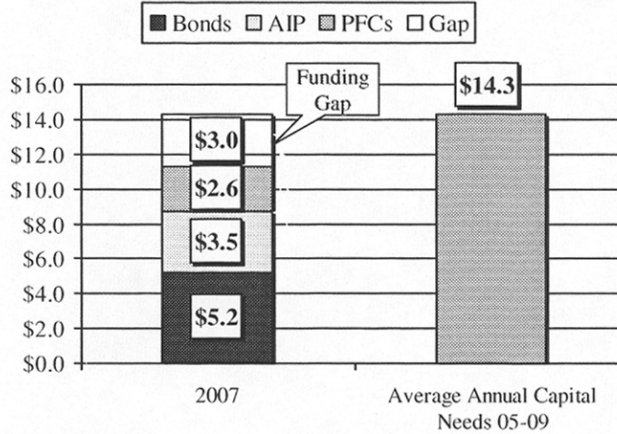
(Sources: FAA NPIAS and ACI-NA Airport Capital Development Needs Survey)  
(Dollars in Billions)



The Airport Capital Development Needs Survey reveals that there is a sizable gap between airport needs and the revenue that is available for capital development projects. On average airports issued about \$5.2 billion in new bonds per year during the past 5 years. That amount coupled with the \$3.5 billion that Congress recently approved for AIP in FY07 and the \$2.6 billion that the FAA expects will be generated from PFCs this year totals about \$11.3 billion. The total of primary funding sources, which does not include the local match or other airport revenue, is about \$3 billion short of the \$14.3 billion mark.

### Primary Funding Sources vs. Airport Capital Needs

(Source for Airport Capital Needs: ACI-NA)  
(Dollars in Billions)



ACI-NA is in the process of updating its Airport Capital Development Needs survey. The results are expected to show a significant increase in airport capital needs between 2007 and 2011 due to increasing capital requirements and rising construction costs. According to the Means Construction Cost Indexes, the average construction costs for 30 major U.S. cities jumped 26.5 percent in the past 3 years. So the gap cited above could be even higher unless Congress takes action.

***The Solution: Provide Airports with the Resources They Need to Accommodate Increasing Demand and Skyrocketing Construction Costs***

FAA and the Department of Transportation (DOT) should be commended for highlighting the need for a Next Generation Air Transportation System (NextGen). Although there may be strong disagreement on how best to pay for transforming the national air transportation system, there is wide agreement on the need to move from a ground-based to a satellite-based navigation system. This is another airport priority, and I am pleased that AAEA is working closely with other aviation stakeholders to develop a plan on how to implement NextGen and avoid congestion in the aviation system.

As I mentioned previously, the passenger level is expected to increase from 739 million to 1 billion 7 years from now. That is the equivalent of adding the entire population of the U.S. on to an already delayed, already constrained system. While many are understandably focusing on the need to implement a satellite-based navigation system to reduce congestion in the skies, we should not lose sight of the need to increase capacity and reduce congestion on the ground.

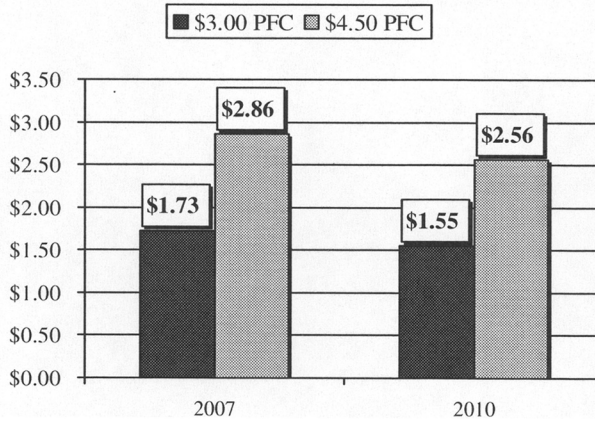
In an effort to build the infrastructure necessary to accommodate increasing demand and to offset the impacts of skyrocketing construction costs, airport executives are urging Congress to raise the cap on PFCs, increase AIP funding and reduce the costs of airport bonds.

*Increase the PFC Cap:* The Aviation Safety and Capacity and Expansion Act of 1990 included a provision that has allowed airports to impose a local fee of up to \$3 on passengers boarding aircraft at their facilities. AIR-21, which Congress passed in 2000, included a provision that allowed airports to increase that amount to \$4.50. Money generated from PFCs augments AIP funding and other sources of revenue that airports use for a variety of purposes including building new runways, taxiways and terminals as well as paying for debt service.

Last year, airports collected about \$2.4 billion from PFCs. Unfortunately, however, the value of PFCs has eroded over time due to inflation and increased construction costs. When you factor in the Consumer Price Index, a \$3.00 PFC in 1990 is expected to be worth only about \$1.86 in 2007, and a \$4.50 PFC in 2000 is expected to be worth about \$3.10.

The picture gets even worse when you examine the increasing construction costs, which provides you with a more accurate picture of the costs associated with airport construction projects. In that case a \$3.00 PFC in 1990 is expected to be worth only about \$1.73 in 2007, and a \$4.50 PFC in 2000 is expected to be worth only \$2.86 in 2007. Unless corrective action is taken, the value of PFCs will erode even more by 2010 when a \$3.00 PFC is expected to be worth only \$1.55, and a \$4.50 PFC is expected to be worth only \$2.56.

### Erosion of PFC Value Due to Increasing Construction Costs

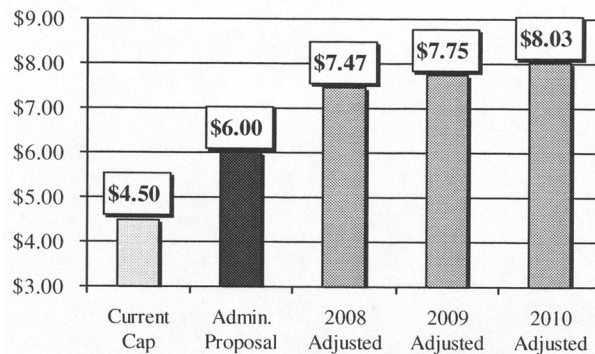


Conversely, a \$3 PFC in 1990 would need to be adjusted to \$4.77 in 2007 to offset the impact of inflation, and a \$4.50 PFC in 2000 would need to be set at approximately \$6.58. If adjusted for increasing construction costs, a \$3 PFC would need to be set at \$5.21 in 2007, and a \$4.50 PFC would be \$7.20.

Airport executives commend the Administration for calling for a PFC increase. Its proposal to increase the cap to \$6.00 is an encouraging step in the right direction. According to the FAA, raising the cap by an additional \$1.50 could allow airports to generate an additional \$1.2 billion per year. That would help close at least some of the gap between airport capital needs and the amount of revenue that is currently available for airport capital development projects. But it is not enough.

It is not enough to close the funding gap especially when the Administration is simultaneously proposing to cut AIP spending by almost \$1 billion from the authorized level. And it is not enough to keep up with inflation or increasing construction costs. By 2010—the final year in the Administration’s FAA reauthorization proposal—a \$4.50 PFC would need to be raised to \$7.14 to keep up with expected inflation and to \$8.03 to keep up with the anticipated increase in construction costs.

### Administration’s Proposal vs. Adjusting PFCs for Increasing Construction Costs



Airport executives are asking Congress to take the next step and raise the PFC cap to at least \$7.50. That would be enough to offset the expected impact of inflation over the next 3 years and the projected increased construction costs in 2008. To prevent further erosion of PFCs, we also ask Congress to include a provision in the next FAA reauthorization bill that would index PFCs to account for increasing construction costs.

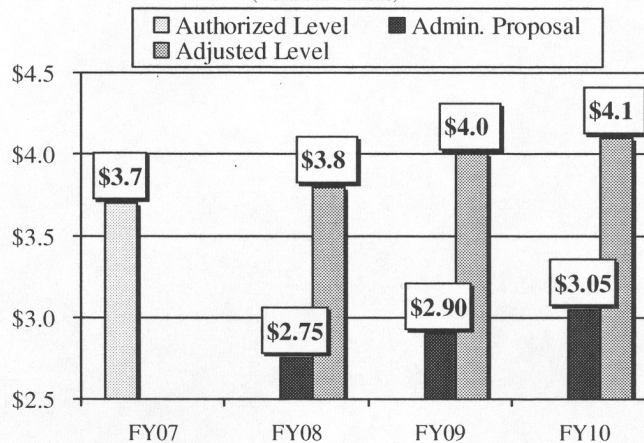
*Increase AIP Funding:* In addition to raising the PFC cap, airport executives ask that Congress increase AIP funding. AIP is an important source of funding for all sizes of airports. According to the FAA, AIP funding counted for 51 percent of capital expenditures for small hub airports in FY03, 94 percent for non-hub airports and 89 percent for nonprimary commercial service airports. Large and medium hub airports also depend on AIP funding—particularly money distributed through the Letter of Intent Program (both entitlement and discretionary funds) to help pay for large capacity projects.

Given the increasing demand, inflation and construction costs, airport executives are dismayed that the Administration is requesting only \$2.75 billion for AIP in FY08. This is approximately \$1 billion less than the amount Congress authorized in FY07 and \$765 million less than the appropriated level. The Administration is proposing to increase AIP to \$2.9 in FY09 and \$3.05 in FY10. However, even the highest proposed level would be \$150 million less than the amount that Congress authorized for AIP 6 years ago. We cannot afford to take such an enormous step backward in terms of critical AIP funding.

We urge this Congress to reject the Administration's proposal to drastically cut AIP funding and roll back the progress made in AIR-21 and *Vision 100*. Instead we urge you to continue to increase AIP funding as Congress did in the previous two FAA reauthorization bills. At the very least, we urge you to increase AIP funding so that the program will keep up with increased construction costs. Doing so would translate into \$3.8 billion for AIP in FY08, \$4 billion in FY09, \$4.1 billion in FY10, and \$4.3 billion in FY11.

## Administration's Proposal vs. Adjusting AIP for Increasing Construction Costs

(Dollars in Billions)



*Reclassify Airport Bonds:* The largest source of funding for capital development projects at airports is generated from airport bonds. Large airports particularly rely on the bond market to finance capital development projects at their facilities. In 2006, airports used approximately \$3.9 billion in new bonds to finance capital development projects at their facilities. Over the past 5 years, airports issued an annual average of \$5.2 billion in new bonds.

Unfortunately, Federal tax law unfairly classifies more than 60 percent of airport bonds as private activity bonds even though they are used to finance runways, taxiways and other critical facilities that benefit the public. Since private activity bonds are subject to the Alternative Minimum Tax (AMT), airport bond issuers are usually charged higher interest rates on their borrowing. Depending on market conditions, AMT requires issuers to pay investors anywhere from 10 to 30 basis points (0.10 percent to 0.30 percent) higher interest costs on long-term fixed rate bonds. This can significantly increase overall project costs.

In addition to being subject to the AMT, private activity bonds that airports use to finance critical capital development projects cannot be advance refunded. Unlike homeowners who have the opportunity to refinance their home mortgages, airports typically are unable to refinance their debt and take advantage of lower interest rates for at least 10 years after issuing their bonds. By contrast, most governmental bonds can be advance refunded one time.

In general, airports are owned and operated by state and local governments, and airports serve a vital public purpose. We encourage Congress to include a provision in the next FAA reauthorization bill that would reclassify those private activity bonds that airports use to finance AIP- and PFC-eligible projects as public purpose. This would save airports in financing costs by allowing them to take advantage of lower interest rates and advance refund the bonds they use for AIP- and PFC-eligible projects. It would also free resources for additional projects.

#### **AIP and PFC Modifications**

The Administration is proposing major reforms for the AIP and PFC programs. It is clear from the Administration's reauthorization proposal that FAA staff dedicated a lot of time and energy toward coming up with a plan to simplify and improve both of these programs. We support many of the concepts outlined in the Administration's plan such as increasing the cap on PFCs. We may disagree with some of the Administration's specific proposals, and we may recommend modifying a few others. But we share the same goal of empowering local airports and truly appreciate FAA's efforts.

*PFC Pilot Program for Large Airports:* The Administration's FAA reauthorization proposal would create a new pilot program that would allow up to 10 medium or large hub airports to charge a \$7.00 PFC if they agree to operate and maintain terminal area navigational equipment, such as instrument landing systems and approach lighting systems. Again, airports strongly believe that the PFC cap should be raised to at least \$7.50. Some large and medium hub airports might be willing to participate in such a pilot program if it allowed them to increase their PFC by an additional dollar above the \$7.50 level and if they received adequate liability protection.

*PFC Streamlining:* Airports support the Administration's proposal to streamline the PFC application process. The FAA points out in its section-by-section analysis of the bill that "current law requires an application and approval of each PFC project (or amendment to a project) that sometimes involves prolonged reviews and delays." We agree with the FAA's assessment and strongly support its proposal to streamline the PFC process, which currently takes several months to complete.

Airports work closely with our airline partners to reach consensus on PFC-funded projects and will continue to do so if Congress endorses the Administration's streamlining proposal. For instance, airports would continue to provide a reasonable notice and comment period for carriers operating at their facilities. However, airports would be allowed to impose a new PFC earlier in the process and avoid months in unnecessary delays. Should a carrier file an objection, DOT would have the authority to terminate the airport's authority to collect PFCs for the new project if the agency concurred with the objection.

*AIP/PFC Flexibility:* The Administration's proposal would also allow small airports to use AIP funds for more purposes. For instance, it would allow nonprimary airports to use AIP funds for mobile fuel truck containment systems and allow them to use entitlements for revenue-producing aeronautical support facilities such as new fuel farms and hanger buildings. Small airports welcome the increased AIP flexibility, and airport executives are interested in learning more about how the Administration's proposal to expand PFC flexibility would impact their facilities.

*The Federal Match for AIP Projects:* A number of airport executives have expressed opposition to the Administration's proposal to reduce the Federal share for certain airport projects. For instance, the Administration is calling for reducing the government's maximum share for airfield pavement and rehabilitation projects for runways and taxiways at large and medium hub airports from 75 percent to 50 percent. Decreasing the Federal share would significantly increase the local cost of runway and taxiway projects at busy airports at a time when we should be trying to

provide airports with more money to pay for critical infrastructure projects—not less.

As many members of this subcommittee know, *Vision 100* included a helpful provision that increased the Federal share for small hub and smaller airports from 90 percent to 95 percent through FY07. The Administration's FAA reauthorization proposal would allow that provision to expire and return the Federal share to a maximum of 90 percent for many small airports. Small communities around the country often find it difficult to come up with a 5 percent local matching share. Increasing their required contribution to 10 percent might prevent certain small airports from moving forward with planned construction projects.

Airport executives oppose both proposals to reduce the Federal share for airport projects. We would also argue that neither reduction is necessary if Congress rejects the Administration's proposal to cut AIP funding by almost \$1 billion from the current authorized level.

*AIP Funding for Small Airports:* The Administration is also proposing to eliminate the Small Airport Fund, which is supported by turnbacks from large and medium hubs, and replace it with a new Small Airport Set-Aside. This new Small Airport Set-Aside would provide funds for projects at small hub, nonhub, nonprimary commercial service, reliever and general aviation airports. The proposal calls for 20 percent of discretionary funds to be used for this new set-aside. We question the wisdom of replacing the Small Airport Fund, which links small and large airports together on AIP and PFC issues, with a new Small Airport Set-Aside. Moreover, it appears that affected airports would receive less money under the Administration's plan and consequently would not be "held harmless" by the proposed change.

*Nonprimary Apportionment:* The Administration's proposal also calls eliminating the maximum \$150,000 apportionment for nonprimary commercial service, general aviation and reliever airports and replacing it with "tiered funding levels based on airport size and aviation activity." The new entitlements would allow some of the larger nonprimary airports to receive up to \$400,000. On the surface, this approach seems to make sense, and a number of general aviation airports have expressed support for tiered funding levels. However, we would reserve judgment until we learn more about how this proposal would impact all nonprimary airports.

*Land Acquired for Noise Compatibility Purposes:* The Administration's proposal would make a grant assurance change regarding the sale of land that an airport initially acquired for a noise compatibility purpose but no longer needs. Current law requires that the proceeds proportional to the Federal Government's share of the land acquisition be returned to the Aviation Trust Fund. The reauthorization proposal would allow DOT to reinvest the government's share of the proceeds in another project at that airport or another airport. However, airport executives are concerned that the Administration's proposal does not resolve the question about what happens if an airport leases land initially acquired for a noise compatibility purpose. We would like to work with this subcommittee to address that omission.

### **Funding of FAA Programs**

*Provide A Stable Funding Stream for AIP:* It is critical that enough money goes into the Aviation Trust Fund to pay airport construction projects. The Administration's FAA reauthorization proposal would dramatically change how the AIP program is funded. Funding for airport improvements would still come from the Airport and Airway Trust Fund. However, money going into the Trust Fund would come from an increase in commercial and general aviation fuel taxes and revenue generated from international departure and arrival taxes.

The Administration is proposing to increase the general aviation taxes from about 20 cents per gallon to 70 cents per gallon. Of that amount, 13.6 cents per gallon would be used to fund AIP, RE&D and the Essential Air Service (EAS) Program. The remaining amount would be used to finance general aviation's share of the air traffic control system. The proposal also calls for raising the commercial fuel tax from 4.3 cents per gallon to 13.6 cents per gallon and reducing the international arrival and departure tax from \$14.50 to \$6.39. All the revenue from these two taxes would be used for AIP, RE&D and the EAS.

Airport executives understand the need for a rational and stable financing system for the FAA. However, airport executives would strongly oppose changing the current financing system in such a way that resulted in *less* money for airports to maintain safe and secure facilities and prepare for increasing demand. Airport executives want a stable and predictable funding stream for AIP, too. Frankly, they are not convinced that relying on a tripling of general aviation taxes to help pay for airport improvements would provide enough revenue or a stable source of funds.

Under the Administration's proposal, the 7.5 percent domestic passenger ticket tax and the domestic flight segment fee, which currently fund about 70 percent of

the Aviation Trust Fund, would be eliminated. Asking domestic passengers to help pay for capital development projects at airports through the AIP program has been a key component of the Aviation Trust Fund since this committee helped to create it more than 30 years ago. Many airport executives would strongly oppose eliminating that funding source because they argue that domestic passengers should continue to directly contribute to the Aviation Trust Fund just like international passengers, commercial aviation and general aviation.

The Administration is recommending that commercial and general aviation fuel tax increases go into effect in 2008 and be adjusted for inflation beginning in 2010. However, it is unclear whether the FAA has determined the price elasticity of its fuel tax proposal or precisely how the agency would make up any potential shortfall if the fuel taxes generated less revenue than expected. Moreover, it is uncertain whether Congress would be willing to increase AIP funding or even reject the Administration's proposal to cut AIP funding if doing so translated into even higher gas taxes on general aviation.

*Strengthen Budget Protections:* Whether Congress decides to keep the current excise tax system in place or call for some new user fees, it is critical that the next FAA reauthorization bill include budget points of order to protect AIP funding. AIR-21 included an airport executive-supported provision that requires all receipts and interest credited to the Aviation Trust Fund to be spent on aviation. It also makes it difficult for Congress to appropriate less than the full amount authorized for AIP.

Those budget points of order have worked reasonably well over the past several years, and we encourage you to strengthen or maintain them in the next FAA reauthorization bill. Absent these protections, we are concerned that we would return to the days before 2000 when the gap between the amount authorized for AIP and the amount appropriated was routinely quite large.

*General Fund Contribution:* The Administration's FAA reauthorization proposal calls for not more than \$2.6 billion in taxpayer revenue to pay for aviation in FY08—or about 18.6 percent. That funding level would decline to \$2.5 billion in FY09 and FY10. During the past 20 years, the General Fund contribution has been as high as 48 percent and has averaged about 27 percent. In recent years, however, the General Fund contribution has steadily declined. We strongly believe that Congress should increase the General Fund contribution to 25 percent.

### **Improve Service to Small Communities**

Although overall passenger levels are continuing to rise, many small communities around country are struggling to retain and attract new commercial air service. In 2005, the Government Accountability Office reported that service to large- medium- and small-hubs has largely rebounded since 9/11. However, non-hub airports had 17 percent less service in July 2005 than they did in July 2000.

In May 2006, the DOT Inspector General also reported that scheduled flights at small communities for the first 3 months of 2006 were 17 percent lower than the number of flights scheduled in the same period in 2000. At non-hubs, the number of flights was down 29 percent from the first 3 months of 2006 when compared to the same period of 2000.

Members of this subcommittee have repeatedly pointed out that many small communities have suffered since the airline industry was deregulated almost 30 years ago. Congress, the Administration and all of us in the aviation industry should work together to find ways to address this problem and to ensure that people who live in rural areas have access to the aviation system.

*Increase Funding for the Small Community Air Service Development Program:* It is disappointing that the Administration's FAA reauthorization proposal does not include any funds for the Small Community Air Service Development Program. Small airports around the country are grateful that this subcommittee helped to create what is now known as the Small Community Air Service Development Program in AIR-21. Since its inception this program has helped small communities that suffer from insufficient air service or unreasonably high fares.

Over the past 4 years DOT has awarded 150 grants, which have typically ranged from \$20,000 to nearly \$1.6 million. Last year, the department received 75 proposals from communities in 37 states requesting more than \$32 million "to support new and ongoing air service development projects." However, the demand for Federal assistance far exceeded the approximately \$10 million that Congress approved for the program in the FY06. In August, DOT announced that it had awarded grants that will benefit 28 communities in 22 states.

Considering the number of communities that apply for funds from this program and the continuing pressures on small communities, we urge this subcommittee to consider making a greater investment in the Small Community Air Service Development Program. Specifically, we urge you to authorize \$50 million for the Small Com-

munity Air Service Development Program per year—\$15 million more than Congress authorized for the program per year in *Vision 100*.

*Maintain the Essential Air Service Program:* We also encourage Congress to maintain adequate funding for the EAS program and to take steps to improve the program as this subcommittee tried to do in *Vision 100*. Unfortunately, the Administration's FAA reauthorization would limit funding for the EAS Program to just \$50 million per year—\$60 million less than the amount Congress approved for FY07.

The plan would also cut communities out of the program by limiting service to those: (1) that currently participate in the EAS program; (2) that are more than 70 miles from a large- or medium-hub airport; and (3) where the per passenger subsidy does not exceed \$200 if the community is less than 210 miles from a large- or medium-hub airport.

*Invest in the FAA's Contract Tower Cost Share Program:* Another program that has improved service and safety at airports in small communities is the FAA's Contract Tower Program. This program has been in place since 1982 and currently provides for the cost-effective operation of air traffic control towers at 233 smaller airports in 46 states. Without the Contract Tower Program many simply would not have any air traffic control services at their facilities.

With help from this subcommittee, AIR-21 included a provision that created the Contract Tower Cost Share Program, which currently allows 26 airports in 22 states that fall slightly below the eligibility criteria to participate in the program if they provide local funds. We recommend that this subcommittee authorize \$8.5 million for the Contract Tower Cost Share Program in FY08 and increase the amount by \$500,000 per year. Doing so would keep the existing towers operating and allow additional airports to participate in the program.

#### **Other Recommendations**

*Require FAA to Continue to Pay for Space the Agency Uses at Airports:* Airport executives strongly believe that the FAA should continue to pay for the space that the agency uses at their facilities just like other airport tenants. Airports do not object to providing land to the FAA for Air Traffic Control facilities without cost. However, they believe that the FAA should continue to pay reasonable rates for space that the agency occupies in airport-owned facilities. For smaller airports, the potential loss of rental revenue—even at below market rates—could have a significant impact on their financial situation. We encourage Congress to include a provision in the next FAA reauthorization bill that would require the FAA to continue to pay for the space that the agency uses at airports. This would provide a permanent fix on this issue, which has been addressed annually in the DOT appropriations bill.

#### **Conclusion**

Chairman Rockefeller, Ranking Member Lott and members of the Senate Commerce Subcommittee on Aviation Operations, Safety, and Security, thank you for inviting me to appear before your committee to discuss the Administration's FAA reauthorization proposal. This subcommittee has a strong track record of increasing funding for airport capital development projects. We urge you to continue to help airports keep pace with increasing passenger demand and skyrocketing construction costs by raising the cap on PFCs and increasing funding for AIP. These actions would help to improve safety, increase capacity and reduce delays at airports around the country.

#### **2007 Airport Legislative Alliance Members**

##### *Large Hubs*

Baltimore/Washington International Thurgood Marshall Airport  
 Chicago Department of Aviation  
 Cincinnati/Northern Kentucky International Airport  
 Dallas/Fort Worth International Airport  
 Denver International Airport  
 Detroit Metropolitan Wayne County Airport  
 Hartsfield-Jackson Atlanta Int'l Airport  
 Massachusetts Port Authority  
 Metropolitan Washington Airports Authority  
 Miami International Airport  
 Philadelphia International Airport  
 Phoenix Sky Harbor International Airport  
 Salt Lake City International Airport  
 San Diego International Airport  
 San Francisco International Airport  
 Seattle-Tacoma International Airport



The Port Authority of New York and New Jersey

*Medium Hubs*

Albuquerque International Sunport  
 General Mitchell International Airport  
 John Wayne Airport  
 Kansas City International Airport  
 Lambert St. Louis International Airport  
 Louisville International Airport  
 Manchester—Boston Regional Airport  
 Memphis International Airport  
 Norman Y. Mineta San Jose International Airport  
 Pittsburgh International Airport  
 Port Columbus International Airport  
 Portland International Airport  
 Reno-Tahoe International Airport  
 Rhode Island Airport Corp.  
 Tucson International Airport

*Small Hubs*

Atlantic City International Airport  
 Bangor International Airport  
 Baton Rouge Metropolitan Airport  
 Billings Logan International Airport  
 Birmingham International Airport  
 Dayton International Airport  
 Des Moines International Airport  
 Fresno Yosemite International Airport  
 Gerald R. Ford International Airport  
 Greenville Spartanburg International Airport  
 Harrisburg International Airport  
 Huntsville International Airport  
 Jackson-Evers International Airport  
 Lexington Blue-Grass Airport  
 Long Beach/Daugherty Field Airport  
 Metropolitan Knoxville Airport Authority  
 N.W. Arkansas Regional Airport Authority  
 Newport News/Williamsburg International Airport  
 Quad City International Airport  
 Santa Barbara Municipal Airport  
 Sarasota Bradenton International Airport  
 South Bend Regional Airport  
 Springfield/Branson National Airport  
 Tallahassee Regional Airport  
 Tulsa International Airport  
 Will Rogers World Airport

*Non-Hubs / General Aviation*

Abilene Regional Airport  
 Addison Airport  
 Asheville Regional Airport Authority  
 Aspen/Pitkin County Airport  
 Bert Mooney Airport  
 Bismarck Municipal Airport  
 Capital City Airport (MI)  
 Centennial Airport  
 Charlottesville-Albemarle Airport Authority  
 Chattanooga Metro Airport  
 Cherry Capital Airport  
 Delaware County Airport Authority  
 Dothan Regional Airport  
 Durango LaPlata County Airport  
 Elmira-Corning Regional Airport  
 Evansville Regional Airport  
 Fernandina Beach Municipal Airport  
 Fort Wayne International Airport  
 Friedman Memorial Airport Authority  
 Gallatin Field Airport  
 Glacier Park International Airport

Glynco Jetport  
 Greater Peoria Regional Airport  
 Greenbrier Valley Airport  
 Hector International Airport  
 Inyokern Airport  
 Kalamazoo Battle Creek International Airport  
 Killeen-Fort Hood Regional Airport  
 Kissimmee Gateway Airport  
 Klamath Falls Airport  
 Laredo International Airport  
 Laughlin/Bullhead Int'l Airport  
 Mahlon Sweet Field  
 Marana Regional Airport  
 McAllen-Miller International Airport  
 Melbourne International Airport  
 MidAmerica St. Louis Airport  
 Monterey Peninsula Airport District  
 Morristown Municipal Airport  
 Nantucket Memorial Airport  
 Napa County Airport  
 Nut Tree Airport  
 Provo Municipal Airport  
 Redding Municipal Airport  
 Roanoke Regional Airport  
 Salina Municipal Airport  
 San Bernardino County/Needles Airport  
 San Luis Obispo County Regional Airport  
 Santa Maria Public Airport  
 Snohomish County Airport/Paine Field  
 Southern Illinois Airport Authority  
 Southwest Oregon Regional Airport  
 Springfield Airport Authority  
 Toledo Express Airport  
 Tri-Cities Airport  
 Tri-Cities Regional Airport, TN/VA  
 Valdosta Regional Airport  
 W.K. Kellogg Airport  
 Wilkes-Barre/Scranton International Airport  
 Williams Gateway Airport  
 Wilmington International Airport

Senator ROCKEFELLER. Thank you very much, “Chip” Barclay, for that excellent presentation.

And we now, Ed, you’re next on my list, but you’re at the end of the table, so you’re going to have to wait one, is that all right? [Laughter.]

Senator ROCKEFELLER. Mr. Jim May, who is President and Chief Executive Officer, Air Transport Association of America, we welcome you.

**STATEMENT OF JAMES C. MAY, PRESIDENT AND CEO,  
AIR TRANSPORT ASSOCIATION OF AMERICA, INC.**

Mr. MAY. Thank you, Mr. Chairman and members of the Committee.

I’m pleased to be here today on behalf of more than a half million passenger and cargo airline employees, three-quarters of a billion airline passengers who fly every year, and the millions who ship goods daily to all parts of the world.

I’ll talk about two main topics, one, the need to modernize the air traffic control system, and implement that much-talked about next generation air traffic control system. And second, the need—in our view—to modernize FAA’s funding structure, and return—

return—to the core principles Congress included when it enacted the Airport and Airway Trust Fund in 1970, which are user-pay and cost-based financing.

This Committee can restore the balance and fairness to FAA funding so airline passengers will no longer have to subsidize other system users, who clearly pay less than the costs they impose on the system.

The current system is based on a 1950s architecture, and it's really short-changing our future. It's using outdated, ground-based systems, finite point-to-point routings, vast inefficiencies, and it really can't be scaled to meet the kind of growth that we see in the future.

When the Trust Fund was created in 1970, there were about 2,500 commercial aircraft in the system, and about 1,800 corporate aircraft using that system. Today there are 8,000 commercial aircraft, and 17,000 corporate aircraft, and I'm not talking about the little GA guys.

The demand projections for the future are truly startling. Chip just mentioned, the FAA projects that a billion passengers will be in planes by 2015. The instrument flight rule ops, the most significant source of demand on the ATC system, are projected to move from 45,000 a day right now, to 61,000 a day in another 10 years. There are going to be an additional 10,000 corporate planes, and very light jets that come into the system.

Three weeks ago, Secretary Peters said, "The current aviation system simply can't handle future increases without major delays, making system transformation necessary." Russ Chew, the former COO of the Air Traffic Organization, said, "We project that if traffic grows as expected, by 2014, delays in the United States will increase 62 percent over 2004 levels." Both are right. And quite frankly, we're disappointed that the Administration's bill failed to include a complete NextGen roadmap for what needs to be done.

We're disappointed, because satellite-based air traffic control systems will provide the means to reduce delays and congestion. Air traffic control modernization is neither novel, or revolutionary. Technology does exist, it's in use by the military, it's being accomplished elsewhere in the world, from Fiji to Canada, the United Kingdom and India, next-generation systems are being put in place today.

The United States—Alaska's Capstone Program, ADS-B trials in the Gulf of Mexico, Required Navigation Performance, RNP, procedures in Atlanta, Dallas-Ft. Worth, give us a wonderful preview of what those technologies can deliver. And all of us will benefit from increased safety, capacity, and even improved environmental performance. And every one of these benefits can be achieved, they are being achieved elsewhere in the world, but I think to help us do that, we need a modern funding system, we need to return to our roots.

In the seventies, Congress based the funding structure on two bedrock principles—one, user-based financing, and two, cost-based financing. These same principles, have been endorsed by multiple bipartisan commissions, the GAO and are in place supporting ATC systems throughout the world.

Unfortunately, here, the principle of equitable funding, I think, has been forsaken. It isn't deliberate, but a reflection on the changing dynamics of the aviation marketplace, and the extraordinary growth of a very successful segment, corporate aviation. There's no correlation today between the revenue collected and services consumed. Airlines pay for 94 percent of Trust Fund revenues, but only use 68 percent of system services. The result is that our passengers are subsidizing other users of the system.

Secretary Peters said it this way, "There is a fundamental disconnect between the existing tax structure, and the FAA's workload." On the theory that a picture is worth 1,000 words, the first snapshot is the traffic in the system, just yesterday. These corporate aircraft are the white on there, and they're anything but incidental users.\*

The second graph is the FAA's just-released cost allocation study. It shows that fractionals, charters, air taxi and corporate jets account for roughly 16 percent of ATO costs, although they only pay in 6 percent.

Here's a specific example. A Cessna Citation 10 corporate jet, flying from New York to Los Angeles would contribute an estimated \$306 to the Trust Fund. Same route, same air space, comparable demands on ATP, a Boeing 757 would pay an estimated \$2,600.

Mr. Chairman and members of this Committee, you have the opportunity to correct this breathtaking disparity, establish an equitable funding mechanism which halts the blatant subsidization of corporate aircraft by commercial passengers, and restores a stable funding stream to the FAA for its modernization efforts.

Let me close with three or four thoughts—we don't advocate charging piston-power GA, the community that Senator Inhofe was referring to this morning—any more than they're currently paying into the system, I think they ought to be exempt. We must accommodate small and rural communities, I'm actually old enough to remember the Farm Team on this Committee, and I know the Committee has a very distinct interest in smaller, rural communities. We are not calling for privatization of ATC, this is not that kind of a user-fee, it is a usage tax that is going to be enacted, at the end of the day, by the Senate Finance, and House Ways and Means Committees.

And, finally, Congress must establish meaningful cost controls, and ensure that the FAA is not given a blank check. We have some very serious issues with the Administration bill, as proposed.

Thanks for your time, I'll be happy to answer questions when the time comes.

[The prepared statement of Mr. May follows:]

PREPARED STATEMENT OF JAMES C. MAY, PRESIDENT AND CEO,  
AIR TRANSPORT ASSOCIATION OF AMERICA, INC.

Congress, in the coming months, has the singular opportunity to lay the foundation for a truly 21st century air traffic control (ATC) system that will safely, efficiently and equitably meet the growing needs of system users; and thereby benefit those who rely on air transportation, the communities that airlines serve, the innumerable industries that depend on air service and our Nation's economy.

\* Charts are located in Mr. Mays Prepared Statement.

All who are interested in the future of civil aviation in our Nation are witnessing a historic convergence of factors that will shape aviation for decades to come—the closely approaching deadline to enact reauthorization legislation for the Federal Aviation Administration (FAA), the undisputed imperative to modernize the ATC system, and the well-recognized need to return to an ATC funding mechanism that matches the costs that users impose on the system with the fees that they pay for ATC services. The inescapable reality is that the ever-growing demand of passengers and shippers for air transportation cannot continue to be met by an ATC system that was introduced in the mid-20th century and that relies on a decades-old funding scheme that has strayed far from its original intent.

The stakes are enormous; the public-interest considerations are clear; and the need for prompt, decisive action is undeniable.

### I. Overview

The benefits of a modernized and equitably funded ATC system will be considerable and will be widely distributed throughout our society:

- *Safety*: Will provide more precise information about aircraft locations, both in the air and on the ground, and will enable aircraft to constantly know one another's locations.
- *Passengers and shippers*: Will ensure needed growth in capacity to satisfy customers' expanding demands for air service.
- *ATC system users*: Will enable the ATC system to continue to accommodate all users—general aviation, corporate aviation, airlines and the military—and to do so more efficiently than today; careful project justification will assure stakeholders that modernization projects are necessary and their costs are contained.
- *FAA*: Will assure a stable, predictable revenue stream, thereby enabling the orderly and efficient transformation of the ATC system.
- *Equity*: Will assure that each user pays its fair share but no more, unlike today where airlines pay for 94 percent of Airport and Airway Trust Fund (AATF) revenues but only use 68 percent of ATC system services.
- *Environment*: Will reduce aircraft emissions through fuel conservation that more efficient flight paths and separation standards will achieve.
- *Communities*: Will promote air service to communities, large and small, and the economic benefits that flow from being linked to the air transportation system.
- *U.S. economy*: Will assure that our economy continues to benefit from air transportation's ability to move people and goods quickly and economically.

### II. What We're *Not* Saying

Rhetoric sometimes does not coincide with reality in the ongoing debate about FAA reauthorization legislation. We want to make a few preliminary points to set the record straight:

- *We are **not** saying that piston-powered general aviation aircraft should pay the same as turbine-powered aircraft.* Piston-powered general aviation aircraft generally fly at different altitudes than turbine-powered aircraft and therefore often impose no or few demands on ATC system resources. Any funding mechanism should reflect that difference, just as it can reflect the difference between daytime and nighttime operations.
- *We are **not** saying that small communities should be left to fend for themselves.* Small communities have unique air service needs. Reauthorization legislation should recognize those needs in its funding and Essential Air Service Program provisions.
- *We are **not** saying that Congress should end its role of guiding the direction of the air traffic control system.* We are not trying to strip Congress of its role of overseeing ATC funding decisions. On the contrary, we are upholding Congress' historic view that funding should be cost based.
- *We are **not** saying that the air traffic control system should be privatized.* The ATC system must be modernized and its funding mechanism reformed but the FAA should continue to be the supplier of air traffic control services. Modernization and reform should not be equated with privatization.
- *We are **not** saying that airlines should control who has access to the Nation's airspace.* Instead, we are saying that unless the system is modernized and a sound funding mechanism for it is created, capacity constraints will increasingly limit the access of all users—general aviation, corporate aviation, airlines and the military.

### III. The Indispensable Role of the Airline Industry in the U.S. Economy

The U.S. airline industry is not simply an important sector of the national economy; its services fuel our entire economy. Air transportation is an indispensable element of America's infrastructure and our Nation's economic well-being. Individuals, businesses and communities depend on the national air transportation system. *U.S. airlines transport over two million passengers on a typical day and directly employ 550,000 persons to do so; they provide just-in-time cargo services; they are the backbone of the travel and tourism industry, which annually generates \$1.3 trillion in economic activity in the United States; and airlines link communities throughout our Nation and to the world.*

Moreover, the airline industry is the foundation of the commercial aviation sector, which is comprised of airlines, airports, manufacturers and associated vendors. *U.S. commercial aviation ultimately drives \$1.2 trillion in U.S. economic activity and 11.4 million U.S. jobs.* By any measure, the U.S. airline industry is a valuable national asset and its continued economic health should be a matter of national concern.

We also recognize how critical air service is to the small communities of our Nation. For that reason, we firmly support the continuation of a strong Essential Air Service Program. Any reauthorization needs to include such a continuation.

This key element of our Nation's infrastructure cannot sustain its vital role of transporting people and goods if the government infrastructure that it depends upon, the ATC system, becomes an impediment. Air transportation risks becoming a wasting national asset if three of its most distinguishing characteristics—speed, dependability and efficiency—are encumbered by an increasingly obsolescent ATC system.

### IV. Today's Air Traffic Control System Is Shortchanging Our Future

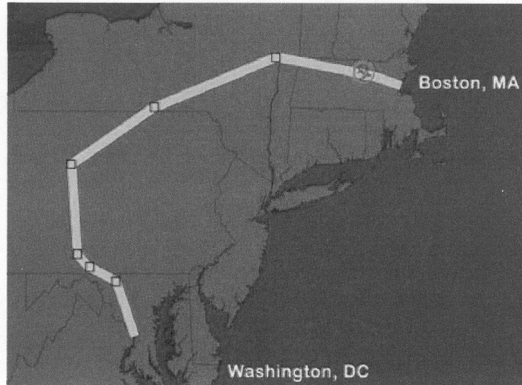
The current system is based on 1950s architecture. It was cutting edge during the era of Ozzie and Harriet but not today. Although the ATC system in the past has served users well, this outdated infrastructure cannot meet the operational needs of 21st century civil aviation. It will not be able to serve the needs of passengers and shippers, private pilots, and corporate aircraft, or accommodate the ongoing introduction of unmanned aerial vehicles.

The current ATC system relies on a series of ground-based platforms. Navigational aids, radar and controllers are all terrestrial. They are linked to form a very complex network system that supports airways, through which aircraft fly. The system was designed to create point-to-point routings, which by their very nature are finite. Its components reflect that paradigm.

Airways, unfortunately, increasingly resemble many highways: they have become saturated. What we have come to realize is that the ground-based system that supports point-to-point airways cannot produce substantial new capacity. We have no choice but to introduce new technology to generate needed capacity.

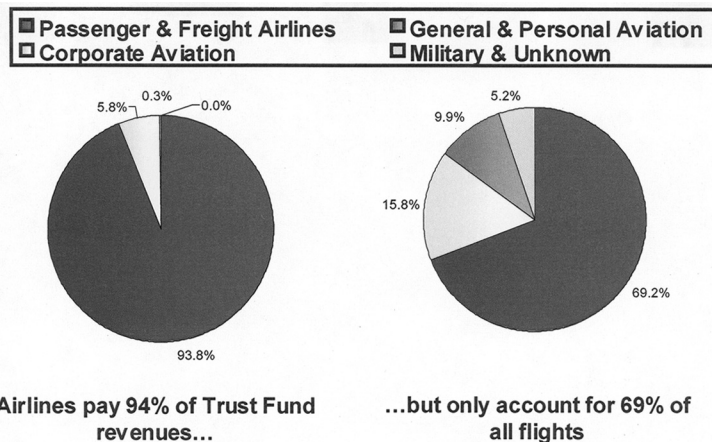
Obsolescent ATC technology and the operating procedures that are tied to them mean that many aircraft routings—for airline, corporate and general aviation aircraft—are inefficient and will become increasingly so as we move further into the new century. Because of these inherent technological limitations, today's ATC system cannot—and never will be able to—take full advantage of available technology or integrate and fully exploit emerging technology. Potential capacity enhancements and efficiency improvements, so critical to meeting growing air traffic demand and responding to environmental concerns, will remain unrealized unless the ATC system is promptly and thoroughly transformed.

## Today's System is Inefficient



*Aircraft frequently zigzag between ground beacons to navigate – an inefficient process that wastes time and fuel while generating excess emissions. This route was flown by an ATA member airline in December 2005, from Washington, D.C. to Boston. This route is about 35 percent longer than the direct route. Weather was not a factor in this situation. This type of flying happens regularly in the NAS.*

Imperiling needed improvements is the fact that the ATC system's funding mechanism is a relic of 1970. Such an artifact has no place in the 21st century. It was created when corporate and general aviation aircraft were insignificant users of the system. This is no longer so. *Today corporate and general aviation consumes 26 percent of the system's services but contributes only 6 percent of Trust Fund revenues.* As Secretary of Transportation Peters said recently, "Under the current tax structure, it is clear that taxes paid by different user categories do not generally reflect the costs those users impose on the system."<sup>1</sup> Corporate aircraft will use an even greater proportion in the future as thousands more business aircraft and very light jets (VLJs) are introduced. Funding for a modernized ATC system must reflect that changed—and changing—reality.



<sup>1</sup>Feb. 14, 2007, letter of Secretary Peters transmitting the proposed Next Generation Air Transportation System Financing Reform Act of 2007 to the Senate at p. 3.

### V. What Delays Cost Today

Airlines schedule their flights based on demand; *i.e.*, when people want to fly and when cargo needs to be delivered. Airlines don't create that demand, customers do. Aviation infrastructure must respond to what consumers want.

*The Department of Transportation has estimated that in 2005 the cost of delays to U.S. airline passengers was \$9.4 billion.* The cost to airlines is also tremendous. Every minute of flight delay experienced in 2005 imposed an estimated \$62 in direct costs on airlines. *The 94.1 million cumulative delay minutes in 2005 therefore generated \$5.9 billion in costs to the airline industry and a total projected cost to the U.S. economy of \$15.3 billion.* Expressed differently, 2005 delays cost \$484 per second.

ATC system capacity must be dramatically expanded—and soon. Flight delays, as noted above, are bad today and they will get worse. The current system cannot handle what is coming. ATC system users, and the ultimate beneficiaries of aviation services—travelers, shippers, businesses and communities—need an air traffic control system that can make the most of contemporary and new technology.

### VI. The Need for Immediate Action

Secretary of Transportation Peters only 3 weeks ago said, *“The current aviation system simply cannot handle future traffic increases without major delays, making system transformation necessary.”*<sup>2</sup> The Secretary's assessment is indisputable. The nation's airways will become more and more congested as increasing demand, particularly from rapidly rising numbers of corporate and VLJ aircraft, overwhelms existing capacity.

The best estimates inform us that, without prompt and thorough modernization, the ATC system will progressively asphyxiate. More and more airports and more and more airspace will become congested, increasingly choking civil aviation in our country. Gridlock will become a common word in aviation parlance.

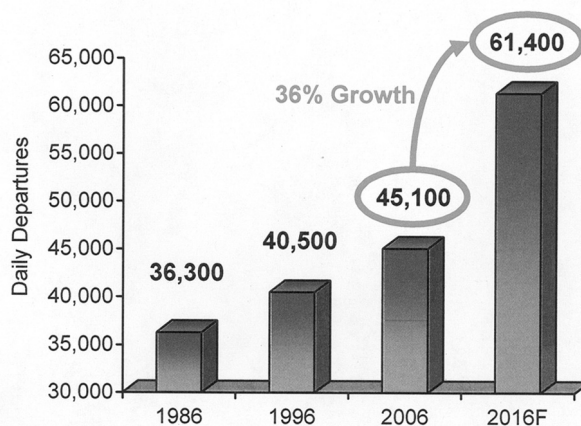
Numbers starkly tell the story. *The FAA projects that one billion passengers will be enplaned in 2015, up from nearly 750 million enplanements in 2006.* That projection reflects an unabated demand for air transportation—no “breathing spell” is forecast. The FAA also predicts that 10,000 corporate aircraft, including traditional business jets, turboprops and VLJs, will be added to the fleet between 2007 and 2017. This will significantly shift the proportion of air carrier to business aircraft using ATC services. It will also generate extraordinary new demands for those services. *Instrument flight rule operations—the most significant source of demand on the ATC system—are projected to rise by 36 percent, from roughly 45,000 per day to over 61,000 per day, in the next decade. That new burden will be on top of an ATC system that today is displaying unmistakable evidence of strain. To place this in some perspective, that strain is evident on days when at any given time, on average, only 6,000 aircraft are flying in the ATC system.*

<sup>2</sup>Feb. 14, 2007, letter transmitting the proposed Next Generation Air Transportation System Financing Reform Act of 2007 to the Senate at p. 1.



## Change Required to Meet Growth

FAA Projects 36% increase in daily flights in ten years



Source: FAA Aerospace Forecasts

The existing ATC system cannot absorb that anticipated demand. It suffers from fundamental structural limitations, principally attributable to the system's reliance on ground-based navigation, radar and communications facilities. The result is that the current system is not scalable; the system cannot be expanded to meet upcoming demand. It is not the system to meet the future growth of civil aviation—airline, corporate or general aviation.

*The ominous consequence of all of this is that delays are forecast in 2014 to increase by 62 percent over 2004 levels. That level of delays will be intolerable. Such an increase will have profound repercussions on airlines, ATC operations and airline customers, and will ripple across our economy. The effect on the total U.S. economy is likely to be immense. The Joint Planning and Development Office has estimated that the cost of failing to meet future airspace demand could approach \$40 billion annually by 2020.<sup>3</sup>*

<sup>3</sup> GAO, *Next Generation Air Transportation System* at p. 16 (GAO Report No. 07-25, Nov. 13, 2006).

## Today's System Cannot Handle Future Demand



**Russ Chew**  
Former COO, FAA ATO

**"We project that if traffic grows as expected, by 2014, delays in the U.S. will increase 62 percent over 2004 levels. These projected delays will cost the airlines at least \$2 billion in extra costs that will seriously erode profits needed for future fleet and infrastructure expansions."**

*Russ Chew, Former Chief Operating Officer of FAA Air Traffic Organization, on Sept. 28, 2006, ICAO Congested Skies Conference.*

The nature and extent of these anticipated delays need to be understood. An increase in delays of that magnitude will mean that airspace and airports that have not experienced chronic delays will routinely experience them in the future. It will not simply be that afflicted airports will get worse, the affliction will spread.

Schedule reliability will be the immediate casualty of such a surge in delays. Not only will flights be delayed, connections will be missed and chronically delayed flights will be canceled. Service unpredictability at a level not previously experienced could materialize. Passengers and shippers and those who rely on the transportation of those people and products will suffer, and their suffering will worsen month by month, year by year. Industries and communities dependent on civil aviation, whether for scheduled airline service or general aviation operations, will be similarly affected.

While customers will not accept such a result, neither will airlines or the FAA. Both airlines and the FAA will reconfigure their operations to respond to worsening ATC system performance. It will certainly not be business as usual if gridlock begins to cascade through the system. Sooner or later, access to airline services and ATC services will be limited in some way or ways. If flight schedule reliability deteriorates, airlines will stretch out their schedules and flight connection times. That, of course, will make airline operations less efficient and more costly. It also will diminish the attractiveness of air transportation and some customers will look for substitute means of transportation, thereby exposing airlines to further financial distress. Were ATC operational performance to worsen, the FAA would predictably explore measures to ration demand on the system. We have experienced that before with the High Density Airport Rule and its progeny, and in the aftermath of the PATCO strike during the first half of the 1980s. We do not want to repeat that experience.

*If the government does not embark on the necessary transformation of the ATC system, it risks becoming the regulator of inconvenience. That is not the role that any of us wants it to assume.*

### **VII. The Solution—Technology and Fair Funding Will Prevent Gridlock**

A satellite-based air traffic control system will provide the means to reduce delays and congestion that otherwise will occur. The benefits of a technologically up-to-date ATC system that is equitably funded will be extensive and will be widely distributed throughout the user community.

#### *A. A Modern Air Traffic Control System: We Can Do It*

Air traffic control system modernization is neither novel nor revolutionary. It is being accomplished elsewhere in the world. We can do the same.

ATC service providers in other nations have recognized the need to replace antiquated ground-based systems. They have taken steps to transform those systems to satellite-based, digital air traffic management systems that ensure safety, generate added efficiency and produce additional airspace and airport capacity. Large and small countries have done so. For example, Fiji introduced a GPS-based air navigation system over a decade ago. Australia, Canada, China, France, Germany, India,

Switzerland and the United Kingdom are implementing next-generation ATC systems.

The Alaska Capstone Program, Required Navigation Performance (RNP) terminal arrival and departure routings at Atlanta and Dallas/Ft. Worth, and RNP instrument approach procedures at airports that have challenging approaches, such as Juneau, Palm Springs and Reagan National in Washington, have given us a preview of what more extensive application of new technologies can deliver for system users in this country. A broadly modernized air traffic control system will enable all types of aircraft to take full advantage of Area Navigation Procedures (RNAV), RNP and Automatic Dependent Surveillance-Broadcast (ADS-B). This will make flying safer and far more efficient.

#### 1. The Safety Benefits

Increases in system capacity are understandably cited in discussions about the benefits of ATC system modernization. Improvements in safety, however, are what should first and foremost command our attention. Some of those improvements have already been accomplished; others are plainly attainable. A sharp drop in aircraft accidents in Alaska has occurred since the Capstone Program, which relies on ADS-B, was introduced earlier in this decade. Widespread use of ADS-B in the future will enable aircraft locations to be more precisely identified. This will be very helpful while aircraft are airborne but will also be useful in ongoing efforts to reduce runway incursions while on the ground.

#### 2. The Capacity Benefits

Capacity improvement is another core reason for ATC system modernization. New technology will enable aircraft to be unshackled from the ground-based, point-to-point navigation systems and associated analog communications systems under which they have operated for over three-quarters of a century. New technology will also enable the more precise spacing of aircraft. The ability to fly outside of existing point-to-point airways and improved precision will enable aircraft to operate more efficiently in airspace, whether it is en route or terminal area. That new-found efficiency will translate into added capacity. It also means, as noted above, the ability to use satellite-based instrument approach procedures at some runways that today have limited or no availability in instrument meteorological conditions—another important capacity enhancement.

The wider use of digital communications, which will be an integral element of the modernization effort, will relieve congested voice communications channels, increasing the capacity to transmit quickly and accurately air traffic control information. This will mean a more orderly transmission of critical information, which will benefit both pilots and controllers, especially during peak workload periods. Furthermore, wider use of digital communications will diminish the possible blocking of voice communications between pilots and controllers in high-volume situations that can occur today, which is an increasing safety concern.

#### 3. The Environmental Benefits

*In addition, routing efficiency improvements will yield significant environmental benefits. Experts estimate that modernization of U.S. airspace management could result in 12–15 percent improved environmental performance. We have already seen such benefits. For example, the introduction of more precise RNP arrival and departure procedures in the Atlanta terminal area is projected to eliminate 483 million tons of CO<sub>2</sub> annually.*

All of these benefits can be achieved; they are being achieved elsewhere in the world. To build a modernized ATC system, however, we need a modern funding system.

#### *B. Funding—The Need to Return to Our Roots*

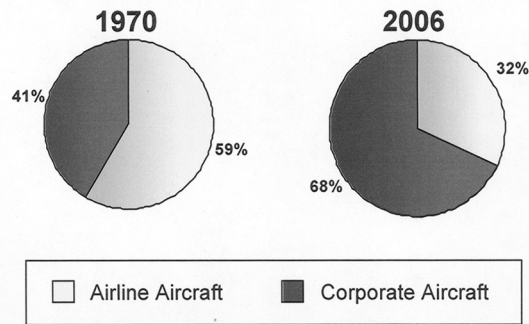
Much of the funding predicament that we face today is because the user-pay principle that Congress embraced decades ago has been abandoned. When it comes to funding the ATC system, therefore, we need to return to our roots.

*When Congress in 1970 enacted the Airport and Airway Trust Fund, the funding structure was based on two bedrock principles: user-pays financing and cost-based financing.* Back then, airlines were the principal users of the system. They, as a result, were responsible for much of the ATC system costs. Funding of the Trust Fund was consequently mostly through the ticket tax. That made sense nearly four decades ago. It reflected a relationship between use and payments. That relationship is what Congress intended when it enacted the 1970 legislation.

1. Corporate aviation has grown dramatically

Congress in 1970 created a cost-based funding mechanism that mirrored the composition of air transportation. Times have changed. *When the Trust Fund was created, there were 2,500 commercial aircraft and only 1,800 corporate aircraft using the system. Today there are 8,000 commercial aircraft and 17,000 corporate planes.* But airline passengers still pay 94 percent of all aviation taxes/fees while corporate fliers pay just 6 percent. The Trust Fund has not evolved to reflect this change in who is using the ATC system. As a result, travelers who fly on commercial airlines subsidize those who fly on corporate planes. The chart below shows this dramatic shift in the makeup of system users.

**U.S. Fleet Makeup Has Changed**  
**Comparison of Jet Fleet Since Trust Fund Inception**

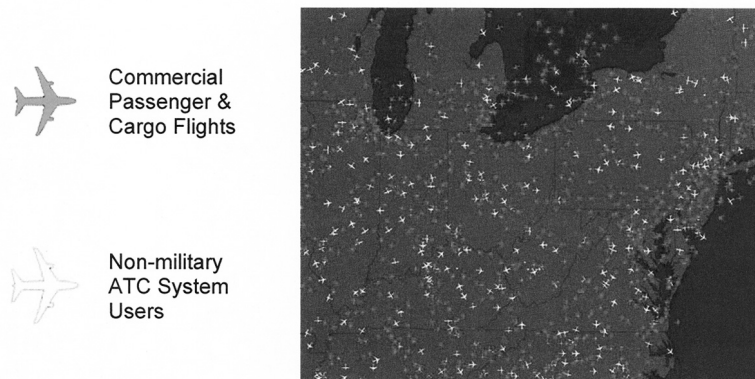


Source: FAA Aerospace Forecasts, 1970 - 2006

Furthermore, business aircraft frequently fly during peak travel hours and often use the same airspace as the Nation's airlines; many times they are consuming the premium services of the ATC system. The magnitude of that demand is substantial. For example, on an average day there are 238 IFR operations at Teterboro Airport. This compares with an average of 301 IFR operations by Continental Airlines at nearby Newark Airport. These corporate users are not merely putting incidental demands on the system, as the depiction below graphically demonstrates.

**A Blip is a Blip**

- *Primary and secondary airports use the same airspace*
- *Planes in the same airspace impose the same costs on the system*



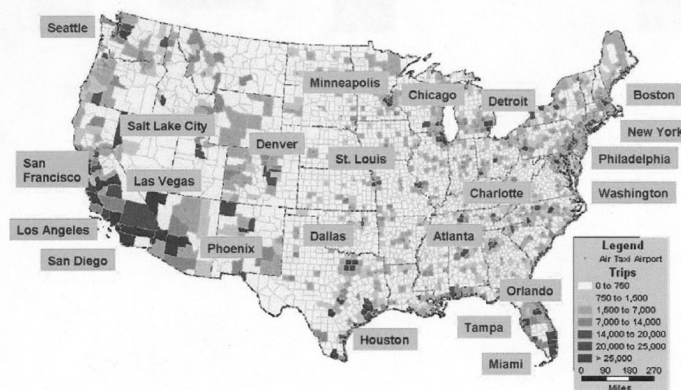
Snapshot taken on Wednesday, March 7, 2007, 11:30 a.m.

The business aviation industry is projected to grow even larger over the next decade with the introduction of next-generation aircraft called very light jets (VLJs) that in many instances will be able to fly at the same altitudes as airline aircraft. Not surprisingly, according to FAA data, business aviation is the fastest growing

segment of the aviation industry. Indeed, there have been well-publicized reports of investors' plans to order vast numbers of VLJs to create new air-taxi services. This will be pure commercial usage of the ATC system. In no way will it resemble the recreational pilot flying from a general aviation airport on a Saturday afternoon.

As the depiction below clearly indicates, VLJ operations are forecast to be more concentrated than is commonly understood. They will not simply be operating between low-activity airports, or in low-activity terminal airspace or underutilized en route airspace. VLJs and their brethren, corporate aircraft, will consume increasingly scarce ATC system resources.

## New VLJs to Serve Major Markets



### Forecast of annual originating VLJ air-taxi trips by county in 2017

Source: CRA International with Calculations by Virginia Polytechnic Institute. Paid for by Eclipse Aviation

## 2. The principle of equitable funding has been forsaken

When the Trust Fund was established in 1970, the airline industry was regulated and ticket prices were set by the government. In general, those government-set ticket prices reflected the cost of operation. As a result, generating revenue through a tax on ticket prices made sense—it ensured that Trust Fund revenues were linked to the cost of operating the air transportation system. Congress recognized at that time that this cost-based financing principle was equitable because

“a ticket tax is geared to charge an equitable tax related to the distance traveled and the cost per mile of air operation, since ticket prices for short flights are more per mile than long-line flights and the tax is proportional to the price of the ticket.”<sup>4</sup>

Today, ticket prices are based on market competition and have absolutely no correlation to the cost of services. *As a result, the largest source of Trust Fund revenue has absolutely no link to the cost of maintaining and upgrading the aviation system.* The symmetry on which the Trust Fund was based has evaporated.

### 3. A “fundamental disconnect between the existing tax structure and the FAA’s workload”

There is no correlation today between revenue collected and services consumed. Airlines pay for 94 percent of Trust Fund revenues but only use 68 percent of ATC system services. The result of this inequity is that airlines, and ultimately their customers, are heavily subsidizing other users of the system. As Secretary of Transportation Peters has very forthrightly said, a “fundamental disconnect between the existing tax structure and the FAA’s workload. . . .”<sup>5</sup>

By way of illustration, a Cessna Citation X corporate jet aircraft would contribute an estimated \$306 to the Trust Fund when it flies from New York to Los Angeles.

<sup>4</sup> *Report of Committee on Ways and Means*, reprinted in 1970 U.S.C.C.A.N. 3084.

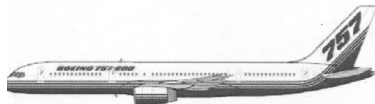
<sup>5</sup> Feb. 14, 2007, letter of Secretary Peters transmitting the proposed Next Generation Air Transportation System Financing Reform Act of 2007 to the Senate at p. 3.

An airline's Boeing 757-200 aircraft flying the same route would contribute an estimated \$2,660 to the Trust Fund. Both are high-performance aircraft; both fly at the same altitude, in the same airspace; and both place comparable demands on the air traffic control system. Yet, there is an eight-to-one difference in payment for ATC services.

### Airline Flight vs. Corporate Jet Flight Contributions to the Airport and Airway Trust Fund

#### New York – Los Angeles

##### Commercial Boeing 757



**AATF Contribution: \$2,660**

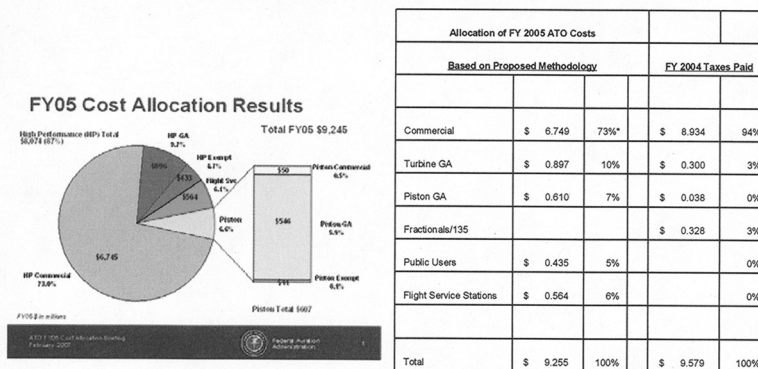
##### Corporate Jet Cessna Citation X



**AATF Contribution: \$306**

This breathtaking disparity does not tell the whole story. Over time, the foundation of the Trust Fund has badly eroded. Today's funding structure does not assure sufficient future revenues, even for the current ATC system. The worrying trend this decade has been the continuing draw down of the Trust Fund. That, obviously, is unsustainable. In fact, the Government Accountability Office has pointed out that past trends and future projections indicate that the "revenue collected under the current funding system has fallen and will continue to fall relative to FAA workload and costs. . . ."<sup>6</sup>

### ATO – Cost Allocation of FY2005 ATO Appropriation (Weight, Size & Purpose of Flight Do Not Drive Costs)



\* Includes Fractionals, Charters and Air-Taxis

Moreover, today's funding structure does not assure a stable revenue stream. That is because the average ticket price is lower today than it was at the beginning of this decade or, adjusted for inflation, than it was in 1970 at the outset of the Trust Fund. Revenue stability and, therefore, predictability will be essential to the suc-

<sup>6</sup> GAO, *Aviation Finance—Observations on Potential FAA Funding Options* at p. 11 (GAO Report No. 06-973, Sept. 2006).

cessful modernization of the ATC system. The Trust Fund as presently constituted simply does not assure the wherewithal to sustain the system in the future.

Again, ATC system service providers elsewhere have confronted this issue and satisfactorily responded to it. They have found this to be a straightforward issue. ATC systems throughout the world have implemented cost-based funding arrangements to ensure an adequate, stable revenue stream to fund their modernization efforts. This has occurred in Australia, Canada, France, Germany, New Zealand and the United Kingdom.

In the United States, several independent commissions and studies have examined how best to meet FAA financing needs. Their common and long-standing conclusion has been that reform is urgently necessary. For example, before the last Trust Fund reauthorization in 1997, Congress established the 21-member National Civil Aviation Review Commission that former Transportation Secretary Norman Mineta chaired. *The Mineta Commission unanimously recommended that FAA revenues be more closely linked to the cost of providing services. As it stated:*

*“The Commission recommends that the FAA adopt a cost-based revenue stream to support its air traffic system activities including capital investments. At the same time, funding for aviation security, safety, and government use of the air traffic system should be provided by the Federal Government’s General Fund.”*<sup>7</sup>

Four years before that report, the National Commission to Ensure a Strong Competitive Airline Industry, which former Virginia Governor Gerald L. Baliles chaired, concluded that the existing Federal budget process “*provides neither a stable, predictable source of revenue nor the ability to leverage that revenue. . . .*”<sup>8</sup>

More recently, the Government Accountability Office has said that “[a]viation experts and stakeholders agree that the incomplete implementation of these recommendations and additional factors could limit FAA’s ability to fully address long-standing NAS [National Airspace System] modernization problems.”<sup>9</sup>

For well over a decade, independent authorities have told us that the funding of FAA air traffic services must be changed to reflect contemporary reality. The necessary path has been described to us, many times. We need to follow it.

#### C. Funding—The Financial Benefits of Returning to Our Roots

A user-pay/cost-based funding arrangement would produce three principal benefits:

- *Lower costs; increased efficiency:* A recent Government Accountability Office report noted that the current financing system does not create any incentive to control costs and improve efficiency because use and cost are unrelated. Right now, consumers of FAA ATC services have little or no motivation to rationalize their consumption of those services. User consumption of services and user payment for services are no longer linked. Reestablishing that link will rationalize decision-making about use of the system and, in turn, economize the way the government provides services. The result will be more efficient use and provision of FAA services.
- *Revenue stability:* The Trust Fund’s uncommitted balances have fallen by more than 70 percent over the past 5 years.<sup>10</sup> That is a disturbing development and calls into question the ability of the Fund to support ATC modernization. A return to cost-based financing would generate a stable revenue stream to fund modernization.
- *Equity:* Under the current funding system, two aircraft operators can pay very different amounts even if they use the same services and impose the same costs on the FAA. This is unjustifiable. Charging aircraft operators based on their use of the system would create a more equitable funding system and ensure that all users are paying their fair share.

#### D. Funding—The Need for Effective Oversight

The principle of equitable funding is not synonymous with writing a blank check. Any change in the financing of the ATC system should only occur if basic oversight issues are addressed. Some of these are knotty but they can and must be resolved.

<sup>7</sup>National Civil Aviation Review Commission Report at p. I-2 (1997).

<sup>8</sup>Change, Challenge and Competition at p. 8 (1993).

<sup>9</sup>GAO, *National Airspace System—Transformation Will Require Cultural Change, Balanced Funding Priorities and Use of All Available Management Tools* at p. 16 (GAO Report No. 06-154, Oct. 14, 2005).

<sup>10</sup>GAO, *Aviation Finance—Observations on Potential FAA Funding Options* at p. 1 (GAO Report No. 06-973, Sept. 2006).

Congress' role in policy decisions about funding should not be supplanted. We regard that as a given. Indeed, we look forward to Congress exercising that role.

Stakeholders, however, must have a central role in decisions affecting the funding and deployment of ATC system improvements. Their decisionmaking role must reflect their contribution to that funding. We recognize the sensitivity of this issue. But we firmly believe that a usage-fee funding arrangement cannot be allowed to become an open spigot. Cost containment will be vital to successful system modernization. Modernization projects must be carefully justified, user vetted, and held to a budget.

### VIII. Administration's Proposed FAA Reauthorization Legislation

The Administration's legislative package contains a usage-fee proposal that is a welcome first step in reforming the funding of the FAA. Nonetheless, as noted below, more needs to be done.

The proposed user fee/tax system is based on the FAA Air Traffic Organization cost allocation study. That study clearly recognized that airlines and their passengers grossly overpay today. It concluded that "high performance commercial" users (*i.e.*, turbine aircraft operated in scheduled service, as on-demand charters or under fractional ownership) generated only 73 percent of system costs, although these same users today contribute 94 percent of the revenue that goes to the Trust Fund. The graph and table on page [46] summarize the FAA's cost allocation. This is a very important recognition of the actual costs that users impose on the system.

*Unfortunately, one matter that the administration's legislation falls short on is the key issue of airport funding. Airlines pay over \$14 billion annually in airport charges and fees—through landing fees, rates and charges, Passenger Facility Charges, and the Airport Improvement Program. We therefore are vitally interested in how in the future airports will be funded and how capacity improvement projects will be approved, especially those funded through the PFC program. The administration's airport-related proposals, however, would not provide airlines a meaningful role in these critical decisions and would virtually eliminate FAA oversight. Airlines and airports need to have a close, collaborative relationship in determining what capacity projects are initiated, project scope and cost, ongoing operations and maintenance costs, and how these various costs are paid for. Disappointingly, the administration's legislation does not recognize these necessary principles.*

Our reactions to several of the propositions in the administration's proposed legislation are described below.

- *User fee authority (§201)*: We support a cost-based approach to funding FAA services and the creation of associated borrowing authority but more needs to be done to make the administration's proposal conform to such an approach.
  - On the positive side, the administration's proposal moves to correct the unfairness of the current funding system through the introduction of a cost-based funding system. Permissible fee factors are identified, although a formula is not specified and thus remains up to the FAA to establish. The bonding authority included in the proposal will facilitate the needed modernization of the air traffic control system, although the short repayment period could put substantial upward pressure on user fees.
  - On the negative side, the proposal is silent about how to assure that costs are appropriately contained. This is a very basic issue that needs to be resolved. Furthermore, no judicial review of FAA user-fee determinations would be permitted. This is a significant shortcoming. In addition, recognizing weight as a permissible factor in determining some user fees, which the proposal would, is unjustified. Weight is not a legitimate proxy for the costs that an aircraft imposes on the system. The authority to impose fees for operations in terminal airspace for large hub airports ignores the significant costs that corporate aircraft that do not operate at those airports impose in that airspace.
- *Air Transport System Advisory Board (§401)*: The industry supports the creation of a board that can have meaningful decisionmaking authority about key ATO issues, particularly those involving user fees and bonding. Unfortunately, the administration's proposal does not give stakeholders a meaningful voice; the Board would merely be advisory and have no real authority. We realize that this is a contentious issue but it must be directly confronted and resolved. If you pay, you must have a real voice in how your money is spent.
- *Passenger Facility Charges (§301)*: Although described as a reform of PFC authority, the administration's proposal could impose an additional \$2 billion in taxes on passengers while reducing airlines' voice in and the role of the FAA in the approval of PFC projects. Such changes are unjustified.



- *Airport Improvement Program (§ 302 et seq.)*: Although the administration’s proposal would modernize parts of the AIP and would recognize the greater financial ability of large and medium hub airports to fund airport improvements, the proposal includes \$1 billion in subsidies for noncommercial airports, most of which would come from airlines and their passengers. Given that the proposal makes no attempt to apply the “pay for what you use” principle to this program, the more than tripling increase of our jet fuel tax from 4.3 cents to 13.0 cents a gallon would be unacceptable.
- *Airport Privatization Program (§ 806)*: This proposal would increase to 15 the number of airports that could be included in the privatization program but would eliminate the requirement of carrier approval of such privatizations. We oppose that provision because of the possibility that the elimination of approval authority could result in transactions that financially disadvantage airport users, including airlines.
- *Facilities and Services Realignment and Consolidation Commission—“FAA BRAC” (§ 409)*: Under this proposal, a BRAC-like process for the realignment and consolidation of FAA facilities and services would be implemented. Effective containment of FAA Air Traffic Organization costs will depend in part on such consolidations. Given the controversy that facility consolidations can create, the administration’s proposal is a sensible approach.
- *LaGuardia Airport Operating Authorization Allocations (§ 503)*: The airline industry has opposed the imposition of new costs at LaGuardia. The preponderant view in the industry is that the operational cap coupled with a reinstatement of the secondary market allowed under the previous buy-sell rule, although perhaps needing some improvement, is sufficient to manage congestion and provide for equitable allocation of access to the airport. The industry opposes any scheme under which the airport operator would be allowed to generate excess revenue and divert that revenue to projects that do nothing to address congestion or expand capacity at the airport.
- *Market-Based Mechanism Pilot Program at Congested Airports (§ 504)*: We oppose this proposal because the focus should be on improving capacity at high-volume airports rather than saddling passengers and shippers with far costlier service at the airports that they want to use.
- *FAA War-Risk Insurance Program Extension (§§ 701, 702)*: The industry supports the unchanged extension of both the FAA war-risk insurance program, and the third-party liability cap and punitive damage prohibition. We oppose the administration’s proposal to eliminate FAA “first dollar” coverage for such insurance.

We look forward to working with the Committee on these and other issues concerning FAA reauthorization legislation.

## **IX. Conclusion**

We need a truly 21st century air traffic control system that will safely, efficiently and equitably meet the growing needs of civil aviation and our national economy. And it needs to be funded the right way so that the revenue that is needed to keep our Nation’s air commerce vibrant and responsive to consumer needs can be provided fairly and predictably. We cannot permit inertia or parochial considerations to delay achieving that important transformation.

Senator ROCKEFELLER. Thank you very much, Jim May, for that excellent testimony.

And now we turn to Mr. Ed Bolen, who is President and Chief Executive Officer of the National Business Aviation Association. Good morning.

### **STATEMENT OF EDWARD M. BOLEN, PRESIDENT AND CEO, NATIONAL BUSINESS AVIATION ASSOCIATION**

Mr. BOLEN. Thank you, Mr. Chairman.

The National Business Aviation Association represents about 8,000 companies in the United States that are involved in business aviation. And, as the members of this Committee know, “business aviation” is a FAA-defined term. It is “the use of any general aviation aircraft, piston or turbine, for a business purpose.”

According to the Aircraft Owners and Pilot's Association, over 50 percent of all single-engine piston aircraft in the United States are used for a business purpose. By the time you go to a piston twin, that percentage of business usage goes up over 80 percent.

I have a chart that shows what the business aviation community looks like—it's made up primarily of piston twins. The next largest category is turboprops, then the entry-level business jets. Those three categories, represent 85 percent of the business aviation community represented.

The types of companies and organizations that operate business aircraft in the United States are primarily, 85 percent, small and mid-size companies, and non-profit organizations. And of course, as you know, a lot of State organizations also operate business aircraft.

A typical example of an NBAA member, is Richard Shine, the head of a family owned recycling company in upstate New York that uses a turboprop to expand their business, but also to allow them to stay headquartered in a community that does not have strong commercial service.

Another example would be a family-owned company called Aero-Charter in Chesterfield, Missouri, which has a fleet of aircraft—piston, turbo-prop, and jet—to help it as the sole transportation provider to a nationwide organ transplant company. These are typical members of NBAA, and reflective of the business aviation community.

Now, I know the purpose of this hearing today is to talk about what people have called the "next-generation" air traffic bill. But for anyone who was around 10 years ago, this does not have as much of a forward feel to it, as it does a sense of déjà vu. You'll recall that in 1997, the Nation's big airlines came forward with a proposal that was designed to shift \$600 million worth of their taxes onto whom they viewed as their competitors. It also had what was—according to a senior airline executive—as a goal of control of the FAA for the airlines' exclusive benefit.

Today, their proposal to shift costs has gone up, with inflation, to \$2 billion. Their goal of control—according to public statements by the Air Transportation Association—remains in place.

Were we here to talk about a modernization bill, we in the business aviation community and, in fact, the entire general aviation community, would be very excited about it. We feel that we have been at the forefront of every modernization effort that has taken place, and that's not just because we view ourselves as good citizens, it's a matter of national survival for us.

You see, everywhere in the community, everywhere in the country, when airports and airspace become congested, it's general aviation that has been pushed out. Some of you may recall when Midway Airport in Chicago was a thriving general aviation airport. Then commercial service came, and we were pushed out to secondary and tertiary markets.

We see that happening today in Ft. Lauderdale, with JetBlue's arrival. It's been repeated in San Jose, and numerous other airports. When there is a squeeze in the system, general aviation loses. Therefore, we're profoundly interested in anything that can expand system capacity. It's one of the reasons we've worked so

closely with Senator Stevens on the Capstone Program up in Alaska, which has led us to the development of ADS-B technology, which I think everyone would agree is the very foundation of our modernization effort.

Capacity enhancement is the reason the general aviation community replaced all of our altimetry, so that we could double the amount of capacity of our en route airspace, by reducing vertical separation.

General aviation was at the lead in calling for the creation of the Joint Planning and Development Office. We are deeply involved in the modernization process, because if it doesn't work, we're the ones that will lose.

Now, knowing that modernization is important, we were hopeful the Administration would come forward with a modernization bill. Unfortunately, what they came forward with is not modernization. Their bill cuts FAA spending on the FAA by \$600 million. It caps the General Fund contribution below what it is today, and has it reduced further in out-years. It diverts money that could be used for modernization to the creation of an assessment and collection bureaucracy. It allows the FAA to go into debt, and most of all, it fails to have a clear modernization plan attached.

What we are talking about with modernization, according to everyone who has looked at it, and that includes the groups at the table today, is an addition to current spending of somewhere between \$200 million and a billion dollars. So, to put that in perspective, you can see on the chart up there, we're talking about an increase in FAA spending of somewhere between 3 percent and 8 percent.

We would argue that there are five options to get to that. One, we can look for efficiencies in the FAA—we can look for non-essential programs that do not relate to safety and efficiency, and we can make cuts. Two, we can increase by a couple of percentage points the General Fund contribution. Three, we can raise industry taxes. Four, we could do some combination of any or all of those. Or, five, we can throw out a funding system that has worked for 40 years, that is well-understood, that every person in the aviation community has based their long-term projections on, and replace it with a radical funding scheme that is going to give unelected officials tax and spend authority, and it's going to reduce Congressional oversight.

We would urge this Committee to take option number five off the table, and get down to the serious work of defining a modernization process, and figuring out how we pay for it.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Bolen follows:]

PREPARED STATEMENT OF EDWARD M. BOLEN, PRESIDENT AND CEO,  
NATIONAL BUSINESS AVIATION ASSOCIATION

Mr. Chairman and members of the Subcommittee, my name is Ed Bolen, and I am the President and CEO of the National Business Aviation Association. I am grateful for the opportunity to appear before you today. NBAA commends the Subcommittee for holding this important hearing to discuss the future of our national air transportation system. NBAA members have a vital interest in a strong and healthy aviation system.

NBAA was founded 60 years ago to represent companies that utilize General Aviation as a tool for meeting some of their transportation challenges. NBAA and our members are committed to working with Congress to transform and modernize the Nation's aviation system. Likewise, we are committed to modernization policies that support the continued growth of each aviation segment, including General Aviation, which plays a critical role in driving economic growth, jobs and investment across the U.S. We strongly support the shared goal of keeping our national aviation system the safest and most efficient system in the world.

General Aviation is an essential economic generator, contributing more than \$150 billion to annual U.S. economic output, and directly or indirectly employing more than one million people. Most General Aviation aircraft operating around the world are manufactured in the U.S., and our industry is continuing to build a strong American manufacturing and employment base that contributes positively to our national balance of trade. Congress recognized just how fundamental General Aviation is to our Nation's transportation system, rural economies, manufacturing capability, and balance of trade when it passed the General Aviation Revitalization Act a little more than a decade ago.

#### **Facts about Business Aviation**

Business aviation, as the members of this Subcommittee know, is an FAA-defined term. According to the FAA, business aviation is the use of any General Aviation aircraft—piston or turbine—for a business purpose.

Business aviation is a vital part of the American economy and our national transportation system. There are some facts about business aviation of which you might not be aware.

Business aviation operators encompass a broad cross-section of interests, including businesses, governments, schools and universities, and not-for-profit organizations. Servicing and supporting these organizations are FBO's, maintenance technicians, suppliers and service providers.

Approximately 85 percent of the entities that rely on general aviation to meet a portion of their transportation challenges are small and mid-sized businesses that own and operate a single airplane.

These include businesses like:

- Manitoba—a small, family-owned metal recycling business in Lancaster, N.Y., which first used a piston-twin airplane and now uses a turboprop to help expand its business beyond its local area.
- Aero Charter, a thirty-year-old, family-owned company in Chesterfield, Missouri. The owners, who are also the company's pilots, use a mix of business aircraft types, including business jets, piston planes and a turboprop. They serve as the sole provider of air transportation for Mid-America transplant services, an organ-donation company.

Business aviation also has a long history of philanthropic activity.

Organizations like the Corporate Angel Network arrange free air transportation for cancer patients traveling to treatment using the empty seats aboard business aircraft. They have arranged more than 20,000 flights since their founding in 1981.

Similarly, Angel Flight America's seven member organizations and 7,200 volunteer pilots arranged more than 18,000 flights in 2005 *alone* to carry patients to medical facilities.

The Veterans Airlift Command uses business aircraft and unused hours of fractional aircraft ownership programs to provide free flights for medical and other compassionate purposes for wounded service members, veterans, and their families. Veterans Airlift finds volunteers in the business aviation community to fly their missions on request and contribute the full cost of their aircraft and fuel for the missions flown.

The community also reliably snaps into action to respond to national crises. In the days and weeks following Hurricane Katrina, our operators provided an outpouring of generosity and assistance. Hundreds of thousands of pounds of supplies were transported into the Gulf Coast region aboard business aircraft, which also were used to transport victims out of harm's way.

The aircraft involved in business aviation are diverse, like the industry itself. For instance, according to statistics by the Aircraft Owners and Pilots Organization, a majority of the hours flown in piston-engine airplanes are for business purposes. Among the turbine-powered airplanes used for a business purpose the Beech King Air is the most common model. The King Air is a twin-engine turboprop that was first introduced in 1965 (see Chart 1).

Business aviation tends to fly at altitudes above and below the commercial airline traffic that prefers to operate in the range between 29,000 feet and 39,000 feet. We

also tend to use different airports. In fact, General Aviation represents less than 5 percent of the total operations at the Nation's 20 busiest commercial airports. The ability to use smaller, less-congested facilities is key to the value and flexibility of business aviation aircraft.

#### **FAA Reauthorization**

Mr. Chairman, we in business aviation are united with the rest of the General Aviation community in our grave concern about legislation the FAA recently unveiled, which the Agency calls the Next Generation Air Transportation System Financing Reform Act of 2007.

The FAA and the Nation's big airlines are promoting this user fee proposal as a forward-looking "modernization bill." But to everyone who was around the last time the Nation's big airlines pushed a user fee scheme in Congress, there is a strong sense of déjà vu.

Some of you may remember that, in 1997, the Nation's seven largest airlines pushed for a user fee scheme that would shift \$600 million in taxes onto what they viewed as their competitors—the low-cost airlines. But, according to one airline CEO at the time, the real goal was "control of the FAA by the Big Seven and for their exclusive benefit."

This time around, the airlines have picked a new target for their tax shift—General Aviation, and they have increased the amount to \$2 billion. The objective of reducing Congressional control of the FAA remains unchanged.

The airlines have not been secretive about their goal of reducing Congressional control. One year ago today, the Air Transport Association (ATA) called a press conference where, according to *The Wall Street Journal*, their chief lobbyist was quoted as saying: "We need to get Congress out of this process."

Let anyone think ATA was misquoted, the association said again in August at an Airports conference in Florida, "it is critical we have a governance structure that is, to the best of our ability, free of the pressures of Congress."

Mr. Chairman, as I said earlier, the proposed bill is being promoted by the FAA and the big airlines as a modernization bill. Let me be clear, the General Aviation community, including business aviation, takes a backseat to no one in terms of pushing for modernization. Our motivation is simple—every time airports or airspace get congested, it's General Aviation that is the first to get squeezed out.

It wasn't that long ago that Midway Airport in Chicago was a great General Aviation airport with flight schools, flying clubs, and so forth. Then, low-cost carriers began using the airport, forcing General Aviation flights to go elsewhere. This same scenario has been repeated in San Jose, California and Manchester, New Hampshire, and it is happening in Fort Lauderdale, Florida.

In order to expand system capacity, General Aviation has been at the forefront of the modernization effort. We were early adopters of GPS navigation systems. We worked with Senator Stevens to develop the ADS-B test program in Alaska—a test program that is now the foundational technology of the modernization effort. Just 2 years ago, General Aviation operators collectively spent millions of dollars equipping their airplanes with new altimetry so that we could double the capacity of our en route airspace.

We are also working closely with the Joint Planning and Development Office to define and implement the Next Generation Air Transportation System.

Because of its deep involvement in the modernization process, NBAA has as much knowledge and visibility into FAA modernization process as any industry organization in the country. It is with that knowledge and visibility that I can tell you without hesitation that *this FAA/airline bill is NOT a modernization bill.*

Let's look at the facts:

- This proposal cuts FAA funding by \$600 million in 2008 alone.
- It caps the use of general taxpayer revenues—the General Fund contribution—below what it is today and further reduces the General Fund contribution in out-years.
- It takes money that could be used for air traffic control transformation and diverts it to assess and collect user fees. Whether the bureaucracy is built inside the government, or outside through contractors, money must be used to create and maintain this new assessment and collection bureaucracy.
- It also authorizes the FAA to go up to \$5 billion in debt starting in 2013.
- This FAA proposal does not outline the technologies, the time lines or the costs of the next phase of modernization.

So, rather than modernizing, this bill cuts FAA funding by \$600 million, reduces the General Fund contribution by hundreds of millions, and diverts money that

could and should be spent on runways, towers and modernization technologies and wastes it on a new bureaucracy. After all that, it allows the FAA to go into debt.

Mr. Chairman, this is not a modernization bill.

Worse still is the fact that this bill is based on a flawed and unprecedented cost allocation study. By FAA's own admission, they have abandoned all economic principles for how to allocate costs to different users in favor of a simple accounting approach. No other nation uses such an approach for allocating air traffic control costs or for setting user charges or taxes.

In fact, the FAA's new approach runs counter to international guidelines. The International Civil Aviation Organization states:

" . . . it is particularly important to recognize that the major part of the air navigation facilities and services infrastructure has been established to serve the requirements of commercial air traffic, and that some users receiving extensive service could not, by reason of the nature of their activity, have called for the provision of service on such a scale on an economic basis."

"The primary beneficiaries among the users should therefore be carefully identified to ensure that realistic allocations of costs to the various user categories are made."

This is a very serious issue. As you know, the FAA has proposed in its legislation that all future fees and charges must be based on its own cost allocation study. Any errors in the study or its methodology will put at risk many segments of our Nation's air transport industry and those communities around the country that are dependent on them.

So, if this is not a modernization bill, what is it?

*This proposal is an effort by the FAA and the airlines to reduce Congressional authority and move toward commercialization.*

Mr. Chairman, I have already reminded this subcommittee what the big airlines' goal was in 1997, and what they have said their goal is today: basically to shift their costs and reduce Congressional control. Their public comments suggest that Congress is an impediment to modernization and that the authorization/appropriation process is too unstable and unpredictable to allow for modernization.

The facts tell a different story.

FAA funding has steadily increased over the past decade, often in excess of the amount the FAA has requested (see Chart 3). Moreover, there has never been an FAA modernization program that has ever failed for a lack of Congressional support or funding. Even this year, Congress is funding the FAA's two Next Generation Air Traffic programs—System Wide Information Management, or "SWIM," and ADS-B—in excess of what the FAA requested.

Mr. Chairman, in our view, the battle over aviation user fees is a battle over whether Congress will retain control of the air traffic system or whether that control will shift to unelected bureaucrats or even industry.

Aviation user fees would reduce Congressional authority and put us on the slippery slope toward commercialization.

In fact, last August, the Reason Foundation published an article in support of aviation user fees that said "user fees are the essential precondition to commercialization." The General Aviation community urges you not to establish that precondition.

Instead, we urge this subcommittee to produce a real modernization bill that retains Congressional authority over air transportation in the United States. The continued transformation of the system is a primary focus of the General Aviation community. In our view, this debate should not be about winners and losers, but about building a system that can meet all future demand.

Mr. Chairman, modernization is not one "big bang"—it's not purchasing a big new piece of technology and plugging it in. It is a stable transformation of our communication, navigation and surveillance systems.

It has been said that modernization could cost somewhere between \$300 million per year and up to \$1 billion per year in new spending (although the FAA itself is proposing a little less than \$200 million in modernization spending in FY09). If those numbers are in the ballpark, we are talking about an annual increase in the FAA's current budget of between 3 percent to 8 percent (see Chart 4).

If that is what is needed, then it seems Congress has a least 5 options for getting there:

1. Congress can direct the FAA to make modernization a priority and find 3 to 8 percent of its budget that can be redirected to modernization without compromising system safety or efficiency. Most multi-billion-dollar budgets, whether in the government or the private sector, include some non-essential spending that

can be redirected. In fact, businesses are often faced with unexpected or new priorities and must meet these challenges within existing resources. A re-ordering of priorities in the range of 3–8 percent of a budget is not excessive.

2. Congress can declare modernization a national priority and increase the general taxpayer revenues supporting modernization. Increasing the General Fund contribution from 19 percent of the FAA's total budget to 25 percent would fully pay for even the high-end estimates of modernization. The last time that Congress fully debated an appropriate General Fund contribution, in 1990, it was determined that 25 percent was the correct amount to cover the public benefits of a strong national aviation system—including national defense, emergency response, postal service, medical emergencies, local commerce and interstate commerce.

3. Congress can increase the existing aviation excise taxes across the board.

4. It can do some combination of the above; or

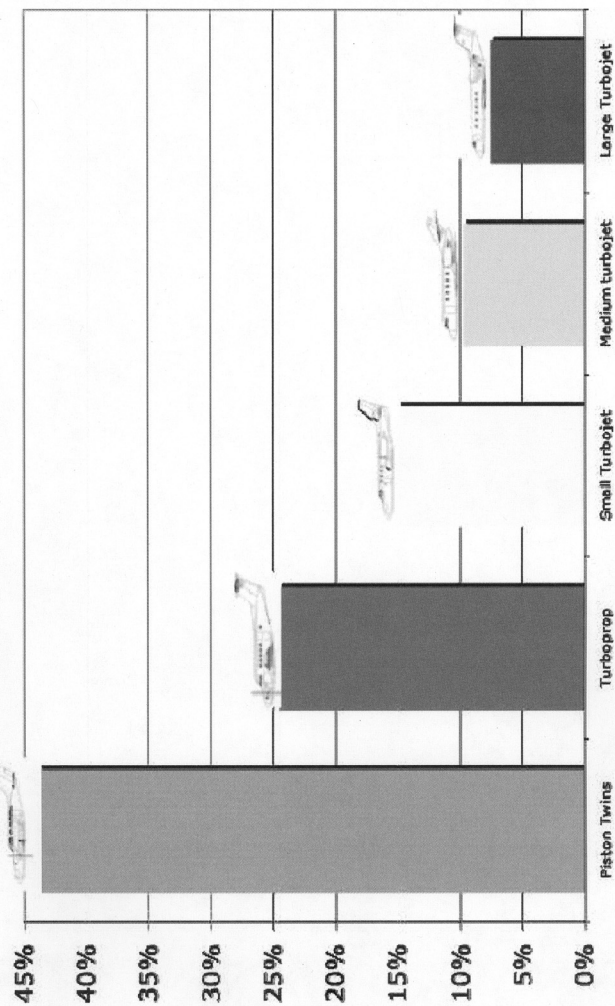
5. It can scrap a Congressional process that has allowed the United States to be the world's leader in all aspects of aviation for decades, and has given the U.S. the largest, safest, and most efficient air transportation system in the world, and replace it with a radical scheme that will reduce Congressional authority, divert millions of dollars to establish a massive new bureaucracy (either inside or outside the government), dilute the FAA's focus on safety by giving it the authority to assess and collect revenues, and put us squarely on the path toward commercialization.

Mr. Chairman, expanding the capacity of our Nation's air transportation system to accommodate demand can and must be a national priority. But no one should mistake aviation user fees with a modernization plan (see Chart 5).

We urge this Subcommittee to immediately reject aviation user fees in any form and begin focusing on how we work within the established Congressional process to expand system capacity to enhance mobility for all Americans. NBAA looks forward to working with this Subcommittee to accomplish this critical national goal.

### U.S. Registered Business Aircraft

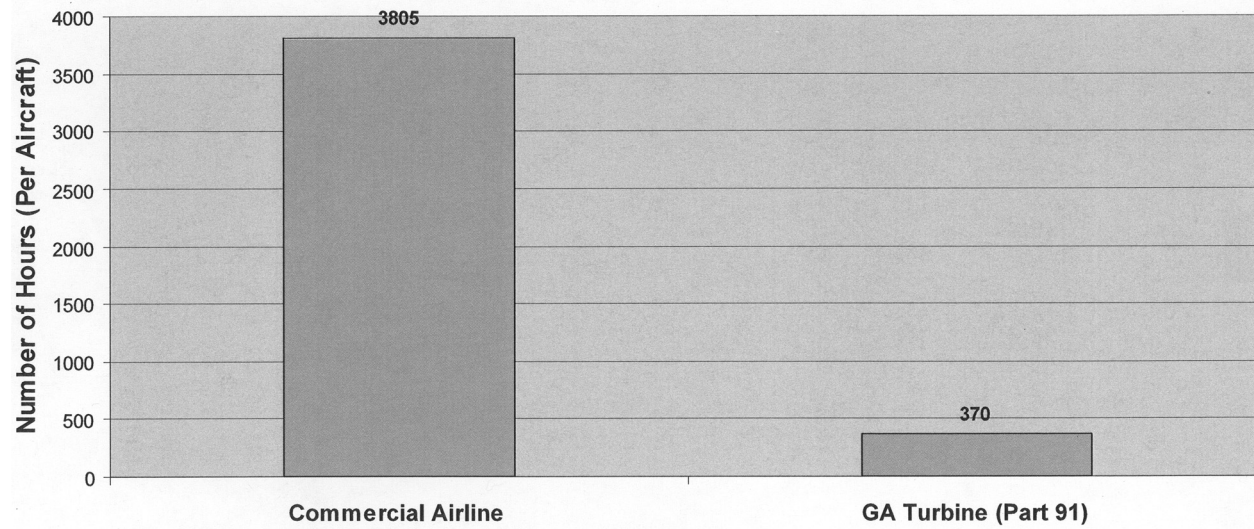
Source: Federal Aviation Administration, 2004



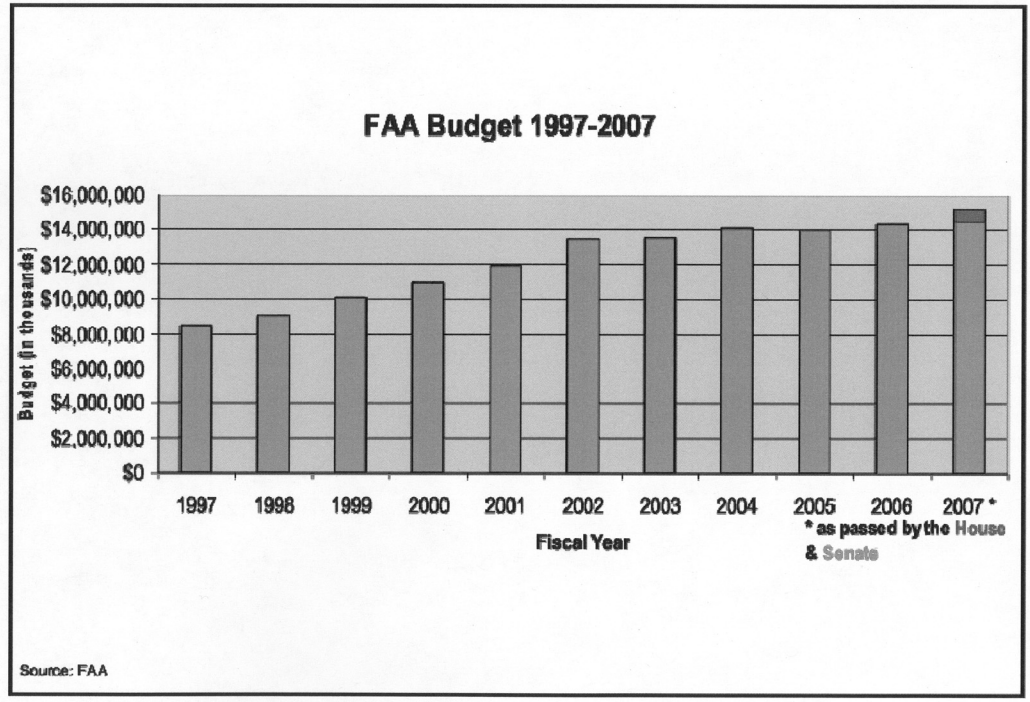
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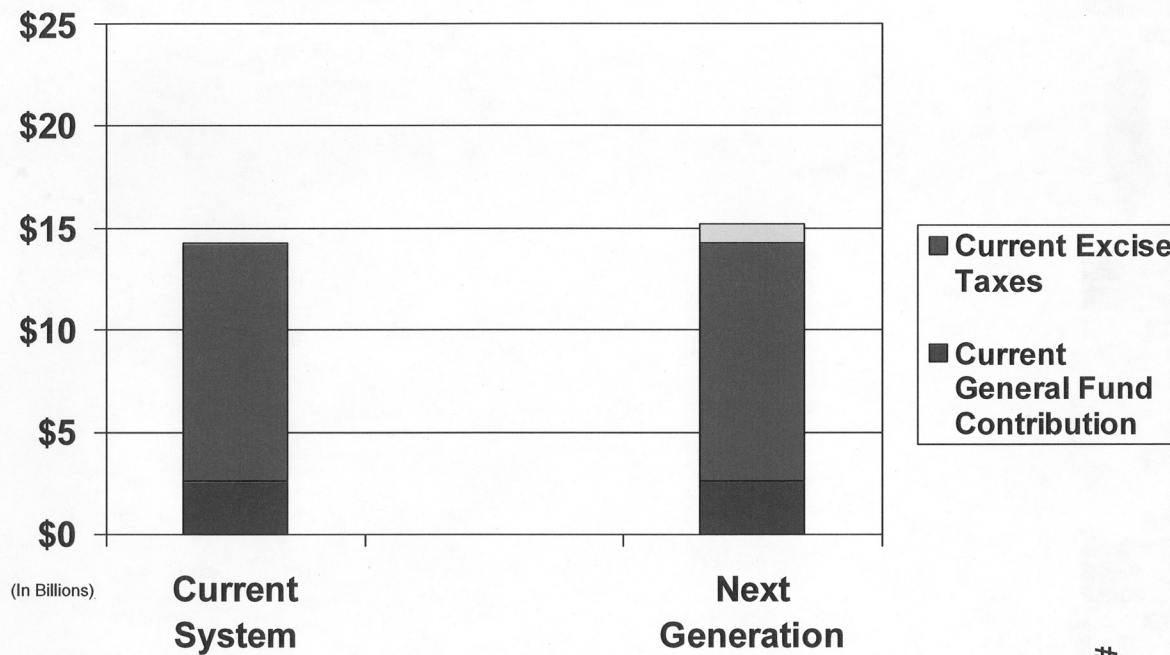
### Average Annual Hours Per Aircraft



Source: Aviation Daily



# Funding Requirements



FAA FY 2007 CR Level

# 4

**The GA fuel tax is the most simple and efficient mechanism for reflecting system use and generating revenue to support the aviation system.**

	GA FUEL TAX	USER FEES
Government Perspective	Prepay for Use	Post-pay for Use
	No Bureaucracy to Administer	Creates IRS Branch of FAA
	Keeps Focus on Safety	Dilutes Focus by Adding Revenue Collection
	Easy to Understand	Confusing Formulas
User Perspective	No Processing Costs/Burden	Processing Costs/Burdens
	Fair For All Users	Subject to Government Manipulation
	Linked to Use	Linked to Use
Policy Perspective	Simple Congestion Deterrent	Complicated Approach to Congestion
	Pro-Environment	Environmentally Neutral

# 5

Senator ROCKEFELLER. Thank you, Ed Bolen, that was excellent testimony.

This hearing, as I indicated, would be perhaps a little bit different, and I hope there will be a series of them, because we have the decisionmakers not just sitting here, but some are here as witnesses. And together, we're going to have to work this out.

Now, there are several models to this. We meet frequently with your representatives who come to see us and our staff. They are not empowered to be able to make decisions when we say—as I'm wont to—"What do you suggest? What do you think are some potential compromises? What are those areas?" For example, Jim

May in, on page [37], has a, is a very interesting thing, he says, "What we're not saying," and then there's a series of things after that. In other words, don't attack others. I haven't read them all.

So, the question is, what is it? That you can look at it in two ways—we've got a short-term financing problem, we've got a long-term financing problem. My own predilection is that America is making a tremendous mistake right now by doing everything short-term and incrementally. That we're not looking at the big picture, that we have to virtually reconstruct America from every single point of view. From our education system, to our transportation system—and all of its forms—to a War on Terror, to Homeland Security—I mean, the list never ends.

I think we have about a 10 to 15 year window in which to do this. The next question is, how can you afford that? I have absolutely no idea. But, I do know this. That, when President Clinton left office, he had a \$5.6 trillion surplus. He may not—because of the Congress at the time—been able to get away with it, but he could have figured something out with his lawyers to take that \$5.6 trillion, not use it into paying down debt, but to use it to—for the one time in our recent life, in our generational life, to create a construction fund, you know, a "Build America Fund"—everything from education, to transportation, to everything else.

We have enormous needs. We are not meeting them. At the rate that we are going, we will not meet them. We will become a Congress and a society of incrementalists, because we are forced to do that by our economic situations, by various things going on in the world, the rest of it, and we're not going to make it, in my judgment. Just speaking as the Chairman of the Intelligence Committee, I don't think we're going to make it. I don't think we have the time to make it. Unless we do these things in a fairly short period of time.

And, I checked this with Senator Lott, and he didn't hit me, I said, "Can we look at a short-term resolution of financing problems? And, can we look at a long-term?" And we can't do the long-term today, because all of the answers aren't in. But, I would just start with this question, and I'll ask a couple. How much more capacity could we add to the system by adding more runways?

That'd be you, Chip.

Mr. BARCLAY. I'm not sure how to answer that specifically—

Senator ROCKEFELLER. Then don't. Then answer just in general terms.

Mr. BARCLAY. Back in 2000, the calculation was what we needed was 50 miles of runways to meet the coming demand in the system. We've built about 20 miles, not the 50 miles that we needed.

One of the reasons we talked about it that way it is because looks pretty modest compared to highway miles to say, "This is the amount you need." On the other hand, a lot of the remaining runway capacity we'd like to get at is going to be very hard for reasons other than economics. We've been building new runways. The difficulty is not just getting the dollars, it's getting permission, and going through all of the—

Senator ROCKEFELLER. Will you say it's possible that if we do not reconfigure the runway system at O'Hare Airport, that it would

have a—I'm not quite sure what the word is, but—almost a, the beginning of a closing effect on American aviation?

Mr. BARCLAY. Yes. Back in the year 2000 we all felt what rolling gridlock feels like. One out of every four airplanes was delayed, and that was rippling from just one airport. Either it was O'Hare where a plane was delayed—a lot of planes were delayed at O'Hare—or La Guardia early in the morning and throughout the day it ripples delays. It's like, one of the bridges coming into Washington at nine o'clock that's working fine. But you get an accident on one, and everybody is scurrying, and everything winds up in gridlock.

Senator ROCKEFELLER. Let me ask one more quick question. The FAA proposal has been assaulted and attacked by everybody. I get along very well with Marion Blakey, she called me several weeks ago, I thought I was in for a big conversation, and she said, "Well, are you for pilots flying at the age of 65?" and I said, "Yes, I always have been," and then she hung up.

[Laughter.]

Senator ROCKEFELLER. I haven't talked to her since.

[Laughter.]

Senator ROCKEFELLER. So, you know, it's not just you that's feeling frustration, it's all of us sitting up here.

But, the trend is that we attack each other's advantages and disadvantages. And, that we attack plans that are either put before us, might be put before us, or we hope will be put before us, and often in the case of this bill, they don't contain the necessary details.

So, that's where we are. Democrats and Republicans have, Administrations over the years have underfunded air transportation and the FAA, that's not a recent problem, that's gone on forever. It's true in a lot of other areas, too.

But, is there anything in any of this—and I, I don't have to have you answer now, because it's Trent's turn to ask questions—nobody seems to support anything in any of this. Are there areas of support, do you believe, that you could reach accommodation with each other?

What we used to do in West Virginia, in transportation—please forgive me—we used to have temporary restraining orders in the coal mines. This was 34 years ago. And, I'd wake up every morning, and there would be the headline in the newspapers saying, "Temporary Restraining Orders, Union Brings Against Company," and the mines would all shut down. Which was not, West Virginia is not a wealthy state, and this was not good news.

Suddenly, what happened is that a couple of leaders within the Union and within the companies decided, "This is stupid, this is hurting all of us." And they decided, from now on, when there is a problem, we're going to fix it at the face of the mine, which is where the coal is mined. Which means, one, that the owner or operator of the mine has to be down under the mine. Those were the days when people who owned mines tended to have come up through working in them. Now, people on Wall Street own mines, and many of them haven't been in mines. But, the principle is the same—you get people at the place of the problem, and you say, "OK, now what are we going to do about this? What can we agree on, so that we don't have to come to conflict?" In this case, to

strike. Is there any possibility, euphemistically, in terms of what I have suggested through that example with the industry? Please.

Mr. ALTERMAN. Senator, I was somewhat struck by the testimony at what, actually, this whole panel agrees upon. And we seem to get stuck on the things we disagree upon, and we seem to argue with each other about the financing, and what we agree on gets lost in the equation.

And what I've heard from everybody here, and I certainly agree with, is that we all agree that the system is going to break, and break fairly quickly, and we need to fix it, we need to modernize. That's going to take money, it's going to take programs.

And, I've got to say, the criticism of the FAA bill that we've heard, has been on the financing side. On the programmatic side, there are actually some very good programs in there—ADS-B demonstration programs, the whole Section 600 environmental initiatives are very, very good—we all seem to agree on those things. The only thing we break down on is who pays what, and we're all looking out for our own wallets.

I was even struck by the fact that, in Mr. May's testimony, he didn't call it a user fee, he called it a usage tax, which means we're back in the tax system, and we're debating exactly what tax there will be, rather than whether it's a user fee versus a tax. I think that's a step forward, frankly.

The problem we have, is that we all represent constituencies who obviously want somebody else to pay for the system, so I, you know, I would be tempted to say, "Why don't we have 100 percent General Fund contribution?" And we probably wouldn't argue with each other.

[Laughter.]

Mr. ALTERMAN. Having said that, there have to be ways to compromise. And, I think what we'd first do is agree on what we agree upon, take all of those things off the table, and just try to isolate and define what we disagree about. As I said we, in our perspective, we're in sort of a unique situation, whatever way you look at the process, we pay approximately 100 percent of our system usage, a little more. So, from the cargo perspective we say, just, you know, just don't hurt us, do no harm, but we understand there are arguments on the other side.

The one point that I made that I'd like to reiterate, and I think everyone else did, is that I'm not sure we can afford to establish a new, multi-million dollar bureaucracy to figure out how to do this. I think there's got to be a simpler way. And there are two ways to do that, as I look at it—one, we simply look at the present system, and see what inequities there are, and tweak it. And, number two—and we don't support—I don't want anyone to take this wrong, we are not advocating what I'm about to say, if I advocate it, I will probably not be employed tomorrow—

[Laughter.]

Mr. ALTERMAN.—but, and I'll say it anyway—

[Laughter.]

Mr. ALTERMAN. Another possibility which might be explored is funding the whole system through a fuel tax. I don't know how that comes out. I have no idea how my members come out. But, I'm looking for something that we might be able to agree upon.

Senator ROCKEFELLER. Within that spirit—I have vastly exceeded my time, not giving the rest of you a chance to answer, and I call upon Senator Lott. I will come back.

**STATEMENT OF HON. TRENT LOTT,  
U.S. SENATOR FROM MISSISSIPPI**

Senator LOTT. Well, thank you, Mr. Chairman, and I certainly look forward to working with you and the Chairman of the full Committee, Senator Inouye and Senator Stevens, and coming up with a really visionary, far-sighted reauthorization of FAA, and my other colleagues here on the Committee.

Some people say, “Well, he’s dreaming.” Well, that’s how things happen. When you dream, and you have a vision, then you try to figure a way to go get it.

I’ve enjoyed working in this area for several years now, worked on the FAA reauthorization in the 2000 bill with Bud Schuster, and of course, in 2004, Senator Rockefeller and Congressman Young and Oberstar—I don’t think we did incredible jobs, although each one of you would probably pick apart parts of it, I think it was incrementally OK, I hope we take the quantum leap this time, way beyond what we’ve been willing to do before.

And as I listen to this panel, I must confess, I got to feeling pretty negative about how we’re going to get all of this done. But then I said, there’s no use, this is what you’re paid to do, to point out your problems, and I think Marion Blakey is an excellent leader, there at FAA, I think some of the problems you point out really were foisted on her and the bill, probably by OMB. They recommend spending less of AIP, they know that isn’t going to happen.

We’re going to spend AIP, it’s a Trust Fund, and it’s for a purpose, and we’re going to make sure it’s spent for the purpose it is accumulated.

So, then I said, well there’s no use of being negative about all of this, because I believe with this Committee, we’re going to do this, and we’d like to do it with your help. Maybe we need to have some meetings where we get you all to actually confess where you’re willing to do more, but I think we all agree we need to modernize the air traffic control system, do we all agree? Anybody disagree? No, OK.

So, that’s kind of the bottom line. I think we can all agree we need more money. We can argue over programmatic changes, and we will. But, we’re going to take input from all of you. We’ve done that, I’ve worked with you in the past, and I worked with all segments of industry, I met with most of you already, I know Jay has, Chairman Inouye.

But, I’m going to not ask any further questions, I’m just going to quote two of my favorite people, one of them is Russell Long, good Democrat who said, you know, “On tax policy, it’s don’t tax me, don’t tax you, tax the guy behind the tree.” Or something to that effect. And that’s what you’re all saying. You’re all saying, “No, not me, go, get over here.” Some of you like the current system, some of you don’t like it, none of you want to pay more, and that’s just not the way it’s going to happen.



So, my second favorite quote of modern time, is one from Morgan Freeman, a great Mississippian in the movie "Glory" in which he said, "We're all going to have to *ante up* and kick in." Every one of you are going to have to pay more, do more, give more. Because we gotta go for the big league this time. We've got to finance this modernization. We have got to do what's necessary to keep this industry competitive, not only so they can serve the American people, but be competitive in the world.

And, I hope that Senator Rockefeller and I can approach it from that standpoint. It's time we do something grand. And, I hope that Senator Rockefeller's name will go up in history as having done what really needs to be done. So far, I don't see it. You're all saying, "Not me." And, my attitude is, yes, all of you. You're all going to pay more. So, let's find out how we can make that happen.

That's my speech for the day, Mr. Chairman.

Senator ROCKEFELLER. That was a hell of a speech.

Senator LOTT. Thank you.

Senator ROCKEFELLER. Senator Inouye, Chairman?

**STATEMENT OF HON. DANIEL K. INOUE,  
U.S. SENATOR FROM HAWAII**

The CHAIRMAN. Is it my turn to give a speech?

[Laughter.]

Senator ROCKEFELLER. You're a Chairman, you do whatever a Chairman wants to do.

The CHAIRMAN. Well, it's no secret that I represent a small state, small in size, small in population. And I do hope that whatever decision we make here, we take into consideration the unique nature of my state. That would make me very happy.

And I was listening to Mr. May, and your remarks pleased me.

Certainly, I serve as Chairman of the Defense Appropriations Committee, and I'm constantly reminded of the word "change" and it comes about every 2 weeks. Something that is current today is obsolete in about a month.

And I think it's the same here in aviation. Now, we have aircraft that require just a small portion of a runway now. We have powerful engines that can fly you across the country in just 2 hours. And I suppose, someday, we will see such aircraft carrying passengers. We can't stop that, because every study indicates that flying is the preferred method of traveling, it is no longer the rail, or the automobile—it is aircraft.

And so we have a grave responsibility. When I became Chairman of the Commerce Committee, there was a brief moment when I said, "Wow," you know, to be called Chairman, it's ego-boosting. But when you realize the jurisdictional responsibilities of this Committee, and it's not—the nature of this Committee is not like, say, Foreign Relations, where you try to maintain the status quo. You don't want any ruffling of feathers.

This Committee—take communications, 10 years ago, we adopted the 1996 Act on Telecommunications, and it is so obsolete today, that we are scrambling to write a new one. And we know very well that 10 years from now, that one will be obsolete. You have one little instrument now that does everything.

It's the same thing with aviation. And so, I plead with you to help us come up with something. Yes, Senator Lott is—one thing I like about him, he's always optimistic, and he's usually correct. And my colleague here from West Virginia, he's rather philosophical, I think that was his training in Japan.

[Laughter.]

The CHAIRMAN. But, we've got to do something, and I hope that we do the right thing. And I don't have the answers, I have a lot of questions, here, I'd like to submit to you. And Mr. Chairman, I'd like to have my statement made part of the record.

[The prepared statement of Senator Inouye follows:]

PREPARED STATEMENT OF HON. DANIEL K. INOUE, U.S. SENATOR FROM HAWAII

As the Senate Commerce Committee considers the reauthorization of the Federal Aviation Administration (FAA), we must remain aware of the impact our policies may have on various segments of the aviation industry. The industry is a large part of the economy and increasingly the preferred method of travel for many Americans. The FAA currently estimates aviation contributes \$690 billion annually to our Gross Domestic Product (GDP). The policy decisions we make this year, both in the area of modernization and funding, will have a profound affect on the U.S. national air-space system (NAS) and our aviation industry for decades to come.

These issues are particularly important to my constituents, the people of Hawaii. We depend on aviation to connect us as a state, as well as to the rest of the country and the world. Our economy is uniquely dependent on aviation, and the ability of people to travel in a safe, efficient, and timely manner at reasonable prices. Any policies we adopt must recognize the relationship between aviation and the economy, as I cannot support any policy that will adversely affect Hawaii's airlines or their customers.

Today, we will hear from aviation stakeholders on the plan the FAA unveiled that would fundamentally change the current aviation system and how it is financed. We must ensure that the air system continues to serve the public well, and at the same time, the air traffic control system must be modernized and it must be done quickly so our social and economic growth are not stifled.

Unfortunately, the FAA has not yet made a solid case supporting their proposed changes. Specifically, the Committee needs to know how this plan affects consumers, local communities and various aviation stakeholder groups. We must determine whether the FAA plan is equitable to all parties involved. The entire country, rural and urban, will feel the impact of the FAA reauthorization that we enact. Any aviation proposal that moves through Congress must deliver the promise of improving access and providing affordable, secure and quality air service to all Americans, regardless of geographic location.

Today is another step in understanding this important issue. We must proceed in a dedicated, cooperative manner that ensures we enact the best legislation for the system and our Nation.

Senator ROCKEFELLER. All statements—and yours will be included—all statements, nobody has given a statement, they're all parts of the record.

The CHAIRMAN. Thank you very much.

Senator ROCKEFELLER. Thank you, sir.

Senator Pryor?

**STATEMENT OF HON. MARK PRYOR,  
U.S. SENATOR FROM ARKANSAS**

Senator PRYOR. Thank you.

Mr. May, let me start with you.

Arkansas has a healthy mix of commercial aviation and general aviation, and we have a lot of businesses there that use both, and a lot of people use both—can you give me a little detail about which general aviation operators would be defined as corporate op-

erators—did you use that term, corporate operators, in your testimony? Who, who was that?

Mr. MAY. Senator Pryor, I'd be happy to do that.

There are actually, if you were to look at the cost allocation study as presented by the FAA, there is a specific category called "high performance GA," if I recall correctly, and it is very specifically turbine, *i.e.*, jet aircraft that are effectively corporate.

There is a second category in that cost-allocation study that is more broadly defined as "high performance commercial," that also includes in the definition, outfits like Net Jets, for example, the fractionals. Charter operations, for instance, et cetera. So, when I talk about restoring equity or balance, those are the two principle characters, categories I'm referring to.

Senator PRYOR. OK. Did you want to add something to that?

Mr. BOLEN. The term "corporate aviation" is also an FAA-defined term. It is the use of any general aviation aircraft for a business purpose with two professional pilots. So, in the United States, we have corporate operations that include piston and turbine-powered.

I would just say that the FAA's cost allocation study defines "high performance" as "any turbine airplane" so that includes single-engine turboprops, and twin engine turboprops.

Probably the most common turbine-powered aircraft in the United States is the twin-engine turboprop, the Beech King Air.

Senator PRYOR. Right. Thank you.

Mr. Forrey, you paint a fairly dim picture in your testimony about the future for employment of air traffic controllers, and I'm concerned about that issue. And maybe you covered this in your testimony, but if you could tell the Committee where the air traffic controllers and the FAA are in their negotiations? And, you know, what the immediate future looks like for air traffic controllers?

Mr. FORREY. Well, currently we're not in negotiations with 11, 12 bargaining units at this time. In fact, 12 bargaining units are working under imposed work rules and pay, and that includes air traffic controllers, engineers, safety engineers, system engineers, nurses, several others—that is causing quite a problem with retaining very experienced and valuable employees, that they're basically retiring as soon as they're eligible, because there's no reason to stick around.

We also believe that this is discouraging new, qualified employees to get hired by the FAA. We, at one point, had seen many of our controller new hires come from the military ranks, that had experience as controllers in the military, and they are no longer coming into the FAA in the numbers they used to, because they can find better employment with the military, with better pay, or with the Department of Defense as civilian air traffic controllers with them.

So, it's having a very negative impact on the ability for us to maintain a safe system, and of course, to keep up with the efficiencies that the system demands.

You know, we're all in favor of modernization, we think that's something we need to do. But we don't want to let the discussion get away from the fact that what's going on right now, the short-term—we need the system to maintain its safety and efficiency as

it is, and we need to prepare for the future of that modernized system, so that we can ensure that system is still safe.

Senator PRYOR. So, if you were able to get your contract issues resolved, what should the FAA be doing to try to increase air traffic control retention, and to enhance their training?

Mr. FORREY. Well, I think initially what we need to do is get us back to the table under a fair negotiations process, so that we can actually show the controllers that they have an opportunity, at least, to receive better pay and better working conditions than we're getting right now. That will retain our experienced controllers, I believe, and I think that will start attracting more qualified individuals to come and enter into the occupation. So, that would be the initial thing we could do right away.

Senator PRYOR. Mr. Bolen, I just have a couple of seconds left, and I just wanted to get your thoughts on the FAA financing reform proposal—have they reached out to your organization, and to other members of the panel—have they reached out to try to get your input on reforming financing through FAA?

Mr. BOLEN. Well, I think we've been pretty clear in our comments regarding financing. We view the modernization hurdle—finding an additional 3 percent, or 8 percent above the current budget, as a little bit like finding the right diet. I mean, there are really two ways to lose weight—you exercise more, or you eat less. Maybe there are three ways, you could do a combination of those. What we see, in terms of the modernization, we either need to find savings within the current FAA budget, that does not affect essential programs, that does not affect system safety, does not affect system efficiency, or we're going to have to find additional revenues. Those revenues can come from an increase in the General Fund, or they can come from an increase in the taxes.

I think Senator Lott was right on target when he made it clear that no one should expect to get a tax break as we go through this process. We may need to pay more, and I think our goal ought to be a way to make sure that as we are looking at the funding options, we don't harm any one segment of the industry, and destroy it, as we're trying to move the system forward.

We've tried to make that clear to the FAA, and to others. We've tried to work with them on their cost allocation study. We've been, frankly, a little frustrated that they've not provided us any data, despite a year's worth of requests.

Senator PRYOR. Mr. Chairman, thank you.

Senator ROCKEFELLER. Thank you very much.

Senator Lautenberg?

**STATEMENT OF HON. FRANK R. LAUTENBERG,  
U.S. SENATOR FROM NEW JERSEY**

Senator LAUTENBERG. Thanks, Mr. Chairman, for holding this series of hearings as we continue our work to improve air travel in our country.

And, just as a preface to my questions, just a reminder, you may have discussed it, the number of people who will fly this year, and that it won't be too many years away that we'll have a billion people flying almost every year. And then we're looking at the very

light jets—they'll be carrying passengers, in my view, in the next 10 years, and we've just got to improve our capacity to handle it.

And, you know, suddenly to realize that the sky is a finite place to put things. And, it makes it very tough and before we go ahead and start spending taxpayer money, I'd like to know exactly what we're, what is being planned.

And, Mr. Forrey, you talked about the source for new controllers, and seeing that dry out. And right now, we're not replacing those that will be retiring quickly. And there are 1,000 less controllers now than we had just a few years ago. I happen to come—as contrasted to Senator Inouye—I come from a very small state, but the largest population of any of the states that are represented here today, and we've got busy, busy airports as you all know. Whether, it's not just Newark-Liberty, it's Teterboro, it's Morristown, and it's other airports throughout the state. We like them. We like the commerce and the opportunity it presents, you know, when we think of aviation, we think almost exclusively of the passenger side, but the cargo side is really a big factor in the movement of goods, and the development and the functioning of our society.

But, the user fee sounds like the last thing that we ought to be thinking about right now. To make it equitable to everybody is going to be a very tough thing to do, and I'm sure that we can come up with things that are more, that are fair, than going to a user fee.

And, I ask—what do we do as we continue to stretch the population of aircraft in the sky, and to increase it? One of the things I'd like to see us do, because it creates problems for you, and for all of us, and that is airport noise, aviation noise. And I think it's essential that we phase out some of the older, noisier Stage Two jets, and I've got a bill that does that.

Now, this legislation, I understand, will bring some hardship for some of the members of your organization, that recently upgraded them with new altimeters to comply with the vertical separations now required, 1,000 feet—so there are investments that have to be made. But, nevertheless, I think these changes must be made to accommodate what we have now, and what we're going to have over the next years. Any suggestions as to the legislation that I've proposed, that you'd recommend in order to get your support?

Mr. BOLEN. Well, Senator, speaking from the business aviation community, I think you hit directly upon the issues at hand. I think everyone in aviation has to find a way to be a good neighbor, and to be welcome parts of every community. Noise is certainly a part of that equation that has to be addressed. You have introduced a Stage Two phase-out, and you've hit on the target—there are a number of people who have invested heavily in Stage Two aircraft so that they could be part of the altitudes between 29,000 feet and 41,000 feet. I think we'd like an opportunity to sit down with you and figure out what the appropriate way to address that situation is.

Your bill, I believe, talks about a 3-year phase-out. I think that would be very onerous on some of the people who have made the investment, but I think you've touched on all of the issues that need to be addressed, and we look forward to sitting down and working with you on that.

Senator LAUTENBERG. We want to help solve the problem, but understanding that people have been encouraged to make investments in these aircraft, that we don't want it to be too heavy-handed, but we have to figure out ways to do it. The communities at large will not permit this to continue, we're getting all kinds of complaints, and appropriately so.

Mr. Chairman, I ask that my statement—you did say all of them would be included in the record, and to keep the record open for questions to be submitted in writing, and I thank you very much for doing it, and all of you.

[The prepared statement of Senator Lautenberg follows:]

PREPARED STATEMENT OF HON. FRANK R. LAUTENBERG,  
U.S. SENATOR FROM NEW JERSEY

Mr. Chairman, thank you for holding today's hearing as we continue our work to improve air travel in America. Seven hundred-sixty million people will fly this year. By 2015, that number will hit one billion. In addition, nearly five thousand very light jets will be carrying passengers over the next 10 years.

To serve those future flyers and aircraft efficiently and safely, we need new equipment—in our towers and on our runways. But before we spend taxpayer money, I want to know what Congress is being asked to buy.

Right now, the Bush Administration's proposal is too vague to evaluate. As my colleagues point out, buying the equipment that will serve as the backbone of our future aviation system is one of the most important jobs the FAA will ever have.

We also must be sure our air travel system is adequately staffed—and that means having enough air traffic controllers to get our passengers and planes safely to their destinations. Our air traffic controllers are retiring in large numbers, and the FAA is not replacing them fast enough. There are a thousand less controllers than we had a few years ago.

At Newark Liberty International Airport alone, there are seven fewer controllers than even FAA Administrator Blakey has said is needed. It takes several years to train a new controller. And with operational errors and traffic levels on the rise at Newark—and staff levels on the decline there—we need a plan from the FAA to get more controllers in our Nation's towers.

Finally, we've got to address the funding imbalance in our aviation system.

I came from the business world. And I am the first one to say that an airline passenger who is sitting in economy class on a delayed commercial flight should not be subsidizing the flight of a corporate executive who's sitting on a business jet that's been cleared for take-off.

I look forward to hearing directly from our excellent panel of witnesses on the proposals before us to modernize our system and create more balance in maintaining the Aviation Trust Fund.

Thank you Mr. Chairman.

Senator ROCKEFELLER. I thank the Senator, and that is the order.

Senator Thune?

**STATEMENT OF HON. JOHN THUNE,  
U.S. SENATOR FROM SOUTH DAKOTA**

Senator THUNE. Thank you, Mr. Chairman, thank you for holding this hearing, and I too, have a statement that I would like to have included in the record.

I would like to pose a couple of questions to our panel, and first off—the Administration's plan includes aviation fuel tax increases on general aviation users, and I've seen an estimate that said it would go from about 21 cents a gallon to 70 cents a gallon. Do you all believe that the increase in fuel taxes for general aviation will have an impact on the number of general aviation flights, or number of general aviation pilots?

Mr. BOLEN. Well, Senator, I think the general aviation community and all of the associations that represent it, and NBAA is certainly proud to be one, are being inundated with letters from pilots and operators that are very concerned about the impact of this 360 percent increase in the tax.

They're concerned about the proposed tax increase. But even more than what we are hearing on taxes, we're hearing concern about user fees and the impact that that's going to create, both financially and administratively—paying those taxes, and then trying to fund a bureaucracy that is ultimately going to have to assess and collect them.

So, I would say the Administration's proposal has certainly captured the attention of the general aviation community, they've been very vocal about their concerns about that, and I would also say that it has gone beyond the pilot and the operating community.

We are hearing from small towns, we're hearing from airport operators, we're hearing from local civic groups that are very concerned about the impact that this proposal will have on small towns and rural communities.

Senator THUNE. And one of the questions that is particularly, important in rural areas, has to do with Essential Air Service, and what is your understanding of how this change would affect the funding structure, to impact the future viability of the Essential Air Service Program? Most of the FAA charges and the funding for EAS, comes out of overflight fees, that those that fly in the United States in airspace, controlled airspace, but neither take off nor land in the United States—what's your sense of how this would impact a program that's important to a lot of the smaller communities that I represent, and others, I think, on this Committee represent as well?

Mr. BARCLAY. Senator, on behalf of airports, our view is that the provisions in the bill for small community air service are not adequate, including the EAS provision. The Administration would cut the current funding for EAS. It's about \$110 million a year, and they'd cut that down to \$50 million and they would take the money in the future from the Trust Fund rather than from the overflight fees. That's something that is a fairly new idea, and we haven't had much chance to evaluate the funding source issue. But our members don't agree that we should be cutting back on the EAS program, as envisioned by the Administration.

When you think about air transportation, you have this vibrant market-based system where 90 percent of the passengers fly between the top 70 markets. But you have 550 air carrier airports out there that need a connection into that system if you're going to have a national air transportation system. Not all good ideas, and people, live in those very large markets that are market-driven.

So, figuring out how do we properly connect rural America to that system that will operate by the market, is one of our great challenges. We shouldn't be undermining the only program we have to do that currently, while we try to figure out better ways to do it.

Senator THUNE. Let me just—

Mr. MAY. Senator, I'd like to just quickly reinforce our concerns, that are quite similar to Mr. Barclay's. That, we think rural and small communities must continue to be served, and I think this is one of the many flaws in the Administration's bill, is to not only change that funding, but cut the funding for EAS.

Senator THUNE. And I assume that none of you believe that a rancher from a remote community like Wall, South Dakota, that's flying a piston-powered general aviation aircraft, flying around South Dakota puts the same strain on our air traffic system as a Gulf Stream business jet might, flying up and down the East Coast.

And, I guess my question is, how does the current cost recovery system differentiate between those two types of flights, how would the FAA proposal differentiate the flights, and how would you make sure that each of the system users—the South Dakota rancher, and the East Coast businessman pay their fair share, and nothing more? That's a complicated series of questions, but—

Mr. BOLEN. Senator, let me begin with that—currently both the rancher and the jet flying up and down the East Coast are currently paying through a fuel tax. The piston-powered fuel tax is at a lower rate than the jet fuel tax. So, we have a tax on aviation gasoline, which is used in piston-powered airplanes, at 19.5 cents a gallon, and we have a tax on jet fuel at 21.9 cents. So, we have separated the tax levels between piston and turbine.

Using that fuel tax we are able to link system usage to costs paid. So, for both of those airplanes, the more they fly, the more they pay. Obviously that differential, or the progressivity, of the fuel tax is enhanced by the fact that there are two different fuel rates. But, I would also tell you that a turboprop going on, say, an hour-long flight, would pay something on the order of 500 percent less than that turbo jet, simply because the turbo jets are heavier, more sophisticated, so they burn more fuel.

One of the reasons that the general aviation community has been such a strong advocate of continuing the fuel tax, is that we see it as a tremendous proxy for use of the system, and an enormously efficient way to pay for use. It captures aircraft weight, it captures distance flown, it captures the number of takeoffs, it provides a penalty if you fly into congested airspace because you're held at less-than-optimal altitudes, and often put in holding patterns—so we think it is the perfect way for general aviation to pay. And we look forward to working with this Committee to discuss the appropriate levels of that.

Mr. MAY. Senator, a couple of additional points, if I may, I don't disagree with Mr. Bolen's description of the current environment.

Going forward, we feel very strongly and, I think, as does the FAA, that you need to tie system income to use. There needs to be a cost-based allocation. In the Administration proposal, the fundamentals of that, the principles of that are incorporated. There are a lot of issues that need to be addressed. I don't think that rancher flying a piston-powered plane should be charged in the same way that the corporate aircraft is driven, or if you don't like the term corporate-driven, it's a jet aircraft using the same airspace, flying Derek Jeter around, or anyone else. And, I think the FAA has shown quite clearly in its cost allocation exercise that you



can distinguish between that class of folks that are in the aviation industry flying the piston-driven—especially those that are flying VFR flight rules—from those that are corporately owned and driven, that are flying at significant altitude, imposing on the system, if you will. As Mr. Forrey will probably tell you, I mean, it's fairly easy to tell who is being actively controlled in the system, and who is not.

So, I think, going forward, we need to find a way, this Committee needs to find a way to distinguish between those different classes of users in the system, and to tie their contributions to the system to the use that they place. And I think that will be one of the fundamental challenges that we have, going forward.

Mr. FORREY. Senator, as a system provider, I think the major concern for us is that there's enough money and funding to staff the system, to maintain the system, and to modernize the system.

The question and problem with this Administration's proposal at this point in time is that it calls for user fees that don't provide the funding that the current system does right now, and so I don't know how we're going to modernize the system staff and maintain it, when you're talking about less funds.

I don't know that it accurately excises the fees on the users in the proper manner, you know, it doesn't really point to that very clearly in the proposals, second.

And third, I think that with—we're certainly open. I mean, we're concerned about making sure that we have the right equipment, the right staffing and the system is safe. That's what we're concerned about, and I don't know that it's necessarily in this proposal, when you talk about privatizing and user fees, that's what it looks like to us. So, that's our big, major concern with the Administration's proposal right now.

Senator THUNE. I thank the panel.

Mr. Chairman, my time is well expired. Thank you.

[The prepared statement of Senator Thune follows:]

PREPARED STATEMENT OF HON. JOHN THUNE, U.S. SENATOR FROM SOUTH DAKOTA

Chairman Rockefeller, Ranking Member Lott—Thank you for you holding this hearing today. Thank you to the witnesses for providing us your reaction to the FAA Reauthorization proposal and the reaction of the aviation system users that your organizations represent.

Both general aviation and the airline industry are important to a rural state like mine. We have over 75,000 square miles of breathtaking landscape with, as Senator Burns used to say, “a lot of dirt between light bulbs.” Getting from point to point quickly often means that business owners, farmers, and ranchers get their pilot's license.

Tourism is one of the largest industries in the western part of South Dakota. That means we obviously need a strong airline industry to get those visitors in and out of the Black Hills and other destinations in our state.

Like each of the Senators on this committee we have a vested interest in both general aviation and commercial aviation. We need to make sure any changes we make to our system keep both of these segments strong.

Thank you, again, for holding this hearing. I look forward to working with this committee along with the stakeholders represented here to produce a bill that strengthens our Nation's air transportation system.

Senator ROCKEFELLER. No, thank you, Senator Thune.

Gentlemen, first of all, we need to have more of these hearings. Which is a vast inconvenience to all of you, and I appreciate that, but they've got to happen.

Second, I want to say that, I think there's no way to put into words the way the American public, the American political process has underestimated, failed to understand, the revolution in technology, and maybe most importantly, the revolution in size of what the aviation industry has become. I can remember, not that long ago, in West Virginia, about 16 percent of the people were flying. It's a lot more than that now. You talk about a billion people, I agree.

That fact hasn't entered into the psychology of either the body politic, or the American body politic to cause movement. And, I just give a simple comparison—we've had a series of tragic events come to light at Walter Reed Hospital. Now, veterans have been around for a long time, and veterans have had difficulties, PTSD, and all kinds of things for a long, long time, going back to World War I and before, they just aren't—we don't have any people left from before.

That, the newspaper writes some stories, and all of sudden the Nation is totally gripped, and they're gripped in a way that they should be. Because what they want to do is to reform, in a very complicated way, what is, in fact, the Nation's best healthcare system—particularly in terms of recordkeeping efficiency and the rest of it—which is the V.A. system, with vast inattention on the part of the military and the V.A., in fact, to our veterans.

Now, it's extraordinary to me to compare those two. Within 2 weeks, 25 Congressional hearings. Not even waiting to get rooms in Congress, but going out to Walter Reed. And here is something called the aviation system, which is just going like this in every single way. We're not keeping up with it. No Democratic Administration that I can think of, and no Republican Administration that I can think of has even begun to keep up with it. Because it does not engage the American psyche in an emotional or "I am at risk"—it did, obviously, after 9/11, but recovered, "I am at risk," "This affects me directly and absolutely, therefore I'm going to be part of this solution, no matter what I have to do."

That takes me to the floor process. I've talked with people who've said, "All right, what you need to do, Senator Rockefeller, is to figure out what has to happen." And in modernization, obviously Senator Lott and the two Committee Chairmen, "what has to happen, and what we have to do about it, and how it's going to be allocated."

The problem with that, is twofold. One, I can't go to the floor, to either Majority Leader Harry Reed, or Minority Leader Mitch McConnell, and say, "I need a week at the end of July, so that we can debate out the various issues," I won't get that time. I won't get that time, even though we're expiring. Because their question is going to be, "Is there a consensus? Is there the beginning of a consensus? Am I committing myself to a two and a half-week food fight?" And that factor of not being able to get time is, in fact, ought to scare all of us a lot. I may be wrong in my judgment, but that's my reading of it.

Because, when you've got Iraq Resolutions, and you've got all kinds of things going on, in a basically, chaotic situation, things fitting in at the time that they ought to be fitted in for discussion, vote and resolution doesn't turn out that way. And you all know the Senate.

So, what I prize, enormously, is what I started out by saying. That there is, in fact, Senator Lott said he was disappointed, then he said he was optimistic. There was a lot of disagreement, but there was also, frankly, quite a lot of agreement on what I heard.

I want to take the positive side, and lock it down with you, and others. And then we'll isolate what is difficult, and then we'll have our Quaker meeting. And, I think if we do that in a timely fashion, we'll get floor time. I think that if I were to ask any of you, what do you think that a modern air traffic control system ought to be, I don't think I'd get a whole lot of argument, would I?

Mr. ALTERMAN. No.

Senator ROCKEFELLER. I think you'd all agree on it. Well, that's called "the big item." Not the only item, but the big item.

How to pay for it, is a nasty item. But, it's not an insoluble item. In no way is it an insoluble item, and that comes through in some of the testimony which you all gave. Yes, you're going to hold onto what you got. Yes, there's going to be the 94 percent, and we only get 70 percent return—that's gotta be. That's the way the system works, it has to.

But, behind that, I thought that I read—and Senator Lott said this to me, just before he left. That he thought he read in your body language a desire for this to work out. And that, in fact, if we get a set of principles that we can agree on which are fundamental to the advancement of this massive 9 million employee industry, with—you know, as I often say, I love the interstate system, but I can't convince anybody to bring any kind of a business to West Virginia on an interstate highway, it's got to be through the air, commercial or general aviation. It's the only way.

And so, I just want to say that I conclude this hearing with, in fact, a very good feeling. You're all people of good faith. You more than anybody, want this to work, because it's your life. You know, it's like, you think of people that have headed up various airlines, various associations, et cetera, I mean they're—cargo, it's what you do every day, all day.

And so I want to be part of a solution on this, and I want to do it with you, and with others. And, I think that is entirely possible. I'm fully engaged in this. I have other things I have to do, sure, we all do. But this has to happen. And not just because of the timing of it, but because of the overwhelming magnitude of its force and power to do good, or if it doesn't work, to do damage, to America as a Nation.

So, with those, somewhat less than Churchillian words, I thank you, sincerely, and I very much look forward to continuing this.

Mr. ALTERMAN. Thank you.

Mr. FORREY. Thank you.

Mr. BARCLAY. Thank you.

Mr. MAY. Thank you.

[Whereupon, at 11:15 a.m., the hearing was adjourned.]



## A P P E N D I X

PREPARED STATEMENT OF HON. TED STEVENS, U.S. SENATOR FROM ALASKA

Good morning, I'd like to thank Senator Rockefeller and Senator Lott for holding this hearing today.

I am pleased to see we are moving ahead on this bill. I encourage the Committee to act quickly and work steadily toward finishing a committee product. There is limited time before the current authorization expires, and it is my preference to see this bill finished on time and in a bipartisan manner.

I also have a personal interest in a FAA bill moving forward given that my state of Alaska depends on aviation more than any other state. Alaska's infrastructure and safety needs are significant. Over 70 percent of our communities can be reached only by air. Alaska alone represents 20 percent of our national airspace, and is home to over 20,000 pilots, nearly 10,000 registered aircraft, and over 250 airports. In addition, we have Anchorage International Airport, one of the top cargo airports in the world. For these reasons, and many others, I am greatly interested in the future of our aviation system.

The Committee needs to look ahead and provide a solution to a system that will have to accommodate growth in airline passengers and cargo, the innovation of unmanned aerial systems, and increased business jet traffic. Congress is going to have to make some tough decisions in order to meet projected increases in air traffic volumes, enhancement of the system's safety infrastructure, and increase the efficiency of the air traffic control system.

We can no longer afford to simply maintain the status quo. While I am not convinced the entire system needs revamping, I do believe we need to provide a mechanism by which the air traffic control system can be modernized in a quick and efficient manner. The economic importance and safety improvements associated with a modern and efficient air transportation system are vast.

It is important we concentrate our efforts on moving a bill forward, and in doing so, I will be focused on improving rural air service, cargo initiatives, and air traffic control modernization. I look forward to working with my colleagues on their priorities.

Thank you, I look forward to the testimony.

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PREPARED STATEMENT OF BILL CONNORS, EXECUTIVE DIRECTOR AND COO,  
NATIONAL BUSINESS TRAVEL ASSOCIATION

The National Business Travel Association (NBTA) applauds the Administration's efforts to enhance funding for the Federal Aviation Administration as part of the FAA reauthorization bill. Additionally, NBTA calls on Congress to move quickly on this critical issue so that work can begin on building a much-needed next generation air traffic control system.

Business travelers count on an effective and efficient aviation system. Taking steps now to modernize and implement new technology is absolutely critical to smooth aviation operations in the years ahead. The time for Congress to act is now, particularly considering the strong growth in air travel that we all project over the coming years. Without needed investment, this already strained infrastructure will become unbearably congested.

The new funding model proposed by the Administration is a thoughtful approach that merits thorough Congressional consideration. Shifting the economic burden for paying for aviation infrastructure from passengers to airplanes, while dramatically different from the current approach, may well be a better approach. Whatever formula is used to fund the aviation system of the future, we urge that formula to be fair and equitable and reflect the interests of consumers and the broad traveling public.

AIR TRAVELERS ASSOCIATION  
*Potomac, MD, March 7, 2007*

Senator JOHN D. ROCKEFELLER IV,  
 Chairman of the Aviation Subcommittee,  
 Committee on Commerce, Science, and Transportation,  
 Washington, DC.

RE: HEARINGS ON THE ADMINISTRATION'S PROPOSAL TO REAUTHORIZE THE FEDERAL  
 AVIATION ADMINISTRATION

Dear Senator Rockefeller:

I am President of the Air Travelers Association which advocates for airline passengers on airline safety, security, savings, and service.

I support the Administration's call for a cost-based, user-supported, air traffic management system. I believe that aviation taxes and fees must be adjusted so that airline passengers are no longer forced to subsidize the operation of corporate jets. Corporate executives, entertainers, real estate moguls, and other fat cats have been getting a free ride from airlines passengers for over 25 years and this must stop!

According to the FAA's most recent analysis, airlines and their passengers use about 70 percent of the air traffic control costs yet contribute almost 95 percent of the revenue into the Airport and Airways Trust Fund that funds the system. Who benefits from this inequity . . . the users of Learjets, Gulfstream jets, Falcon jets, and the like. If they can afford these planes, believe me, they can afford the fair and equitable taxes and fees that go with using them.

As airline passengers, we have been taxed, charged, and "fee'd" to excess. We pay the passenger ticket tax, passenger facility charges, flight segment fees, international flight taxes, and airline security fees, all of which can add up to more than 20 percent to 50 percent of an airline ticket. Without aviation tax reform this could get even higher and threaten the continued availability of low airfares.

The "air-limo" crowd says that the airlines are just trying to shift the aviation tax burden to corporate jets. That's right! Aviation taxes should properly be shifted from airline passengers who have been overpaying for years to the corporate jet crowd that has been underpaying for years.

All that passengers are asking is that corporate jets pay their fair and equitable share of what they use of the aviation system . . . no more, no less. Airline passengers have been footing the bill for corporate jets for too long, and it must stop.

Respectfully submitted

DAVID S. STEMLER,  
*President.*

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PREPARED STATEMENT OF GREGORY PRINCIPATO, PRESIDENT,  
 AIRPORTS COUNCIL INTERNATIONAL—NORTH AMERICA

Mr. Chairman, on behalf of Airports Council International—North America (ACI-NA) and our United States airport members and associate member companies, I want to thank you for the opportunity to submit this statement for the record. The mission of Airports Council International—North America (ACI-NA) is to advocate policies and provide services that strengthen the ability of air carrier airports to serve their passengers, customers and communities. ACI-NA is the largest airport-based association, representing local, regional and state governing bodies that own and operate commercial airports in the United States and Canada. ACI-NA member airports enplane more than 95 percent of the domestic and virtually all the international airline passenger and cargo traffic in North America. Nearly 400 aviation-related businesses are also members of ACI-NA.

This year will be a critical year for aviation in the United States. On September 30 of this year, both the authorization for the Federal Aviation Administration's (FAA) programs and the taxes and fees that support those programs will expire. This provides an historic opportunity to make needed revisions to the way our national air transportation system is funded, developed, and operated. Many in the industry are calling this the most important reauthorization in decades, and we concur with this view.

Air transportation has recovered from the tragic events of September 11, 2001 with passenger traffic and cargo volumes now surpassing pre-9/11 levels. This places many airports at or near capacity. The FAA predicts that by 2017, only 10 years away, the United States air transportation system will have to expand to accommo-

date 1.07 billion passengers annually.<sup>1</sup> This is a 45 percent increase over today's passenger levels. Cargo volume is also expected to grow at 5.2 percent annually, resulting in 71.7 billion Revenue Ton Miles by 2017,<sup>2</sup> which represents a dramatic 83 percent increase over today's volume.

Airports need to respond to the inevitable capacity strains associated with these higher traffic levels by building facilities that provide safe, secure, comfortable and environmentally compliant facilities for air travelers. With runway and other major capacity projects often taking upwards of 10 years to complete, it is clear that we need to take action now to be able to accommodate increasing demand.

An assessment of airport capital needs is being completed by ACI-NA based on a 2006/2007 survey of U.S. airport operators. The preliminary results of this survey indicate that total capital development costs for all airports are approximately \$17.5 billion per year from 2007 through 2011, in current year dollars. This represents a 19.5 percent increase in annual capital needs from a similar survey conducted in 2005 for the period 2005–2009.

Last month, FAA released the *Next Generation Air Transportation System Financing Act of 2007*, proposing significant and challenging concepts to change the funding and investment policies of the airport and airways system and would affect our member airports throughout the United States. While the proposal provides an innovative framework to begin discussions, more work is necessary to ensure that funding for airports is properly conceived so that it meets growing demands for passenger and cargo service. ACI-NA and the airport community firmly believe that the five provisions below are critical for the future of U.S. airports and, therefore, must be included in any final FAA reauthorization bill enacted by Congress.

- The FAA and its programs should be funded by a stable and predictable revenue stream that provides sufficient resources for capital investments in the air traffic system. Additionally, fees and/or taxes targeted to capital investment accounts should be protected for their intended investment use.
- The FAA should be bolstered by a strong, guaranteed General Fund contribution.
- The Passenger Facility Charge (PFC) ceiling must be increased to \$7.50.
- The PFC application process must be streamlined and eligibility rules aligned with airport needs.
- The Airport Improvement Program (AIP) needs to be simplified and funded at or above today's level.

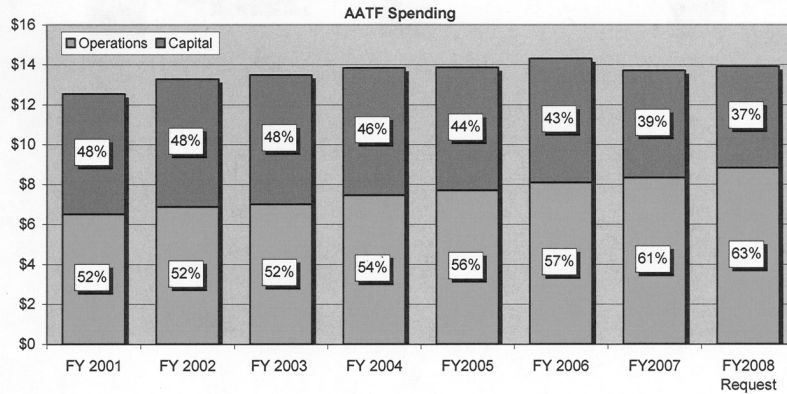
#### *Stable, Predictable Funding Stream*

FAA proposed changes to the current system of taxes and fees to a structure largely based on user fees that will require thorough explanation and justification. While ACI-NA has not taken a position on whether to retain the current system or to implement a user fee based system, we believe this discussion is appropriate as we must ensure that adequate funding is in place to pay for its capital programs, including AIP and an overdue program for air traffic modernization through the Facilities and Equipment, or F&E, budget account. As can be seen in the Figure 1, in recent years the strains on the Airport and Airways Trust Fund (AATF) combined with increases in FAA operational costs have put downward pressure on both AIP and the F&E capital accounts.

<sup>1</sup> Federal Aviation Administration, "FAA Aerospace Forecast Fiscal Years 2006–2017" <[http://www.faa.gov/data\\_statistics/aviation/aerospace\\_forecasts/2006-2017/media/FAA%20Aerospace%20Forecasts%202006-17.pdf](http://www.faa.gov/data_statistics/aviation/aerospace_forecasts/2006-2017/media/FAA%20Aerospace%20Forecasts%202006-17.pdf)>.

<sup>2</sup> *Ibid.*

Figure 1



The Administration’s reauthorization proposal also includes a complete overhaul of the FAA’s funding structure as follows:

- By FY 2009, most of the current excise taxes on passengers and cargo would be eliminated, in favor of a system largely based on new user fees.
- Along with this change, the proposal also includes a restructuring of how the FAA classifies its obligations or accounts.
- Rather than having a single large, multipurpose AATF, the FAA would have separate accounts for the Air Traffic Organization, Safety and Operations, and a smaller AATF for traditional AIP and RE&D accounts.

The table below describes the current account structure, the new account structure, and the revenue sources that would support each after transition is completed:

Old account	New account	Revenue source
Operations	Air Traffic Organization (ATO)	User Fees, Gasoline Taxes and General Fund.
Facilities & Equipment	Air Traffic Organization (ATO)	User Fees, Gasoline Taxes and General Fund.
N/A	Safety and Operations	Inspection, Registration and Certification Fees, Gasoline Taxes and General Fund.
AIP	Revised AATF	International Arrival and Departure Taxes, Gasoline Taxes and General Fund.
Research, Engineering & Development (RE&D)	Revised AATF	International Arrival and Departure Taxes, Gasoline Taxes and General Fund.

User fees collected from commercial airlines would be deposited into the new ATO account which would pay for most of the operating and capital costs of the ATC system. However, operating and capital expenditures appear to be interchangeable uses of the accounts and this may raise concerns, given that the growth of Operations has already been crowding-out funding for the capital equipment required for modernization.

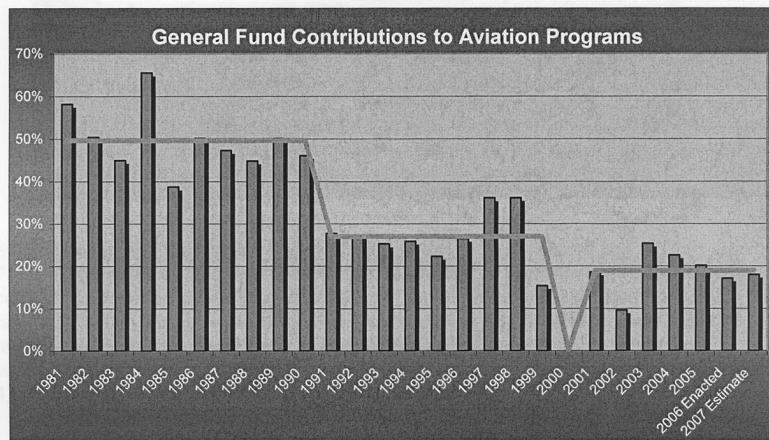
A 70.0 cents/gallon fuel tax to be paid by general aviation, 13.6 cents/gallon commercial fuel tax, a variable General Fund contribution and \$6.39 per person international arrival/departure tax are proposed as the revenue sources for the revised AATF, which would fund AIP and a host of other FAA needs. ACI-NA is very concerned about the ability of this system to fund a robust AIP, as well as FAA’s other programs proposed to be financed from this account. We are currently evaluating the financial viability of this proposal using an AATF simulation and forecasting model ACI-NA has developed in preparation for the reauthorization debate.



*Strong, Guaranteed General Fund Contribution*

Over the past 25 years, the General Fund contribution to the FAA has been unpredictable year-to-year, and steadily declining in the long term (Figure 2). ACI-NA is concerned that the proposed General Fund contribution contained in the Administration's proposal does not adequately reflect these benefits to the general public and should be significantly increased.

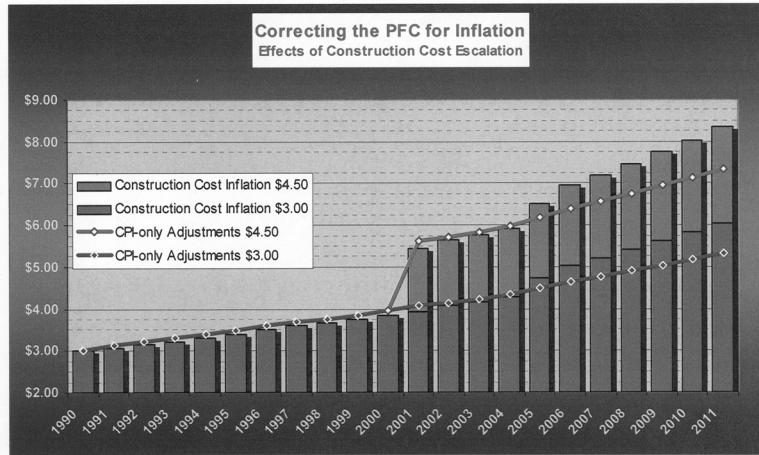
Figure 2

*PFC Ceiling Must Be Raised to \$7.50*

The current PFC ceiling of \$4.50 has not been raised since 2000. In that time, construction cost inflation has stripped the PFC of much of its value. While the Administration recommends that the PFC ceiling be adjusted to \$6.00, that level is not sufficient to offset the combined effects of (1) the deflated value of the current PFC, (2) the proposed elimination of AIP passenger entitlements at large-hub and medium-hub airports, and (3) increased capital needs faced by airports.

Analysis conducted by ACI-NA shows that the \$4.50 PFC is worth only \$2.86 in 2007 when the effects of construction cost inflation are applied. In order to recapture the lost value of the PFC, the ceiling must be raised to \$7.50 and indexed to prevent future erosion. Figure 3 shows the effects of construction cost inflation when applied to the PFC.

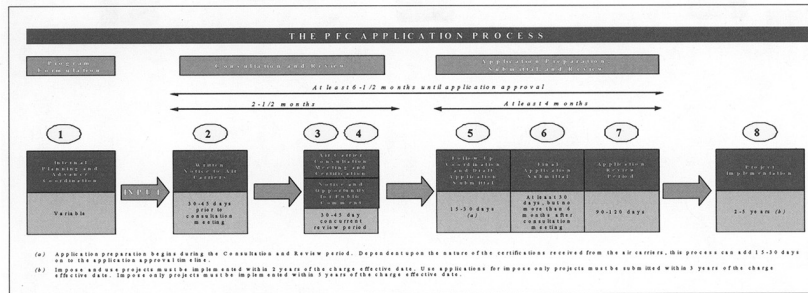
Figure 3



*Streamline the PFC Process and Clarify Eligibility Rules*

PFCs were enacted by Congress in 1990 and over the last 16 years, they have become a cornerstone of airport capital programs. Many of the administrative procedures governing the original program are now obsolete and burdensome given that the PFC program has fully matured and is an essential element of airport financial planning. The current application process takes at least 6 months and countless FAA and airport staff hours to complete (Figure 4).

Figure 4



Similar to ACI-NA’s “Impose, Report and Review” recommendation for streamlining the PFC application process, the Administration proposes to allow airports to notify carriers and their local community of initiatives under their PFC program and then begin collecting a PFC. An annual report on both ongoing and new projects would be required, laying out costs, intended uses, and estimated PFC collections. This proposed system would also ensure that FAA could stop a collection if such action is warranted under Federal regulations.

PFC eligibility rules must also be clarified and simplified. Today’s eligibility rules leave much to the discretion of the various FAA offices leading to a patchwork set of rules leading to differential treatment in FAA’s regions. This has resulted in added costs and confusion as to how PFC eligibility is determined. A project or project element in one region may be deemed eligible, while a similar project in a neighboring region may be deemed ineligible. Such a discretionary system does not serve the traveling public.

The Administration proposes to treat PFC revenues more like airport capital, expanding eligibility considerably and simplifying what can be a lengthy and tedious process to determine eligible from non-eligible uses (especially in a passenger terminal) and ACI-NA supports these proposed changes. To clarify the new process,

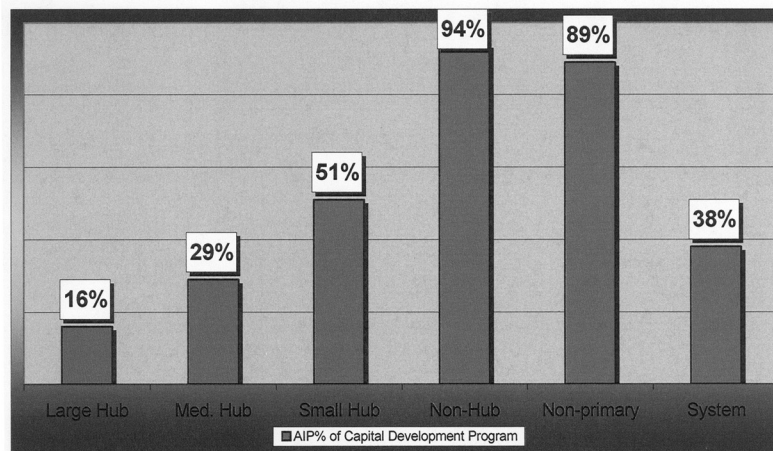
the FAA is proposing a reasonable system that if the project is an eligible use of airport capital and it is not anti-competitive, then the project would be eligible to be funded by PFCs. This promotes local decision-making and allows airports to meet local needs. The new eligibility rules would also eliminate the different eligibility criteria for PFC levels above \$3.00, which is widely supported by the airport community.

#### *Strengthen and Increase AIP*

A balanced capital investment strategy for a system of airports requires a strong AIP program. Therefore, the Administration's recommended funding levels for the next 3 years of \$2.75B (FY 2008), \$2.90B (FY 2009) and \$3.05B (FY 2010) are not adequate. AIP must be reauthorized at current or higher levels to ensure that adequate funding is available, especially for smaller airports that depend on this program to fund important infrastructure improvements.

ACI-NA is pleased that the proposed new AIP structure will provide a more direct approach to providing additional funding to the smaller airports that need it most (Figure 5), with more predictability of funding. The new structure also is designed to ensure that as AIP funding grows, more funds would be available in the discretionary fund for FAA's Letter of Intent program, which ACI-NA believes should grow significantly, as well as for other important projects that expand capacity and improve safety in the national airport system.

Figure 5



FAA proposes to eliminate the Small Airport Fund, which has been funded by PFC "turnbacks" from large and medium hubs, replacing it with a Small Airport Discretionary Fund. This Fund, providing a 20 percent small airport discretionary fund set-aside for all airports below the level of medium-hub, would be smaller than the old Small Airport Fund under the funding levels proposed in the Administration's bill. However, the approach would provide a more predictable funding source since the only variable affecting the funding amount is the size of the annual AIP appropriation, rather than the choices of larger airports and their PFC programs. Small airports would also still be able to compete for the project funding in the other, now increased, discretionary fund.

While large and medium airports are willing to forego AIP entitlements in Fiscal Year 2010 if an increased PFC ceiling is approved, there is concern that a small increase in passenger traffic—as little as one flight a day—would result in a small hub airport being re-designated as a medium hub and losing AIP entitlements. Therefore, Congress should amend this provision to require that the designation of medium hub airport be effective for 3 years prior to the airport being required to forego AIP entitlements.

FAA also proposes to repeal the "\$3.2 billion trigger," the program currently in place to provide airports below the level of medium hubs a fixed, formula-based entitlement each year. ACI-NA supports this change as primary airports would no longer annually face the risk of a 50 percent reduction in entitlements and non-primary airports would not lose all entitlements should the appropriated level of AIP

fall below \$3.2 billion in any particular year. This provides more predictability when airports are planning their capital programs.

ACI-NA strongly supports the proposed increase in the minimum amount in the Discretionary Fund. Under the Administration proposal, that amount would be raised to \$520 million. The previous minimum was \$148 million plus an amount calculated based on Letter of Intent (LOI) payments prior to 1996. ACI-NA believes that the proposed elimination of passenger entitlement funds at large-hub and medium-hub airports should be balanced with a corresponding increase in discretionary funds thereby allowing these funds to facilitate those projects that make the greatest contribution to improving system capacity for the benefit of all stakeholders.

In conclusion, airport capital needs are growing and we must act now to meet these demands. Increased airport capacity is critical for a safe, efficient and successful aviation system. Congress in reauthorizing FAA has an excellent opportunity to improve and modernize the public-private system for funding airport infrastructure. In order for that to be a success, the FAA reauthorization bill must include the five critical elements discussed above.

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RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. JOHN THUNE TO  
STEPHEN A. ALTERMAN

*Question.* Can you give the Committee your thoughts on the new governance board in the FAA proposal? Do you think the board would represent your interests well? Do you think that the board would take away too much authority from Congress?

*Answer.* Assuming that a revamped Advisory Board is deemed necessary under a reauthorized Federal Aviation Administration, the Cargo Airline Association submits that the Air Transportation System Advisory Board proposed in section 401 of the FAA's *Next Generation Air Transportation System Financing Reform Act of 2007* does not adequately represent the interests of individual members of the aviation community.

In support of this position, the following comments are offered:

- Board Membership—The proposed Board would consist of 13 members drawn from a diverse group of interests. From a purely “cargo airline” perspective, having one seat on a 13-member Board provides little opportunity for influence. In addition, there would be three members with a “fiduciary responsibility to represent the public interest.” While fairness to all segments of the aviation community probably dictates this broad membership, it appears unlikely that any real consensus could possibly be forthcoming from this sizable and diverse group.
- In addition, the proposed Board has no real power to influence decisions and is purely advisory, leaving the Administrator with complete power to set fees at will, with virtually no oversight from Congress.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. DANIEL K. INOUE TO  
PATRICK FORREY

*Question 1.* There has been concern raised over the level of controllers at the FAA. Do you believe the FAA has enough controllers right now?

*Answer.* Mr. Chairman, no we do not have enough controllers in the system right now. We are down over a thousand controllers since 1998. At the conclusion of the 1998 contract, the FAA and NATCA agreed on 15,606 air traffic controllers. Today we have onboard 14,500 of which only 11,450 are certified professional controllers.

*Question 1a.* Has the FAA acted quickly enough to address the pending retirement wave?

*Answer.* No, the FAA is not hiring enough to address the current controller retirement wave. Here are just a couple of examples. Dallas-Fort Worth TRACON has 68 fully certified controllers on staff, along with 14 in training, including three with military controller experience. Combined with two controllers currently out on extended medical leave, there are 84 on staff. Controllers believe there should be 117, the number the FAA agreed was needed to safely and efficiently run the facility before the agency arbitrarily replaced in March with a new “range” of 83 to 101 that was not backed up by any study or proof that it met traffic demands.

At Atlanta Terminal Radar Approach Control (TRACON) the facility is so short-staffed that the FAA management officials were forced to spend approximately \$865,000 in overtime from January to March of this year to cover for staffing short-

ages, nearly seven times the amount of overtime spent in the same three-month period in 2006.

*Question 1b.* Is the FAA now hiring enough controllers to meet its future needs?

Answer. The FAA employs more than 14,500 air traffic controllers. They safely guide about 50,000 aircraft through the system each day. These employees provide air navigation services to aircraft in the U.S. domestic airspace, and in the 24.6 million square miles of international oceanic airspace delegated to the U.S. by the International Civil Aviation Organization.

In FY 2006, there were 583 controller retirements, which were 116 more than the FAA anticipated. The FAA has underestimated retirements by 25 percent over the last 3 years.

Despite numerous public statements that the FAA is having no trouble attracting qualified candidates to enter the air traffic control profession, the FAA is now offering \$20,000 "recruitment incentive" for applicants that have previous air traffic control experience, indicating the agency's apparent inability to overcome a staffing shortage by simply hiring candidates off the street using MySpace and Facebook solicitations.

*Question 1c.* What have the controller levels been over the past 10 years? Relative to workload? Relative to safety levels?

Answer. During FY00 bargaining unit employees (air traffic controllers) numbered 14,904. The number rose to 15,386 by FY 2003. During the next 4 years the number of controllers dropped to 14,500. During that time we have had the safest system without a major accident. The National Transportation Safety Board in their recent report stated that controller fatigue is becoming a serious issue. Current FAA regulations and policies place limits on controller work schedules, but they do not adequately consider the potential impact of work scheduling on fatigue and performance.

*Question 2.* During the year, we have heard a number of concerns regarding the Administration's implementation of the new work and pay rules. What are the main concerns/issues that are raised regarding the new pay/work rules?

Answer. What has happened on pay is that the FAA has created a two tier pay system. Current controllers will not receive another pay raise and the new hires will be paid 30 percent less than the current workforce. The current workforce by the new pay rules will not be adding money to their base pay thus not adding to their Federal retirement. That is why we have seen a 25 percent increase in air traffic controller retirement according to Administrator Blakey.

*Question 2a.* Have there been efforts by the FAA and/or NATCA to resolve these issues short of reopening contract negotiations?

Answer. When Pat Forrey became President of the National Air Traffic Controllers Association (NATCA) he went to the Administrator to see if both sides could resume contract negotiations. The Administrator, after a number of meetings, both by phone and in person, did not want to open the imposed work and pay rules. This is after the union offered \$1.6 billion in cost saving. Chairman Costello and Chairman Oberstar worked for 3 weeks to bring both sides to the table. They were not successful. The FAA did not want to move away for lowering the pay bands. That was their bottom line.

Since the FAA is unwilling to go back to the table we cannot address the outstanding issues such as the dress code, leave scheduling and the other 21 articles NATCA and the FAA did not come to an agreement on.

*Question 3.* Obviously air traffic controllers are the key component to our air traffic management system, and a continued record of safety excellence. Modernization of the air traffic management has progressed, to what extent have air traffic controllers been involved?

Answer. In the early 1990s during the development of the standard terminal automation replacement system (STARS) the FAA severely limited controller input, which resulted in significant cost overruns and schedule delays. Because of what happened to the STARS program. The Clinton Administration under FAA Administrator Jane Garvey brought in 35 air traffic controllers to aid the FAA on the deployment of new technology. This was a very successful program.

Administrator Blakey disbanded this collaboration effort and sent all of the air traffic controller's home.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. DANIEL K. INOUE TO  
CHARLES "CHIP" M. BARCLAY, A.A.E.

*Question 1.* Funding for the AIP program is proposed to be cut significantly. However the FAA states this will be offset by PFC increases. How is this likely to affect capital projects at airports?

Answer. The Administration is proposing \$2.75 billion for AIP in FY08—approximately \$1 billion less than the amount Congress authorized in FY07 and \$765 million less than the appropriated level. The Administration argues that raising the cap to \$6.00 would generate approximately \$1.2 billion and offset the proposed cut in AIP funding.

In other words, the Administration's proposal to raise the cap on PFCs would merely generate enough money to offset the proposed AIP cut. When it comes to airport capital development projects, maintaining the status quo is simply not enough. As you know, passenger enplanements are expected to increase from about 740 million to 1 billion by 2015, and flight delays are back to pre-9/11 levels. With increasing passenger levels, increasing delays and increasing constructing costs, it is critical that Congress increase AIP funding *and* raise the cap on PFCs.

We are urging Congress to reject the Administration's proposal to drastically cut AIP funding and roll back the progress made in AIR-21 and *Vision 100*. Instead, we recommend that Congress increase AIP funding to at least \$3.8 billion for AIP in FY08, \$4 billion in FY09, \$4.1 billion in FY10, and \$4.3 billion in FY11. This would be enough to allow AIP funding to keep up with increasing construction costs. We also recommend that Congress raise the PFC cap to \$7.50 and index it for increasing construction costs. Both actions would help provide airports with the resources they need to meet increasing demand and help reduce delays.

*Question 2.* The FAA's reauthorization proposal includes a provision to expand the types of projects eligible for AIP/PFC funding—specifically navigational aids (NavAids) that have traditionally been covered by other funding sources. What's your position on expanding AIP/PFC eligibility to include NavAids?

Answer. We are concerned about the Administration's proposal to have airports take over navigational aid systems (NavAids). The Administration's proposal would authorize "a new pilot program permitting the FAA to transfer to up to 10 medium or large hub airports terminal area navigational equipment, such as instrument landing systems and approach lighting systems." Airports that participate in the program would be able to charge a \$7.00 PFC. In return, airports would agree to "operate and maintain all of the covered equipment at the airport in accordance with FAA standards, allow periodic inspections, and replace the equipment when needed."

Many airports are concerned that the Administration's proposal is simply an effort to shift their operating costs onto airports at a time when airports need more money for their own capital development needs. Even those airports that may be willing to participate in such a pilot program in exchange for being able to collect a higher PFC would much prefer that Congress raise the cap to \$7.50 without the NavAid requirement instead. Doing so would help airports prepare for increasing demand and to help offset increasing construction costs.

Separately, we oppose the Administration's proposal to allow airports and other sponsors to use AIP funding to acquire Automatic Dependent Surveillance-Broadcast (ADS-B) equipment. We support the ADS-B program. However, the FAA should use money from the Facilities and Equipment account to pay for ADS-B—not AIP—especially at time when the Administration is proposing to cut AIP funding by almost \$1 billion.

*Question 3.* The Administration proposes to increase the PFC limits. How much additional funding is this likely to bring to airports?

*Question 3a.* Which airports are likely to benefit from this?

*Question 3b.* If AIP is cut, but PFCs increased, are there guarantees to ensure the smaller amount of AIP funding is directed to smaller airports?

Answer to Questions 3–3b. According to the FAA, raising the PFC cap from \$4.50 to \$6.00 would generate approximately \$1.2 billion. Although this is a welcome step in the right direction, AAAE recommends that Congress increase the cap to \$7.50 to help commercial service airports of all sizes keep up with increased construction costs to prepare for increasing demand.

Airports of all sizes would benefit from increasing the cap on PFCs. For instance, many small airports use PFC revenue to pay for capital development projects at their facilities and to help pay their local match for AIP projects. According to the FAA, there are about 300 small airports collecting PFCs (including 3 airports in Hawaii), and about 218 of those small airports collect PFCs at the \$4.50 level.

Large airports traditionally rely more on PFCs and airport bonds to finance capital development projects than their counterparts at smaller airports. According to the FAA, 68 large and medium hub airports collect PFCs (including 2 airports in Hawaii), and 50 of those airports are approved to collect PFCs at the \$4.50 level.

In addition to increasing the cap on PFCs to \$6.00, the Administration is proposing to cut AIP by almost \$1 billion from the authorized level. Although the Administration is proposing to phase out AIP entitlements to large and medium hub airports, we are concerned that the Administration's proposal would actually make *less* money available to small airports. The Administration's suggested formula change coupled with its proposal to cut the AIP funding to \$2.75 billion would cost small airports approximately \$430 million in FY08. Rather than cutting funds for those airports that rely on AIP the most, we strongly believe that Congress should increase AIP funding and that small airports should be "held harmless" by any proposed formula changes.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. THOMAS R. CARPER TO  
CHARLES "CHIP" M. BARCLAY, A.A.E.

*Question 1.* Noise impacts are becoming a big problem for many communities. As a result, airport expansions are meeting with greater and greater opposition. This is at a time when most of the witnesses today are talking about the necessity of expanding airports to address congestion. How does the FAA plan help airports and the airlines reduce noise impacts on surrounding neighborhoods? What can Congress do to help decrease noise and support quieter aircraft to prevent this from being a road block to needed capacity expansions?

Answer. Airport operators have long been concerned about aircraft noise and continue to work hard to reduce noise around their facilities. Congress could help airports mitigate aircraft noise by increasing the cap on Passenger Facility Charges (PFCs) from \$4.50 to \$7.50. When Congress created the PFC program in 1990, one of the primary purposes of the program was to help reduce aircraft noise. Since then, the FAA has approved about \$2.8 billion in PFCs for noise projects. Increasing the PFC cap to \$7.50 would make more money available for airports to spend on noise mitigation projects such as soundproofing nearby schools and homes. Increasing the cap on PFCs would also help airports accommodate skyrocketing construction costs and increasing demand.

Congress could also reduce aircraft noise by phasing out noisy Stage 1 and Stage 2 aircraft. Some airport representatives are recommending that lawmakers include a provision in the next FAA reauthorization that would require all Stage 1 and Stage 2 aircraft to cease operations in the 48 states 3 years after the bill is enacted into law. We support that proposal.

*Question 2.* One factor that impacts the cost of air travel for many people is the cost of transportation to the airport. Here in D.C., there is a stark difference in the cost of travel to Reagan National, BWI and Dulles based on the availability of transit or intercity passenger rail. In Delaware, people use both Philadelphia and BWI because they are both accessible by either transit, Amtrak or both. How should airports work with local surface transportation authorities to address this? What could be done to better connect airports to population centers by rail?

Answer. Raising the PFC cap and increasing Airport Improvement Program (AIP) funding would improve access to airports since airports are allowed to use both sources of revenue on rail service to their facilities. There are numerous restrictions. For instance, the rail line must be on airport property or within a right-of-way acquired by the airport. To date, the FAA has approved about \$3 billion in PFCs for access to airports, and approximately \$2 billion of that amount has been approved for rail projects. Raising the cap on PFCs to \$7.50 and indexing it to increased construction costs would make more funding available for rail projects. Increasing AIP funding to \$3.8 billion in FY08 and increasing that amount incrementally would also make more money available for airport access projects.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JOHN THUNE TO  
CHARLES "CHIP" M. BARCLAY, A.A.E.

*Question 1.* As you know there is a Passenger Facility Charge increase in this administration's proposal from \$4.50 up to \$7.00 per enplanement in some cases. I like the idea of giving local airports greater flexibility in making capital improvements the local communities deem as necessary. But will this increase in the PFC fee per segment have a larger impact on passengers who often fly in and out of smaller des-

tinations that nearly always require two or more legs on the trip? Are there any alternative options that don't have a magnified impact on rural destinations?

Answer. Under current law, a PFC may not be collected from a passenger for more than two boardings on a one-way trip. In other words, passengers may be charged a maximum of \$9.00 for each one-way trip or \$18.00 for each round-trip. The Administration is proposing to raise the cap on PFCs to \$6.00 in most cases and keep the current two-fee limit in place. So, passengers may be charged a maximum of \$12.00 for a one-way trip or \$24.00 for a round-trip unless one of the airports happens to participate in a PFC pilot program.

It is also important to point out that small airports in South Dakota and throughout the country would benefit from a higher PFC. For instance, Rapid City, Pierre and Aberdeen currently collect \$4.50 PFCs. If the cap on PFCs is raised to \$6.00 or to higher amount airports would be able to generate more revenue for important safety and security projects at their facilities.

Even small airports in South Dakota that don't collect PFCs at their own facilities benefit from the PFC program. That's because large and medium hub airports that collect PFCs have a portion of their Airport Improvement Program entitlements withheld. (Large and medium hubs that collect \$4.50 PFCs have 75 percent of their entitlements withheld.) Current law requires that 87.5 percent of those withheld funds be distributed to small airports through the Small Airport Fund. Small airports are expected to receive about \$427 million from the Small Airport Fund this year.

Finally, the Administration's proposal to raise the cap on PFCs to \$6.00 is a welcome step in the right direction. But the American Association of Airport Executives and the Airport Legislative Alliance are recommending that Congress increase the cap on PFCs to \$7.50 in order to offset the impacts of inflation and skyrocketing construction costs. By 2010—the final year in the Administration's FAA reauthorization proposal—a \$4.50 PFC would need to be raised to \$7.14 to keep up with inflation and to \$8.03 to keep up with increased construction costs. Moreover, it is critical that airports be able to build the infrastructure they need to accommodate increasing demand and to help prevent delays.

*Question 2.* Can you give the Committee your thoughts on the new governance board in the FAA proposal? Do you think the board would represent your interests well? Do you think that the board would take away too much authority from Congress?

Answer. The FAA is proposing an Air Transportation System Advisory Board. The Board would be comprised of 13 members:

- FAA Administrator;
- Department of Defense representative;
- 3 members "who shall have a fiduciary responsibility to represent the public interest;" and
  - 8 members representing aviation interests:
    - 1 airport representative;
    - 1 major air carrier representative;
    - 1 national air carrier representative;
    - 1 regional air carrier representative;
    - 1 cargo representative;
    - 1 general aviation representative;
    - 1 business aviation representative; and
    - 1 aviation manufacturing representative.

It is my understanding that the board is dominated by airline and general aviation representatives, in part, because the panel would make recommendations on the type and level of user fees that aircraft owners and operators would be required to pay for air traffic control services. Nonetheless, some have questioned whether one airport representative is enough and that it may be more appropriate to have one airport representative from each hub size instead.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. DANIEL K. INOUE TO  
JAMES C. MAY

*Question 1.* I am concerned about how the FAA proposal will affect air carriers in my home state, Hawaii. Aloha and Hawaiian have served our people for many years. Given the unique air traffic conditions and needs in Hawaii, can you give me



some assurance that these carriers will not be left at a competitive disadvantage with other carriers under a user fee system.

Answer. I want to preface my answer with a general comment about the administration's reauthorization bill, which was submitted to the President of the Senate on February 14, 2007, by the Honorable Mary E. Peters, U.S. Secretary of Transportation. The Air Transport Association (ATA) has stated that the administration's bill was a good start on a number of very important issues. However, ATA expressed significant reservations right from the beginning regarding some of its provisions. For example, I testified on March 8 before your Committee noting that small communities have unique air service needs and that reauthorization legislation should recognize those needs in its funding and Essential Air Service Program provisions. The FAA bill, unfortunately, did not support strong funding for Essential Air Service provisions.

I further noted at that hearing that, "Air transportation is an indispensable element of America's infrastructure and our Nation's economic well-being. Individuals, businesses and communities depend on the national air transportation system." The ATA is seeking a reauthorization that assures the continuation and expansion of that system, so that all areas of the country enjoy the benefits of air service. We do not want any area of our Nation disadvantaged in such legislation.

*Question 2.* FAA proposes dividing airports into 3 categories, and levying different terminal fees on flights using the 2 busiest categories of airports to cover the costs of air traffic control services associated with those airports. What's your position on the proposal? How about congestion fees? How are these market measures likely to affect access for small communities to large hubs?

Answer. The ATA appreciates the manner in which you, Chairman Rockefeller, Co-Chairman Stevens and Ranking Member Lott have handled these issues. Under the current funding system, airline passengers subsidize corporate aircraft using the same ATC services, so any proposal that calls for business aviation to pay more of its fair share is a step in the right direction.

The commercial hub-and-spoke system has been critical to small community air service. The reason for this is that as flights from smaller cities arrive at hubs, passengers can be combined into flights back to smaller cities or on to other final destinations—both domestic and international. Congestion fees that do not apply equally to corporate aircraft simply add to the problem instead of reducing congestion. It is important to recognize that congestion at hubs takes place in the airspace as well as on the runways. Corporate jets contribute to the congestion at hubs by using the same airspace, even when they are not using the hub airport. For example, corporate aircraft flying into Teterboro Airport, just six miles from Newark International Airport, compete with Newark departures since the two airports share common airspace. Therefore, even aircraft that are not using the hub-and-spoke system help to drive the cost of providing ATC services to hub airports. If all system users—commercial and corporate aircraft—pay for the ATC services they use, that system will be strengthened.

In addition to funding for the Essential Air Service program mentioned above, ATA believes that an important way to improve service to and from small communities is to provide stable funding for the next-generation ATC system.

*Question 3.* Is it accurate to say that the Administration's proposal is designed to have smaller airlines that connect thru hubs pay the most proportionately?

Answer. I believe that my answers to your second and fourth question address the matters you raise in this question.

*Question 4.* It would be unfair to have the one-quarter of passengers who currently fly on regional airlines pay more because they live in rural communities where the smaller airline might be the only option. How would any plan that you support address that?

Answer. The issue is not whether regional airlines should pay more or less relative to their mainline airline partners, but whether their passengers should continue to subsidize corporate and private jets. Under the current system, a regional jet may pay many times more than a similarly-sized private jet through passenger ticket taxes and segment fees, even though it imposes the same costs on the ATC system. A more equitable funding scheme will benefit all airline passengers by shifting some of that burden to other users of the system who can well afford to pay for it.

In addition, I have indicated to this Committee that the significant increase in the Passenger Facility Charge (PFC) proposed in the administration's bill would disproportionately affect small communities. Thus, the ATA is very pleased with the manner in which you have handled that issue in your reauthorization bill with Senators Stevens, Rockefeller and Lott.

The ATA opposed that aspect of the administration's bill because most travel to or from small communities involves a connecting flight; those passengers frequently would have to pay the administration's proposed higher PFC twice for each direction of a round-trip flight. For example, urban passengers flying between major cities would have more nonstop options and more likely would have to pay the PFC only once for each direction. Thus, on a round-trip basis, passengers from smaller communities would pay \$14.00 more than nonstop passengers if the PFC increases from \$4.50 to \$7.00 per segment. Passengers from smaller communities would be disproportionately affected by this proposed increase because, in most cases, they will be on connecting flights.

As you know, PFCs are a tax on both passengers and airlines; while they are imposed on passengers, the airlines collect them as part of the price of a ticket. It is well accepted that PFCs affect the revenue airlines earn. Moreover, you should understand that the local community has virtually no say in PFCs and the projects they fund since that is an airport decision. If PFCs were collected separately at the airport and not included in the price of an airline ticket, local accountability and transparency for PFC projects would occur and should achieve the goals of local community involvement that you noted in your question.

As I have said to this Committee, our concerns about these increases in costs to our customers apply not only to PFCs. The total fees and taxes paid by passengers flying out of rural communities is proportionally more than would be the case for passengers flying out of middle-sized or larger cities. A family of four flying from a rural airport, then connecting through a hub, and then getting to their destination, and back, would face multiple PFCs, segment fees and security fees. For that family of four, there could be as much as \$150 to \$160 in fees and taxes.

Your bill has addressed the ATA concerns because you have not called for increases in PFCs except for permitting increases that the airlines would not collect regarding six pilot studies.

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RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. FRANK R. LAUTENBERG TO  
JAMES C. MAY

*Question.* Current law caps the number of aviation security screeners that the Transportation Security Administration may hire at 45,000, regardless of the agency's budget. I've suggested the first thing we need to do in order to fully staff the TSA and keep airline passenger security lines to a minimum is to remove this arbitrary cap of 45 thousand security screeners. Do you agree Congress should remove the cap and fund the agency's staffing needs to an appropriate level?

*Answer.* The simple answer is that the Transportation Security Administration should be given all the resources it needs to implement, in the most efficient and effective way, the Congressional mandates in the Aviation Transportation and Security Act (ATSA). In ATSA, Congress very clearly required the Federal Government to provide for the screening of all passengers and property, including cargo, carried on passenger aircraft. In fact, Congress specifically required that the screening "shall be carried out by a Federal Government Employee."

The security issues facing America and the Department of Homeland Security are very significant. Indeed, the Comptroller General of the United States submitted testimony on February 7, 2007, to the Congress on the security challenges facing this country and the DHS. With respects to all modes of travel, GAO complemented DHS by saying that progress has been made "particularly in aviation" and that "DHS and TSA have taken numerous actions to strengthen commercial aviation security, including strengthening passenger and baggage screening, improving aspects of air cargo security, and strengthening the security of international flights and passengers bound for the United States."

That GAO testimony praised TSA for using covert testing and other means to measure effectiveness of airport screening systems and for working to enhance passenger and baggage screener training. GAO also noted that TSA has modified airport screening procedures based on risk. On the negative side, GAO said that TSA continues to face challenges in implementing a program to match domestic airline passenger information against terrorist watch lists and in "fielding needed technologies to screen airline passengers for explosives."

The GAO did raise an across-the-board criticism of DHS for not basing program investments on risk analysis. I believe the more detailed answer to your question depends on a thorough risk-analysis of all facets of the security problems facing this Nation. Since the air transport industry represents only one segment of the full picture, I would propose that the Congress undertake to hold hearings on the matter

you raised so that all the security needs of the U.S. could properly be balanced before a decision is made as to whether to raise that cap, or not.

TSA has come a long way in just a few years and is doing an effective job of ensuring the security of our air transport system within the budget provided by the Congress. TSA has been coordinating with the Air Transport Association. The ATA and our member airlines will continue to work with the TSA to address new security concerns and to look for additional ways to improve the experience of airline passengers.

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RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. THOMAS R. CARPER TO  
JAMES C. MAY

*Question.* Noise impacts are becoming a big problem for many communities. As a result, airport expansions are meeting with greater and greater opposition. This is at a time when most of the witnesses today are talking about the necessity of expanding airports to address congestion. How does the FAA plan help airports and the airlines reduce noise impacts on surrounding neighborhoods? What can Congress do to help decrease noise and support quieter aircraft to prevent this from being a roadblock to needed capacity expansions?

*Answer.* The ATA is concerned about the noise impacts of airports on communities, and our member airlines have been working to address those issues. First of all, airlines have been investing in newer aircraft, which are designed to produce less noise, and our member airlines will continue to do so. Further investments of General Funds by Congress in additional noise-reduction research would be very helpful in this effort.

Second, Congressional support for the Next Generation Air Traffic Control System will provide noise-reduction benefits by permitting descent routes into airports and more precise routing in a manner that minimizes the impact of noise on neighboring communities.

The FAA and the ATA, in addition, support reasonable noise-mitigation efforts for homeowners living near airports. The ATA and its member airlines are ready to work with you and this important matter.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JOHN THUNE TO  
JAMES C. MAY

*Question 1.* As you know there is a Passenger Facility Charge increase in this administration's proposal—from \$4.50 to as much as \$7.00 per enplanement in some cases. I like the idea of giving local airports greater flexibility in making capital improvements that the local communities deem as necessary. But will this increase in the PFC fee per segment have a larger impact on passengers who often fly in and out of smaller destinations that nearly always require two or more legs on the trip? Are there any alternative options that don't have a magnified impact on rural destinations?

*Answer.* A PFC is a tax imposed on passengers who may not live or vote in the jurisdiction that levies it. This is especially true in the case of connecting passengers, who are literally "passing through" and have no business or community ties to the governmental entity that operates the connecting airport.

The significant increase in the Passenger Facility Charge (PFC) proposed in the Administration's bill would somewhat disproportionately affect small communities. Because most travel to or from small communities involves a connecting flight, those passengers frequently would have to pay the proposed higher PFC twice for each direction of a round-trip flight. For example, urban passengers flying between major cities would have more nonstop options and more likely would have to pay the PFC only once for each direction. Thus, on a round-trip basis, passengers from smaller communities would pay \$14.00 more than non-stop passengers if the PFC increases from \$4.50 to \$7.00 per leg. Passengers from smaller communities would be disproportionately affected by this proposed increase because in most cases they will be on connecting flights.

It should not be overlooked that PFCs are a tax on both passengers and airlines; while they are imposed on passengers, the airlines collect them as part of the price of a ticket. It is well accepted that PFCs affect the revenue airlines earn. Moreover, you should understand that the local community has virtually no say in PFCs and the projects they fund since that is an airport decision. If PFCs were collected separately at the airport and not included in the price of an airline ticket, local accountability and transparency for PFC projects would occur and should achieve the goals of local community involvement that you noted in your question.

Our concerns about these increases in costs to our customers apply not only to PFCs. The total fees and taxes paid by passengers flying out of rural communities is proportionally more than would be the case for passengers flying out of middle-sized or larger cities. A family of four flying from a rural airport, then connecting through a hub, and then getting to their destination, and back, would face multiple PFCs, segment fees and security fees. For that family of four, there could be as much as \$150 to \$160 in fees and taxes.

One means of reducing the impact on travelers to and from rural communities would be to place a limit on the total amount of PFCs that could be added to a single itinerary, regardless of the number of connections. This is currently done with the September 11 security fee, which is set at \$2.50 per flight segment but capped at \$10.00 total.

*Question 2.* I served on the House Transportation and Infrastructure Committee during the last FAA reauthorization and I remember well the spirited debate that occurred over what Air Traffic Control activities drove FAA costs. During that debate, the Committee was given information that one of the major cost drivers in the system was the hub-and-spoke systems operated by the major airlines. I would be interested in having both Mr. May and Mr. Bolen's views about the merits of this argument in light of the current debate on this FAA reauthorization?

*Answer.* While an interesting question in 1997, the issue is a red-herring today because the FAA is now able to accurately capture and allocate its costs. In a cost-based charging scheme where charges are based on the costs different users drive, the source of those costs is immaterial. By looking at each facility or service and asking whether it principally benefits a single user type and determining if other secondary users cause an incremental cost, FAA has been able to assign costs on a more sophisticated basis than simply looking at activity levels. Whatever the costs of providing ATC services for a hub airport are, they will be paid by the users of that airspace, whether a network carrier, point-to-point carrier, or corporate jet. The costs these users drive can be captured and allocated to them so each pays its fair share.

It is also worth mentioning that the hub-and-spoke system is the most efficient method of connecting rural America to the rest of the world. Indeed, many more rural communities would not have commercial airline service without the hub-and-spoke system. While most communities cannot support nonstop service to all of the destinations that people may want to reach, the hub-and-spoke system allows residents of those communities to get almost anywhere in the world, often with just one connection.

Although we tend to think of the hub-and-spoke system in terms of airports, congestion at hubs take place in the airspace as well as on the runways. Corporate jets contribute to the congestion at hubs by using the same airspace, even when they are not using the hub airport. For example, corporate aircraft flying into Teterboro Airport, just six miles from Newark International Airport, compete with Newark departures since the two airports share common airspace. Therefore, even these aircraft that are not using the hub-and-spoke system help to drive the cost of providing ATC services to hub airports.

Another example is right here in the Washington, D.C., area. Even though corporate aircraft might not fly into Washington Reagan National Airport as much as they did before 9/11, they have in fact just shifted to smaller nearby airports—Manassas, Frederick, Leesburg and Hagerstown. The Washington, D.C., terminal-area controllers are still handling that traffic and costs are still being imposed on the system.

The large and growing volume of corporate aviation increasingly will drive ATC costs in the future. Corporations own approximately 17,000 jets today, with another 10,000 corporate jets expected over the next 10 years. Indeed, corporate jets are selling at a record pace—a new world record was recently set in corporate jet shipments of \$18.8 billion—a 24 percent increase over last year.

*Question 3.* Can you give the Committee your thoughts on the new governance board in the FAA proposal? Do you think the board would represent your interests well? Do you think that the board would take away too much authority from Congress?

*Answer.* We support the creation of a board that has decisional authority over Air Traffic Organization (ATO) issues, particularly those involving user fees, subject to appropriate Congressional oversight. However, the proposed composition of the board—only four airline representatives out of a total of 13 members—is inadequate because it does not reflect the proportion of funding that the airline community will contribute to the ATO.

The composition of the board should reflect the investment of airlines and their customers, and future investments in the ATC system should be focused on efficiently moving more than two million passengers per day to their destinations while meeting the needs of recreational piston-aircraft owners and the high-performance corporate jets.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. DANIEL K. INOUE TO  
EDWARD M. BOLEN

*Question 1.* Do you support a funding system, whether comprised of taxes or fees, based on the principle that users should contribute in proportion to the costs they impose on the system?

Answer. NBAA generally agrees that users should contribute to the trust fund based on the costs they “impose” on the system, through taxes set by Congress. NBAA disagrees with the assertion by the Nation’s big airlines that overall traffic levels reflect costs imposed on the system. If general aviation were grounded, the costs for running the Air Traffic Control system would decrease by less than 10 percent. When general aviation operators were barred from Reagan National Airport, costs did not go down at all.

Congress should reject FAA’s recent cost allocation report which assigns costs to users based on a flawed methodology that deviates from international practice, from widely held economics principles and from the FAA’s own recommendations advocated from 1973 until 2007.

As the Government Accountability Office (then the General Accounting Office) found during the last debate on FAA financing, “hubbing operations at the Nation’s largest airports increase the peak service demands on the airway system and increase FAA’s operating and staffing costs.” (GAO/RCED–97–23) General aviation is an incremental user of the aviation system, representing only a single-digit percentage of activity at the Nation’s top 20 hub airports.

This is not to say that the airlines’ hub-and-spoke network is good or bad; rather, it is to say that this network is what drives the costs for the aviation system. The decision of one airline to put dozens of airplanes into one hub location in a 30 minute period forces the FAA to make major investments in technology and staffing to meet peak hub demands. We at NBAA are unified with the rest of the general aviation community in our belief that, if the carriers are largely responsible for driving up the FAA’s costs, they should pay for a significantly larger portion of those costs.

It is also important to look at what has changed in the last 10 years since Congress considered FAA financing legislation. During that time, general aviation operations have remained flat, while hubbing has increased. In light of that fact, it is unlikely that the costs general aviation imposes on the system have increased substantially enough that the general aviation community should be subjected to new user fees and a 300 percent increase in the fuel tax, while the commercial airlines get a \$2 billion tax break.

However, these elements are at the very foundation of the FAA’s user fee funding proposal. To justify its new funding setup, the FAA points to its unprecedented cost-allocation study, conducted by the Agency, that abandons all mainstream economic principles for allocating costs to different types of users in favor of a faulty approach that assumes all users are the same. No other nation uses such an approach for allocating air traffic control costs or for setting user charges or taxes.

I encourage Congress to reject the FAA’s flawed assumptions and review GAO’s own figures, which indicate that the hub-and-spoke system drives FAA’s costs. General aviation remains an incremental user of the aviation system and we look forward to working with Congress to ensure that we pay in proportion to our use and the cost it imposes.

*Question 2.* FAA has released a cost allocation report that it feels provides the necessary information to support the development of their proposed user fee system. Do you have any comments on the results and/or methods used in this report?

Answer. I submit for the record the following independent, economic analysis of the FAA’s cost allocation report, prepared by Dr. Michael W. Tretheway, Executive Vice President & Chief Economist, InterVISTAS Consulting, Inc.

FAA'S COST ALLOCATION STUDY—A FLAWED APPROACH TO ASSIGNING COSTS THAT  
DISCARDS MAINSTREAM ECONOMIC FUNDAMENTALS

*Overview*

The tax mechanism that supports the Federal Aviation Administration (FAA) is set to expire in September 2007, setting the stage for the Federal reauthorization process that will determine FAA funding for the next several years. A debate is taking place about what changes, if any, are needed to FAA's funding structure, including how costs should be allocated among users of FAA services, particularly commercial airlines and general aviation (GA).

This summary will show that, thus far, the discussion on cost allocation has been incomplete, because the FAA's recently issued cost-allocation study for air traffic control (ATC) services sets aside established economic principles and international practices recognized by economists, the International Civil Aviation Organization, other national air traffic systems, and, previously, the FAA.

*Summary*

The FAA's cost-allocation methodology does not conform to basic economic principles or international practices.

*Mainstream economic principles are set aside.* When allocating costs for services, the standard practice is to apply mainstream economic principles to determine incremental costs imposed by different services and/or users, and allocate costs accordingly.

- Unfortunately, in its 2007 cost-allocation study, *the FAA abandons an economics-based methodology*, used in previous FAA cost-allocation studies, in favor of a simple, arithmetic approach to costs. While this has the characteristic of simplicity, it results in inappropriate cost allocations. Not only has the FAA rejected the "first best" principle widely accepted by economists, they also abandoned second best pricing principles.

*International practices are ignored.* Government and commercial/privatized air traffic service providers in other nations recognize that different types of operations impose different costs on an air traffic system.

- Unlike ATC cost allocations used in virtually all other nations, the FAA's cost-allocation method fails to recognize that most Air Traffic Organization (ATO) costs are driven by the operational needs of the commercial airlines (*i.e.*, the costs involved in operating airline hub-and-spoke systems).
  - This assumption is not supportable, in view of international guidelines recognizing that most ATO costs are driven by commercial airline operations through their hub networks. The International Civil Aviation Organization states:
 

". . . It is particularly important to recognize that the major part of the air navigation facilities and services infrastructure has been established to serve the requirements of commercial air traffic, and that some users receiving extensive service could not, by reason of the nature of their activity, have called for the provision of service on such a scale on an economic basis. . . . The primary beneficiaries among the users should therefore be carefully identified to ensure that realistic allocations of costs to the various user categories are made."

- The study also departs from international practices in failing to recognize that aircraft weight and other factors are appropriate cost drivers when considering cost allocation. Instead, the FAA's study assumes, without evidence, that all high performance aircraft (from 5-seat single-engine turboprops, to 350-seat 747's) drive the same costs.

*Conclusion*

The FAA's cost-allocation methodology does not conform to economic principles or international practices. The Agency's approach, based upon faulty economics, would produce a misguided direction for future funding decisions. The FAA's methodology should be set aside, and a serious, economics-based methodology developed to replace it. Furthermore, the FAA's new cost-accounting database should be made available to stakeholders and researchers to allow a transparent and collaborative approach to developing an appropriate cost allocation methodology.

*Question 3.* What's your position on the proposed Air Transportation System Advisory Board?

Answer. The FAA governance board is simply a thinly veiled attempt by the FAA and the big airlines to reduce the critical role Congress has in aviation system oversight. The ploy calls to mind the last time the Nation's big airlines pushed a user fee scheme in Congress, in 1997. According to one airline CEO at the time, the real goal was "control of the FAA by the Big Seven and for their exclusive benefit." This time around, the airlines' objective of reducing Congressional control of the FAA remains unchanged.

The carriers have not been secretive about their goal of reducing Congressional control. Last year, the Air Transport Association (ATA) called a press conference where, according to *The Wall Street Journal*, their chief lobbyist was quoted as saying: "We need to get Congress out of this process."

Lest anyone think ATA was misquoted, the association said again in August, at an Airports conference in Florida, "it is critical we have a governance structure that is, to the best of our ability, free of the pressures of Congress."

We disagree with ATA on this issue, especially considering that Congress has steadily increased FAA funding over the past decade, often in excess of the amount the FAA has requested. There has never been an FAA modernization program that failed for a lack of Congressional support or funding. Furthermore, Congress has done an effective job of ensuring that *all* aviation interests—including those for general aviation—are represented. This critical oversight role must be preserved.

We believe Congress should reject the ill-conceived rate-setting entity, envisioned in the FAA's user fee proposal, which would allow the FAA to set user fees and outline spending priorities without Congressional input. This is not a good government model, as it would provide no incentive for the FAA to control costs or focus on funding priorities outlined by Congress. The ability to set priorities, authorize programs, appropriate funds and determine costs for system users must remain with Congress.

*Question 4.* What's the GA community's position on the changes to AIP, specifically changing the distribution formula for smaller airports? What are the implications for the GA community? Do you think this will be beneficial or problematic?

Answer. Airports are critical transportation centers that collectively form a network that makes flying the fastest, most efficient way to travel. General Aviation relies heavily on smaller, less-congested airports, which are the key to the value and flexibility of business aviation aircraft. In fact, General Aviation represents less than 5 percent of the total operations at the Nation's 20 busiest commercial airports.

Through the current trust fund model, the FAA has received ever-increasing budgets for the Airport Improvement Program (AIP), which helps fund airport capital improvements at airports of all sizes. However, the FAA's reauthorization bill radically changes how airports are funded and provides less money for AIP than under the current funding system.

According to the American Association of Airport Executives, "the Administration's suggested formula change coupled with its proposal to cut the AIP funding to \$2.75 billion would cost small airports approximately \$430 million in FY08."

Perhaps more concerning is that the FAA proposes a tripling of general aviation fuel taxes in order to help fund the AIP program. It appears that the FAA has failed to determine the price elasticity of its fuel tax proposal and the result it would have on trust fund revenues.

Congress should reject the FAA's user fee proposal that, among its many flaws, would provide less money for AIP.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JOHN THUNE TO  
EDWARD M. BOLEN

*Question 1.* I served on the House Transportation and Infrastructure Committee during the last FAA reauthorization and I remember well the spirited debate that occurred over what Air Traffic Control activities drove FAA costs. During that debate, the Committee was given information that one of the major cost drivers in the system was the hub-and-spoke systems operated by the major airlines. I would be interested in having both Mr. May and Mr. Bolen's views about the merits of this argument in light of the current debate on this FAA reauthorization bill.

Answer. An important part of this debate is not only how much modernization will cost, but who will pay for it. As the Government Accountability Office (then the General Accounting Office) found during the last debate on FAA financing, "hubbing operations at the Nation's largest airports increase the peak service demands on the airway system and increase FAA's operating and staffing costs." (GAO/RCED-97-23) General aviation is an incremental user of the aviation system, representing only a single-digit percentage of activity at the Nation's top 20 hub airports.

This is not to say that the airlines' hub-and-spoke network is good or bad; rather, it is to say that this network is what drives the costs for the aviation system. The decision of one airline to put dozens of airplanes into one hub location in a 30 minute period forces the FAA to make major investments in technology and staffing to meet peak hub demands. We at NBAA are unified with the rest of the general aviation community in our belief that, if the carriers are largely responsible for driving up the FAA's costs, they should pay for a significantly larger portion of those costs.

It is also important to look at what has changed in the last 10 years since Congress considered FAA financing legislation. During that time, general aviation operations have remained flat, while hubbing has increased. In light of that fact, it is unlikely that the costs general aviation imposes on the system have increased substantially enough that the general aviation community should be subjected to new user fees and a 300 percent increase in the fuel tax, while the commercial airlines get a \$2 billion tax break.

However, these elements are at the very foundation of the FAA's user fee funding proposal. To justify its new funding setup, the FAA points to a flawed and unprecedented cost-allocation study, conducted by the Agency, that abandons all mainstream economic principles for allocating costs to different types of users in favor of a faulty approach that assumes all users are the same. No other nation uses such an approach for allocating air traffic control costs or for setting user charges or taxes.

I encourage Congress to reject the FAA's flawed assumptions and review GAO's own figures, which indicate that the hub-and-spoke system drives FAA's costs. General aviation remains an incremental user of the aviation system and we look forward to working with Congress to ensure that we pay in proportion to our use and the cost it imposes.

*Question 2.* Can you give the Committee your thoughts on the new governance board in the FAA proposal? Do you think the board would represent your interests well? Do you think that the board would take away too much authority from Congress?

Answer. The FAA governance board is simply a thinly veiled attempt by the airlines to reduce the critical role Congress has in aviation system oversight. The ploy calls to mind the last time the Nation's big airlines pushed a user fee scheme in Congress, in 1997. According to one airline CEO at the time, the real goal was "control of the FAA by the Big Seven and for their exclusive benefit." This time around, the airlines' objective of reducing Congressional control of the FAA remains unchanged.

The carriers have not been secretive about their goal of reducing Congressional control. Last year, the Air Transport Association (ATA) called a press conference where, according to *The Wall Street Journal*, their chief lobbyist was quoted as saying: "We need to get Congress out of this process."

Lest anyone think ATA was misquoted, the association said again in August, at an Airports conference in Florida, "it is critical we have a governance structure that is, to the best of our ability, free of the pressures of Congress."

We disagree with ATA on this issue, especially considering that Congress has steadily increased FAA funding over the past decade, often in excess of the amount the FAA has requested. There has never been an FAA modernization program that failed for a lack of Congressional support or funding. Furthermore, Congress has done an effective job of ensuring that *all* aviation interests—including those for general aviation—are represented. This critical oversight role must be preserved.

We believe Congress should reject the ill-conceived rate-setting entity, envisioned in the FAA's user fee proposal, which would allow the FAA to set user fees and outline spending priorities without Congressional input. This is not a good government model, as it would provide no incentive for the FAA to control costs or focus on funding priorities outlined by Congress. The ability to set priorities, authorize programs, appropriate funds and determine costs for system users must remain with Congress.