

Statement on Principles for Reforming the United States Air Traffic Control System

June 5, 2017

Overview

The United States Air Traffic Control (ATC) system is one of the most important and vibrant elements of our Nation's infrastructure. Every day, the dedicated men and women of the Federal Aviation Administration (FAA) safely and efficiently guide thousands of aircraft to and from their destinations, collectively carrying millions of passengers and tons of cargo. Yet, the FAA's ATC operations are currently mired within a Federal bureaucracy that hinders innovative operations and the timely introduction of new technology. In order to modernize our ATC system, the Administration supports moving the FAA's ATC operations into a new non-governmental entity. This will enable ATC to keep pace with the accelerating rate of change in the aviation industry, including the integration of new entrants such as Unmanned Aircraft Systems and Commercial Space Transports. A more nimble ATC entity will also be able to more quickly and securely implement Next Generation (NextGen) technology, which will reduce aircraft delays and expand the availability of the National Airspace System (NAS) for all users.

ATC reform presents an exciting infrastructure improvement opportunity, and its completion will demonstrate early progress toward much needed infrastructure reform across all sectors. The Administration's principles for reforming ATC will drive legislation that will reduce delays, further improve aviation's leading safety record, protect access to rural communities, and accelerate much needed capital investment. These principles insulate one of our most important national assets from political interferences and the crippling effects of budget uncertainty, while keeping intact FAA's critical safety oversight. Additionally, they preserve essential working relationships and interoperable capabilities with the Department of Defense (DoD), the Department of Homeland Security (DHS), and law enforcement agencies that are critical to ensuring the safety and security of the Nation.

This proposal demonstrates that the Federal Government does not have to supply all of the resources required to develop and maintain our Nation's vast infrastructure. Often, it simply needs to remove obstacles hindering investment and innovation. The new ATC entity envisioned in these reform principles will be self-sustaining, financed through fees paid by the users of the NAS. These fees will be more efficient and less burdensome than the patchwork of aviation taxes that supports the system today.

The time has come to embrace a bolder vision of what our Nation's ATC system can be and how best to move forward to achieve it. In 2016, House Transportation and Infrastructure Committee Chairman Bill Shuster introduced the Aviation Innovation, Reform, and Reauthorization (AIRR) Act to move ATC from the Government to a not-for-profit, independent entity. The Administration supports the proposed AIRR Act as a good foundation for reforming the ATC system, and believes the legislation can be improved. Accordingly, the Administration supports the enactment of legislation that incorporates the principles detailed in this document.

The Principles

Safety: The FAA's appropriate role is the inherently governmental function of safety regulator. Removing ATC operations from the FAA would further this principle, and bring it in line with the recommended practice of the International Civil Aviation Organization's (ICAO) and the approach used by the majority of developed aviation states around the world. Aviation safety regulation would remain within the Department of Transportation, and the FAA would migrate to a performance-based framework responsible for providing effective oversight of the new ATC entity.

National Security: Protecting our Nation's security is of paramount importance. Accordingly, the new ATC entity must provide airspace access, prioritization, integration, cooperation, navigation, and information management services and support at levels of quality that ensure sustained national security and law enforcement capabilities. This must be done at no cost to the Federal Government. The new entity must develop interoperability plans, procedures, policies, and programs that ensure it can operate effectively, under all circumstances, with DoD. The new entity must also be able to work under DHS control in exigent circumstances involving physical, adversarial, and technological threats and circumstances. The Federal Government would indemnify the new entity for costs incurred in connection with operations that support Federal national security and law enforcement activities.

Cybersecurity: The new ATC system must be secure, robust, and resilient. Components will fail, but those failures must not significantly affect the ATC system's ability to provide safe and effective operation at peak capacity. Additionally, as part of our Nation's critical infrastructure, the new ATC system must be able to detect and defeat malicious cyber-based efforts to manipulate or degrade its operations.

Access: The new ATC entity must maintain open access for all users of the airspace and, specifically, those in rural communities, general aviation users, and the military.

- **Open Access:** All users, including the general aviation industry and emerging new entrants, must have open access to our Nation's airspace. The FAA would continue to certify new entrants (such as Unmanned Aircraft Systems and Commercial Space Transports) as part of its responsibility to oversee safe use of the NAS. The new ATC entity would grant FAA-certified users access to the NAS, subject to their participation in the system's user fees, their being equipped, as necessary, to fly in controlled air space, and their compliance with other applicable rules and regulations.
- **Rural Access:** The new entity must maintain access and services to rural communities and general aviation users.
- **Military Access:** To ensure safe and effective execution of military missions, the new ATC entity must ensure continued military access to delegated Special Activity Airspace (e.g., Military Training Routes, Military Operating Areas, Warning Areas, and Restricted Areas); be capable of enforcing temporary airspace restrictions; and meet national security airspace requirements for DoD training, testing, and exercises.

Noise: Efficient use of the airspace requires new technology and efficient air routes. The new ATC entity must have the authority, after seeking public comment, to adjust airspace routes. The proposed route change would only be subject to National Environmental Policy Act (NEPA) review if the change exceeds the FAA-established noise threshold. The FAA would still be responsible for ensuring—within a reasonable period of time, like 120 days—that any proposed route change does not create a safety hazard.

New Entity: America's growing aviation system demands a new, independent, non-government organization to operate our Nation's airspace. The new entity should have access to capital markets in order to spur capital investment, technology adoption, and innovation faster, more effectively, and securely. Over the last 20 years, more than 50 countries have already successfully transitioned their ATC operations.

- **Transition Period:** The transfer of ATC operations from the FAA to the new entity should be completed within an established 3-year transition period overseen by the Secretary of Transportation. The transition period should be marked by milestones developed and monitored by the Secretary of Transportation, in coordination with the Secretary of Defense, to ensure adequate progress. The transition period may be extended only with the approval of the President.
- **Not-For-Profit Entity:** The new ATC entity should be a not-for-profit, non-governmental entity.
- **Fees:** The new ATC entity should be financially self-sufficient through the collection of user fees that cover both its costs of operations and recapitalization. The aviation taxes that currently cover these costs should be sunset, except for those necessary to continue to fund the Airport Improvement Program. General fund revenues should fund the rest of the FAA. Users should have input in the fees and their structure, which should be guided by ICAO principles and be consistent with the international obligations of the United States. Except national-security users (including DoD aircraft, DoD-contracted flights, and foreign military aircraft), diplomatic users (including non-commercial United States Government and foreign sovereign State aircraft), and public safety users, all users should pay their fair share. To ensure that rates are just and reasonable, however, users should have the ability to request review by the Secretary of Transportation, rather than the Congress. Any determination by the Secretary of Transportation should be final.
- **Financial Authority:** The new ATC entity should have the authority to borrow funds and enter into contracts, leases, and other arrangements during and after the transition period. The new entity should also have the authority to procure goods and services, hire employees, and to bond or pledge future revenues to fulfill the terms of financial arrangements and other transactions. Additionally, the new entity should have the authority to sell or transfer its assets.
- **Assets:** All assets currently owned by the FAA and used in the operation of ATC should be transferred, at no charge, to the new ATC entity. The users of the ATC system have already paid for those assets and should not be charged for them again. The assets should be transferred along with any environmental liabilities associated with them. Accordingly, sufficient funds to account for those liabilities should also be transferred to the new entity.
- **Governance:** A professional Board of Directors should manage the new ATC. The members of the Board should have a fiduciary responsibility solely to the new ATC entity and be free of any financial conflict of interest. Board seats should not be reserved for any entity, except for the ATC entity's Chief Executive Officer, who would serve as a representative of the new entity. The new entity should represent all users impartially, and no group should have even the appearance of influence over the Board. The Board should ensure that DoD and national-security equities are

adequately represented and that the entity maintains appropriate relationships with national and international air navigation service providers and forums. To establish the initial Board, the Secretary of Transportation should select eight members from candidate lists provided by five nominating groups. The nominating groups should be airlines, unions, general aviation, airports, and the Department of Transportation. Each nominating group would provide lists of six to ten qualified persons to the Secretary.

- United States-based carriers with annual revenues greater than \$10 billion should develop the airline list.
- Unions representing at least 50 percent of FAA employees that would transfer to the new ATC entity or representing more than 10,000 United States commercial pilots should develop the union list.
- The two largest trade groups representing general aviation (Aircraft Owners and Pilots Association (AOPA) and National Business Aviation Association (NBAA)), should jointly develop the general aviation list.
- The two largest trade groups representing United States airports (Airports Council International–North America (ACI–NA) and American Association of Airport Executives (AAAE)), should develop the airport list.

Two members should be selected from the airline list, two members should be selected from the union list, one member should be selected from the general aviation list, one member should be selected from the airport list, and two members should be selected from the Department of Transportation list. Those eight initial Board members would then select a Chief Executive Officer. Those nine Board members would then select four independent Board members. The 13-member Board would be constituted for at least the transition period, plus the first year of operation. After this time, decisions about Board constitution and members' terms should be left to the discretion of the Board. Once the initial Board members are nominated, no group should have an exclusive right to name successor Board members.

- **Labor:** The new ATC entity should honor existing labor agreements. Employees who transition to the new entity will no longer be Federal employees, but they should be held harmless and have similar rights to those they had as Federal employees at the FAA. Consistent with those rights, employees of the new entity should not be permitted to strike.
- **Spectrum:** The new ATC entity should not be charged for its use of spectrum, as the FAA is not charged for spectrum use today. The new entity will occupy spectrum shared with Federal entities. The new entity, however, could be required to vacate existing spectrum band (at some point) and move to another frequency along with other Federal entities. In any future spectrum reallocation, the new entity should be treated as a Federal entity, including with respect to the use of any reallocation auction proceeds to finance relocation expenses. Relocation expenses could include those associated with the development, procurement, and installation of new radar systems that are interoperable with government systems on a different spectrum band.

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