

Governance of a U.S. ATC Corporation

**House Transportation & Infrastructure
Committee
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**Testimony of Robert W. Poole Jr.
Director of Transportation Policy
and Searle Freedom Trust Transportation Fellow**

**Reason Foundation
5737 Mesmer Avenue
Los Angeles, CA 90230
310-391-2245**

Chairman Shuster, Ranking Member DeFazio, and Members:

I'm Robert Poole, Director of Transportation Policy and Searle Freedom Trust Transportation Fellow at Reason Foundation, a nonprofit think tank with offices in Los Angeles and Washington, DC. I received two engineering degrees from MIT and began my career at a large aerospace firm. I have been in the public policy business since 1978.

Subject Matter Expertise

I have studied the performance of the U.S. air traffic control system since before the 1981 controllers' strike, which led to an invitation from the Reagan White House to brief the DOT Secretary and FAA Administrator on the idea of a nonprofit corporation as a way to rebuild the ATC system in the wake of the firing of PATCO controllers. My first policy paper that fleshed out the concept was commissioned by the Heritage Foundation in 1982¹ and led to a peer-reviewed paper for the Transportation Research Board's journal in 1983.² I advised the Air Transport Association on its ATC corporation proposal in 1985, and have written a number of Reason Foundation policy studies on ATC reform in the intervening years.

During the Clinton Administration, I advised both Vice President Gore's National Performance Review and DOT Secretary Pena's Executive Oversight Committee which developed the proposal for a U.S. Air Traffic Services (USATS) corporation.³ I also advised the subsequent Mineta Commission in 1997, which proposed what we might call almost-corporatization.⁴ In 2001, I coauthored a detailed Reason Foundation proposal for a nonprofit ATC corporation governed by a board representing aviation stakeholders.⁵ That plan won the support of 12 retired FAA officials, including three former Administrators.⁶

During the current decade, I have been a member of two working groups to develop consensus recommendations on ATC reform. The first was convened by the Business Roundtable, 2011, because its CEO, Gov. John Engler, had concluded that our low-tech ATC system was an impediment to economic growth. It included former FAA and DOT officials, as well as aviation researchers and consultants. The other working group was organized by the Eno Center for Transportation in 2013, and was co-chaired by former Sen. Byron Dorgan and former DOT Secretary Jim Burnley. Both of these groups ended up recommending that ATC be shifted from the FAA to an ATC corporation. I also serve on the National Aviation Studies Advisory Panel of the Government Accountability Office and am a long-time member of the Air Traffic Control Association (ATCA).

¹ Robert W. Poole, Jr., "Air Traffic Control: the Private Sector Option," Heritage Foundation, October 1982

² Robert W. Poole, Jr., "Privatizing Air Traffic Control," *Transportation Research Record*, 1983

³ Executive Oversight Committee, *Air Traffic Control Corporation Study*, Office of the Secretary, U.S. Department of Transportation, May 1994

⁴ Norman Y. Mineta, et al., *Avoiding Aviation Gridlock & Reducing the Accident Rate*, National Civil Aviation Review Commission, December 1997

⁵ Robert W. Poole, Jr. and Viggo Butler, "How to Corporatize Air Traffic Control," Reason Foundation, February 2001

⁶ 12 former FAA officials, "A Statement Concerning the Future of the U.S. Air Traffic Control System," Reason Foundation, May 1, 2001 (<http://reason.org/news/show/1002978.html>)

Over the years, I have met with senior officials of a number of the leading ATC corporations around the world, mostly at conferences of ATCA or of the Civil Air Navigation Services Organization (CANSO). I have also made site visits to the headquarters of Nav Canada and of Airways New Zealand, two of the most innovative and successful ATC corporations.

The ATC Problems That Need to Be Solved

As a participant in both the Business Roundtable and the Eno Center working groups, I agree with their assessment of the problems and with their conclusions that ATC is a high-tech 24/7 service business that is a poor fit for a tax-funded bureaucracy housed within a safety regulatory agency. This assessment was also made unanimously by the FAA Management Advisory Council in its January 2014 final report calling for the Air Traffic Organization to be separated from the FAA and the federal budget, made self-supporting from ATC fees and charges (as used by every developed country except the United States), and be regulated at arm's length by the FAA safety regulator, per ICAO policy.

The three major categories of problem that corporatization would address are:

- Funding: uncertain, unstable, and poorly suited to paying for large-scale capital modernization of not just technology but also of antiquated facilities.
- Governance: a system in which far too many legislative and executive branch agencies oversee the ATO, which leads it to focus more on its overseers than on its aviation customers.
- Culture: an organizational culture that is risk-averse and status-quo-focused and therefore lags considerably behind its counterparts that have been corporatized over the past three decades.

My focus today is limited to the second of these: *governance*. Although technology may someday allow for competition, air traffic control is basically a utility monopoly. We know of only three ways to deal with the monopoly problem of such entities.

- If the utility is a *for-profit, investor-owned company*, the usual solution is economic regulation by an external public utility regulatory body. That is the situation of NATS in the United Kingdom, one of the few for-profit ATC corporations (though partially government-owned).
- A second approach is a *government corporation*, such as the Tennessee Valley Authority, one of the nation's largest electric utilities. Because such utilities are owned by the government, they are presumed to be operating in the public interest and are not externally regulated (though that presumption is not always correct). Most of the world's 60 ATC corporations are government corporations, often with only one or two government ministers as the sole shareholders.
- The third alternative is a *non-profit corporation* in which the customers are the owners. We have thousands of rural electricity and telecommunications user co-ops in this country. They operate as businesses, but any profits they make are used either to reduce the extent of bond issuance or to make it possible to reduce customer charges. This is essentially the Nav Canada model.

Misunderstanding Stakeholder Governance

The most misunderstood aspect of the ATC corporatization proposal adopted by this committee last February is the stakeholder board concept. It was intended to be a U.S. adaptation of the concept that has served so well at Nav Canada for the past 20 years: board members elected by the principal aviation stakeholders such that all are represented fairly in a body that manages the corporation in the best interests of a viable and cost-effective ATC system for all of its customers and other stakeholders. But over the past year, this proposed stakeholder board has been described as “giving effective control of our public airspace to the major airlines.” Others have described it as a board “*dominated* by the major airlines.”

Needless to say, this characterization has led to serious concerns and opposition to ATC reform by many private pilots, small-city officials and their airport managers, and rural-state legislators and their Members of Congress. I can understand their fears that a for-profit ATC entity controlled by major airlines might see small-airport towers as less than essential. And if that is what was actually being proposed, I would be among the opponents.

But the proposal under discussion is a *non-profit*, federally chartered corporation to which the federal government delegates the provision of ATC services. This is consistent with international aviation law, ICAO principles, and global practice. In a nonprofit, stakeholder co-op structure, there are no shareholders, and every stakeholder board member has a vote of equal value to that of every other member.

Where the Corporation Proposal Came From

Contrary to what some opponents imply, this proposal did not originate with the major airlines. The Business Roundtable (BRT) working group, which began in mid-2011, had reached consensus on corporatization by April 2012. At that point, Gov. Engler and several working group members (including me) gave a briefing to senior officials of Airlines for America (A4A) at their offices. The reception we got was cool, at best. I got the sense that no one there wanted to re-start the battles that had raged several times in the previous two decades over earlier proposals for either corporatization (1990s) or a shift to ATC user fees and revenue bonding (2000s).

The BRT group went back to work, but held off on other stakeholder briefings in 2012, due to this non-enthusiastic reaction from one of the most important groups. But everything changed in spring 2013. The key event was the budget sequester, which imposed furloughs on controllers, closed the FAA Academy, and threatened the closure of 189 contract towers. In response, A4A, NATCA, and AOPA all requested new discussions with the BRT working group, and at a meeting in the BRT conference room in May 2013, leaders of all three groups told us that a nonprofit, stakeholder-governed corporation similar to Nav Canada was their preferred option. It was only after some further work by the BRT working group over the summer of 2013 that Gov. Engler and

several working group members briefed Chairman Shuster on its recommendations, and received an enthusiastic response.

The Eno Center working group was launched that summer, initially without knowledge of what the BRT group had been doing. Eno brought together about 16 stakeholder organizations for monthly meetings from mid-2013 to mid-2015. This broader group of stakeholders agreed on corporatization, but could not reach consensus between a government corporation model (as in Germany and New Zealand) and a private, nonprofit model as in Canada, so it concluded that both were workable options.

I've summarized this history to demonstrate that the current push for ATC corporatization did *not* originate with the airlines; it originated with the working group created by Gov. Engler at Business Roundtable. That group included a former FAA Administrator, a former Chief Operating Officer of the FAA Air Traffic Organization, two former U.S. DOT senior officials, and several consultants.

Nav Canada's Board as a Starting Point

The stakeholder board concept has been used in partial form for ATC corporations in Switzerland and Thailand. But its largest and most successful application has been at Nav Canada, the world second-largest ATC provider. Nav Canada's model is tailored to the specifics of Canadian aviation, so I do not suggest that it be blindly copied. Still, if we want to use it as an inspiration, it's important to understand what it is and how it works.

First, Canada's enabling legislation defines four key "members" of the aviation community, which are the ones that elect directors. Those four are commercial airlines, general and business aviation, unions, and the government. After those stakeholders select 10 members, the board as a group elects four additional directors (to represent the flying public), with the CEO serving as the 15th member. The board appoints its chair from among the directors by a vote of at least two-thirds.

The composition of Nav Canada's board, as of 2014, was as follows:⁷

3 elected by Government of Canada

- Former MP, British Columbia
- Financial & management consultant
- Former Sr. VP, Bell Canada

4 elected by commercial airlines

- Former Exec. VP Planning, Air Canada
- Former CEO, Bradley Air Services
- Former President, Transat Tours
- Former COO, Air Canada

2 elected by unions

- Exec. Director, BC Nurses' Union
- Partner, Denton's Canada

⁷ "A Unique Structure, Built to Last," *Nav Canada News*, Issue No. 5, Summer 2014, pp. 7-10

1 elected by general aviation

- Former consultant, CBAA

4 elected by stakeholder board

- CEO, Barrett Diversified
- Former Group VP, Enbridge Inc.
- Former President, TSX Venture Exchange
- Chairman of the Board, Canada Post

CEO of Nav Canada

None of these board members holds any paid position in any aviation company or organization; that is a requirement of the enabling legislation. Note also the wide range of business experience represented. Even among the four seats elected by commercial airlines, only two are retired from major carriers, one is retired from an air tours company, and the fourth is retired from a regional airline serving the far north. In addition to not being currently involved financially with aviation, the law requires that all Nav Canada board members have a legally enforceable fiduciary duty to the best interests of the company and its mission.

A U.S. Adaptation of the Stakeholder Board

The United States differs from Canada not only in being larger, but also in having a very large and diverse general and business aviation sector. This suggests that general and business aviation should elect more than one stakeholder seat on the ATC corporation's board. Likewise, given how important small-city and rural airports are in providing access to the National Airspace System, airports are a key stakeholder group that should also elect a board member. Taking these considerations into account, the 2001 Reason Foundation ATC corporatization study proposed the following adaptation of the Nav Canada governance model for the United States:

Commercial Air Carriers (4)

2 seats elected by major airlines (A4A)

1 seat elected by regional airlines (RAA)

1 seat elected by cargo airlines (CAA)

General and Business Aviation (3)

1 seat elected by personal/recreational aviation (AOPA)

1 seat elected by business aviation (NBAA)

1 seat elected by commercial GA (NATA)

Unions (1)

1 seat elected by the corporation's largest union (NATCA)

Airports (1)

1 seat elected by the two airport associations (AAAE, ACI-NA)

Federal Government (2)

2 seats in view of governmental use of the NAS

Those 11 members would select the CEO and three members to represent the flying public. The total board would then consist of 15 members.

One caveat about this 2001 proposal is that it assumed that all *aviation users* of ATC that elected members of the board would pay some kind of ATC fees, giving them a direct stake—as *paying customers*--in the cost-effectiveness and productivity of the corporation. For small private planes, these could be simple annual registration fees like those Nav Canada charges piston-engine planes. Turbine-powered business aircraft would pay ICAO-type weight-distance charges, as they do everywhere else in the world except here. And commercial GA—air taxis, fractionals, and any others that provide air travel to paying customers—would of course pay the same weight-distance fees as other commercial carriers.

This is not the only possible board structure, but in view of concerns of small-city and rural officials and their elected representatives, including *airports* and *regional airlines* as stakeholders that elect board members should make it clear that those portions of the National Airspace System will be fully represented.

Some observers have criticized the stakeholder board concept as likely to be unworkable, considering all the battles fought out in Congress over the years by various aviation interest groups. In response, I offer two pieces of evidence to the contrary. First, in its 20 years of existence, Nav Canada's governance model has worked very well, with the company achieving increased productivity and delivering better ATC services at lower cost in terms of the ATC fees paid by its customers. Second, in this country we have the ongoing example of the NextGen Advisory Committee (NAC). Like a stakeholder board, it represents all the diverse aviation stakeholders in an effort to develop consensus recommendations on how the ATO can best spend the limited and uncertain funds it has for NextGen. Despite their different interests and concerns, the NAC has been able to work out consensus approaches to its tasks, and has earned widespread respect in doing so.

Closing Thoughts on Access to the NAS

Some of those expressing concern about possible loss of control towers at small-city and rural airports assume that the ATC corporation would be making unilateral decisions about where ATC services will be provided. Those concerns are misplaced. First, Congress could specify in the enabling legislation that those airports meeting a reasonable benefit/cost test would be assured of getting tower services.

Second, it is important to remember that the FAA would still be in charge of all aspects of aviation safety. The ATC corporation would *propose* new technologies and new procedures, but the FAA—operating then at arm's-length as the safety regulator—would have the obligation to approve or disapprove. In no way would the ATC corporation be establishing the rules of the air.

Third, when considering the status quo of the ATO's current inadequate and unpredictable funding, we should understand that *small airports are getting the short end of the stick*. For example, despite a long waiting list of airports that have applied for a contract tower, FAA funding limitations have led to a *moratorium on new contract*

towers since fiscal year 2014. The moratorium was imposed following the 2013 sequester. In addition, FAA continues to study possible revisions to its benefit/cost methodology for contract towers. Even if the moratorium were to be lifted next year or the year after, the FAA's ongoing triage—making painful decisions about what to invest in, based on recommendations from the NextGen Advisory Committee—means that low-activity control towers will likely remain a low priority.

A self-funded ATC corporation would be an *improvement* for small airports in at least two ways. First, thanks to its predictable user-fee revenue stream, the corporation would be able to issue long-term revenue bonds to finance major facility renewal, including an overdue expansion of contract towers where justified. Second, the ATC corporation would likely move forward, as its self-funded counterparts in Europe are doing, with implementing remote-tower technology at airports of all sizes (rather than building ever-taller and more-costly traditional towers). For low-activity airports, remote towers have the potential to reduce the *cost* of tower capability while maintaining or increasing the *benefits*. Thus, more airports will qualify by meeting the benefit/cost threshold.

Chairman Shuster and Ranking Member DeFazio, this concludes my testimony. I am happy to answer questions here today, or by email in follow-ups to this hearing.