STATEMENT OF THE

NATIONAL BUSINESS AVIATION ASSOCIATION

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PRESIDENT AND CEO

BEFORE

THE COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE

U.S. HOUSE OF REPRESENTATIVES

REGARDING

“THE NEED TO REFORM FAA AND AIR TRAFFIC CONTROL TO BUILD A 21ST CENTURY AVIATION SYSTEM FOR AMERICA”

MAY 17, 2017
Chairman Shuster, Ranking Member DeFazio, and members of the Committee, on behalf of the National Business Aviation Association (NBAA), we are submitting testimony on the concept of handing our nation’s air traffic control (ATC) system over to a private entity.

Our aviation system is both dynamic and innovative, and is the largest, safest, most diverse and complex in the world. In the U.S., civil aviation supports 11.8 million jobs, $1.5 trillion in economic activity, and contributes 5.4% to gross domestic product.1

Our world leadership in general aviation is undisputed – the industry contributes $219 billion in annual economic impact and 1.1 million jobs.2 Both commercial and general aviation are clearly key drivers of our economy, and provide high-paying jobs to millions of Americans.

Although America leads the world in aviation, we at NBAA understand that we cannot rest on our laurels. The work to continue toward the completion of a modernized, Next Generation, or “NextGen” aviation system has implications not just for the aviation community, but for all citizens.

NBAA and its members are committed to a strong, world-leading ATC system; we stand at the forefront of promoting forward-looking policies, and emerging technologies, to ensure that our aviation system serves not only the needs of today’s stakeholders, but those of tomorrow as well.

Before directly addressing the topic of ATC privatization, I believe it would be useful to provide a reminder of what business aviation looks like, and how it serves America’s citizens, companies and communities.

Business aviation fosters economic development in small towns and rural areas. It helps businesses of all sizes to be efficient, productive and competitive — no matter where they happen to be located. And, business aviation assists in our nation’s humanitarian efforts. Every day, business aviation transports patients to treatment centers, reunites combat veterans with their families, and transports organs for transplants.

NBAA’s 11,000 member companies are part of this essential industry. They rely on business aircraft to meet some portion of their transportation challenges. Among the many ways our members use general aviation is to reach multiple locations in a single day, move equipment that may be too big to fit in an overhead bin, or too sensitive to fit in a cargo hold. They also use general aviation to reach thousands of towns not served by scheduled airline service.

For example, one of NBAA’s member companies, New Hampshire-based Antaya Science & Technology, is pioneering the development of a portable, proton-beam therapy device that can be transported to treat cancer patients located far from the large, specialist hospitals in America’s major metropolitan areas.

The company’s pilot-founder, Dr. Timothy Antaya, relies on a business airplane, because his life-saving device requires very precise calibration, making it impossible to carry on an

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airliner, or even over a bumpy road. He has said that, “Any mishandling, dropping or
temperature extremes in transit would compromise the results” of the treatment his device
provides.

A second example of a company that relies on business aviation can be seen in Oregon-
based Wilson Construction. The company’s pilot-CEO, Don Wilson, uses a mix of aircraft to
deliver electrical specialists and other employees to build and service power-distribution and
transmission lines for utilities across the United States. The company’s lines are often
located in remote areas that have no airline service, and the business aircraft ensure that
Don’s employees can respond to power disruptions in real time, so that those towns remain
on the nation’s electric grid.

A third demonstrative example of business aviation can be found in Schweitzer Engineering
Laboratories, an employee-owned business located in Pullman, Washington. The company’s
founder, Dr. Ed Schweitzer, works with a team of engineers to develop computer systems,
power-grid technologies and other leading-edge innovations. The company does business
throughout the U.S., and in more than 100 countries around the world.

Schweitzer could not compete in a global marketplace without business aviation, because it
is often the only way the company’s personnel can meet the real-time demands of servicing
power grids and other infrastructure.

As a fourth example of business aviation, consider the case of Dave MacNeil, who owns
Illinois-based MacNeil Automotive, which produces custom-designed and precision-fit floor
liners and other protective interior equipment for cars and trucks.

Dave uses sophisticated tools to capture data and reverse engineer complex vehicle
geometry. His sensitive measuring equipment will not fit in the overhead bin of an airliner,
and it might be damaged if checked as baggage on a commercial flight, or sent to a
destination through an overnight shipper. According to Dave, moving the equipment is as
sensitive as “handling a bag of potato chips,” so he must carry the tools aboard his airplane.

These four companies, located in four distinctly different parts of the country, are among
the many thousands of organizations that have business aviation at the heart of their
operations. While they are very diverse companies, they all have a couple of things in
common. They need airplanes, and access to the nation’s aviation system, to conduct
business.

While the airlines serve fewer than 500 American airports, business aviation can access
about 5,000. Ensuring that business aviation has continued access to those airports, and to
the nation’s airspace, will ensure that our industry remains an essential part of the nation’s
economy and transportation system, as it always has been.

As we know, much of the debate over aviation system modernization is about increasing
system efficiency, capacity and access which is a key focus for the companies like the ones I
have mentioned here. This means that a critical part of retaining America’s aviation-
leadership position, now and in the future, will be to continually look for ways to optimize
the access, capacity and efficiency of our system for all stakeholders. Unfortunately, too
often, that debate is being set aside in favor of a distracting discussion over whether we
should privatize ATC.
As congress debates the future of America’s aviation system, the entrepreneurs and companies in NBAA’s membership, have very real concerns over this concept.

The debate over ATC privatization is not new – the big commercial airlines have unsuccessfully sought to take control of the ATC system for nearly 30 years. In 1997, when new entrants began challenging legacy carriers, one of the new carriers sounded an alarm, saying, "The issue is not one of economic efficiency, but of economic power, economic domination, and economic control."\(^3\) New carriers felt the "endgame" of big legacy airlines was the takeover and control of the ATC system for their exclusive benefit. More recently, the CEO of a major airline complained that airlines “are not in control” of the ATC system, and this control is key to their success.\(^4\)

That CEO’s comment speaks to a reality proponents of ATC privatization don’t want to talk about, which is that America’s ATC system is, and will remain, a monopoly. The question on the table is, who will effectively control this monopoly, and for whose benefit? Last year during this debate, a member of this committee said H.R. 4441, which contained ATC-privatization among its provisions, was like giving a highway over to the truckers for them to decide who can drive on it and how much it was going to cost.

It sounds absurd – however, that is what the airlines are seeking to do: wrest control of the nation’s air traffic system away from the public’s elected representatives and give it away, for free, to a private board.

What can we expect to happen under this scenario? First, giving the airlines effective control of the ATC system will not make our system better, but instead will take away from real modernization.

Consider, the example of ADS-B, a GPS-based surveillance technology that tracks aircraft using satellite-position data sent to ground stations. The U.S. has deployed the world’s largest ADS-B network, and has already made use of the technology in areas such as the Gulf of Mexico.

However, as of 2015, only six percent of commercial airliners were equipped with ADS-B capable transponders, which are required to fully utilize the GPS-based ATC system.\(^5\) The airlines also petitioned the FAA to delay equipping some aircraft with the required ADS-B transponders for five years, until 2025, and have resisted investments in NextGen technologies unless they are "capable of helping us grow."\(^6\)

Another troubling aspect of a privatized ATC is the potential for significant access restrictions to airports and airspace. What makes the U.S. air transportation system so unique and special is that it serves all Americans, in communities large and small.

\(^3\) National Civil Aviation Review Commission (1997) (testimony of Herb Kelleher)
That is very much at risk if we move to a private ATC system. One airline industry CEO recently said, “we also need to direct infrastructure improvements into the regions of the country where they’ll produce the most benefits, like the Northeast Corridor.” Again, we have a comment from an airline executive, which demonstrates how the current focus of our ATC system on serving all Americans will change to a system focused on serving the airlines’ interests in the big, hub cities, if they gain effective control.

The focus on commercial airline operations at large hub airports creates airport and airspace access restrictions for business aviation in countries with privatized ATC systems. In Australia, the private ATC operator explicitly prioritizes certain types of operations over others at major airports including Melbourne and Sydney. Canada severely restricted general aviation operations during recent runway construction at Toronto Pearson airport and is considering a future general aviation slot requirement.

Across Europe, many airports in key business centers such as Frankfurt, London, Geneva and Zurich have restrictive slot requirements that make it difficult for business aviation to access airports. These examples demonstrate how shifting from a “first-come, first-served” policy for airport and airspace access, as is currently the case in the U.S., to a system effectively controlled by the airlines, places business aviation at a significant disadvantage.

In addition to jeopardizing access for general aviation, proponents of privatization want to give power to a private board to determine who gets taxed, and in what amounts. John Marshall, the first Chief Justice of the Supreme Court, had it right when he famously wrote that the “power to tax is the power to destroy.” Today, that authority resides with the American public’s elected representatives. Congress should not abdicate, delegate or outsource its responsibility in the areas of aviation taxes and fees.

Allowing a private board to control the taxes and fees that fund our ATC system leaves the traveling public and business aviation open to uncontrolled fee increases. In Canada, travelers were forced to absorb a nearly 15-percent increase in Nav Canada fees when the global economic downturn created financial challenges for the privatized ATC system. There was a similar situation in the United Kingdom, where taxpayers were forced to bail out the private ATC operator, UK NATS, amid system failures and management challenges.

The big commercial airlines have already shown their ability to charge ever-increasing fees to customers for checked bags, seat assignments, flight changes and even overhead bin space. In 2016, airlines collected $6.8 billion worth of “ancillary fees” for baggage, changes/cancellations and early boarding.

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Consumers in Canada have observed first-hand how shifting control of their ATC system to Nav Canada resulted in rapidly escalating airfares. The Canadian Airports Council found the base airfare at Canadian airports is 43-percent higher than at U.S. airports, and international flights from Canada are now the most expensive in the world.\(^{12}\) The Senate of Canada investigated the situation and determined that Toronto Pearson is “the most expensive airport in the world at which to land a plane.”\(^{13}\)

There are also serious constitutional issues with giving away control of our nation’s ATC system to a private entity beyond the reach of Congress, as illustrated by a recent report from the non-partisan Congressional Research Service, which found that allowing a non-profit, privatized entity the authority to set user fees and establish air traffic flow controls may well be unconstitutional.\(^{14}\)

There is precedent for such a finding: more than 80 years ago, in *Carter v. Carter Coal Co.*, the Supreme Court held that delegating hour and wage standards to a private entity “is not even delegation to an official or an official body, presumptively disinterested, but to private persons whose interests may be and often are adverse to the interests of others in the same business.”\(^{15}\) The Founding Fathers were right to be concerned with exactly what the airlines are proposing – we cannot see how a private board will fairly govern our nation’s ATC system.

NBAA has been steadfast in its support and advancement of NextGen technologies that allow equal and fair access to airports and airspace for all aviation stakeholders. We also believe a streamlined certification process that advances safety and promotes innovation will allow the general aviation industry to thrive. However, we are strongly opposed to allowing the big airlines to gain effective control of our nation’s ATC system at the expense of general aviation, the traveling public, and communities across the United States.

When it comes to the notion of ATC privatization, there are many, troubling questions with no definitive answers. Companies and communities across the U.S., which rely on general aviation for business, civil services and a host of other needs, simply cannot risk turning over the system to a private board beyond the reach of Congress. With the challenges faced by other countries’ privatized systems and unanswered constitutional questions, privatization is simply a distraction from the very real progress being made to modernize our nation’s ATC system.

But perhaps the most important question is the one I mentioned earlier: Our nation’s aviation system – the world’s best – is a monopoly; if the system is privatized, who will effectively control this monopoly, and for whose benefit?

Concerns over the answer to that question have been raised by aviation groups, organizations on the political left and right, House members and Senators from both sides of the aisle, mayors from across the country, and a majority of American citizens.

\(^{13}\) The Future of Canadian Air Travel: Toll Booth or Spark Plug (Rep.). (2012, June).
\(^{15}\) *Carter Coal*, 298 U.S. at 311
Let’s set aside the many concerns over ATC privatization by setting aside the concept altogether. Let’s seek targeted solutions to the FAA’s identified challenges, so that we continue to be the world leader in aviation five, 10, and 25 years from now.

Thank you.