

Air Traffic ~~Control~~ Corporation

PHOTOCOPY
PRESERVATION

ATC Mtg - 2-10-84

① 2 options

- Govt Corp -- NPR Recommendation
- Nongovt. Authority -- CEA & Treasury

④ Governance

- Some kind of election of board members by users -- people who pay for services?
- maybe so - ?

- Fed Reserve example

- Board Make-up?
- Who appoints Board?
- Some user - election input

✓ Govt Control over Business Plan -- how do we do this?

- Sec DOT veto?
- Board membership?

"To come Draft" - Draft to come later

⑤ Financing

ops govt. Corp -- when corp borrows \$, scored under Deficit rules. ^{From Treasury}

✓ Appropriation to ATC for GA? or do dir/lies pay higher fees to cover costs

PARAMETERS FOR ATC CORPORATION DECISION MEMO

1. Options.

- NPR*
CBA
treasury
- a) government corporation with ATC services only (not entire FAA, not AIP program)
 - b) nongovernmental ATC Authority with ATC service only (not entire FAA, not AIP)

2. Procurement.

- Congress will say it is due to bad management, not rules*
- a) coordinate with Steve Kelman (who does not believe that the Administration's broader reform efforts will in any way constrain the search for more sensible ATC rules).
 - b) convincing the Hill:
 - specific concrete examples of contracts that were over budget, behind schedule due to inflexible contracting rules. *+ the reasons for it*
 - explain why the ATC should have procurement rules that are different from the rules under which other agencies operate (analogize to other govt corps). *- Must have a strong*
 - explain how our proposed rules achieve efficiency through flexibility while still meeting Congressional goals for fair and competitive contracting practices (especially in light of recent Congressional reports about Executive agencies abusing the practice of off-loading contracts).

3. Personnel.

- coordinate w/ OPM*
- a) coordinate with ~~DOJ~~ DOL (Chuck Richards?). *- union issue*
 - b) pros/cons paper on:
 - veteran's preference
 - right to strike
 - compulsory arbitration
 - c) convincing the Hill:
 - explain why the ATC corporation should have a personnel system different from that used by other agencies.
 - *Coordinate w/ OPM's larger personnel reform efforts*

4. Governance.

a) Government Corporation

- i) Board of Directors [Advisory Board]
- ii) President appoints Board subject to Senate confirmation
- iii) CEO/Administrator appointed by Board [President]

- require certain types of reps - air, land, water, etc.

SEC Transportation has last word on business plan

- iv) DOT, in consultation with DOD, must approve business plan each year. ~~Secretary can overrule corporation on Budget if plan "threatens safety or the efficient operation of the ATC."~~
- v) Liability -- current law. (coordinate with DOJ splash and crash crew).
- vi) Safety regulated by FAA

b) Nongovernmental ATC Authority (described in Treasury/CEA draft)

- i) Board of Directors
- ii) President appoints Board subject to Senate confirmation?
- iii) CEO appointed by Board
- iv) DOT, in consultation with DOD, must approve business plan each year. Secretary can overrule corporation on Budget if plan "threatens safety or the efficient operation of the ATC."
- v) Liability -- commercial? (coordinate with DOJ splash and crash crew).
- vi) Safety regulated by FAA

5. Financing/Pricing/Budget.

a) Pricing

- i) convert taxes to fee for services. *- scope out - what happens under BEA when taxes are gone? mandatory user fee?*
- ii) government subsidies (from ticket taxes) allowed during some specified transition period, after which the corporation would be required to become entirely self-financing.
- iii) pricing will protect GA and others by requiring that pricing promote "economic health of GA, new entrants, safe and efficient operation...."

b) Financing/Borrowing Options

- i) allow borrowing from private markets. *Borrowing from Federal Financing*
- ii) put spending and revenues on mandatory side of budget. No borrowing allowed, but appropriation for specific line items is eliminated.
- iii) current rules: financing unchanged; only procurement and personnel reform offered.

c) Convincing Congress on the Need to Allow Borrowing

- how much capital spending do we want for ATC -- now and in the near future -- and how does this compare with baseline expenditures?
- what return do we expect on this investment relative to tying the corporation to annual appropriations that stretch out capital spending?

let's see if we really need to borrow from private sector markets

Historical Evidence -- future plans

6. Meeting Congressional Concerns. Many key members believe that the Administration is not focussing on the central issues: safety and management.

Safety. The Task Force should provide an unassailable brief explaining how our proposed regulatory structure will assure the safety of travelers. The Task Force should canvass the Hill for specific concerns and then rebut these concerns point by point.

Management. Some Members of Congress attribute FAA's problems to faulty management practices at FAA -- practices that may have contributed to the cost and scheduling problems with the AAS program. The Task Force should address these concerns directly -- by describing how the AAS (and other?) programs have gotten off track, and how we propose to change management practices in order to improve the administration of the AAS and other ATC contracts. (Possible approach: adopt some of the management training and oversight systems at the British CAA). Having done this, we are more likely to find the Congress willing to listen to the remainder of our proposal.



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MEMORANDUM

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JOHN GORTCHAKOFF, Minority Staff Director

TO: Aviation Subcommittee Members
FROM: Chairman James L. Oberstar
DATE: February 25, 1994
RE: Reorganization of the FAA

The Administration has recently announced its support for proposals to take the air traffic control system out of the Federal Aviation Administration and create a new home for it in a separate government corporation. I strongly believe that breaking up FAA in this manner would not only fail to make the reforms which FAA really needs, but would create serious new problems, threatening the safety and efficiency of the ATC system. I thought it would be useful to discuss my concerns with you in detail.¹

1. Disrupting the World's Best ATC System

First and foremost, we need to keep the situation in perspective. FAA has problems, and much of my work in the Congress has been devoted to identifying these problems and pushing the agency to solve them. But we must not allow the problems to obscure the agency's strengths.

FAA now runs the world's best air traffic control system, a system which moves more than 450,000,000 passengers a year, with the highest degree of safety (no fatalities on a scheduled airline in the last two years), and a substantial degree of efficiency. The system is improving. Since 1982, air traffic delays have declined by 15%, while aircraft departures have increased by 39%.

¹Although the Administration is also considering proposals to turn all of FAA over to a government corporation, at this time it seems most likely that their recommendation will be to have only the ATC system in a corporation. Turning the whole FAA over to a corporation would raise many of the same problems as a break-up of the agency, and would raise additional problems, such as the desirability of having a corporation responsible for aviation safety regulations.

With an excellent system in place, we should be extremely reluctant to make radical changes which have the potential of disrupting the system. Unless there is a strong case to the contrary, the policy preference should be for focused reforms which deal with specific problems, while leaving in place the organizational structure which is working well.

The existing air traffic control system does not operate as an autonomous function within FAA. Rather, operation of the system requires the cooperative coordinated efforts of a number of divisions in FAA; including the divisions responsible for air traffic control services, facilities and equipment, safety certification and regulation, airport development, research and development, and law. This inter-dependence was recognized by the experts who testified before the Commission To Ensure a Strong Competitive Airline Industry, most of whom "agreed that the ATC system cannot be separated from other FAA functions because they are interdependent," (Aviation Daily, June 23, 1993).

The proposed breakup of FAA into an air traffic control system, and a rump agency with the rest of FAA's responsibilities, would disrupt organizational relationships and responsibilities which have been worked out over decades. Given human nature, a break-up of FAA would inevitably produce a period of jockeying for position and power which, at the least, would seriously distract employees. The end result of this struggle cannot be fully anticipated. However neat the organizational lines in the original plan, there undoubtedly will be unexpected problems affecting safety and efficiency.

This is not the first time corporatizing ATC has been proposed. An earlier proposal for a separate ATC corporation concluded after in-depth study:

: "Of all the options being considered, this one (a separate ATC corporation) raises the most serious possibilities for substantially disrupting a complex program which, despite major obstacles, has proven to be safe and reliable."²

Because of the disruptive effects of breaking up the agency, the study recommended against a major reorganization of FAA, if there were feasible alternatives.

² "Organizational Options for the Federal Aviation Administration," study by Herbert N. Jasper for the Transportation Research Board (1991).

"Reorganization...is never accomplished without some difficulty and the investment of resources, as well as the risk of unintended consequences. Therefore, one should be certain that the problems to be addressed can not be adequately treated within the existing structure before turning to legislation to effect a reorganization as the remedy."

I fully agree that we should not run the risk of disrupting our outstanding ATC system, unless there are serious problems which cannot be resolved by reforms which will keep the agency intact. Regrettably, as will be discussed in section 7 below, the Administration decided to propose a break-up of FAA before adequately analyzing either the problems facing FAA, or alternative ways of solving these problems.

2. Safety Problems with Corporation Proposal

The main concern I have about converting the ATC system to a corporation is the effect on aviation safety.

The plan contemplates that system users, principally the airlines, will be saddled with a fee system to pay for the corporation. This means that the air traffic control system will be an expense for airlines, affecting their profit and loss. At the same time airlines will play a role in setting corporation policies and deciding how much the corporation will spend.

Do we really want to have a relationship between airline profitability and ATC spending and other decisions affecting safety? Would prescription drug users feel comfortable with an FDA financed by the pharmaceutical manufacturers? Would shareholders feel good about a Securities and Exchange Commission financed by brokerage firms? To be blunt about it, when airline profit margins start to influence air traffic control practices, the safety margin may be eroded, and that would not serve the public interest.

One of the main justifications which has been advanced in support of a corporation is that this form of organization would produce a system which is more responsive to airline concerns and will reduce airline costs. This raises some disturbing scenarios. What if the airlines want to cut their operating expenses by reducing separation-in-trail requirements (the distance between planes) to allow more planes in the air? What if the airlines are having financial difficulties and want to reduce their air traffic control costs by cutting back on the number of controllers and increasing each controller's area of responsibility?

In the existing system, decisions on safety issues are made in the overall best public interest by the Federal Aviation Administration and the Congress, with input from system users. If we go to a corporation how will the public be assured that ATC operations will be managed to protect the interest of airline passengers and ensure safety?

The answer to these questions that has been advanced thus far by the Administration is that there will be no safety problems because the operations of the air traffic control system would be regulated by the remaining FAA. In other words, a new level of bureaucracy would be created by establishing within FAA a new safety unit to regulate the air traffic control system.

Establishing this new regulatory system will require resolution of many difficult issues. Ultimately, the safety of the system will turn on whether the right solutions can be found. For example, which aspects of the corporation's operations will be considered safety issues to be regulated by FAA, and which issues will be considered operational issues to be left to the corporation? Will the hours a controller works or the size of the sector he or she manages be considered a safety issue to be regulated by FAA? Or will it be an operational issue to be left to the corporation? What role will the airlines play on the corporation's board of directors or otherwise in making decisions which could affect safety? How will FAA enforce its safety regulations against the corporation?

The basic question which needs to be asked is whether we should risk the uncertainties of creating a new system to promote ATC safety when we have in place a system which has not had a fatal airline accident in two years.

3. Would a Corporation Protect the Interests of All Users of the Air Traffic Control System?

One of the objectives of today's air traffic control system is to develop facilities, personnel, and procedures which make the system available to all classes of users, both airlines and general aviation. If the ATC system is turned over to a corporation there will be difficult questions of ensuring that the system will continue to be open to all users. What role would representatives of the 325,000 general aviation users play in establishing the corporation's policies and how will their role compare to that played by airline representatives? How will we ensure the development of facilities and operating procedures needed to accommodate general aviation. Who will decide whether a small airport needs a tower, a landing system or other navigational equipment.

Who will set the fees to be charged to general aviation, and how will these fees compare to those charged to the airlines? Will we need to establish a new rate making bureaucracy such as the Postal Rate Commission?

Again, we must ask whether we should avoid all these difficult issues and uncertainties by addressing FAA's problems within the existing structure.

4. Airlines may have to pay more for an air traffic control Corporation than they now pay to support FAA

I see a good chance that airlines will have to pay more to support the combination of an air traffic control corporation and the rump FAA. If airline charges go up, there are likely to be pressures to cut the expenses of the corporation, to the possible detriment of safety and efficiency.

There are a number of potential areas of added costs from breaking up FAA. There will have to be a new FAA bureaucracy to write the rules regulating the safety of the air traffic control system, and to enforce the regulations. There may have to be a new bureaucracy to ensure that the corporation's charges are fair.

Controllers' salaries in a corporation are likely to be higher than they are under the existing system. In a corporation, controller salaries will no longer be determined by government-wide legislation, but most likely by collective bargaining and arbitration.

Another reason that charges are likely to be higher for a corporation is that current taxes now only cover about 60% of the FAA's budget. The Congress is unlikely to approve a subsidy for 40% of an ATC corporation when the rationale for forming the corporation would be to make the system more efficient. The likely result will be higher charges to users to cover the corporation's expense.

5. The Experience of the Postal Service and Other Unfavorable Precedents

There were high hopes and great expectations when the United States' Postal Service was converted from a government department to a government corporation in 1972. The pattern was the same then as now: a commission was formed to study the problems of the postal service. The Postal Commission's report recommended a corporation as a silver bullet to solve all of the postal service's problems. If we slightly revise the 1968 report by changing "postal service" to "air traffic control system," the

1968 report could easily be mistaken for 1993 reports on converting the air traffic control system to a corporation.

The 1968 report concluded that:

"The United States postal system is in serious trouble today because of decades of low priorities assigned its modernization and management needs. Years of lagging productivity have created a gap between postal performance and that of other industries--a gap which represents at the same time a hazard and an opportunity.

* * *

"...a great opportunity exists to improve postal service, cost performance and the circumstances under which postal employees work.

"The Commission and its contractors have examined postal operations carefully. It is our considered judgement, based on first-hand observation, that postal costs can be reduced by at least 20% if the normal investment and operating practices used in private industry are made available to postal management.

"Several years after the Corporation is under way, therefore, it should be able to eliminate entirely the postal deficit, releasing over a billion dollars a year of tax money to other purposes. The long-run potential for improvement, furthermore, is so high that we are reluctant to estimate its size.

* * *

"What lies ahead, however, after the new Corporation's shakedown period is:

- dependable postal service, at fair prices, fully responsive to the public's needs;
- a soundly financed and self-supporting postal system;
- better working conditions and greatly increased career opportunities for one of the nation's largest work forces."

Opinions may differ as to whether there were any benefits from turning the postal service over to a corporation. But certainly no one would claim that the postal service has come anywhere close to the 1968 expectations.

AAS- The \$5 Billion Corporate Experiment

The experience with corporations in the air traffic control area has been equally discouraging. IBM, the main contractor in the Advanced Automation System program has made management and technical mistakes which played a large role in causing the delays and cost overruns of their contract (see our Subcommittee's 1993 hearing, "Delays, Technical Problems, And Cost Escalation In The Federal Aviation Administration's Advanced Automation System"). In addition, two highly respected private corporations, Martin Marietta and TRW, were awarded contracts to help FAA manage the modernization program. The FAA Administrator has made it clear on a number of recent occasions that these private contractors were as unaware as FAA itself of the program's recent cost overruns. Clearly, the two corporate contractors have not been successful in preventing the substantial delays and cost overruns which have plagued the program.

We should bear in mind that theories of the efficiency of private enterprise do not fit the air traffic control system. Private enterprise is considered more efficient than government because private companies operate in a free market where competitive pressures force them to be efficient. By contrast, an ATC corporation will be a monopoly. An ATC corporation will not be subject to the normal competitive pressures which force corporations to be efficient.

6. The Administration decided to support an ATC corporation on the basis of studies which misunderstand the problems facing FAA.

The Administration has indicated that its support of an ATC corporation is based on the 1993 recommendations of the National Commission to Ensure A Strong Competitive Airline Industry and the Vice President's National Performance Review. A review of these studies reveals that they were largely directed to solving problems which are either non-existent, or are not the main problems facing FAA today.

Both reports claim that a corporation is needed to solve three main problems facing FAA; inadequate funding, and burdensome personnel and procurement regulations.

On funding, both reports give considerable weight to a perceived problem that, in the words of NPR, it has been "virtually impossible" for FAA to modernize the ATC system "because the FAA's money comes in annual appropriations. How can FAA maintain a massive, state-of-the-art, nationwide computer system when it doesn't know what its appropriation for next year or the years beyond will be."

I see no basis for blaming a lack of funding for the delays in the modernization program. Over the years, Congress has given the modernization program all the money that could be spent, and then some. Because of FAA's inability to spend all the money it has been

given, the modernization program account has an unobligated balance of \$2.5 billion, more than an entire year's modernization budget.

Both the NPR and the National Commission cite cumbersome procurement regulations as a major problem. I have no doubt that government procurement regulations could stand reform. But this is not the major problem facing FAA today. More than 95% of the original \$32 billion modernization program is now under contract, and the IBM contract for the cornerstone AAS system was signed in 1988. Today's major problem is successful management of contracts, not the procurement process.

The final problem cited is government personnel regulations which make it difficult for FAA to attract controllers to high cost cities. This is a real problem. However, it can be solved without major surgery, by allowing FAA to offer financial incentives to controllers who wish to serve these facilities.

This approach has been tried and proven. Five years ago, in response to calls for reforms and improvements in its personnel management, the FAA instituted a differential pay project at air traffic control and inspection facilities that had difficulty recruiting and retaining personnel. The program contributed to maintaining staff at the necessary levels at key facilities in New York, Chicago, and California. The program is set to expire in June 1994 after a five year experiment. The Administration should take steps to continue this program as well as explore other innovative opportunities to fully utilize its personnel.

Overall, the three problems raised: funding, personnel and procurement, fall far short of justifying a radical change in FAA's structure.

NPR also claims that inefficiencies in ATC are currently causing the airlines to "lose about \$2 billion annually in costs for additional personnel, equipment, and excess fuel." The implication is that corporatization could save the airlines expenses of this magnitude. This is vastly overstated. The \$2 billion figure is the airlines' estimate of the cost of every minute of delay in the ATC system. No reforms are going to eliminate delays due to weather, which accounts for 66% of air traffic delays; nor will 'reform' eliminate the additional 25% of delays caused by inadequate airport capacity.

7. The Administration decided to support a corporation without comparing the corporation to less drastic alternatives.

The Administration's recommendation of an ATC corporation would have more credibility if it was supported by a comparison with the best results which could be achieved within the existing structure.

Originally the Administration had intended to proceed with a study to consider the advantages and disadvantages of several options, including a corporation and a package of reforms which would improve the system without changing FAA's basic organizational structure. Regrettably, a last minute decision was made to eliminate consideration of the option of reform without a corporation. It is difficult to see how the Administration could have decided that a corporation was the best approach without comparing the advantages and disadvantages of a corporation with those of less drastic alternatives.

Moreover, the Administration decided that it was in favor of an air traffic control corporation before it had developed any of the details of how a corporation would function. In view of the many problems which have been raised about a corporation, it is difficult to see how the Administration could have decided that it was in favor of a corporation before it knew how these problems would be dealt with.

Clearly the Administration's decision that a corporation is the best solution to FAA's problems was premature and based on inadequate analysis. In the words of Lewis Carroll, "Sentence first- verdict afterwards."³

8. We need to go forward with reforms which do not split up FAA.

I am very concerned that the Administration's efforts to develop a plan to convert the ATC system to a corporation are diverting time and energy of FAA's top management from the real problems it needs to resolve. Rather than spending time worrying about, for example, how to coordinate safety regulation between a new corporation and the remaining FAA, shouldn't FAA's top management be devoting more time to getting the advanced automation contract back on schedule and within budget?

There are many steps which could be taken to improve FAA's efficiency without creating the problems and uncertainties involved in a change in organizational structure.

a. Term of Office for FAA Administrator

An important reform to improve FAA efficiency would be to give the Administrator a fixed term in office. In recent years, FAA Administrators have not been in office for more than two years. These short terms in office have limited their ability to successfully manage the agency. Even an Administrator with substantial experience in large government programs or the aviation industry needs a year or

³ Alice's Adventures in Wonderland (1865).

more to gain familiarity with the problems, organization, and culture of the FAA. Until this understanding is gained, an Administrator cannot have a major impact on the agency's important programs.

Since 1987, we have had four FAA administrators and substantial periods when no Administrator was in place. These turnovers have meant that almost as soon as one Administrator gains control over the agency he is gone, and a new Administrator begins the learning process. The House reauthorization bill, now pending in the Senate, establishes a five year term for FAA Administrator. This is one of the greatest improvements which could be made to promote the efficiency of FAA.

b. Contract Management

Another area where FAA needs to make substantial improvements is in its ability to manage large contracts. Experience with the IBM contract has shown a need for FAA to exercise more restraint in making costly changes in contractual requirements, to make decisions faster on minor issues, and to improve its ability to gain up-to-date and accurate information on the costs being incurred under a contract. These improvements in FAA management need to be made whether the ATC system remains part of FAA or is switched to a corporation.

c. Procurement Reform

There are other areas in which we could work to improve FAA's efficiency. Although cumbersome procurement procedures are not at this time the main problem in the modernization of the air traffic control system, the agency's overall efficiency could certainly be improved by a liberalization of procurement regulations. We have worked with FAA in the past to make procurement reforms and are fully prepared to do so in the future.

One area which should be explored is whether FAA should be given the same exemptions from procurement regulations as the Department of Defense and NASA. We should also examine the procurement reforms which will be proposed by the Administration (through the National Performance Review) on a government-wide basis to see whether any of these reforms should be applied to FAA, should the government-wide effort break down.

In evaluating procurement reform, we should bear in mind that most of the government-wide regulations apply only after an agency has made a decision to go forward with a purchase. The procedures which an agency follows in deciding to make a buy and in structuring the requirements for a procurement are largely within the agency's own control.

d. Excessive Standards

We will encourage FAA to make reforms to improve its ability to determine its requirements for new systems. For instance, FAA could go a long way towards solving the misnamed "procurement problem" by selecting equipment that is not required to meet excessive standards of reliability. Excessive standards create technical problems resulting in delays and added costs. Example: FAA has been demanding equipment that will have no more than four seconds per year of down time. The system now functions safely with down time measured in hours per year. Could we live with down time of minutes per year for new equipment? I think so.

It is regrettable that FAA has not been ordered to focus its full attention on these types of reforms. We stand ready to work with them to make the changes needed to improve the management and the modernization of the agency.

The FAA problem is symptomatic of the problems which we will face in trying to make government more effective. As was recently stated in an editorial opposing the proposal for an air traffic control corporation,

"The answer (to alleged government inefficiencies) simply cannot be, in every instance, to create a private corporation or advisory committee to displace an allegedly constipated bureaucracy. As former FAA Administrator McArtor said in a recent symposium on the Commission's recommendations, 'If the Department or the FAA is not doing the job they ought to be doing, the solution is not to set up a shadow organization to look over their shoulder or to make recommendations. Instead, create the expertise and empower the people who are supposed to be tasked with the responsibilities.'"⁴

In conclusion, I believe that moving the ATC system to a separate corporation will create serious problems, without making the changes which FAA really needs. Rather than be lured by simplistic slogans like 'government cannot do a job efficiently', we should focus on the real challenge of reforming FAA so that it will be able to continue to give us the world's finest air traffic control system.

⁴ Editorial in "TransLaw", newsletter of Federal Bar Association Section on Transportation Law, Fall 1993.

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

10-Mar-1994 02:49pm

TO: Jeeyang Rhee

FROM: Harry E. Moran
 Office of Mgmt and Budget, BRCD

CC: Arthur W. Stigile

SUBJECT: Lastest ATC paper from DOT

Overall, the paper is a pretty good summary of the problems and options. However, DOT apparently has concluded that BEA exemptions are more feasible than spending increases. I'm not sure that is the case. I have these specific comments:

In the first paragraph, the last sentence starts, "It is impossible to have meaningful reform in financing of air traffic services without some amendment of the BEA...." That is not, as a matter of fact, a true statement. There are several possible ways to finance ATC without amending the BEA, including more discretionary funding under the caps with tradeoffs, shift to direct spending with offsets in other direct spending or increases in receipts. It should be modified to say, "It is not feasible...." if that is their view.

The first sentence under option 2 is not quite accurate. It should read, "Under the BEA, legislation can increase spending on the mandatory side of the ledger (discretionary spending caps do not apply) provided the increase is offset on the 'pay-as-you-go scorecard' by a decrease in other madatory spending or an increase in receipts."

Option 3 needs to be expanded to recognize that an exemption from the President's Executive Order on direct spending targets would also need to be exempt.

Option 4, third paragraph: An amendment to the BEA is one option. Another is offsets to the increase on the PAYGO scorecard. I would reword the second sentence to read: "However, it would either require an offset on the PAYGO scorecard or an amendment to the BEA for the transition. This is because aviation taxes would be reduced...aviation industry. This would create a PAYGO deficit that would have to be resolved."

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

10-Mar-1994 03:55pm

TO: Harry E. Moran

FROM: Arthur W. Stigile
 Office of Mgmt and Budget, BASD

CC: Jeeyang Rhee

SUBJECT: RE: Lastest ATC paper from DOT

I second Rusty's comments, particularly concerning the need for a BEA exemption. We have been told that privatization is being included as an option because the President should see the full range of options. The same reasoning should apply to options under the BEA. The President should know that one option is to pay for the PAYGO costs, either by increasing receipts or reducing other mandatory spending. If those are unacceptable, then there are other options (cap adjustments, etc), but they raise additional issues that should be taken into account (point of order problems). As it is currently written, the memo presents 2 options -- do nothing, or else waive the BEA. Here are some other thoughts.

Regarding point of orders, I can't remember if we have ever mentioned the 60 vote point of order in the Senate against bringing PAYGO legislation to the floor if it increases the deficit in any year through 2003 (may be extended to 2004 in this year's budget resolution). This is not a BEA point of order -- the BEA expires at the end of 1998. Instead, it was included in last year's budget resolution.

Option 1 should be relabled as no change to the existing program or continuing with discretionary funding or something that does not convey the message that full compliance and discretionary funding are the same.

If it is impossible to find PAYGO offsets for converting this to a mandatory program, the memo should say so under option 2 and state why (the costs are too big, etc). Option 2 also ought to be renamed for the same reasons as Option 1.

Contrary to what the memo says, Option 2 does not preclude giving the ATC borrowing authority. This is simply an issue of the size of the PAYGO costs. Giving it borrowing authority as well as the authority to spend user fees means mandatory outlays will be higher initially. Thus the offsets, whatever they are, will also have to be higher.

Second paragraph, page 2 -- change "amount of spending" to "reduction in spending"

Last paragraph, option 2 -- I doubt that any legislated change in the discretionary caps would be viewed as "technical," but I guess that's a judgement call. It has certainly never been done, and OMB has opposed all directed scorekeeping.

Option 3 -- once again, giving the ATC borrowing authority does not necessarily require an exemption from the BEA. It probably raises the projected level of spending, so the PAYGO costs are higher. It also does not create any other longer-term or on-going PAYGO issues. For example, there would be no PAYGO consequence to the ATC borrowing and spending more than what was assumed in our PAYGO estimates of the legislation. There are no PAYGO consequences for non-legislative changes in receipts and outlays. Once our PAYGO reports are issued, our estimates for PAYGO purposes do not change.

Option 4 -- The memo appropriately raises many of the issues about what is meant by non-governmental. Given the likely presumption that this is a governmental function no matter what the form of organization, I think this will set off a lot of bells, particularly among people who would be opposed to the idea. Some may attack it on that basis rather than on the merits. The furor over the regional alliances in the administration's health care reform proposal is instructive. That quite literally substituted for any genuine policy discussion for the 3-4 months after the proposal was sent to the Hill, and when CBO ruled that the alliances belonged in the budget, that was viewed as a defeat for the Administration. I strongly recommend that Option 4 be presented in that light.

Third paragraph under Option 4, last sentence -- once again, the memo only presents one option for addressing the PAYGO costs -- forgiving it by law.

the National Performance Review
the National Airline
Comparison of Recommendations by ~~NPR~~, ~~Airline Commission~~ and ~~the~~
Administration's Initiative

Aviation Industry

Restructuring the FAA and establishing an air traffic control corporation is treated by the National Performance Review, the National Airline Commission and the Administration's Initiative to Promote a Strong Competitive ~~Airline Industry~~.
Aviation

The National Commission to Assure a Strong Competitive Airline Industry makes the strongest and most detailed recommendations: ✓

- o Creation of an independent federal corporate entity within the DOT to manage and fund air traffic control and related functions, including system development, procurement and maintenance. Policy control of the air traffic control system and safety oversight should stay with the federal government;
- o Establishment of a panel of FAA and industry experts, with the participation of the Department of Defense, which will report in 90 days on the specific structure and method of implementation, and which will draft legislative proposals for creation of the corporate entity; and,
- o The following principles should be embodied in the federal corporate entity's implementing act:
 - Ability of the corporate entity to create and use a predictable, stable source of revenue for operations, maintenance and capital investment;
 - Ability of the corporate entity to issue long-term bonds for capital purchases;
 - Removal of current expenditures and revenues from the federal budget in equal amounts for a fiscally neutral effect;
 - Sufficient management flexibility and compensation to attract and retain high-caliber leadership and staff;
 - Flexibility to create systems for procurement, staff and budget consistent with best practices in the private sector;
 - Flexibility in an orderly transfer of operating functions to the reorganized entity; and,
 - Continued air traffic control service to the Defense Department, meeting national security requirements.

The National Performance Review agreed with the Commission's recommendation to "... [create] ... an independent federal corporation entity within the Transportation Department." ^{The} NPR recommendations are not as detailed as those of the Commission. However, NPR elaborated three recommendations:

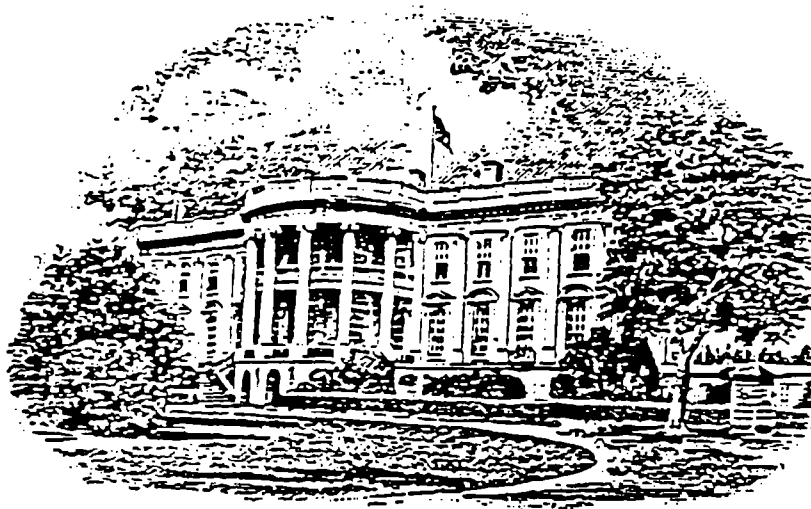
1. restructure the air traffic control system into a government-owned corporation;
2. it should be supported by user fees; and,
3. it should be governed by a board of directors that represents the system's customers.

There is not a specific NPR recommendation that the corporation be able to issue debt to finance investment in a new air traffic control system, ^{although} ^{does} the NPR refers to the need to finance new technologies to improve safety.

The Administration's Aviation Initiative makes restructuring FAA's air traffic control services its first recommendation. The Initiative establishes a committee to develop a detailed plan for establishing a government-owned corporation for air traffic control services. It establishes the following goals:

- o streamline procurement
- o simplify the personnel process
- o provide funding stability
- o ensure continuity of leadership
- o reduce incidence of detailed management oversight
- o the committee is also to ^{evaluate} ¹ the implications of the corporate model for:
 - aviation safety
 - productivity
 - responsiveness to customer needs
 - national defense needs
 - other key issues

Like the NPR, the Initiative is less detailed than the Commission's recommendations. The Initiative makes no recommendation on the corporation's ability to issue debt. ✓



FAX TRANSMISSION

**NATIONAL ECONOMIC COUNCIL
THE WHITE HOUSE**

TO: *Ed Murphy 622-1294 Jonathan Baker 5-6947*
Jee Rhee 5-4797 Mike Schmidt 6-7028

PHONE: _____ FAX: _____

FROM: **MICHAEL DEICH**

PHONE: 202-456-2801 FAX: 202-456-2223

DATE: _____ TIME: _____

PAGES TO FOLLOW: _____

*Draft from George McDonald.
Let's review at 4 pm.*

This memorandum is to provide you with the options we see for financing an air traffic control corporation, a change to the way the Federal Aviation Administration (FAA) does business that was recommended by the National Performance Review (NPR) and the National Airline Commission. While we are still developing the specifics of our proposal, we seek your early guidance on financing because of the implications the financing options have with respect to the Budget Enforcement Act (BEA). It is impossible to have meaningful reform in financing of air traffic services without some amendment of the BEA, and the kind of flexibility we would like to see would require an exemption from the BEA or creation of a non-governmental entity to provide air traffic control services.

Background

We are developing a proposal for your review that would separate those portions of FAA that provide air traffic control (ATC) services from the remainder of the organization (primarily, the safety regulatory and enforcement activity and airport improvement grants) and convert the ATC portions to a corporation. The ATC corporation would be given great freedom to establish its own personnel and procurement procedures. The residual FAA would retain the responsibility for assuring aviation safety and would have authority over the corporation similar to the authority FAA has today over the airlines and aircraft manufacturers.

A major objective of FAA restructuring would be to remove ATC's dependence on the annual appropriations process and to permit it to impose fees on users of the aviation system and use those fees to meet customer needs and finance new technologies to improve safety. FAA's budget today comes through the appropriations process. Its spending is discretionary and, together with all other discretionary spending, subject to the BEA's discretionary spending caps.

To change the ATC's dependence on appropriations would require an amendment to the BEA. If we seek an amendment before the BEA expires at the end of FY 1998, our proposal would be subject to a point of order. To override a point of order would take 60 votes in the Senate.

Option 1 -- Full Compliance with the BEA

If we pursue the ATC corporation but choose not to amend the BEA, the corporation would continue to rely on discretionary appropriations. We could propose personnel and procurement reforms, but the ATC corporation would get no budgetary benefit from imposing direct fees on users and would continue to depend on the annual budget/appropriations process. Any increase in ATC spending for new technology would have to be offset by reductions in other discretionary spending elsewhere in the budget. This option would achieve none of the financial benefits suggested by those recommending an ATC corporation. ATC would have no greater ability than today to do long-term financial planning, to borrow on the capital markets, or to buy equipment it needs when it needs it.

Option 2 -- Limited BEA Amendment

Unlike discretionary spending, government spending on the mandatory side of the ledger can be increased without regard to spending caps, provided that the increase is offset on the "pay-as-you-go (PAYGO) scorecard" by a decrease in other mandatory spending or an increase in government receipts. If ATC spending were moved from the discretionary category to mandatory, the corporation could gain the ability to spend the fees it collects without appropriation and the ability to increase spending for new technology without regard to budget caps, provided users were willing to pay higher fees to offset the increased spending.

Under this option, we would propose an amendment to the BEA to reduce the discretionary spending cap by an amount that would represent some benchmark level of spending that could be reasonably projected for the ATC portion of FAA, and give the corporation credit for that amount of spending on the PAYGO scorecard. Current aviation taxes would be reduced, and the corporation would have to impose fees to raise a comparable amount of revenue from aviation users. Then, the corporation could raise spending and fees if it could justify the increases to its users -- or reduce both -- provided that it maintained the balance on the PAYGO scorecard.

This option would effectively preclude borrowing by the corporation -- a key element of the ATC corporation recommendation both in the NPR and in the National Airline Commission's report -- since spending of any borrowed funds would have to be offset on an annual basis by increases in fees to maintain the balance on the PAYGO scorecard.

While this would require an amendment to the BEA, it could be presented as a technical amendment that preserves the deficit reduction "spirit" of the law: since ATC spending would still be subject to PAYGO requirements, it would not result in an increase in the annual deficit.

Option 3 -- Exemption from the BEA

To give complete financial flexibility to the ATC corporation would require an exemption from BEA -- that is, the action described in Option 2 to move ATC spending from discretionary to mandatory plus a waiver of the PAYGO requirement with respect to the corporation's spending. The corporation would be able to borrow to meet its capital needs and set its fees based on its spending requirements, without regard to the its effect of the PAYGO scorecard balance. The use of debt financing by the corporation would better match the payments by the aviation industry for new technology to the timeframe when the industry would be receiving the benefits of that technology. That would promote better investment decisions than a pay-as-you-go scenario where large, short-term capital expenditures may be deferred or foregone because the inefficiency is less expensive in the short term. This option would enable

the provision of air traffic control services on a business-like basis.

Under this option with the waiver of the PAYGO requirement, corporation spending could result in larger annual Federal deficits in some years.

Option 4 -- Non-Government ATC Corporation

Under Option 3, the ATC would operate in the way envisioned by the NPR and the National Airline Commission, but at the cost of a permanent exemption from the BEA. That cost could be avoided if the ATC corporation were established as a non-government entity.

While we have not developed the specifics of such a non-government entity, the key characteristic would be independence from government control. While the corporation could be subject to safety oversight and control by the residual FAA (as the airline and aircraft manufacturing industries are today) and to protection against anti-trust and anti-competitive behavior (and would have to be able to be brought under the control of the President during a national emergency), it likely would have to be beyond the reach of government officials -- the President, the Secretary of Transportation, and other presidential appointees -- in its normal business operation.

From a BEA perspective, this option is more attractive than Option 3 since it would not require a permanent exemption from the BEA. However, it would require a BEA amendment for the transition: for example, aviation taxes would be reduced so that the corporation could charge fees (that would not be government receipts) without raising the overall burden on the aviation industry, but there would be no offsetting increase in other taxes, so there would be a PAYGO deficit that would have to be forgiven by law.

Independent of the BEA issue, there would be serious concern among many in the aviation community, airline passengers and others with particular concerns for aviation safety, and the Defense Department about such a severing of the ATC-government connection. Both the NPR and the National Airline Commission recommended that the ATC corporation be a government entity. Numerous issues are raised by the concept of a non-government entity. For example, could its employees be prohibited from striking as FAA's air traffic controllers are today? Would ownership of ATC assets be transferred to the non-government entity and, if so, at what cost? (Aviation users would no doubt object to paying for assets they see themselves as already having paid for through aviation taxes.) Who would own and control a non-government corporation -- the airlines, all aviation users, private investors? Would it be for profit? Could the public interest in a safe, efficient system be protected with a provider of ATC services working for profit? With control of the corporation in the hands of parties with potentially conflicting interests? These and many other issues will need to be carefully considered if you wish us to pursue the concept of a non-government ATC

corporation.

Conclusion

From a transportation perspective, Option 3 is the most attractive. It would provide the maximum financial flexibility while retaining the security provided by government control of a system that is so critical to safety and national defense. It does present a challenge, however, to the deficit reduction regime established in the BEA. There is a very good case for separating ATC from that regime, I believe. ATC is a business -- not an "inherently governmental" -- function. It would be financed only from fees on those that use its services and receive its benefits. Any option that gives the corporation financial stability and flexibility will require a BEA amendment, with the possible need for 60 votes in the Senate. If we are to take on this fight, and I believe we should, we ought to take it on in behalf of a proposal that we believe to be the best available.

DEPARTMENT OF THE TREASURY
WASHINGTONFACSIMILE COVER SHEET
OFFICE OF ECONOMIC POLICYDATE: 3/11/94

NUMBER OF PAGES TO FOLLOW: _____

FAX TO: for Rhee
for Baker
Mike Schmidt

ADDRESSEE'S FAX NUMBER _____

ADDRESSEE'S CONFIRMATION NUMBER 622-2377FAX FROM: Ed Murphy

SENDER FAX NUMBERS: (202) 622-1294

SENDER CONFIRMATION NUMBER: (202) 622-2370²

COMMENTS/SPECIAL INSTRUCTIONS:

This is as far as I have gotten by this afternoon. The
gov't vs non-gov't corporation at the BEA have been rewritten
including parts of George's paper; place holders are indicated
for elaborating the basis for choice.
Comment ?

Ed

***** U N C L A S S I F I E D *****

8/11/94

MEMO: TO MICHAEL DEICH

FROM: EDWARD MURPHY

SUBJECT: Draft options

This is as far as I have gotten by this afternoon. Before or maybe after my brain turned to mush, I rewrote the gov't. vs non-gov't. and combined it with George's four budget options. I took massive liberties with his write-up, so if they are not recognizable, that is the reason. I put in place-markers for discussing the basis for choosing, after each issue. This will give the FAA something to write, or we can continue to work on the paper ourselves. If you want to give Frank Kruesi a paper on Monday, I think this is close to showing what we beleive should be the approach. However, if you have changes let me know and I will incorporate them on Monday. I will have a cleaned up, but probably not more complete, version of this tome for you on Monday.

If I am not at the office on Saturday, I can be reached at home on the weekend if you would like to discuss: 703-536-2748.

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Decision Memorandum: An Air Traffic Control Corporation

This memorandum describes options for an Air Traffic Control corporation pledged in January in the Administrations Aviation Initiative. In the options presented here the ATC corporation would not set landing fees, allocate landing slots, or determine pilot or crew qualifications; it also would not certify aircraft or airports. Its only function would be to facilitate the movement of airplanes from one place to another safely and efficiently.

The principal political issues that must be joined in creating an Air Traffic Control Corporation involve: the effect on the Federal budget and the Budget Enforcement Act; public concern about safety; and the potential effect of corporatization on DOD's use of the national air space. Six options have been prepared for your consideration. All entail political issues.

BACKGROUND

Recent reports by the National Performance Review and the National Airline Commission have recommended that the air traffic control component of the Federal Aviation Administration be restructured as a government corporation. The Administration's Aviation Initiative establishes a committee to develop a detailed plan for establishing a government-owned corporation for air traffic control services. These reports have focused on the need for improving the efficiency of the air traffic control system through use of commercial procurement rules and reform of personnel practices. In addition, the Commission stressed the importance of corporate borrowing to finance investment in modern technology for air traffic control. The Department of Transportation would retain responsibility for safety, certification of equipment, aircraft, pilots and airports, and airport security.

The government performs its air traffic activities to maintain a high degree of aviation safety. But the technology the government uses is not as modern as it could be, government procurement is slow and federal personnel rules hamper efficient deployment of human resources. Adopting more business-like practices would speed the introduction of new technologies that would permit new methods for controlling the movement of aircraft and allow more direct routing and closer spacing of aircraft in a wider range of conditions than is possible in today's FAA. The airlines would realize saving from lower fuel use and more efficient utilization of airline fleets and personnel. Consumers would benefit from fewer delays and faster scheduled flight times.

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The Budget Enforcement Act and Government vs Non-Government Corporation Options

The NPR and the National Commission both recommended a government-owned corporation. In addition NPR recommended that the board of directors represent the system's customers; and the Commission recommended that the corporation be able to issue long-term bonds for capital purposes. In exploring how to achieve these recommendations it has become clear that the Budget Enforcement Act pushes us to consider options for a non-government corporation in addition to options for a government-owned corporation. The non-government options solve a political problem with the BEA, but they raise other political issues, e.g. safety. The government and the non-government options all have government oversight for safety and fairness.

The political issue arises from the need to amend the BEA in any option that achieves meaningful reform of FAA. For a government-owned corporation air traffic control outlays would be moved to the mandatory side of the budget to create a mandatory revolving fund; then amend BEA to balance the mandatory increase with a corresponding decrease in discretionary outlays. To establish a non-government entity would require an amendment to BEA to permit balancing a reduction in the ticket tax with an equivalent reduction in discretionary outlays. Each of these would require agreement by CBO and the Budget Committee, and even with agreement each could trigger a point of order on the Senate floor; a point of order would trigger the need for a 60 vote majority in the Senate to amend BEA.

The greatest BEA hurdle would exist for the Commission's recommendation to establish a government-owned corporation with authority to borrow: in addition to having to balance a mandatory increase with a discretionary decrease for a revolving fund, the borrowing option would require exempting the borrowing from the deficit calculation under BEA. This option is the one most likely to encounter strong opposition in Congress because it entails the greatest departure from the philosophy of budget discipline that underlies the BEA. Its request by the Administration would be a departure from Administration practice to date; its enactment could carry a political price for the Administration.

Option 1 -- Full Compliance with the BEA: A Government Agency-like Corporation.

The ATC corporation would be a part of DOT and continue to rely on annual discretionary appropriations. It would be exempt from federal personnel and procurement laws. Any increase in ATC spending for new technology would have to be offset by reductions in other discretionary spending elsewhere in the budget. This option would not achieve many of the objectives identified by

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those recommending an ATC corporation. ATC would have no greater ability than today to do long-term financial planning, to borrow on the capital markets, or to buy equipment it needs when it needs it. This proposal would be criticized by the industry, and since it would be so much like a government agency, it is possible Congress might even decide not to exempt it from federal procurement and personnel rules.

Option 2 -- Limited BEA Amendment: Government-owned Corporation.

Under this option, we would propose an amendment to the BEA to reduce the discretionary spending cap by an amount that would represent some benchmark level of spending that could be reasonably projected for the ATC corporation and give the corporation credit for the amount of spending on the PAYGO scorecard. Current aviation taxes would be reduced, and the corporation would impose fees to raise a comparable amount of revenue from aviation users. Then, the corporation could raise spending and fees if it could justify the increases to its users -- or reduce both -- provided that it maintained the balance on the PAYGO scorecard.

This option would effectively preclude borrowing by the corporation -- a key element of the ATC corporation recommendation both in the NPR and in the National Airline Commission's report -- since spending of any borrowed funds would have to be offset on an annual basis by increases in fees to maintain the balance on the PAYGO scorecard.

This option would require an amendment to the BEA and be subject to a point of order on the Senate floor and require a 60 vote majority. However, it could be presented as a technical amendment that preserves the deficit reduction "spirit" of the BEA since it would not result in an increase in the annual deficit.

Option 3 -- Exemption from the BEA: A Government-owned Corporation

This option would give complete financial flexibility to the government-owned ATC corporation. This would require an amendment to BEA and an exemption from BEA -- that is, the action described in Option 2 to move ATC spending from discretionary to mandatory plus a waiver of the PAYGO requirement with respect to the corporation's spending. The corporation would be able to borrow to meet its capital needs and set its fees based on its spending requirements, without regard to its effect on the federal budget deficit. The use of debt financing by the corporation would better match the payments by the aviation industry for new technology to the timeframe when the industry would be receiving the benefits of that technology. That would promote better investment decisions than the pay-as-you-go

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investment scenario of options 1 and 2 (and the current FAA). This option would enable the provision of air traffic control services on a business-like basis.

Option 4 -- Initial BEA Amendment: Non-Government ATC Corporation

From a BEA perspective, this option is more attractive than Option 3 since it would not require a permanent exemption from the BEA. However, it would require a BEA amendment for the transition: for example, aviation taxes would be reduced so that the corporation could charge fees (that would not be government receipts) without raising the overall burden on the aviation industry, but there would be no offsetting increase in other taxes, so there would be a PAYGO deficit that would have to be offset by the corresponding reduction in discretionary outlays.

A non-government entity would be independent of operational control by government. The corporation would be subject to safety oversight and control by the residual FAA (as the airline and aircraft manufacturing industries are today) and to protect against anti-trust and anti-competitive behavior (and like the other options would have to be able to be brought under the control of the President during a national emergency). Like all other non-government corporations, its business operation would be beyond the reach of government officials except for government regulations or in the event of violation of law or regulation.

Governance

The degree of independence of the corporation will be reflected in its governance structure. All agencies agree that the relevant governance options for a government-owned corporation are:

- o An Administrator who is appointed by the President and who reports to the Secretary of Transportation. An advisory board consisting of users and/or other interested parties could be established.
- o A board of directors appointed by the President. The directors could be chosen to represent various categories of users. Or the board could also include other interested parties. The board would select the CEO, approve the budget and operating plan, the strategic plan and fees for the

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corporation's services. The board's actions would be subject to approval by the Secretary of Transportation.

(Discuss basis for choosing between.)

For a non-governmental corporation the relevant governance options include:

- o A board of directors elected by users. The corporation's charter could require structured voting to assure that all categories of users are represented. The board would have the same powers as above plus the ability to borrow against revenues. Its actions would be subject to oversight review by the Department of Transportation to assure safety and fairness.
- o A variant of the preceding would have the board elected by some other constituencies, e.g., airports, passenger groups, anti-noise groups and/or environmental groups. In this case stronger oversight could be needed.
- o A board elected by private owners of the air traffic control system. The corporation's charter would establish it as an investor-owned public utility. The board would have the same powers as that of any publicly traded corporation. A newly established regulatory commission would regulate the corporation for rate of return, non-discrimination, price and safety.

(Discuss basis for choosing between.)

Finance/Pricing

At present air traffic control services are financed by the excise taxes on passenger tickets and freight waybills. We can retain this method of financing for the government-owned corporation options, i.e., continue to deposit the tax revenue to the corporation's account at the Treasury via a mandatory revolving fund. However, a government-owned corporation might prefer instead to collect fees from the airlines that use the system. (The cost of air traffic control services does not depend on whether a plane is full or not.) In this case the Department of Transportation would need to assure that the corporation did not unfairly disadvantage any class of users.

A non-government corporation could not receive tax revenues directly from the Treasury. Thus the ticket and waybill taxes would be reduced or discontinued. The corporation would derive its revenues from user fees, most likely collected from the airlines that use air traffic control services. The Department of Transportation would have oversight responsibility for safety (discussed below) and to assure that the corporation did not discriminate unfairly against any class of user.

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(Discuss how oversight or regulation would prevent unfair behavior.)

Other Issues

There is general agreement on how to address the following issues in establishing a corporation, whether or not government-owned:

Personnel

Federal personnel rules would not apply to any of the options. The right of free association of labor, the right to collective bargaining, including for wages, is included in each option. The right to strike is not included in any of the options. The absence of the right to strike is balanced by the requirement that collective bargaining differences be settled by compulsory arbitration. The pension rights of current employees would be preserved. The corporation would be able to utilize personnel practices available to private sector entities, subject to applicable Federal and state labor laws and the corporation's collective bargaining agreement(s).

Procurement

Federal procurement rules would not apply to any of the options. The corporation would be able to utilize procurement methods available to private sector entities.

Management

To be provided by FAA.

Safety

At present the FAA encompasses air traffic control, safety (of airplanes, manufacturers, pilots, airports, runways, air traffic control equipment and procedures), airport security and the \$1.8 billion per year grant program for airport improvements. All the options for an ATC corporation would require that safety rules, inspections, certification, etc. remain with the Department of Transportation. Thus, DOT would have oversight of an ATC corporation to assure that air traffic was controlled in a safe manner.

Concern has been expressed that an ATC corporation, directed by or heavily influenced by the airlines, would compromise safety, by allowing airplanes to fly too close to one another or to fly in bad weather, or by using unreliable equipment or following unsafe procedures or staffing. The options have designed DOT's oversight role so that it would be able to set

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safety standards, to detect deviations from safe practice and to order correction.

Some others believe that any significant reorganization will be distracting and compromise safety.

(Discuss safety oversight role.)

Department of Defense Concerns

The Department of Defense is concerned that creating an ATC corporation may impede its ability to use the national air space as necessary in event of national emergency or war. All the options attempt to address this concern by providing Presidential authority to determine priorities in use of the national air space in a national emergency or war.

At present both DOD and FAA provide air traffic control services in an integrated single system. Each provides services to defense and civilian aircraft, with DOD accounting for around 20 percent of the total. DOD is concerned that its services be properly coordinated with an ATC corporation, and that the value of its contribution to air traffic control services be balanced against its use of such services; DOD does not want to pay fees to an ATC corporation for use of the national airspace.

Those portions of the national air space now reserved for use by the Department of Defense would continue to be so reserved. Any changes would be by mutual agreement between the Department and the ATC corporation.

DRAFT**Option 1: Government-owned ATC corporation in DOT**

Subject to annual appropriations; no borrowing authority; headed by an Administrator appointed by the President, reporting to Secretary of Transportation; Secretary appoints Board of Directors or advisory board of users; DOT and Congress maintain effective control of corporation.

Pros:

- o easiest to sell to Congress, requires no change in current discretionary or mandatory spending;
- o could be exempt from Federal procurement rules;
- o could be exempt from Federal personnel rules;
- o under control of Secretary of Transportation for spending plans, safety, etc.; and,
- o annual review by OMB and Congress.

Cons:

- o under annual appropriation process, not able to establish consistent contractual funding stream;
- o long term strategic commitments not possible because subject to annual appropriation;
- o slower development of new air traffic control system because cannot borrow to invest;
- o advisory boards have no authority, so influence of users in planning and operations not increased from current status; and,
- o Congress might not exempt from federal procurement and personnel because in this option the corporation is so similar to current FAA.
- o exemption from rules may not be needed because the Administration is following through on NPR recommendations to reform procurement and personnel rules.

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Option 2: Government-owned ATC corporation in DOT

Corporation's outlays are mandatory and financed by user fees deposited in the Treasury; no borrowing authority; Board of Directors appointed by the President; exempt from Federal procurement and personnel rules; DOT maintains safety oversight.

Pros:

- o mandatory revolving fund permits long term planning;
- o exemption from Federal procurement and personnel rules will permit more efficient operation; and,
- o user influence in operations and planning can be increased if President appoints users to Board of Directors.

Cons:

- o CBO and Budget committees may not score decrease in discretionary spending as a PAYGO saving to balance increase in mandatory spending;
- o review of this governmental entity by Congress and OMB is reduced; and,
- o consistent with Administration support for NPR recommendations to reform procurement and personnel rules.
- o lack of borrowing authority will slow installation of more modern air traffic control system.
- o exemption from rules may not be needed because the Administration is following through on NPR recommendations to reform procurement and personnel rules.

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Option 3: Government-owned ATC corporation in DOT

Same as Option 2, but can borrow from Treasury and resulting outlays are exempt from BEA calculation of budget deficit.

Pros: same as Option 2, plus

- o has flexibility to install modern air traffic control system quickly and pay for it as it is used.

Cons: same as Option 2, plus

- o could carry political price for Administration;
 - CBO and Budget Committee not supportive of piecemeal exemptions to BEA; and,
 - exemption from BEA could require 60 votes on Senate floor to overcome point of order.

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Option 4: A private, non-profit ATC corporation

Government would charter a corporation; not owned or operated by the government; Board of Directors (trustees) elected by users for fixed terms; borrowing not subject to Federal budget limits; DOT provides oversight for safety and to assure that the corporation would not disadvantage any class of user; USG would lease, sell or transfer existing air traffic control assets to the corporation.

Pros:

- o can make and execute long-term plans;
- o can use commercial practices in managing procurement and personnel;
- o can utilize debt to procure new traffic control system and amortize investment;
- o non-profit requirement and rules to assure competitive behavior can make corporation self-regulating, subject to Federal oversight; and,
- o a user-elected Board of Directors will focus on providing air traffic control services efficiently, within Federal safety constraints.

Cons:

- o CBO and Budget Committee may not score the decrease of discretionary spending as a PAYGO saving to balance the equivalent reduction in revenues as the ticket and waybill taxes are reduced;
- o CBO and the Budget Committee might believe this corporation is an extension of the Federal Government under existing scoring rules and hence require it to be included in the Federal Budget.
- o some believe a corporation run by users is inherently less safe;
- o a public corporation would lose the legal defenses afforded the current FAA by the Federal Tort Claims Act; special defenses might be needed; and,

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Option 4a: A private non-profit ATC corporation

Same as Option 4, but the Board of Directors would be elected by non-users (e.g., airports, passenger groups) of air traffic control services.

Pros:

- o avoids potential conflict of interest between users and operators of corporation;
- o can make and execute long-term plans;
- o can use commercial practices in managing procurement and personnel; and,
- o can utilize debt to procure new traffic control systems and amortize investment as it is used.

Cons: Same as Option 4 plus

- o perpetuates current status where ATC services are not planned or provided by users; and,
- o could require a separate regulatory commission to assure continuity of service.

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Option 5: An investor-owned, for profit ATC corporation

Government would charter a public utility corporation; investor-owned, stock exchange listed; Board of Directors elected by shareholders; borrowing not subject to Federal budget limits; DOT oversight for safety; operations, user fees and profits regulated by a new public utilities commission (the Airways Regulatory Commission); USG would lease, sell or transfer existing air traffic control assets to the corporation.

Pros: Same as Option 4, plus

- o this is option most likely to avoid BEA problem regarding debt; i.e. most likely to meet CBO and Budget Committee test that the corporation is not a government entity.
- o can utilize private equity (in addition to private debt, as in Option 4) for investment in new traffic control system;
- o a shareholder-elected Board of Directors will focus on providing air traffic control services efficiently, within Federal safety constraints; and,
- o there is extensive experience in regulating public utilities.

Cons:

- o will require creation of a new Federal regulatory commission;
- o would lose legal defenses afforded the current FAA by the Federal Tort Claims Act, and it may be unacceptable to grant a private corporation any special defenses for torts;
- o some believe a corporation run by investor interests is inherently unsafe; and,
- o Department of Defense may have greater difficulty in integrating its traffic control activities with a for profit corporation.
- o Users would not necessarily own or control the corporation.



U.S. Department of
Transportation

Office of the Secretary
of Transportation

Assistant Secretary

400 Seventh St. S.W.
Washington, D.C. 20590

MEMORANDUM

May 6, 1994

SUBJECT: Status Report on Implementation of the
Administration's *Aviation Initiative*

FROM: Patrick V. Murphy
Acting Assistant Secretary for
Aviation and International Affairs

TO: All Members of NEC Working Group on Civil Aviation

Enclosed for your information is an updated version of a status report I provided to Secretary Peña last week to apprise him of our progress in implementing the actions outlined the Administration's *Aviation Initiative*. I want to thank all of you for providing status information regarding the actions in your respective areas of responsibility.

The Administration's proposal for a U.S. Air Traffic Services Corporation (reported prospectively in my memo to the Secretary) was announced by the Vice President and Secretary Peña at a May 3 press briefing at National Airport. Press clippings of that event are enclosed. Also, on May 5, the Secretary testified before the House Subcommittee on Aviation with regard to the Administration's international aviation policies and the factors shaping our development of a new policy statement. A copy of the Secretary's opening statement at the hearing is also enclosed.

I anticipate a need to provide updates on the status of our implementation efforts in the future, and will advise you accordingly once the next reporting date is fixed. Meanwhile, if you have any questions, please call me on 366-4551 or Jim New on 366-4868 (FAX: 366-7483).

Your continued support is greatly appreciated.

Enclosures (3)

Distribution:

CEA	Joseph Stiglitz, Member, Council of Economic Advisers
COMMERCE	Jonathan C. Menes, Acting Assistant Secretary for Trade Development
DOD	James R. Klugh, Deputy Under Secretary of Defense
DPC	Michael T. Schmidt, Senior Policy Analyst, Office of Domestic Policy, Old Executive Office Bldg
FAA	David R. Hinson, Administrator
JUSTICE	Roger Fones, Acting Chief, Transportation, Energy and Agriculture, Antitrust Division
LABOR	Jack Donahue, Assistant Secretary for Policy
NASA	Wesley L. Harris, Associate Administrator, Office of Aeronautics
NEC	Michael Deich, Special Assistant to the President for Economic Policy
OMB	Christopher Edley, Associate Director for Economics and Government
S&TPol	Richard Delbello, Assistant to the Director for Space, Office of Science and Technology Policy
S&TPol	Timothy Newell, Assistant Director for Intergovernmental Affairs, Office of Science and Technology Policy
STATE	Richard E. Hecklinger, Acting Assistant Secretary for Economic and Business Affairs
TREASURY	Alicia H. Munnell, Assistant Secretary for Economic Policy
USTR	Don Abelson, Assistant U.S. Trade Representative for Services



U.S. Department of
Transportation

Office of the Secretary
of Transportation

Memorandum

Subject **INFORMATION:** Status of Implementation of the
Administration's *Aviation Initiative*

Date: April 28, 1994

From Patrick V. Murphy, Acting Assistant Secretary
for Aviation and International Affairs

Reply to
Att. of:

J. New (X-60)
6-4868

To The Secretary
The Deputy Secretary

The *Aviation Initiative* announced on January 6 committed the Administration to 33 specific actions for implementing 49 of the 61 recommendations from the National Airline Commission. (Note: 12 Commission recommendations were rejected.) Of the 33 actions, one involving tax relief for the aviation industry was implemented by the FY94 budget reconciliation law and one involving a public rulemaking on drug and alcohol testing was completed with the promulgation of DOT's revised testing regulations for the aviation and other transportation industries. Thus, 31 actions remain outstanding.

We have designated 7 of the 31 actions as "High-Profile/High-Priority." These actions, which include the ATC corporation and the accelerated implementation of GPS, are believed to be of highest public interest and in most instances require new legislation. The status of each high-profile action is summarized below.

Another 10 actions have been designated as "Interim"; these are actions of lesser public interest, but commit the Administration to a specific completion date or delivery of a specific product, such as a report or study. The status of the actions in this category are shown in attachment 1.

Finally, 14 actions have been designated as "Continuing." Actions in this category are ongoing, ~~continual~~ in nature with no specific completion date or product, and largely involve ~~continuation~~ of policies or programs already in place at the time of the Airline Commission's report last August. Noteworthy developments since January for actions in this category are described in attachment 2.

HIGH-PROFILE/HIGH-PRIORITY ACTIONS (7)

#1: ATC Restructuring

Action: Committee of Administration experts is developing detailed plan for restructuring ATC services as a government corporation, with plan and draft legislation to be submitted to DOT Secretary in April 1994. Secretary to work with Congress to

enact required legislation.... Plan for restructuring ATC services to include options for creating public-private consortia as means of expediting development and implementation of ATC technologies....

Status: The inter-agency Executive Oversight Committee has presented its legislative recommendations to the Secretary for approval and submission to the White House. The Administration's restructuring proposal is tentatively scheduled for public announcement on May 3. Extensive outreach to members of Congress continues.

#2: Foreign Ownership Restrictions

Action: Administration to submit draft legislation to liberalize current restrictions on foreign ownership of U.S. airlines... Departments of State and Transportation to take the lead in preparing a legislative proposal increasing the limit to 49 percent of the voting interest (up from 25 percent), subject to certain conditions to ensure reciprocal/comparable rights for U.S....

Status: Legislative proposal is being drafted and will be submitted for interagency review and comment (including DOD). Expect to have proposal introduced into Congress by late spring.

#3: Montreal Protocols

Action: The Administration to urge the Senate to ratify Montreal Protocols 3 and 4....

Status: A "views" letter stating the Administration's support is awaiting Justice's approval. Sticking point is legislation for supplemental compensation -- aircraft manufacturers and airlines disagree on this point.

#4: Bankruptcy Law Amendments

Action: Administration to support provisions of S. 540 that would limit the time period for bankrupt airlines to assume or reject their leases for scarce airport gates; allow governmental bodies to sit on creditors' committees; and codify court decisions with respect to aircraft leases....

Status: S. 540 was passed by the Senate on April 21 with the provisions noted above included, except that participation by governmental bodies on creditors' committees is expressly limited to the Pension Benefit Guaranty Corporation.

#5: GPS Implementation

Action: FAA Administrator charged with the task of accelerating the use of GPS, with specific implementation targets to be achieved during 1994-96, and for implementing DOT/DOD task force recommendations for ensuring long-term viability of civil GPS....

Status: In December 1993, Continental Express was approved for GPS approaches at Aspen, CO, and in February 1994 FAA declared GPS operational and an integral part of the U.S. air traffic control system. Also in February, FAA granted approval to one manufacturer's GPS signal receivers which are capable of providing stand-alone guidance for oceanic, domestic en route, terminal and non-precision approaches. Additional manufacturer approvals are continuing.

By September 1994, FAA will complete its GPS Augmentation Study to provide an integrated national approach for GPS augmentation and address national security concerns associated with implementation of augmentation systems. Progress also continues on development of the wide-area augmentation system for implementation in 1998, which will allow use of GPS as a sole means of navigation in all phases of flight.

Other ongoing GPS-related activities include imminent award of a contract to demonstrate the feasibility of using satellite-based systems for Category II/III precision approaches; and, by mid-1994, definition of the Data Link system to support GPS-based operations.

#6: International Aviation Policy

Action: Interagency Committee on Aviation to evaluate all potential negotiating alternatives and, by June 1994, prepare policy statement for achieving liberalization objectives in international air services....

Status: An initial draft policy statement is under review within DOT; a final draft is expected to be issued for public comment in May or June, with the completed statement announced this summer.

#7: EU Air Cargo Negotiations

Action: Exploratory talks with the EU on creation of a fully unrestricted North Atlantic air cargo market to begin in early 1994....

Status: U.S. and EU delegations met in mid-February to explore the possibilities for air cargo liberalization and the elements that might be included in a liberalized air cargo regime. Areas of apparent agreement for further dialogue include: liberal provisions for multiple designation of air carriers, open route descriptions, routing flexibility, unrestricted all-cargo capacity, deregulated pricing, intermodal operating flexibility, competitive ground-handling, unrestricted all-cargo charters, and non-discriminatory user charges. The EU has indicated it will not be in a position to engage in formal negotiations this year. However, exchanges of information and views at the staff level are expected to continue later this spring.

STATUS OF INTERIM ACTIONS (10)

#1: High Density Rule

Action: DOT/FAA has begun comprehensive review to evaluate impact of High Density Rule at affected airports and determine whether rule can be eliminated or modified to better utilize airport capacity. Study to be completed by November 1994....

Status: Preliminary planning, review of study design and contract awards have been completed. Study Phases I (Analysis of Issues) and II (Analysis of Alternatives to HDR) are progressing on schedule for the November 1994 target completion date.

#2: Industry Cost Data

Action: FAA to invite the aviation industry to submit data on actual costs incurred to comply with regulations. These data, married with data on benefits, to form basis of annual cost-benefit report to Congress....

Status: FAA is planning an FAA/Industry conference on cost/benefit issues to be held on June 23. A number of organizations have expressed a strong interest in participating. Results of the conference will be used to develop and implement, by the first week of October 1994, a specific plan for obtaining compliance cost data from industry.

#3: Cost-Benefit Analysis

Action: Office of Information and Regulatory Affairs, OMB, to establish interagency working group in January 1994 to expand and improve regulatory cost-benefit analysis and resolve significant cost-benefit disputes....

Status: The interagency working group was established in January 1994 and consists of representatives from FAA, OST, the Council of Economic Advisers, and OMB. FAA, in consultation with the working group, has begun to construct a data base to better account for the aggregate benefits and costs of regulations over time, including estimates of the benefits and costs of past as well as all significant future FAA regulations. This work is being coordinated with the Regulatory Working Group (co-chaired by Joe Stiglitz and by Steve Kaplan), which was established under Executive Order No. 12866. The FAA-sponsored conference on cost/benefit issues (*see #2 above*) will address ways to improve the accuracy of benefit-cost analysis.

#4: Regulatory Review

Action: Deputy Secretary, DOT, to lead systematic evaluation aimed at eliminating or amending existing rules and regulations to reduce the compliance burden on industry, consistent with safety, environmental protection, and security considerations....

Status: In early January 1994, FAA published a notice in the Federal Register initiating a short-term regulatory review and asking respondents to identify regulations which they believe are unwarranted, inappropriate, or burdensome, and to recommend alternatives which they believe would ensure a level of safety equivalent to the existing regulations. Over 120 comments were received. An FAA team is currently categorizing and summarizing those comments and, based on its review, will develop an implementation proposal for top management's approval.

#5: Bankruptcy Law Review

Action: Administration to complete a review of the economic impact of bankruptcy laws, giving particular attention to the effects of (1) introducing certain time limits on the filing of reorganization plans and (2) increasing the representation of the public interest in bankruptcy proceedings. Based on results, Administration to work with Congress to effect appropriate changes to the bankruptcy laws....

Status: These matters are being examined by the Administration's Bankruptcy Review Group in conjunction with its comprehensive review of the economic, social and legal issues arising out of business applications of the Bankruptcy Code. A specific completion date for this review has not been set.

#6: Industry Job Promotion

Action: By March 1994, Labor Department to complete an analysis of impact of globalization on aviation jobs, including policy options for capitalizing on U.S. competitive advantage in high-skill jobs....

Status: A draft of the subject analysis has been completed and is undergoing interagency review and comment.

#7: Labor-Management Cooperation

Action: By October 1994, Labor Department to complete its project on encouraging the development and expansion of employee stock ownership and other "gainsharing" programs, and to make results available to industry....

Status: Preliminary planning and scoping of the project has been completed. Labor intends to award a contract shortly to enable completion by the October 1994 target date.

#8: Safeguard Defense Needs

Action: DOT and DOD to ensure that emergency airlift requirements are taken into account in decisions on cross-border investment and ownership... DOD to complete review of airlift requirements by January 1994... FY 95 CRAF contract to be awarded by June 30, 1994....

Status: DOD completed its review of airlift requirements on January 7, 1994; those requirements are now being translated into the CRAF contract for Fiscal Year 1995, which will be awarded by August of this year. Defense issues are being addressed in conjunction with development of legislative proposal for increasing foreign ownership limit to 49 percent.

#9: Government Aircraft Subsidies

Action: As part of the outcome of the Uruguay Round, parties agreed to bring civil aircraft under the new Agreement on Subsidies and Countervailing Duties... USTR to seek agreement on tighter disciplines by December 1994....

Status: USTR sections were updated in January to take account of the outcome of the Uruguay Round negotiations (December 1993).

#10: Statute of Repose

Action: As part of comprehensive review of product liability laws, Administration to consider whether to support a statute of repose for manufacturers of general aviation aircraft....

Status: Subject review is underway at Department of Justice. The Senate passed a bill with an 18-year statute of repose; House has yet to consider.

NOTEWORTHY DEVELOPMENTS ON CONTINUING ACTIONS (14)

#1: Cost Impact Data

Action: FAA, assisted by its Aviation Rulemaking Advisory Committee, to identify options and opportunities for receiving cost input data early during the regulatory process....

Developments: Ways to receive cost impact data early during the regulatory process are to be addressed at the FAA/industry conference on cost/benefit issues planned for late June (*see related actions #2 and #3, Attachment 1*).

#2: Aircraft Noise

Action: FAA to continue to ensure carrier compliance with federal requirements for phasing out noisier Stage 2 aircraft by the year 2000, and to exercise review and approval authority over all proposed local restrictions on Stage 3....

Developments: FAA is closely tracking operators' progress by reviewing and analyzing the annual operators' reports required to be submitted by mid-February. These reports provide the basis for FAA's Annual Report to Congress on progress in making the transition to a Stage 3 fleet. Also, an FAA ombudsman has been designated to work with the air carriers concerning their progress in achieving an all Stage 3 fleet. Many inquiries and requests for guidance have been received from airport authorities regarding procedures for imposing local restrictions. However, to date no formal submissions for restrictions have been received for review and approval. FAA continues to engage in regular dialogue with both airport authorities and aircraft operators in an even-handed effort to work out local noise concerns.

#3: Financial Fitness

Action: DOT has intensified its carrier fitness review to monitor more closely and report to the Secretary regularly on the state of the airline industry and the condition of individual carriers... Financing of large transactions involving established carriers to be scrutinized... The Secretary will continue to meet regularly with the industry, financial community, etc., regarding financial and competitive conditions in the industry....

Developments: DOT is developing a quarterly analysis of the financial results of major U.S. air carriers with data obtained from periodic computerized financial reports submitted by the carriers. The objective is to institute a carrier-specific, continuing fitness review whenever the quarterly

analysis indicates a substantially deteriorating financial condition or other significant financial problems, such as high-risk financing plans. Also, DOT has begun a program to impose conditions on new entrant authority, on a case-by-case-basis, to require prior approval or advance notice when a carrier proposes substantial changes in operations, such as a large increase in the number or size of aircraft operated or markets served. In addition, DOT continues to require all new entrant carriers to provide reports or briefings to agency staff 6 months to 1 year after commencing operations.

#4: Airport Revenue Diversion

Action: DOT to continue to enforce prohibitions against the unlawful diversion of airport revenues....

Developments: FAA is working with airport owners examined by the Inspector General to comply with IG recommendations for preventing revenue diversion. FAA also is considering a clearer definition of revenue diversion and is developing guidelines on what it will be looking for in determining whether an airport is engaging in diversion. In addition, FAA is reviewing its policy on awarding discretionary grants to airports which are known to be diverting revenue for non-airport purposes.

#5: PFC Compliance

Action: FAA to continue to scrutinize PFC applications for compliance with statutory eligibility criteria....

Developments: During the 1st quarter of 1994 FAA disapproved five projects for not meeting statutory criteria for PFCs. Also, the Administration's "Aviation Investment Act of 1994" includes a provision amending the Federal Aviation Act to require PFC applications to include adequate justification for specific projects.

#6: New Airline Entrants

Action: DOT to continue its policy of encouraging and assisting new airline entrants....

Developments: DOT has developed information booklets to help educate prospective applicants and continues to provide direct assistance in completing the certification process. Due to a large volume of incomplete applications, DOT in March 1994 issued an order making clear to prospective applicants that their applications are likely to be rejected if found to be substantially incomplete. This action was necessary to avoid diverting

—
staff resources from attending to and assisting more thoroughly prepared applicants.

#7: Potentially Displaced Workers

Action: DOT has amended its fitness procedures to direct carriers seeking international route transfer or undergoing other major change, to provide any plans developed for protecting potentially displaced workers....

Status: Since January DOT has reviewed one proposed transfer with the potential for displacing airline workers: the transfer of certificates from the "old" Trans Continental Airlines to the "new" Trans Continental. In this instance additional information has been requested regarding the impact of the proposed transfer on employees.

#8: Enforcement of Bilateral Agreements

Action: Government to continue to vigorously defend the air service rights exercised by U.S. carriers under the terms of bilateral agreements....

Developments: There have been numerous actions attesting to the Administration's commitment to vigorous enforcement of U.S. air service rights. Examples are enforcement actions involving Costa Rica, Jamaica, the U.K., Israel, and Northwest's complaint against Lufthansa and Germany. Further, efforts continue, through all appropriate means, to achieve more liberalized air service arrangements with major trade partners such as the U.K., Japan and Germany.

#9: Enforcement of Airbus Agreement

Action: USTR (and other agencies) to continue vigilant enforcement of Airbus agreement....

Developments: Monitoring of Airbus subsidy issue has been strengthened through stricter disciplines achieved in the Uruguay Round. U.S. requested information on and held follow-up consultations regarding French Government's equity infusions to Aerospatiale. Further, efforts continue to "multilateralize" the U.S./EU Bilateral Agreement on Large Transport Aircraft.

#10: Enforcement of Trade Laws

Action: Administration to continue vigorous enforcement of existing trade agreements and U.S. trade laws affecting international aviation commerce to protect rights and interests of U.S. airlines and aerospace firms....

Developments: Commerce is policing irregularities in procurement practices through Title IV and the GATT Government Procurement Code, and is engaged in bilateral discussions concerning allegations of "inducements" in foreign competition under Article 4 of the GATT Agreement on Trade in Civil Aircraft.

#11: Agency Organization

Action: As Administration develops new approaches to international negotiation, it will assess whether (further) organizational changes are needed at State and Transportation to assure that such negotiations continue to receive the appropriate level of attention and continuity....

Developments: [No new significant developments since *Aviation Initiative* was announced.]

#12: Industry Cooperation

Action: President has signed into law the National Cooperative Production Amendments of 1994... U.S. will expand bid opportunities for U.S. firms; monitor international competitions; fully investigate complaints by U.S. industry regarding foreign trade barriers; and act to eliminate, or counteract, such barriers.... Also actions regarding government/industry partnership: NASA civil air programs; defense conversion program; joint FAA/industry R&D; NEC aeronautics R&D plan by February 1995....

Developments: As part of the national Technology Reinvestment Project, FAA established a focal point for industry interest in developing new products for civil aviation, and has evaluated hundreds of proposals. Following selection of awards, FAA will manage two multi-million dollar projects for new technology in radars and sensors. One project will develop the next generation of highly accurate radars for airports; a second project will develop ultrasonic ice detection sensors for aircraft wings. FAA also has arranged industry forums and presentations at national seminars to promote government/industry partnerships. Recent examples include the National Aviation Weather Users Forum and the Dual Use Technology Symposium. Further, under the Small Business Innovative Research Program, FAA has funded more than \$3.1 million to small businesses to develop new devices for inspecting aircraft

damage and detecting terrorist weapons and explosives. In addition, ~~FAA~~ currently has 27 Cooperative Research and Development Agreements to conduct joint research and development with a variety of large and small companies.

At NASA, significant progress is being made in the High Speed Research program and the Advanced Subsonic Technology program, both of which were specifically cited as leading examples of government/industry partnership in the *Aviation Initiative*. In addition, NASA has received \$181 million to upgrade aeronautical facilities in support of U.S. industry and government requirements, including: \$27 million for the Composites Technology Center at NASA Lewis in Cleveland; \$60 million for the National Transonic Facility at NASA Langley in Hampton, VA; \$20 million for the Unitary Plan 11-Foot wind tunnel at NASA Ames in Mountain View, CA; and \$74 million for new studies on wind tunnels.

At Commerce, numerous actions have been taken to expand distribution of information on bid opportunities to U.S. firms; to monitor international competitions; and to identify and overcome barriers to foreign trade. Examples are:

- o Recruitment and management of Aerospace Product Literature Centers at events in South Africa, Chile and Singapore.
- o Reestablishment of an Aviation and Airport Infrastructure Subcommittee of the U.S./China Joint Committee on Commerce and Trade.
- o Monitoring of several international competitions involving U.S. firms, including competitions sponsored by Brazil, Brunei, China, Greece, Indonesia, Japan, Mexico, the Netherlands, Kuwait and Saudi Arabia.
- o Achievement of a bilateral agreement with Russia with respect to space launch pricing practices that establishes a pricing mechanism and requires immediate consultations if the Russians bid more than 7.5 percent below the lowest Western bid for an international contract. Similarly, renegotiation of U.S./China bilateral agreement to impose stricter pricing provisions on space launch marketing practices is in the planning stage.

- o Reduction in time required to certify helicopters in Japan, which has been excessive and beyond that experienced in other countries. Commerce and FAA developed a way to monitor the re-certification process that has reduced processing time by 40 percent to date. Monitoring will continue.

#13: Export Financing

Action: U.S. continuing to provide the necessary level of support to the Export-Import Bank to ensure that competitive financing is available to the U.S. aerospace industry....

Developments: The Export-Import Bank has created an aircraft loan unit to support the President's pledge to aid the U.S. aircraft industry and facilitate aircraft exports. The Bank also has announced a major reorganization aimed at making its services more accessible to customers.

#14: International Harmonization

Action: FAA to expedite its ongoing global effort to harmonize international regulation....

Developments: Since January FAA made steady progress in achieving greater harmonization with respect to General Aviation and Business Aircraft Issues; Airworthiness Approval Tag; Rotorcraft; Transport Airplane and Engine Issues; and Emergency Evacuation Issues.

White House Launches Bid to Have A Federal Firm Oversee Air Traffic

By Richard M. Weintraub
Washington Post Staff Writer

The Clinton administration launched its campaign to place the nation's air traffic control system under a government corporation yesterday and immediately got some clear signals of opposition from key lawmakers.

"This is the safest system in the world but we shouldn't wait until the system . . . collapses before we bring change," said Vice President Gore, speaking against the backdrop of the busy runways of Washington National Airport. "We must move toward change before catastrophe strikes."

Gore said it is "absurd" that air traffic controllers use computers dating from the early 1960s and vacuum tubes made only in technologically backward former communist countries.

The administration says that a government corporation would move faster than the Federal Aviation Administration and be free of government procurement and personnel rules. This would help it avoid problems such as those that are ensnaring a multibillion-dollar program to modernize the air traffic control system's computers.

Sen. Wendell H. Ford (D-Ky.) and Rep. James L. Oberstar (D-Minn.), chairmen of the Senate and House aviation subcommittees, said they remain "very skeptical" of the proposal, which would remove 38,000

air traffic controllers, computer experts and technicians from the FAA and place them under an Air Traffic Services Corp.

"After six months of study, the administration continues to try and put a round peg in a square hole," Ford said, adding that it would be wrong to put the flying public at "risk . . . with the uncertainty of a new and untested corporation."

Oberstar said the FAA is an organization that "has served its primary mission—aviation safety—extremely well."

With an eye to this congressional skepticism, Transportation Secretary Federico Peña said "we have intentionally not decided to introduce legislation, signaling those with concerns that we want to work with them." Peña said the administration's goal was to get legislation passed in this session of Congress but that it would not be pinned down to a specific commitment.

Gore, however, called on doubters to "get with the program of reinventing government" and said that he and President Clinton "are determined to go ahead" with projects such as the air traffic control change.

Two lawmakers—Sen. Frank R. Lautenberg (D-N.J.) and Rep. Maria Cantwell (D-Wash.)—appeared with Gore and Peña yesterday to endorse the concept, although Lautenberg called it an "excellent framework for legislation," indicating that changes might be made by Congress.

Under the proposal, the Air Traffic Services Corp. would operate under an 11-person board, including the secretaries of transportation and defense, and would have representatives from airlines, noncommercial aircraft users and labor. It would be funded primarily by the airlines, under a formula similar to the present ticket tax.

Because the corporation would have the authority to borrow as much as \$15 billion to fund long-term projects, Peña said a "technical adjustment" would be needed to get it out from under federal budget constraints.

Just as concerned members of Congress quickly divided on the issue, so did representatives of the aviation community.

The Air Transport Association, which represents large air carriers, endorsed the project but said it had reservations over how the corporation would be funded. Representatives of the nation's airports and the air traffic controllers endorsed the project.

Representatives of the general aviation community—recreational pilots, business aircraft and other smaller planes—remained either skeptical or in outright opposition.

Phil Boyer, president of the Aircraft Owners and Pilots Association, said the administration plan had met some of his group's concerns by saying general aviation users of the system would not have to pay the same fees as commercial airliners.



WALL STREET JOURNAL A6 5/4

Clinton Introduces Plan to Reorganize Air Traffic Control

By DANIEL PEARL

Staff Reporter of THE WALL STREET JOURNAL
WASHINGTON — The Clinton administration introduced its plan to reorganize the nation's air-traffic-control system, but postponed filing legislation in hopes of reaching a compromise with skeptical lawmakers.

Vice President Al Gore and Transportation Secretary Federico Pena insisted that the best way to replace outdated air-traffic-control technology is to put the system in the hands of a new federal corporation. But their delay in producing legislation gave Congress a chance to produce less-sweeping reforms that could leave the system in the hands of the Federal Aviation Administration.

Rep. James Oberstar (D., Minn.), who chairs the House Aviation Subcommittee, has indicated he's willing to consider legislation to loosen purchasing and personnel rules that have helped add years of delays to the FAA's effort to install new computer systems in air-traffic-control systems. The administration's plan attempts to wrest air-traffic-control from those rules entirely, so that the new corporation could borrow money from the Treasury or private sources and vary air-traffic-controllers' salaries to help fill understaffed locations. (Air-traffic-controllers still would be denied the right to strike).

Oberstar said the administration's plan was "a solution in search of a problem." In a joint statement, he and Kentucky Democrat Wendell Ford, chairman of the Senate Aviation Subcommittee, said it would be "extremely difficult" to support the plan until questions about safety, finances, and the effects on small-plane pilots are answered.

The administration provided only sketchy details about its proposed "United States Air Traffic Services Corp." As previously reported, the corporation's stock would be owned by the government, and its 11-member board would include the transportation secretary and representatives of aviation industries and travelers. Mr. Pena confirmed that the administration has guaranteed private pilots that the new corporation wouldn't impose new fees on them.

Under the plan, the transportation secretary would have power to veto any fees.

JOURNAL OF COMMERCE 3B 5/4

Pena Expects Congress to Back Air Traffic Plan

Reuters

WASHINGTON — The Clinton administration is optimistic that Congress will back its plan to reorganize the U.S. air traffic-control system, Transportation Secretary Federico Pena said Tuesday.

"We think chances are good," Mr. Pena told the NBC "Today" show, shortly before Vice President Al Gore was to join him at Washington's National Airport to formally unveil the plan.

The proposal would transfer air traffic functions from the Federal Aviation Administration to a new government-owned corporation, Mr. Pena said.

Speaking from the airport control tower with an obsolete vacuum tube in one hand and a computer chip in the other, he said the current system was beset by red tape that made it impossible to get equipment on time.

On CBS "This Morning," Mr. Pena said it takes the FAA three to five years to bring aboard new technology, and "many times by the time we have the technology it's antiquated."

"We got to have a corporate culture to have the same flexibility that any major corporation in this country has in buying off-the-shelf technology," Mr. Pena said. He added that one computer chip can replace 3.5 million vacuum tubes.

**STATEMENT OF FEDERICO PEÑA
SECRETARY OF TRANSPORTATION
BEFORE THE
HOUSE PUBLIC WORKS AND TRANSPORTATION COMMITTEE,
SUBCOMMITTEE ON AVIATION
MAY 5, 1994**

Mr. Chairman, Members of the Subcommittee, I appreciate this opportunity to be here today to discuss the international aviation policy of the Department of Transportation. The last time that the Department crafted a written statement of international aviation policy was 16 years ago during the Carter Administration. We are finalizing a new policy statement, making this a well-chosen time for today's discussion. I know that Committee Members realize that this is a complex subject that combines economics, politics, domestic and international law, bilateral agreements and foreign policy. Numerous, often conflicting interests are involved.

That is why I would like to begin by setting out some basic facts and trends that we at the Department of Transportation see as shaping the international aviation industry and the context of international policy-making:

- ° first, the global market environment, including the growing international aviation market, regional differences, the transformation of U.S. airlines, U.S. airline performance in overseas markets, and the globalization of the industry;
- ° second, the external factors shaping aviation industry growth, including the bilateral regulatory system, the investment regime, and infrastructure constraints;
- ° Third, the outlook or vision of the future we see evolving and which

we seek to influence;

- ° Fourth, specific concrete steps that the Department of Transportation is taking to provide more aviation opportunities for U.S. airlines, cities and the American public; and
- ° Fifth, the role and impact of the use of code-sharing.

THE GLOBAL MARKET ENVIRONMENT

The growing international aviation market

Total worldwide international travel has been growing at the healthy rate of 7 percent per year -- more than doubling in the last 10 years -- and U.S. airlines have shared in this significantly. Indeed, U.S. carriers' international traffic has grown at a remarkable 9.5 percent per year for the last 10 years -- about twice the growth rate of the U.S. home market. International traffic now accounts for 25 percent of our airlines' business, up from 18 percent a decade ago. All forecasts show that international travel growth will continue to outpace growth at home, as our domestic aviation market matures and less-developed foreign markets surge.

One reason why overseas travel is likely to outpace domestic growth for years to come is that North Americans now travel by air more than 15 times more per capita, per year than Asians do and three times more than Europeans. This gap can only close as other economies around the world grow and their people travel more by air. Even as the gap narrows, though, U.S. international travel is expected to continue to grow twice as fast as domestic traffic over the next 10 years, rising more than 80 percent by the year 2003.

Our airlines know where the greatest growth opportunities are, and are determined to be major players in the dynamic global marketplace.

Regional differences

As the world market grows, it is important to analyze growth prospects by geographic region to see where the greatest opportunities lie. A decade ago, almost half of U.S. carriers' international revenues were earned over the Atlantic. Europe was our largest revenue market. That has changed dramatically. Last year the Pacific region generated 46 percent of our airlines' international aviation business and the Atlantic just 37 percent. Both regions have grown significantly, but Asia is now clearly more valuable to our industry's growth.

I should point out here that our carriers' international profits and losses are even more varied than their growth rates. Last year, U.S. passenger/cargo combination carriers reported an overall \$392 million operating loss internationally. But their Pacific and Latin operations were slightly profitable. All of the reported losses were in the Atlantic, and one airline incurred most of them.

U.S. all-cargo carriers lost money in all three regions, with the heaviest losses in the Atlantic.

The primary factor driving the growth and profitability of global air travel is economic activity -- here in the United States and around the world. Airlines are extremely sensitive to the business cycle -- suffering severely during the recent recession and hopefully now returning to profitability as recovery takes hold. As Dr. Laura Tyson, Chair of the Council of Economic Advisers, said when she and I presented the Clinton

Administration's Aviation Initiative three months ago. "A strong economy will be the best medicine for what ails the aerospace complex."

As the U.S. economy continues to improve and other economies resume growth, airline activity is bound to increase. Strategic planning now, focusing on those markets with the greatest potential, will reap rich benefits in the future.

Two other major factors that shape our international aviation sector are: our domestic airline experience of competition and the world's international regulatory system.

The Competitive Transformation of the U.S. airline industry

Fifteen years of intense competition has brought about a startling metamorphosis, not only in the U.S. home market but in the list of players in U.S. international aviation. Indeed, with the exception of Northwest Airlines, the largest U.S. international airlines today were all primarily or exclusively domestic not very long ago.

But these changes in the rankings of dominant international airlines have not created a static situation. Our biggest international carriers remain under enormous competitive pressure at home. A steady stream of new entrants and more rigorous enforcement of anti-trust laws by our Administration ensure this healthy competition. This sustained competitive pressure has made U.S. carriers highly efficient. Indeed, Mr. Chairman, U.S. carriers are ready to compete anywhere in the world. The problem is that the rest of the world is not ready to compete with them. Although the U.S. airline industry will continue to evolve, U.S. carriers will always be formidable competitors, and the fact that the identity of the U.S. players in

particular markets may change over time will not alter our fundamental policy of promoting competition and opening up international markets.

U.S. airline performance vis-a-vis foreign competitors

The European Union's Comité des Sages recently pointed out that European airlines have operating costs 48 percent higher than major U.S. carriers -- before even factoring in our low-cost companies. This U.S. advantage extends beyond Europe to Asia and around the world. No wonder U.S. carriers' share of international traffic is growing.

In international markets involving the U.S., our carriers captured 47 percent of the traffic in 1986. Last year, they took a 54 percent share. The U.S. share has risen 7 points in 8 years. On a market-by-market basis, U.S. carriers convey 66 percent of the traffic to and from Japan, 62 percent to and from Germany and Canada, 70 percent to and from France and 44 percent to and from the United Kingdom.

Caught up as we sometimes are in day-to-day issues and disputes, we should bear in mind that the big picture of achievement in international aviation shows U.S. carriers doing very well indeed.

The trend towards globalization

The competitive quest now underway for better, more efficient access to as many international markets and passengers as possible, might best be summarized as the "globalization" of the airline industry. Airline strategies and initiatives have been driven in part by the logic of strong economic forces and the search for profit, but they have also been influenced by the character of the international regulatory system and other constraints.

Airlines are being impelled by the economic force of their customers' demand for improved service and their own search for higher growth. Demand for international air service is growing strongly -- hence, airlines want to tap this demand and enhance their competitive positions by gaining better access to as many markets and passengers in the most efficient ways they can.

Many airlines cannot achieve these goals by establishing new direct services with their own aircraft and marketing their services exclusively under their own names. It is not only regulatory constraints that inhibit them but the daunting costs that unilateral expansion on a global scale would entail. Given the presence of extensive, existing networks in all regions of the world, one of the most efficient, cost-effective ways to expand globally is to facilitate passenger movements between existing networks. This economic logic has fueled the ongoing wave of inter-airline investments, mergers, strategic alliances and code-sharing both within and across national borders.

The trend toward alliances gathered speed during the 1980's, as U.S. and foreign carriers around the world sought various degrees of strategic integration. Virtually all of the major U.S. international airlines have entered into marketing alliances with foreign carriers large and small. Several U.S. airlines have been involved in equity transactions. Similarly, investments or marketing alliances between foreign carriers have involved virtually all of the major carriers within Europe as well as many large and small airlines in other regions. Marketing alliances have been most common, but there have been a number of notable equity transactions

Some of these arrangements have ended and several far-reaching

alliances have been proposed, but not consummated -- such as the KLM-British Airways bid for Sabena and the Alcazar project to merge KLM, SAS, Swissair and Austrian Airlines. But even if some alliances have proven temporary, and some deals have aborted, the participants have simply gone on to seek new partners. The trend remains.

It is also true that carriers' various corporate strategies have been strongly influenced by the regulatory environment and other externalities. Some alliances, for instance, may not have been created, or would have taken different forms, were it not for the limitations imposed by the restrictive bilateral system and other constraints.

EXTERNAL FACTORS SHAPING GROWTH

Unfortunately, Mr. Chairman, both the growth of international aviation and the ability of U.S. airlines to meet the demand for global air services have been severely inhibited by a number of economic and physical barriers to efficient airline operations. These barriers include continued government reliance on bilateralism, restraints on capital movements and the limitations of airport and air traffic control infrastructure.

The restrictive bilateral system

The bilateral system of negotiating aviation rights is designed to limit, not to foster, competition, and inhibits or distorts globalization. The Chicago Convention -- established half a century ago toward the end of World War II -- dictates that nothing can happen unless government agreements explicitly permit it. Consequently, there are 1,200 bilateral agreements worldwide setting out exactly what airlines can do.

The U.S. didn't want this system 50 years ago, and we don't want it now. Indeed, this restrictive bilateral regime limits the competitive advantages and growth prospects of U.S. air carriers -- the most efficient in the world. That is because the bilateral system encourages many countries to focus on the fortunes of a single flag carrier -- thus viewing aviation negotiations as a zero-sum game. Secondly, the bilateral structure makes it extremely difficult and costly to build efficient airline systems. To do so requires a laborious process of assembling the necessary market access rights through a network of interlocking bilateral agreements. That is difficult in the best of times. It is virtually impossible when major nations adopt severely restrictive policies.

The French government, which renounced its treaty with us and now keeps a lid on U.S. carriers' growth, may be the most blatant example of resurgent airline protectionism at work. Air France, meanwhile, is undertaking a multi-billion dollar state-subsidized restructuring in an attempt to become competitive. Other governments are also restricting U.S. carriers. A key part of our international aviation policy strategy is to lift these mercantilist bilateral barriers and allow global aviation commerce to develop.

And the truth is, Mr. Chairman, protectionist barriers are little more than desperate, rearguard actions that cannot succeed in the long term. The longer national carriers are shielded from competition, the less effective they will become relative to their more nimble competitors in the race for shares of the growing international market. The waves of liberalization, while imperfect and far from universal, will continue to undermine fortresses built on the sand of protectionism.

Foreign investment

Intrinsic to the bilateral system is the requirement that airlines designated by each country be substantially owned and effectively controlled by nationals. Virtually all nations, including the U.S., have strict limitations on the degree of foreign investment allowed in their airlines. Clearly, these restrictions impede the free flow of airline capital. Thus a valuable corporate strategy used in other industries to increase growth -- market access through investment -- has been limited in the case of airlines.

Infrastructure constraints

Airlines have also been hindered in entering new markets or expanding services because of inadequate airport and airway capacity, thus distorting service patterns and the allocation of resources. The limitations at airports like Heathrow and Narita are well known, as are the constraints of fragmented European ATC systems.

European ATC capacity shortages and inefficiencies stem chiefly from the fragmentation of ATC services among more than 20 separate national systems. Political pressures have so far stymied the establishment of a single-integrated system even though European governments are embarked on a "harmonization and integration program" to improve coordination between national systems, agree on equipment standards and upgrade less advanced national systems.

The United States supports this effort to reduce delays. FAA experts have collaborated with their European and other world safety counterparts in the search for solutions and we will continue to work closely with them to mitigate this problem, which imposes billions of dollars of added costs each year on both U.S. and foreign carriers.

THE OUTLOOK: GLOBAL NETWORKS

All of these constraints -- the bilateral system, restraints on investment, and infrastructure limitations -- will continue, for some period, to limit airline flexibility in selecting markets and choosing corporate strategies, to deny new service to cities, and to deny passengers and shippers a full range of transportation options. In particular, there is a tension between the bilateral system, focused as it is on national boundaries and individual airlines, and the economic forces driving globalization. As some countries continue to work hard to protect their airlines, progress in some markets will be very difficult.

Ultimately, economic forces will prevail. The constraints, even taken all together, will only delay or distort -- not stop -- the process of globalization. Indeed, we expect this trend to continue well into the next century, leading to the development of a number of global aviation networks linking the three major regional air travel markets -- the Western Hemisphere, Europe (with Africa and the Middle East) and Asia.

These networks, based on major hubbing complexes in each region, will evolve in large part by the spread of various commercial arrangements to share passengers and freight between airlines. These arrangements will be the most efficient way to provide the "feed traffic" of people and goods needed to support complex, geographically diverse networks and sustain major hubbing operations.

We believe that U.S. airlines are strongly positioned to compete as lead players in these emerging global networks. First, because the U.S. domestic and international market accounts for 40 percent of all world air traffic today -- providing a rich base of passenger traffic; secondly, because

deregulation has honed U.S. airlines to a high degree of efficiency.

Even though the first advantage is sure to diminish over time as air travel grows in other world regions, several U.S. airlines -- and it is difficult to predict which ones -- can emerge as the leading players in global networks.

DOT ACTIONS TO PROMOTE THE GROWTH AND DEVELOPMENT OF INTERNATIONAL AIR SERVICES

Against this background of continuing globalization, enhanced competition remains the core of U.S. aviation policy. We are convinced that airlines responding to the demands of a competitive marketplace produce the best results for their shareholders, for their employees, and for the passengers, shippers and communities they serve. That has been our experience at home and we believe that competition will multiply the benefits of increased air travel throughout the global economy.

There are, of course, obstacles to the implementation of an effective pro-competitive aviation policy. As I mentioned, Mr. Chairman, some foreign governments have restricted U.S. airlines operations in the interest of protecting their airlines from competition. We appreciate the concerns of our trading partners and we are prepared to adopt innovative programs to deal with them -- provided that our joint efforts lead to the elimination of restrictions on airline services and otherwise liberalize international aviation markets.

We face continuing challenges in assessing the shifting, often difficult-to-quantify opportunities and benefits for diverse U.S. carriers and the U.S. economy and in crafting effective strategies to guide us in negotiating

and maneuvering from today's airline world into the globalized future. We need to give our airlines the opportunities they need to choose the corporate strategies they believe are in their best interests. While we cannot change the basic economic forces airlines face, we must do our utmost to insure that their choices are not constrained by artificial barriers.

Our goal throughout should be to maximize overall U.S. interests -- defined in the broadest sense to encompass airlines and their employees, the traveling and shipping public, U.S. cities and our national economy as a whole.

DOT, in partnership with the Department of State, has been proactive in seeking to increase opportunities around the world for our airline industry and its customers. We played a key role in the formation and deliberations of the National Airline Study Commission, and in crafting the Administration's Civil Aviation Initiative. Since taking office, we have shared the frustrations of U.S. carriers faced with restrictions placed on their operations by foreign governments, and we have acted to remove these restrictions wherever possible.

In general, Mr. Chairman, our international aviation policy has been consistently guided by the strategies to support globalization and open markets that I enunciated in a speech before the International Air Transport Association last November:

- 1) First, we actively seek unrestricted, multilateral and sectoral agreements with those groups of nations that are willing -- and able -- to bring comparable benefits for U.S. carriers and the U.S. economy to the table.
- 2) Secondly, while we pursue multilateral accords, we also seek to

liberalize existing bilateral agreements -- ensuring that any such agreements actually stimulate more air travel, increase competition, and add to -- not reduce -- any other aviation rights that existing bilaterals already contain. We plan to move forward -- not backwards.

3) Thirdly, while we seek to move beyond the obsolete regime of bilateral accords, we will vigorously defend any and all existing U.S. bilateral rights. We will act, through all available means, against any foreign competitors whose governments discriminate against or fail to honor the rights of U.S. airlines. No one should underestimate our resolve in this regard.

4) Fourthly, we will explore the formation of a global coalition of like-minded, free market-oriented nations that could significantly advance liberalization.

In applying these strategies, we seek solutions that reflect a genuine exchange of reciprocal economic opportunities. In our recent agreement with Germany, for example, we preserved and enhanced the competitive position of U.S. carriers, obtaining new opportunities to balance the temporary moderation in capacity growth, and embarked firmly on the path to an Open Skies regime. We have also begun to seek multilateral arrangements to replace the outmoded bilateral regime, notably with the European Union in exploring air cargo liberalization.

As for encouraging the free flow of capital, we support raising the current 25 percent limit on foreign voting equity in U.S. carriers in markets governed by liberal arrangements.

To continue these initiatives in a comprehensive way, we are refining our strategies for liberalizing the prevailing international aviation regime. I have asked my international aviation policy staff, in coordination with the Department of State, to prepare practical strategies for achieving a liberalized international regime.

We will seek the advice of members of Congress in this effort and I expect to complete it by early summer.

Our current negotiating strategies -- like the comprehensive strategy to be embodied in the policy statement -- will be guided by one bright, unwavering lodestar: enhanced competition.

Nations that adopt more competitive policies and more liberal aviation agreements deliver measurable benefits to their citizens and businesses. As a study of aviation agreements from 1975 to 1989 concludes: "Having a liberal agreement in place results in 46 percent more passengers traveling between the United States and a foreign country and an annual passenger growth rate of 11 percent higher than it would be if there had been a non-liberal agreement in place -- after controlling for other country-specific factors....."

That's why we are confident that protectionist incidents will decline over time. First, because airlines worldwide all need to grow and globalize. Secondly, because airline consumers, businesses and tourist officials worldwide are realizing that they are not being "protected" -- but are instead badly hurt -- when their own governments adopt restrictive aviation practices.

Our attitude toward competition, our approach to international negotiations and indeed, our definition of what the United States' national

interest is in shaping aviation policy are all profoundly different from most other nations, Mr. Chairman.

Most of our trading partners have only one or two national carriers. My counterparts in those countries need not look beyond the interests of those carriers when they develop their aviation policies. They believe -- and act -- as if what is right for their national airlines is the supreme good for their nation.

The U.S. is very different in this regard. Almost every international aviation issue that my Department deals with involves the interests of several of our airlines. We rarely enter bilateral negotiations with broad consensus, let alone unanimity of strategy by U.S. carriers. What one carrier may view as a positive outcome others often vigorously oppose. Therefore, I must always seek to discern what is in the best interest of the United States as a whole.

Moreover, U.S. airlines are not the only parties whose legitimate interests the federal Department of Transportation must consider.

To our cities, international air service represents a vital element in their strategies for economic development.

For our economy as a whole, increased air access to foreign markets creates more trade, tourism and jobs. Growth in aviation markets -- brought about by rising traffic and competition -- means that U.S. aircraft manufacturing will be able to sell more planes and hire more workers. Finally, the interests of the U.S. consumer -- in inexpensive, convenient and safe air travel -- must be a paramount consideration for all of our policy.

That means that as Secretary, I must look beyond the specific interests of individual airlines to develop an aviation policy that takes all of

these important "customers" into account before arriving at what I believe best serves the national interest. I know the members of this Committee appreciate that this is no easy task. There is no simple solution that will allow everyone to achieve all of their objectives.

I strongly believe that the strategies governing our aviation policy, which I have described to you today, have been developed and applied in a way that best serves America's national interest. I can also tell you that this same concern will remain the guiding principle as we further develop and implement the aviation policies of this Administration.

CODE SHARING

Mr. Chairman, I want to touch on the practice of code sharing, one of the key strategies that airlines are pursuing in building global networks.

Code sharing can provide real economic benefits by offering improved market access at reasonable costs. It also offers important marketing advantages. Airlines can establish a new market presence or supplement their own flight frequency with code-shared flights, thus freeing up their own aircraft for use in other markets. Code-share alliances can also produce a level of cooperation and coordination that approximates the advantages of single-carrier service in scheduling, connections, baggage handling and pricing.

We ~~think~~, however, that it is critical that passengers know exactly what they are buying when they purchase code share tickets. Today, the Department is announcing a proposal to ensure that the identity of each of the airlines in any code-share relationship is disclosed fully and clearly to all passengers.

We know from our recent experience with code-sharing that this practice can be a powerful tool for capturing additional traffic at relatively little cost. It also represents a highly effective strategy for foreign carriers to tap into the traffic from U.S. interior points. Absent reciprocal opportunities for access by these U.S. carriers to foreign markets, code-sharing has the potential to create an unacceptable imbalance in our existing aviation relationships.

At DOT we are deeply engaged in analyzing the international implications of code-sharing. We have also engaged the services of an airline economic consulting firm to assist us to further develop conceptual models in the area. We are also considering ways to obtain additional information from U.S. and foreign carriers about their code sharing operations. Our policy in the area of international code sharing requests is comparable economic opportunities.

That means that before a foreign carrier is allowed to undertake code-share arrangements in the U.S., we will require that its homeland guarantee U.S. airlines comparable market access. Those countries that continue to pursue restrictive aviation policies should understand that the benefits of code-share alliances will not be extended to their airlines until those policies have changed. It is noteworthy that while there are 80 code sharing arrangements with U.S. airlines, the largest and most comprehensive code-share arrangement between a U.S. and foreign carrier, Northwest and KLM, was approved in the context of our most liberal aviation relationship, the U.S.-Netherlands Open Skies Agreement.

We have dealt with code sharing arrangements in keeping with our fundamental goal of moving to a truly open international aviation regime.

and have approved them only where consistent with that vision, or where approval was required by pre-existing bilateral commitments.

CONCLUSION

In summary, as the trend towards globalization of the airline industry continues, U.S. carriers are performing well compared to the majority of the world's carriers. However, because our carriers are doing so well, foreign governments are trying to protect their national flag carriers in various ways ranging from limiting our carriers' services to outright massive subsidies of their airlines. These efforts have produced tensions in many of our aviation relationships, and have created inefficiencies for our airlines and their customers, the traveling and shipping public.

Due to the tensions described above, during the next few years the transition from a restrictive regulatory regime to a more liberal and competitive environment will be extremely difficult. Our goal is to be firm in our commitment to providing the flying public with greater choices at reasonable prices and increased international market opportunities for our airlines.

Thank you for convening these hearings, Mr. Chairman.

I will be happy to answer any questions that you or members of the Committee may have.



U.S. Department
of Transportation
**Federal Aviation
Administration**

Memorandum

Subject: **ACTION:** Final Draft Report on a Proposed
Corporation for Air Traffic Control Services

Date: April 22, 1994

From: Chairman, Corporation Assessment Study Team

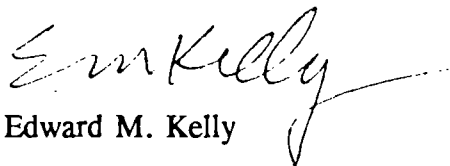
Reply to
Attn. of:

To: Members of the Executive Oversight Committee (EOC)

Attached for your review and comment is the final draft of the Report of the EOC to the Secretary of Transportation on a proposed Government corporation for air traffic control services.

Because of the time that will be needed to produce the final report, please submit your comments to the EOC Chairman at the final EOC meeting, or before if at all possible. A final meeting of the EOC has been tentatively scheduled for Wednesday, April 27 at 10:00 a.m., in the Fletcher Room at DOT headquarters. The task force staff will confirm the meeting date and time with your office.

Edits to the report will continue early next week, and we will discuss any additional changes on Wednesday. However, we wanted to get this draft to you today.



Edward M. Kelly

Attachment

AIR TRAFFIC CONTROL CORPORATION STUDY

Report of the Executive
Oversight Committee to the
Secretary of Transportation

Final Draft
April 22, 1994



U.S. Department
of Transportation
**Federal Aviation
Administration**

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EXECUTIVE SUMMARY

Introduction

The Secretary of Transportation established an Executive Oversight Committee (EOC) to study how the air traffic control (ATC) system could be restructured to make it more businesslike and to resolve long-standing problems in acquisition, budget/finance, and personnel. The EOC comprised senior executives from the Federal Aviation Administration (FAA), the Department of Transportation (DOT), White House offices, three government agencies and two existing government corporations. A Corporation Assessment Task Force (Task Force), made up of career executives from FAA, DOT and other government entities, was established to support the EOC. Maintaining the existing high level of ATC safety was established as an overriding criterion for their work. The EOC and Task Force directed research into the following areas:

- Review of prior studies on the need for restructuring the ATC system;
- The success of other U.S. government corporations in resolving organizational problems similar to those of the ATC system;
- The experience in other countries that have restructured the provision of ATC services;
- Measurement of the cost and existing use of ATC services;
- Identification and resolution of safety issues raised by corporatization;
- Assessment of the financial performance and viability of a government corporation to provide ATC services; and,
- Identification of best practices in acquisition, budget/finance, governance and personnel that would be possible under corporatization, and the limitations on achieving these if ATC remained within a government agency.

The EOC and Task Force also conducted extensive outreach with users, other U.S. government corporations, foreign civil aviation authorities and ATC organizations, and other interested parties, such as FAA's labor unions. The EOC held a public meeting on February 22, 1994 to provide interested groups and the public an opportunity to comment on its proposals. This report transmits the findings and recommendations of the EOC to the Secretary of Transportation.

The Need for Change

FAA's problems are not new and have been widely recognized. Since 1985, seven major studies have recommended creating a government corporation to provide ATC services. These studies included Presidential Commissions appointed under each political party--the Aviation Safety Commission (1988) and the National Commission for a Strong Competitive Airline Industry (1993). In addition, Vice President Gore's effort to improve government, the National Performance Review (NPR), endorsed those earlier recommendations and called for the formation of an air traffic control corporation to operate, maintain and invest in the ATC system.

The U.S. ATC system is the safest in the world. However, FAA is struggling to keep up with rapidly advancing technology, such as the use of global positioning system (GPS) satellites, which offer the potential to substantially improve safety and reduce the cost of aircraft operations. FAA's ability to effect timely delivery of advanced technology ATC systems is hampered by government acquisition regulations and procedures. The U.S. General Accounting Office (GAO) noted in a recent report that major acquisitions for the ATC system were delayed for five years on average and that nearly every project incurred significant cost increases.¹

FAA will face an increasingly difficult time in acquiring the necessary budgetary resources to operate and modernize the ATC system if it is subject to the governmental pressures to reduce the deficit. In contrast to prior years where FAA was able to operate with increased budget authority, overall governmental constraints on spending will increasingly affect the ATC system. This will occur even though most of ATC costs are met through user taxes, the proceeds of which will continue to grow.

*user.
oversight*

Comprehensive reform of the existing structure is needed for the ATC system to meet the challenges of the technological revolution during a period of fiscal austerity. FAA has tried internal restructuring again and again without success--in the last decade it has attempted 24 reorganizations and reforms without solving its fundamental problems.

Findings

The EOC concluded that continued operation of the ATC system as part of a traditional government agency will not resolve the problems that impede its operation and modernization. Because air traffic services are critical inputs to the production of airline services, these problems unduly affect the operations and increase the costs of airline services. As noted by the National Commission To Ensure a Strong Competitive Airline Industry:

¹Air Traffic Control: Status of FAA's Modernization Program, United States General Accounting Office, April 1993.

"To understand the central role of the air traffic control system in the operational functioning and economic well-being of the airline industry, it is important to recognize that virtually everything an airline does--from pushing off the gate and taking off and landing airplanes to selecting and changing flight paths--can be done only with the prior approval of a federal air traffic controller. Thus, in a very real sense, the federal government controls the production line of the U.S. airline industry. In the history of American business, there has never been a major commercial industry whose minute-by-minute operating efficiency was capped by the daily operating efficiency of the federal government--except for the airlines."

The EOC found, while incremental reforms can be undertaken as "building blocks," that a traditional government agency is simply not structured to manage a high technology operational service such as air traffic control. This conclusion is supported by the following findings:

- The ATC system operates safely--this results from the combined efforts of the FAA work force and system users, including commercial and non-commercial aviation and the military. However, safety is maintained by sacrificing the efficient operation of the system. This imposes large cost penalties on airlines, passengers, cargo shippers and all other ATC system users.
- The ATC system is unable to respond quickly to its customers' needs and to modernize its infrastructure. The physical plant of the ATC system is characterized by obsolete technology; for example, it is the world's largest user of vacuum tubes. Most of the acquisition programs designed to modernize the system have experienced lengthy delays and significant cost overruns.
- The record of the last ten years shows that fundamental problems of the ATC system cannot be solved by internal reforms. These problems result from operating ATC within a traditional government agency. Although individual reforms would be helpful, they would not address the ATC system's problems comprehensively.
- Other countries have undertaken major structural changes in the provision of air traffic control services. In these countries, delays have been reduced, the cost to system users lowered and the quality of ATC service substantially improved. Their experience also shows that with more businesslike operations safety can be maintained and even enhanced.

Too much emphasis on budget. Also need section on Mgmt problems require user control

the existing authority of the Secretary of Defense concerning the use of the National Airspace System will be maintained. The Department of Defense will be represented on the corporation's Board of Directors.

- Preserving Oversight--The corporation will be housed within the Department of Transportation, and DOT will retain oversight through its membership on the Board of Directors and the Secretary of Transportation's authority to disapprove the level of user charges. FAA, DOT and Congress will also retain safety oversight through the FAA's regulatory authority and the Administrator's power to **intervene** in compelling safety and national security issues.
- Responsiveness to Users--Users would be represented on the ATS Corporation's Board of Directors and will have a direct voice in decisionmaking. The corporation would be required to consult with users prior to changing rates and charges. The corporation will be required to operate under public notice procedures before it could close facilities or discontinue safety services.
- Encourage Cost/Productivity Improvements--The efficient operation of the ATS Corporation would be assured through user membership on the Board and the linkage of the user charges to the cost of producing services.
- Meeting International Commitments--The ATS Corporation would provide technical expertise to support international agreements where appropriate. The corporation's user charges will conform to ICAO principles for international aviation, and will be developed through consultation with users.

Shifting the provision of ATC services to a government corporation will result in more businesslike practices. In particular, the ATS Corporation will fund its capital improvement program using funds raised in private markets. The corporation will have incentives to operate efficiently because the market will look to debt coverage in determining the level and cost of funds provided to the ATS Corporation. User participation on the Board will provide incentives to invest in those projects which provide tangible returns in terms of reduced operating costs for the corporation or its customers. The corporation also will bear any liability costs resulting from operation of the ATC system providing direct incentives for the safe and efficient provision of ATC services. The development of best practice personnel and acquisition systems also will provide the corporation with incentives to manage the operations and investment programs using businesslike incentives.

NO
< NO

Financial Results

The EOC conducted a detailed analysis of the financial performance of the ATS Corporation and the core FAA over the FY1996 to 2005 time period. The results of this analysis shows that the ATS Corporation will be financially viable and will not require appropriated funds. A portion of existing aviation taxes will be converted to user fees. Under the base spending scenario, the total burden on commercial users will be reduced by \$4.2 billion over the ten year period. The corporation will be able to make all expenditures at planned levels to operate and maintain the ATC system as well as continuing research into future ATC systems.

In the increased investment scenario, the corporation will be able to undertake \$5 billion of additional expenditures for ATC modernization which will produce total FAA cost savings and user benefits with a net present value of \$11.3 billion in 1994. In both scenarios, the Airport and Airways Trust Fund is viable and supports the remaining FAA's facility and equipment, research, engineering and development expenditures and the Airport Improvement Program. The net general fund contribution to FAA and the corporation is reduced by almost \$18 billion over the ten year period, producing substantial savings to the general taxpayer.

The reduction in the contribution by users and the general taxpayer in the increased investment scenario is accomplished by the following:

- Long-term debt of \$6.4 billion is used to finance ATC equipment acquisitions. Internally generated funds and capital contributions from users provide 74 percent and long-term debt provides 26 percent of the total acquisition costs over the 1996 to 2005 time period. The uncommitted balances in the Airport and Airways Trust Fund are reduced by \$2.3 billion. However, at the end of 2005 the Trust Fund still has an uncommitted balance of \$2.3 billion, assuring its financial viability.
- The corporation does not put funds into the Trust Fund to pay for future acquisitions. Instead, capital equipment is paid for when delivery is made using internally generated funds or the proceeds from borrowing. Users pay only when they receive the benefits of these investments.

Transition to the ATS Corporation

An interim CEO will be appointed by the President within 30 days of enactment of the corporation's enabling legislation. The ATS Corporation will commence activities within one year, subject to certification by the FAA Administrator that all required actions have been completed. A portion of the existing aviation taxes will be converted to user fees for commercial aviation. Permanent fees will be based on a detailed study of the cost and use of the ATC system. These fees will be established in consultation with users and subject to the disapproval of the Secretary of Transportation.

1. INTRODUCTION

1.1 Background

The National Commission To Ensure A Strong Competitive Airline Industry and the Vice President's National Performance Review (NPR) recommended major changes in the organization of the Federal Aviation Administration's (FAA) air traffic control (ATC) services. These studies concurred with earlier ones in concluding that the performance of the U.S. aviation industry is unnecessarily constrained by government operation of the ATC system, that FAA must undergo significant change to meet the challenges of the twenty-first century and that a government corporation should be created to provide air traffic services.¹

The recommendation that a government corporation should be established to provide air traffic services was carried forward to a January 1994 policy statement, *The Clinton Administration's Initiative to Promote a Strong Competitive Aviation Industry*:

"In response to the recommendations of both the National Performance Review and the National Airline Commission, a Committee of Administration experts is developing a detailed plan to restructure FAA's ATC services as a government corporation. Our goal is to make ATC more businesslike and to overcome certain chronic impediments to good management, such as inflexible personnel rules and burdensome procurement regulations, that have frustrated efficient and effective delivery of ATC services."

To implement this initiative, the Secretary of Transportation established a two-tier study group to examine how ATC could be restructured: an Executive Oversight Committee (EOC) was formed to direct and oversee a Corporation Assessment Task Force, which conducted analysis and outreach on behalf of the EOC. The EOC comprised senior officials from DOT, FAA, White House offices, three government agencies and two existing government corporations. The Task Force comprised individuals from DOT, FAA, other agencies, government corporations and FAA labor unions. Attachment A lists the members of the EOC and the Task Force.

The Task Force began its activities in September 1993 and continued its outreach and analysis through January 1994. The Task Force chartered four Working Groups to examine issues in specific areas and to identify best practices for a restructured ATC organization; the four groups were: Governance, Acquisition, Budget and Finance and Personnel. The Working Groups began their activities in October and submitted initial reports in early December.

¹The EOC reviewed 13 studies and reports on restructuring FAA. Seven of the 13 recommended some form of government corporation for all or part of FAA, while only one recommended reforming FAA without any organizational change. These studies are discussed in Section 15 of this report.

The Task Force briefed the EOC on its deliberations through bi-weekly meetings. The EOC reviewed the results of the Task Force's work and directed additional analyses where appropriate. Throughout its evaluation of proposals for restructuring ATC, the EOC's fundamental criterion was that any proposed change must maintain the current high level of aviation safety.

The Task Force provided an initial draft report to the EOC, setting forth key issues, in January 1994. After review of these materials, the EOC and Task Force refined the corporation design. This report reflects the work of the EOC, the Task Force and the Working Groups. It constitutes the recommendations of the EOC to the Secretary of Transportation.

1.2 Study Process

The study was designed to identify the major forces driving organizational reform, consider alternative organizational models for restructuring ATC, and to determine which model was the best alternative. The major issues in the assessment of the models were their potential impact on safety and national security, responsiveness to customers, financial viability, productivity and continuity of service.

The EOC employed outside experts to assist it in the key study areas of acquisition, finance and budget and personnel. The following firms were asked to identify best industry practices in the following areas:

- Acquisition--Arthur D. Little & Company;
- Finance and Budget--Arthur Andersen & Co.; and
- Personnel--Towers Perrin.

The EOC, Task Force and Working Groups were supported by Gellman Research Associates, Incorporated (GRA), a consulting firm specializing in transportation economics and policy issues. GRA performed FAA's Cost Allocation Study in 1986, and has detailed knowledge of FAA's costs and programs².

GRA was supported by Mr. Erwin von den Steinen of International Transport Policy Associates, a recognized expert in international ATC organizations and Mr. Alan Dean and Mr. Harold Seidman, recognized experts in the structure and operation of government corporations, who are affiliated with the National Academy of Public Administration. Dr. Clinton V. Oster of Indiana University prepared a paper on the safety issues raised by proposals to restructure the ATC system. The Center for Naval Analysis identified specific problems in FAA's operations that compel change.

² The FAA Cost Allocation Study is a seven volume report prepared in 1986 for the Office of Aviation Policy and Plans by Gellman Research Associates, Inc.

Arthur Andersen & Company, in addition to supporting the Finance and Budget Working Group, assisted in the development of a financial restructuring plan for the ATS Corporation. Believing that safety should always have the highest priority in the consideration of any changes in the ATC system, the EOC requested that the Flight Safety Foundation--the preeminent aviation safety organization--prepare an independent assessment of safety issues.

The EOC, Task Force, and Working Groups also conducted significant outreach efforts, which ultimately led to meetings with representatives of the civil aviation and air traffic services authorities from Australia, Canada, Germany, New Zealand and the United Kingdom. The study group also met with representatives of financial institutions such as Morgan Stanley, Bankers Trust, and Marsh McLennan. The study group sought comments from various Department of Defense organizations, the National Academy of Public Administration, the Tennessee Valley Authority and other government corporations, held listening sessions with the aviation community and arranged for presentations by members of the National Airline Commission and the National Performance Review. The EOC also conducted a public meeting on February 22, 1994 to provide interested groups and the public an opportunity to comment on its proposals. A more complete discussion of these outreach activities is contained in Section 7 of this report.

1.3 Report Organization

The report contains the results of six months of effort by the EOC, Task Force and Working Groups. This report provides the EOC recommendations and also provides a source of information on the issues and deliberations that led to these recommendations. The report is organized into the following sections:

- Section 2: The ATC System and Need for Change--Describes the existing ATC system and the need for change, and provides an overview of a government corporation;
- Section 3: Compelling Reasons for Restructuring ATC--Reviews the problems under the current organizational structure and how these problems can be resolved by creating a government corporation to provide air traffic services;
- Section 4: Models--Discusses the recommended structure of the ATS Corporation and its relationship to FAA; also describes alternative organizational models that were evaluated but not selected;
- Section 5: Safety--Describes the safety considerations in establishing an ATS Corporation, and how safety will be assured in the corporation, and the relationship of the ATS Corporation to the FAA;

- Section 6: National Security--Identifies the role of the ATC system in national security, describes support of the national defense mission, and discusses existing FAA-DOD relationships;
- Section 7: Outreach--Summarizes the outreach activities conducted during the study by the EOC, Task Force and Working Groups;
- Section 8: Governance--Describes how the recommended corporation will be governed and reviews alternative governance structures that were considered but not selected;
- Section 9: Acquisition--Describes current acquisition system problems and presents an overview of the recommended acquisition system;
- Section 10: Personnel--Describes existing problems with FAA's personnel policies and practices and recommends personnel systems appropriate for an ATS Corporation;
- Section 11: Finance and Budget--Summarizes the existing budget and financing system and the problems that this causes; recommends changes in budget and finance practices;
- Section 12: Business Plan Summary--Summarizes the business and financial issues that must be resolved to achieve a financially viable ATS Corporation; contains projections of the financial performance of the ATS Corporation;
- Section 13: International ATC Precedents--Describes the experience of other countries in restructuring their ATC systems;
- Section 14: U.S. Government Corporation Precedents--Reviews the experience of other U.S. Government Corporations;
- Section 15: Review of Prior Studies--Provides a synopsis of the reports of the National Performance Review and the National Airline Commission, and summarizes other studies that have examined changes in the structure of the ATC system;
- Section 16: International Obligations--Describes how international obligations can be met by an ATS Corporation;
- Section 17: Transition--Describes the activities that will have to be undertaken during the transition to an ATS Corporation and during its start-up.

- A series of attachments contains materials to supplement the analyses and information in the main body of the report:
 - Attachment A lists the members of the EOC and Task Force;
 - Attachment B contains a summary of the Flight Safety Foundation's analysis of safety issues;
 - Attachment C provides data to support the allocation of FAA's costs to specific air traffic services;
 - Attachment D contains a summary of the analysis of the costs and benefits of accelerating ATC system investment; and,
 - Attachment E contains year-by-year projections of the ATS Corporation's financial performance.

2. THE ATC SYSTEM AND THE NEED FOR CHANGE

2.1 The U.S. ATC System

The U.S. operates a unified air traffic control system, to serve the needs of both civil and military aviation. While FAA manages the system, ATC services are provided by both FAA and the Department of Defense (DOD). Broadly, the ATC system consists of air traffic control and flight services facilities, navigation and landing aids, the staff to operate and maintain existing facilities, and the staff that conducts research into future ATC systems, develops these systems, and brings new ATC equipment into service. In FY1993, support of the ATC system required about 70 percent (\$6.3 billion) of FAA's total budget and about 85 percent of its total personnel (full-time equivalents).

The U.S. operates the largest ATC system in the world. Fourteen of the world's 15 busiest commercial airports (in terms of commercial aircraft operations) are in the U.S. (London-Heathrow ranks 12th.) The U.S. has about one-half of the world's air traffic activity. The ATC system provides about 600,000 air traffic control services per-day, including activity at FAA and DOD facilities. The major types of air traffic control facilities include the following:

- Air Route Traffic Control Centers (ARTCCs)--FAA operates 21 ARTCCs, which provide radar separation for aircraft flying at higher altitudes between terminal areas. Centers handled about 38 million aircraft in FY1993. FAA also provides oceanic air traffic control services.
- Terminal Radar Approach Controls (TRACONs)--FAA operates 167 radar approach control facilities, which provide separation services for aircraft operating in busy terminal areas. TRACONs handled about 53 million operations in FY1993. FAA establishes radar approach control services when activity levels support such a facility. FAA has begun a program to consolidate existing TRACONs into Metropolitan Control Facilities to reduce the cost of operating these facilities, and to provide more effective coordination in high traffic locations. This is being accomplished as facilities are modernized. DOD operates 63 radar approach control facilities which serve both civil and military traffic.
- Air Traffic Control Towers (ATCTs)--These facilities control aircraft on the airport surface and landing or taking off at the airport. FAA operates 402 air traffic control towers, which had 60.1 million operations in FY1993. About one-half of the tower operations were at facilities that also had primary approach control; the other half were at Visual Flight Rule (VFR) or non-radar towers or towers with secondary approach control services. In addition, the FAA contracts-out low activity towers. There were 27 contract towers, which

handled a total of 1.7 million operations, in FY1993. DOD control towers serve mostly military installations, but they are a part of the national ATC system.

- **Flight Service Stations (FSSs)**--Flight service stations, which serve principally general aviation, provide flight plan filing and pre-flight weather briefing services. FSSs also remain in contact with flights to provide updated weather information and to provide advisory and other services. FAA is completing consolidation of existing FSS facilities into automated flight service stations (AFSS). At the end of FY1993, FAA operated 59 AFSS facilities and 74 FSS facilities. When consolidation is complete, FAA will operate 61 AFSS facilities, and 31 auxiliary FSS in locations with unique weather or operational characteristics. FAA also provides some flight services to pilots via call-in computer in its direct user access terminal system (DUATS). FAA produced 37.2 million flight services and 11 million DUATS transactions in FY1993.

2.1.1 The Use of FAA ATC Services

FAA provides ATC services to a broad spectrum of users. For example, air carrier users can be subdivided into passenger and cargo flights, domestic and international flights, and scheduled and non-scheduled flights. However, activity is measured at FAA ATC facilities for four major user types: air carrier, commuter/air taxi, general aviation and military. Figure 2-1 shows the distribution of activity for the four major user types at each type of ATC facility in FY1993. Air carriers account for almost one-half of the total activity at ARTCCs. General aviation (GA) use of the en route system is predominantly by larger and more sophisticated GA aircraft that are equipped to operate under instrument flight rules (IFR) and typically operate with IFR flight plans.

Figure 2-2 shows the percentages of GA aircraft and flight hours operated under IFR flight plans. Only two percent of the hours flown in single-engine piston aircraft with three or fewer seats are under IFR flight plans, while 97 percent of the hours flown by turbojet aircraft are under IFR flight plans.

According to FAA's most recent forecast, the projected increase in ARTCC use is not constant across the user groups.¹ The total growth in ARTCC activity for each of the major user types over the FY1993 to FY2005 time period is estimated to be:

¹FAA Aviation Forecasts: Fiscal Years 1994-2005, Report No. FAA-APO-94-1, March 1994.

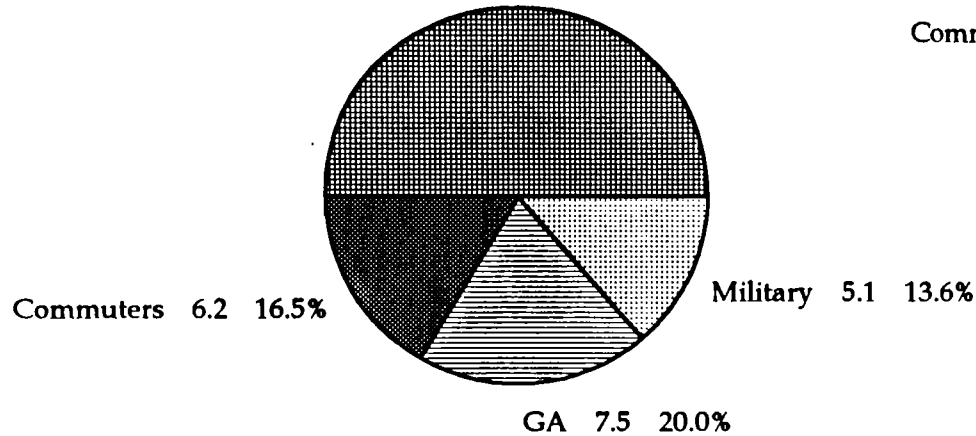
Figure 2-1

Services Provided by FAA Facilities by User Group

ARTCC Handles

(millions)

Air Carriers 18.7 49.9%



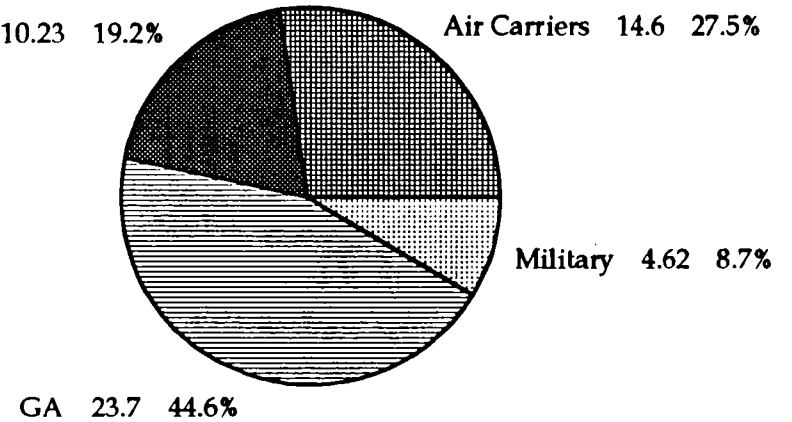
1993: 37.50

TRACON Total Operations

(millions)

Commuters 10.23 19.2%

Air Carriers 14.6 27.5%



1993: 53.15

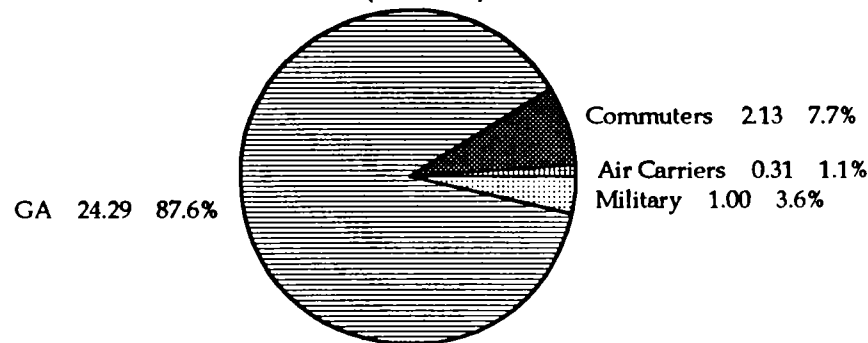
ATCT Operations

(millions)

Commuters 2.13 7.7%

Air Carriers 0.31 1.1%

Military 1.00 3.6%



1993: 27.73

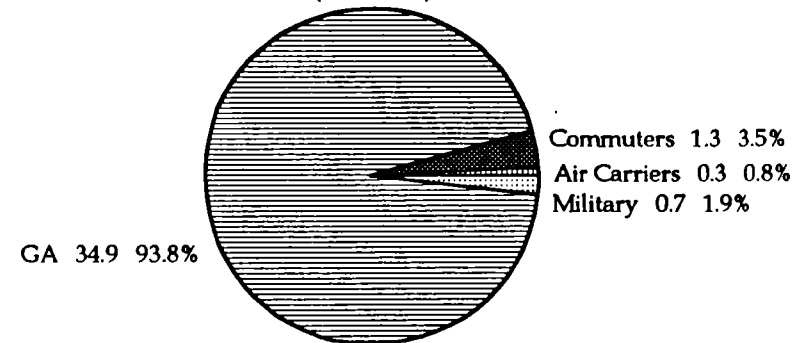
FSS Flight Services

(millions)

Commuters 1.3 3.5%

Air Carriers 0.3 0.8%

Military 0.7 1.9%



1993: 37.2

Source: Tabulated from FAA Air Traffic Activity Database.

Figure 2-2

GENERAL AVIATION USE OF IFR FLIGHT PLANS

Aircraft Type	Total		IFR Flight Plan			
	Number of Active Aircraft	Hours Flown	Number of Active Aircraft	Percent of Total Number of Active Aircraft	Hours Flown	Percent of Total Hours Flown
Fixed Wing - Piston						
1 Eng.: 1-3 seats	52,524	5,659,846	3,133	6.0%	118,737	2.1%
1 Eng.: 4+ seats	91,046	12,393,505	39,872	43.8%	2,174,376	17.5%
2 Eng.: total	<u>18,451</u>	<u>3,171,634</u>	<u>14,951</u>	<u>81.0%</u>	<u>1,485,067</u>	<u>46.8%</u>
Total Piston	162,107	21,229,172	57,974	35.8%	3,778,393	17.8%
Fixed Wing - Turboprop	4,704	1,477,508	4,065	86.4%	1,043,405	70.6%
Fixed Wing - Turbojet	4,022	1,072,292	3,896	96.9%	1,039,703	97.0%
Rotocraft						
Piston	2,211	414,119	16	0.7%	930	0.2%
Turbine	3,541	1,866,326	233	6.6%	12,361	0.7%
Other	<u>7,836</u>	<u>409,872</u>	<u>93</u>	<u>1.2%</u>	<u>4,585</u>	<u>1.1%</u>
Total	184,424	26,469,280	66,281	35.9%	5,879,377	22.2%

Source: General Aviation Activity and Avionics Survey, Calendar Year 1992,
 Prepared by FAA Office of Aviation Policy, Plans and Management Analysis

- Air Carrier--25.8%;
- Commuter/Air Taxi--50%;
- General Aviation--17.6%;
- Military--4.2%.

Total TRACON activity for FY1993 is also shown in Figure 2-1 for the four user groups. General aviation accounts for about one-half of TRACON activity. The projected growth rates for the use of TRACON facilities by user group are approximately the same as for ARTCCs because each facility type handles different parts of the same IFR aircraft flights.

The most active air traffic control towers are at airports that are served by TRACONs for approach control services. However, there are a large number of VFR towers that have only secondary approach control services. Figure 2-1 shows the activity at VFR towers in FY1993. General aviation accounts for almost 90 percent of the activities. Total general aviation hours flown are expected to grow by 12 percent over the FY1993 to FY2005 time period, or about one percent per year.

FY1992 activities by user group at flight service stations are also shown in Figure 2-1. Almost 95 percent of FSS services were used by general aviation. FAA forecasts show that conventional flight services (flight plans, pilot briefs and aircraft contacts) are projected to decline by about nine percent over the FY1993 to 2005 time period. However, DUATS transactions are projected to increase by about 80 percent over the same period.

The projections of future activity show that growth will be concentrated in those facilities which serve primarily IFR traffic. Low growth or declines in activity are projected for those facilities which serve VFR traffic. Higher growth rates are projected for air carrier and commuter/air taxi users than for general aviation and military users.

2.1.2 ATC System Costs

As shown in Section 12 of this report, the costs of the ATC system comprised facility operations and maintenance, equipment acquisition, research and development and overhead. These costs amounted to about \$6.3 billion in FY1993. The total costs for the individual facility types in FY1993 are estimated as follows:²

- ARTCCs--\$3.1 billion;
- TRACONs--\$2.5 billion;
- VFR Towers--\$211 million;
- Flight Service Stations--\$385 million.

²Estimates of FAA costs by ATC facility type are from an update of the 1986 FAA Cost Allocation Study. The methodology used to prepare these estimates is discussed in Attachment 3 of this report.

The acquisition and maintenance cost of en route and terminal navigation aids are included in ARTCC, TRACON and VFR Tower costs, respectively.

2.2 The Need for Change

The FAA is an integral part of the U.S. aviation industry, which includes aircraft manufacturers, airlines, airports and other aviation companies. The aviation industry is a leading exporter and employer; in 1991, civil aviation provided over three million high-quality jobs and its employees earned almost \$100 billion.³ The aviation system is a vital national resource, essential to economic progress for the nation's citizens and businesses and in linking the U.S. to an increasingly global economy.

Combined with the diligence of the industry and its workers, FAA regulations, surveillance and standards have ensured that the U.S. aviation system is one of the safest transportation networks in the world and have supported the efficient expansion of American aviation. In 1993, the major carriers reported a total of 22 accidents--most of them minor--with no fatalities. The current accident rate for air carriers has stabilized at such a low level that a single accident can significantly change the reported accident rate. Commuter airlines, notwithstanding two recent accidents, continue to show a marked improvement in their safety record. General aviation also had its safest year on record, with accidents and fatalities each down about five percent from the 1992 levels.

In view of this excellent safety record and the steady growth of the aviation system, why are so many voices calling for fundamental change in the way FAA operates? They are doing so because the system is operating under constraints that unduly limit its ability to provide needed services as safely, efficiently and cost effectively as it should. These limitations are significant today and will be more important in the future as increasing air traffic places additional demands of the ATC system.

The U.S. aviation system is on the verge of a technological revolution similar to that brought about by the introduction of jet aircraft some 30 years ago. Global navigation systems, satellite communications, data link, and ATC automation will provide tremendous savings to aircraft operators of all types through (1) more direct routings that save fuel and (2) from reduced in-trail separation that will increase en route capacity. These savings will make our industry more competitive, and will directly benefits consumers, who now ultimately pay for the system's inefficiencies. The FAA is projecting a 39% growth in passenger traffic within the decade, reaching 700 million a year by 2001. The ATC system must be able to respond. However, technological constraints raise serious questions about its ability to continue to perform as it has.

³ The Economic Impact of Civil Aviation on the U.S. Economy UPDATE '91. Wilbur Smith Associates, April 1993.

Reform of the existing structure is needed for the ATC system to meet these challenges. The question is whether incremental change will suffice or whether more fundamental change is needed. This section first examines whether internal reform is likely to produce an acceptable solution to ATC problems and then looks at more significant change.

Evaluation of Internal Reform of the FAA

There appears to be broad agreement that the FAA faces major challenges, and that some type of reform is necessary. The EOC believes that this is a key point of consensus, and represents an important base that can be built upon. The question then becomes not whether to try to solve the ATC system's problems, but how that objective can best be accomplished. One approach to the problems confronting FAA would be to introduce reforms within the FAA's existing organizational structure. This approach would have the advantage of being carried out "within the system."

Under this approach, air traffic control would remain under the FAA, and the FAA would retain its current status and responsibilities as a Federal agency within DOT. However, changes would be made through the implementation of selected reforms in the areas of procurement, personnel and budget. These changes can be thought of as "building blocks," each of which could provide limited benefits to the FAA and the ATC system. The more blocks that are added, the greater the benefits.

Personnel--FAA managers and employees must work with 47,200 pages of personnel laws and regulations. There are a number of measures that could be taken to reform existing laws and regulations to improve the FAA's personnel system. These measures include:

- Creating a more flexible recruiting, selection and placement system exempt from Title 5 of the U.S. Code and administrative restrictions on employment levels.
- Developing a compensation system that permits flexible salary-setting within expanded pay ranges exempt from Title 5 and the 150 separate sections of Federal pay statutes that govern pay matters. That would permit broad-banding of pay levels, providing greater flexibility to move employees into different jobs without changing compensation, as well as to determine appropriate pay levels.
- Designing a performance management system exempt from Title 5 and other administrative restrictions.
- Creating a flexible labor relations system exempt from the Labor-management provisions of Title 5, allowing greater employee input.

One approach would be to exempt FAA fully from the provisions of Title 5 of the U.S. Code. Another approach would be to exempt FAA from specific sections within Title 5 that cover these areas. These include:

- Chapter 31: Authority for employment
- Chapter 33: Examination, selection and placement (except for the section 3333 prohibition of strikes)
- Chapter 34: Part-time career employment
- Chapter 35: Retention preference, restoration and reemployment
- Chapter 43: Performance appraisal
- Chapter 45: Incentive awards
- Chapter 51: Classification
- Chapter 53: Pay Rates and systems
- Chapter 55: Travel, transportation and subsistence
- Chapter 59: Allowances
- Chapter 61: Hours of work
- Chapter 63: Annual and sick leave
- Chapter 71: Labor-Management relations
- Chapter 72: Anti-discrimination
- Chapter 73: Suitability, security and conduct (except section 7311 prohibiting strikes)
- Chapter 75: Adverse actions
- Chapter 77: Appeals
- Chapter 79: Services to employees.

These steps would permit the FAA to provide incentives for increased productivity, to pay employees based on performance and improve the management of the workforce.

Procurement--There are a whole host of procurement laws and regulations that affect the FAA's ability to acquire technology in a timely, value-conscious and cost-effective manner. Many of the laws and regulations, designed with the best of intentions, combine to produce a rigid, burdensome and time-consuming acquisition approval process. These procurement statutes and regulations include, but are not limited to the:\

- Federal Aviation Act
- Brooks Act
- Competition in Contracting Act
- Federal Acquisition Regulations
- Small Business Act
- Office of Federal Procurement Policy Act
- Regulations for Construction, Services and Supplies
- Real Property and GSA regulations
- Procurement Protest Act
- Economy Act
- Other Administrative Acts and Executive Orders.

The 10,500 pages of procurement laws, rules and regulations create numerous obstacles to the efficient updating of air traffic control technology. The procurement reform "building blocks" would include relief from certain of the more restrictive statutes and regulations.

For example, the Brooks Act authorizes the General Services Board of Contract Appeal, among other things, to consider bid protests regarding federal information technology procurements. FAA has faced an average of 10 of these protests annually. Although FAA has won 90 percent of those protests, the process has delayed important acquisitions. More importantly, it has created incentives to go slowly and painstakingly through the procurement process in order to avoid protests, rather than providing incentives to get new technology in place quickly and efficiently.

The Competition in Contracting Act requires FAA to solicit and evaluate bids from all potential vendors, regardless of their qualifications or expertise in providing a given product. The inability to limit bidding on certain specialized pieces of technology wastes time and resources, and the modernization of FAA's air traffic control technology provides a prime example. In addition, the Competition in Contracting Act also requires competition at each stage in the life of a program. While the overall goal of encouraging competition is laudable, the result may be to change vendors mid-stream during a project. This can result in added delays as the new vendor gets up to speed, and a loss in continuity.

Federal Acquisition Regulations (48 C.F.R.) can preclude FAA from using its expertise in making timely programmatic and business decisions. The FAR forbids comparison of bidders' proposals, making it difficult to consider key differences between proposals. That inhibits FAA's ability to select the best product for the price, and negotiate the best deal possible.

Relief from some or all of the provisions of Federal procurement law and regulation discussed above would help the FAA improve the efficiency of its procurement process. However, in order to provide a truly significant change in FAA's ability to modernize the ATC system, these changes would need to be combined with the substantial changes to the budget process.

Budget--As GAO and others have noted in their reports on FAA, FAA's budget has grown significantly during the last decade, and the amount of funding it received for capital projects (in its "Facilities and Equipment" appropriation) has doubled. Consequently, some observers do not believe that FAA's budget is in need of reform. But the ATC system's "budget problem" is not about the amount of funding that FAA has received in any given year since FY85. It revolves around the annual appropriations process, and the difficulties it causes for a high-technology, capital intensive organization. The EOC concludes that there are three reasons why the Federal budget process creates a problem for FAA.

First, although the FAA's annual budget has grown significantly during the last decade, when viewed from a longer-term economic perspective, FAA's infrastructure had been underfunded for many years before that. The mid-1980's represented a period when funding for FAA was increased in an attempt to "play catch up" for decades of underinvestment by

replacing the outdated equipment of the 1940's, 1950, and 1960's. As has been noted elsewhere in this report, in spite of those funding increases, the ATC system is still saddled with generations of outdated technology.

Second, as GAO indicates in its recent testimony before the House Appropriations Transportation Subcommittee on FAA (April 19, 1994 testimony by Kenneth Mead), the years of growth in FAA funding appear to have come to an end. The spending limitations and reductions required to decrease the Federal budget deficit have resulted in the prospect of "almost no-growth budgets for the foreseeable future", and the trend is likely to continue (Mead, 4/19/94, page 25). The dramatic growth in the cost of projects like AAS may also crowd out other FAA capital projects (Mead, 4/19/94, page 2). The EOC believes that it is unrealistic to believe that FAA will be able to replace the ATC system's outdated infrastructure in this fiscal environment.

Third, the year-to-year appropriations process creates a level of uncertainty, which makes it very difficult to design a capital investment strategy and stick to it. More often, it forces an agency to focus on contingency planning instead of long-range planning. Clearly, that inhibits the FAA from executing a technology-intensive capital investment program.

There are a number of possible reforms to the Federal appropriations process that could help FAA. These include:

- Reducing the number of line-items and appropriations, providing greater flexibility to shift funds in response to changing circumstances.
- Eliminating earmarks.
- Establishing a multi-year budget for FAA capital investments.
- Establishing a "revolving fund" for ATC, using existing aviation taxes as the funding source, so that the ATC system would not need to rely on the annual appropriations process.

Any of these reforms would be helpful. The first two would provide FAA with greater latitude in the use of its overall funding. The latter two would create greater certainty for long-range capital planning. However, no Federal agency has the ability to use long-term financing for capital investments, which a government corporation could. That would be a key advantage for a corporation, which no government agency currently enjoys.

Conclusions on Internal Reform of FAA--The reforms listed above represent the personnel, procurement and budget process "building blocks" that could be used to reform the FAA within its existing organizational structure. Each building block that is adopted would help improve the performance of FAA and the ATC system. However, making the kinds of bold, fundamental reforms that are required through a piecemeal, incremental approach will be extremely difficult. In the EOC's judgement, the likelihood of eliminating

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a sufficient number of the obstacles to the system's improved performance within the existing structure is poor. Implementing only personnel reforms, or only procurement reforms, or only budget reforms, would address only part of the larger problem.

A comprehensive, coherent approach is necessary to fully address the needs of the ATC system and the aviation system's customers. The EOC concludes that the most effective way in which to fundamentally change the ATC system is by taking it out of the existing structure of Federal procurement, personnel laws and regulations, and to remove it from the Federal budget appropriations process.

2.2.2 Development of a Government Corporation

The EOC recommends the creation of a federal corporation for air traffic control as a solution to meet the challenge that faces U.S. aviation. In addition to alleviating the acquisition, personnel, budgetary and oversight restrictions enumerated by the NPR, creating a government corporation to operate, maintain and modernize the ATC system would lead to more business-like operations, acceleration of capital investment in the ATC system and better meet the technological and operational needs of the aviation community.

Of course, most government agencies are affected to some degree by the restrictions outlined by the NPR, which has proposed a wide-ranging series of reforms of government to address those problems. Although these reforms would clearly help, many are designed to address the problems of agencies that do not have operational responsibilities. FAA is unique in its functions and requires a broader set of changes. FAA has tried internal restructuring again and again without success. FAA has attempted 24 reorganizations in the last decade without solving its fundamental problems. Only one of these undertook a fundamental rather than incremental organizational change--the transfer of National and Dulles airports to a regional authority. That transfer has been very successful, and could serve as a model for other fundamental changes. In addition, although various legislative efforts have provided limited relief, they have not addressed the basic problems facing the ATC system.

ATC is different from other government activities because of its operational nature and that there is a pressing need for an immediate restructuring of ATC into a government corporation. It recommends the establishment of the United States Air Traffic Services Corporation (hereinafter the ATS Corporation) to provide air traffic services and a continuing government agency to provide regulatory oversight of the corporation. Such a restructuring would provide substantial benefits to users and consumers and reductions in appropriations from the general fund, and would improve aviation safety.⁴ In fact, by removing the constraints on the ATC system imposed by the current structure, the EOC concludes that safety will be enhanced as new technologies are implemented more quickly, personnel are able to work more efficiently, facilities can be staffed as needed, and long-term planning and program management are improved. Compelling reasons for making changes in the structure and operations of the ATC system are discussed in Section 3 of this report.

⁴Safety issues related to restructuring FAA are discussed in Section 5 of this report.

2.3 Overview of a Government Corporation

The Government Corporation Control Act (GCCA) of 1945 established general procedures to govern the management of government corporations. The Act's purpose was to make the corporations accountable to the Congress for their operations while giving them the flexibility and autonomy needed for their commercial activities. The general impact of the GCCA was to replace Congressional oversight, exercised through the appropriations process, with annual business/financial management reporting and audit requirements. A government corporation may be excluded from all or part of the Act. The Act and the CFO Act, which superceded parts of the GCCA, established the following general requirements for wholly-owned government corporations:

- The corporations must prepare and submit a business-type budget to Congress.
- The corporations' budgets are not subject to the traditional appropriations process. Although Congress "considers" their budgets, the corporations are not prevented from either carrying out and financing their activities as authorized under another law, or from making commitments without fiscal year limitations.
- Audits of their financial statements are to be conducted by the corporation's Inspector General or by an independent external auditor, as determined by the head of the corporation. The General Accounting Office (GAO) may conduct an audit at its option; when that occurs, the corporation may, if it so chooses, use the GAO audit that year in lieu of an independent audit.

There is no general definition or model of a government corporation. These organizations differ significantly with respect to ownership, their relationship to the President and Congress, their financial and budgeting status and their reporting and audit requirements. Conceptually, some have no relationship with the Executive Branch and operate outside most of the laws and regulations that govern the activities of federal agencies. Others have been afforded very limited exemption from these laws and regulations and report directly to a Cabinet Officer. The extent to which the governance structure of a particular corporation differs from that which typically governs the operations of federal entities is determined by or reflected in its enabling legislation. Section 14, which provides information on 45 existing U.S. government corporations, illustrates this diversity of governance structures.

The National Academy of Public Administration has identified attributes that justify establishing a government corporation. Key among these are the following:

- The agency deals with the public as a business rather than as a sovereign; and,
- Users, rather than taxpayers, are expected to pay the costs of providing services.

A government corporation is suited to these situations because it would allow more flexible, businesslike operation, financial control and planning than typically is possible within a government agency. A government corporation also would permit the development of acquisition and personnel systems that are tailored to the needs of the entity and which differ from those used in government departments.

The EOC believes that air traffic services fit the accepted definition of activities that justify the establishment of a government corporation. Section 4 describes the key attributes of the government corporation that the EOC recommends be established to provide air traffic services, and the corporation's relationship with FAA.

3. COMPELLING REASONS FOR RESTRUCTURING ATC AS A GOVERNMENT CORPORATION

3.1 Introduction

The EOC conducted an in-depth assessment of organizational options for restructuring ATC. The EOC concluded that the best way to achieve the goal of re-inventing the ATC system is to establish a government corporation to maintain, operate and modernize it. The EOC believes there are compelling reasons to take this step and that it should be taken immediately. The principal reasons for establishing the ATS Corporation include the following:

- The ATC system is supported by equipment from the 1950s and 1960s that is long past its original life expectancy and functionally obsolete;
- Operating under government rules and procedures, FAA has been unable to implement new technology quickly. Doing so would offer tremendous cost savings to the users of the ATC system;
- A government corporation would be able to invest in projects that have large user benefits without being constrained by overall government spending or deficit reduction considerations;
- FAA needs to be able to borrow from private capital markets to finance the acceleration of system modernization;
- FAA has fundamental problems in acquisition, financing and personnel that are unlikely to be resolved if FAA remains a government agency; and,
- A government corporation can be streamlined to provide business-like incentives to improve the provision of ATC services and to increase efficiency.

The benefits of creating the ATS Corporation are significant. This section discusses the factors that drive the need for change and why the establishment of a corporation to provide ATC services is the best way to meet those needs.

3.2 Economic and Technological Factors

The changing economics of the aviation industry and rapid technological innovation in navigation and air traffic systems have created a sense of urgency for restructuring the ATC system.

User Oversight

3.2.1 Economic Impact of Technological Change on the Aviation Industry

The ability of the ATC system to provide efficient and safe separation services, using the most modern technology available, is vital to the economic health of the aviation industry. As it exists today, caught in a tangle of federal regulations and procedures, FAA cannot meet the current demands of the aviation industry and faces increasing problems in meeting future demands.

Of particular importance to the aviation industry is the timely implementation of advanced technology solutions to their problems. The Global Positioning System (GPS) is a prime example of an emerging technology whose swift implementation would provide great benefits to users. GPS-equipped aircraft would save fuel by flying more direct routes. GPS will also increase en route capacity by permitting the reduction of in-trail separation and by providing more accurate tracking of oceanic flights. These savings would make our industry more competitive and would benefit consumers as well.

The economic impact of these changes would be very significant. An airline would save 70 cents (at current prices) for each gallon of fuel that an aircraft does not burn because of more direct routes provided through satellite-based systems combined with ATC automation procedures. An airline could save as much as \$300,000 per aircraft per year, an annual savings of \$120 million for a 400 aircraft fleet. Additional savings would accrue from the increased cargo capacity made available by reduced fuel requirements (at seven pounds per gallon of fuel and at a current estimate of \$3 in revenue per pound for air cargo) and from increased aircraft utilization.

Experimental flights using the National Route Plan offer evidence of additional benefits from direct routing. That program permits about 300 aircraft each day to fly direct routes between some 100 city pairs that are 1500 miles or more apart. If the savings realized by these experimental flights were extended to the entire U.S. airline fleet, savings of approximately three percent of aircrew costs and maintenance could be realized.

These examples indicate that the possible cost savings from direct routing would approach \$1 billion annually when applied to the entire industry. These savings could be retained by airlines as increased profits or passed on to their customers. Increases in profit would significantly bolster the financial health of the industry. More efficient air traffic services would also provide significant savings to passengers, who would see a reduction in lost time and productivity; in turn, this would make air travel more attractive. These benefits cannot be realized, however, until the air traffic management system is upgraded--and at this point FAA is the weak link in the technological revolution.

3.2.2 Economic Impact of Technological Change on FAA

Today's aviation industry is facing a technological revolution, while much of the ATC system is supported by equipment from the 1950s and 1960s that is long past its original life expectancy. Maintaining this obsolete equipment makes FAA the world's largest buyer of vacuum tubes. ATC facilities use thousand of vacuum tubes each year, although the last U.S. manufacturer ceased production in 1987. Tube availability and reliability are becoming serious problems. Certain tubes are manufactured by a single company, leaving FAA with a tenuous supply system. FAA also faces problems in finding technicians to maintain this older equipment. As current electronics technicians retire, FAA's ability to service and repair this equipment is continually diluted. Newly-hired technicians have not generally been trained to maintain older equipment and must therefore be retrained in vacuum tube technology. This training is conducted by experienced technicians since the original manufacturers in some cases no longer exist.

The contrast between the technology now used in aircraft and that still used at ATC facilities underscores the efficiency of a corporate structure. For example, on-board radar displays are far more sophisticated than those used in ATC facilities across the country. These cockpit displays provide pilots with detailed information on weather that is not readily available to controllers. This technology has been available for years but is not used by FAA ATC facilities. As a result, controllers often rely on pilots for information, which they then use to route aircraft.

The Air Transport Association and the airlines have stated repeatedly that FAA is having serious problems in keeping up with technological developments. For example, the airlines are cautious about buying new air navigation equipment offered by aircraft manufacturers because they don't believe the FAA will be able to make timely delivery on its end of system needs. They cite many examples of planned capabilities that were delayed for years or were finally overtaken by advancing technology: The Precision Runway Monitor program and the Microwave Landing System are just two examples.

Accelerating the transition schedule for system modernization would require additional funding estimated at \$5.1 billion through FY2005. If this investment were made, additional benefits through FY2005 with a 1996 net present value estimated at \$11.3 billion would be realized. The estimated benefits of increased investments are discussed in greater detail in Section 12 of this report.

Unlike the previous decade, where federal spending grew, current and future budgets are severely constrained by efforts to reduce the deficit. The FAA is already facing the effect of these budget restrictions. It is not likely that the additional funds required to accelerate the transition to satellite-based ATC would be available from the traditional appropriations sources over the next several years. In a time of increasing competition among federal agencies for scarce federal resources, financing a modernized infrastructure for aviation by borrowing from the private market within the scope of best

business practices today becomes an attractive alternative. A corporate structure, with its ability to leverage resources to raise capital, initiate contracts rapidly and adjust to changing workforce requirements as necessary, can provide such mechanisms.

3.3 Restructuring the Air Traffic Control System

The NPR report recommended sweeping, comprehensive change for all of government. Other government agencies, like FAA, are affected by rigid acquisition, financial, personnel and oversight problems. The EOC believes the ATC system is different from other government activities and that its problems cannot be solved through government-wide reforms. Although many problems could be addressed through piecemeal reform, this would be a time-consuming process, with some uncertainty as to what actual changes would be made. There is a clear need for change—not only in specific procedures but in people's attitudes as well. Much could be gained from the synergy of making needed changes as part of a comprehensive strategy.

3.3.1 What Makes ATC Unique

What makes ATC unique among government services is the responsibility to provide, maintain and operate a safe, orderly and expeditious system, international in scope and serving both civil and military users. The U.S. ATC system controls substantial amounts of oceanic airspace, and has a leading role in developing worldwide standards. ATC is the only non-defense governmental service operating 24 hours a day, 365 days a year, providing critical services that affect a significant segment of the national economy. ATC personnel separate and control more than 170,000 aircraft operations each day and maintain more than 8,500 navigation and surveillance aids used to guide and track aircraft.

In many respects, the ATC system is more like the private companies that FAA now regulates than it is like the rest of FAA.

The efficient operation of the ATC system and the agency's ability to meet future demands on that system are essential to the health of the aviation industry. The rules and regulations that FAA promulgates and the pace at which it deploys new technology have a direct influence on the day-to-day operation and the financial well-being of the industry. The interdependence of the airlines and the ATC system was highlighted by the National Commission to Ensure A Strong Competitive Airline Industry in its report:

"To understand the central role of the air traffic control system in the operational functioning and economic well-being of the airline industry, it is important to recognize that virtually everything an airline does—from pushing off the gate and taking off and landing airplanes, to selecting and changing flight paths—can be done only with the prior approval of a federal air traffic controller. Thus, in a very real

sense, the federal government controls the production line of the U.S. airline industry. In the history of American business, there has never been a major commercial industry whose minute-by-minute operating efficiency was capped by the daily operating efficiency of the federal government--except for the airlines."

Because of this unique operational role, ATC has long been recognized as different from other governmental services by the media, the Congress and the public.

As noted earlier in this report, the Government Corporation Act specifically identifies those activities that are more properly located in a government corporation. The concept of a government corporation--an entity with dedicated sources of revenue and the power to leverage those revenues through issuing debt--makes sense for the ATC system.

3.3.2 Deregulation of the Airlines

The aviation industry and FAA have received greatly increased attention since the passage of the Airline Deregulation Act in 1978. Since airlines were the first transportation industry to be substantially freed from government economic regulation, the implementation of the Act was seen as a prototype for the deregulation of other industries. The Act provided a new range of flexibility to the airline industry. As the industry adjusted to and became familiar with the flexibility of the deregulated environment, Congress, the travelling public, and the aviation community became increasingly frustrated with the cumbersome procedures that prevented the ATC system from quickly responding to the changing demands of the newly dynamic airline industry.

These concerns have prompted an almost continuous series of studies of the structure and operation of the FAA, with a particular focus on ATC. Given that the previously static regulated industry was now operating in the sometimes harsh light of deregulation, there was an increasing cry for a more businesslike operation of the FAA. Since 1985, seven major studies have recommended creating a government corporation to provide ATC services, including Presidential commissions appointed by presidents from each political party--the Aviation Safety Commission (1988) and the National Airline Commission (1993). Finally, Vice President Gore's study of improving government--the National Performance Review--endorsed those earlier recommendations.

3.4 Problems as a Government Agency

Internal changes in management and operations must accompany organizational change. But FAA has fundamental problems in acquisition, financing, personnel and governance that are unlikely to be resolved if the ATC system remains within a government agency. Examples of problems under the current FAA structure that could be solved under a corporate organization include:

Acquisition Problems

The FAA acquisition process takes too long, lacks flexibility and accountability, and results in products and services that cost too much. The statutes and regulations that govern FAA--some 10,500 pages of instructions--inhibit the ATC system in the timely acquisition of advanced technology equipment and result in the inefficient use of time, people and money.

- *As shown in Figure 3-1, the average delay of implementation of NAS plan projects is five years. All programs for which information is available have been delayed for at least one year and up to 12 years. Further, the unit costs for each project, with the exception of Airport Surveillance Radar, increased by 10 percent or more. The unit costs for the Voice Switching and Control System have more than quadrupled.*
- *Even a straightforward acquisition can take four years or more before a contract is awarded, in part because the budget process is so slow and in part because the selection process is so complicated. It takes two years just to get an equipment replacement through the FAA, DOT and Presidential budget process. Another two years are required to prepare the procurement request, advertise the proposal, conduct a technical evaluation of offers, negotiate with firms and award the contract. Prototype development and actual production typically add another three years to the equipment delivery schedule.*
- *The Advanced Automation System (AAS) is an excellent example of FAA's problems in acquisition. The replacement of the vintage computers has met with billion dollar cost overruns and years of delays. There are many reasons for this system's problems and Federal acquisition and budget processes contributed to them. What is clear, however, is that a corporation's users, represented on the Board of Directors, would never have tolerated these delays on cost overruns.*

In contrast to FAA's experience with AAS, Britain's National Air Traffic Services contracted with IBM Europe to design and install a \$500 million en route system that is on time and on budget. The British managers attribute their success to their ability to use good business judgement in making this acquisition, free from their government's procurement system.

- *FAA spent \$80 million conducting design competitions for the Host computer contract, which called for off-the-shelf equipment. The production award for all the Host computers was for only \$191 million. It took FAA seven years from the initial request to the final installation; in that time, the computers went from being state-of-the-art to being technologically obsolete.*

Figure 3-1

CHANGES IN IMPLEMENTATION MILESTONES AND UNIT COSTS FOR 12 MAJOR FAA PROJECTS

Project	First-site Implementation Years Delayed 83 NAS - 92 CIP	Last-site Implementation Years Delayed 83 NAS - 92 CIP	Percent Change in Unit Cost
Advanced Automation System	1	8	127%
Air Route Surveillance Radar	9	1	11%
Airport Surface Detection Equipment Radar	6	6	10%
Airport Surveillance Radar	4	4	-30%
Automated Weather Observing System	3	7	35%
Central Weather Processor	1	Not Available	Not Available
Flight Service Automation System	7	6	22%
Microwave Landing System	12	9	105%
Mode S	7	3	40%
Radar Microwave Link Replacement and Expansion	1	Not Available	38%
Terminal Doppler Weather Radar	*	*	38%
Voice Switching and Control System	6	5	444%
Average	5	5	

Source: *Air Traffic Control: Status of FAA's Modernization Program*, United States General Accounting Office, April 1993

* The Terminal Doppler Weather Radar project was not included in the 1983 NAS Plan.

Note: Cost data from 1985 and 1987 are used for the RLM Replacement and Expansion project and the Terminal Doppler Weather Radar project, respectively, because earlier data are not sufficient to create a cost index.

- *The aviation industry identified the need for additional instrument landing systems (ILS) to reduce delays at airports in 1986. Money for the systems was provided by Congress in the fiscal 1987 supplemental appropriation. FAA had tried to award the contract to the sole historical supplier of ILSs, but because of a protest by a potential competitor, FAA was forced into a lengthy competitive procurement. The historical supplier was ultimately awarded the contract, but the first ILS system was not installed until 1990.¹ FAA is required to solicit bids from all potential vendors, even when only one or a few are capable of delivering what is needed. This caricature of the competitive process creates delays and increases costs.*

Subject to best business practices, the ATS Corporation would be able to buy the equipment it needs, from the vendor it prefers, when it needs to.

Financial Problems

Although a large share of FAA's budget comes from user taxes, Congress must still appropriate funds for operations and investments. The modernization of the ATC system is delayed by FAA's dependence on annual appropriations and the federal budget process (including the pressures of the budget deficit.) FAA's inability to make sufficient investments imposes penalties on system users. Eliminating these penalties would more than offset the cost of improvements.

- *When FAA studied how to replace its aging fleet of flight inspection aircraft, it found that purchasing new aircraft would produce a large net benefit because they would be markedly more fuel efficient and would require less maintenance and training. Budget limitations prevented FAA from making the most cost-effective purchase, and the final cost was increased by \$6.7 million. In addition, FAA continued to use its aging and expensive airplanes until they could be replaced.*

The ATS Corporation would be able to purchase any assets that it needs for operations and whose cost can be justified financially. The ATS Corporation would be able to use debt financing to replace obsolete and costly equipment and pay back the debt as the benefits are realized in the future.

- *In 1990, all government agencies were threatened with a budget sequester; this required FAA and the airlines to develop contingency plans for the furlough of 25 percent of the air traffic controllers. The airlines characterized the impact of this plan, if carried out, as "catastrophic."²*

¹Airport Magazine January/February 1994, p. 67

²Airport Magazine, ibid.

This is FAA not ATC problem.

The ATS Corporation, with reliable funding from user fees, would never threaten its paying customers with a cutoff of service.

Personnel Problems

FAA's human resources systems lack flexibility. Its personnel, compensation and incentive systems and rules are rigid, complex and over-proceduralized. They address broad, government-wide concerns and do not directly support the ATC system's strategic objectives and unique needs.

- *FAA cannot readily deploy its controller workforce to the facilities where they are most needed or in response to changes in demand. This is due, in part, to the fact controllers' pay is determined by rigid federal classifications; controllers at facilities with widely varying workloads receive the same rate of pay and can be offered little incentive to move.*

The ATS Corporation would be able to shift workers to where they are needed and to negotiate pay rates that ensure that all facilities are staffed adequately and none are over-staffed.

- *In an era of rapid technological change, FAA will have to repeatedly create new positions and reclassify personnel to meet its needs. But the process of occupation change within the government is slow and ponderous. For example, creating the new occupation category of Airway Transportation System Specialist to maintain GPS equipment took six years. That is not acceptable.*

The ATS Corporation would be able to create flexible job classification and compensation systems. Using a broad-banding pay system with fewer and broader pay grades, managers will be able to quickly move personnel into different occupational categories when there is a business reason to do so.

Governance Problems

FAA is unable to fully control its operational decisionmaking because of excessive external oversight by DOT, OMB and Congress. The current budget process, with four separate budget accounts involving numerous line items, encourages micromanagement and reduces FAA's ability to meet changing needs by reallocating funds.

- *The modernization of the Flight Service Station system was originally planned to reduce the number of FSSs from 306 to 61 Automated Flight Service Stations. Although FAA's analysis showed that there would be no reduction in services provided to pilots and that the modernization would result in substantial cost savings, Congress prevented FAA from carrying it out. Congress required FAA to obtain specific authorization to close each FSS and subsequently failed to provide sufficient permanent-change-of-station funds to*

permit the transfer of employees to newly commissioned AFSSs. There are now 59 AFSSs and 74 remaining FSSs.

The ATS Corporation would have the autonomy to plan and efficiently carry out necessary modernization programs in a cost-effective manner, justified by user demand, subject to FAA's safety oversight.

3.5 Reorganization as a Government Agency

As noted above, the NPR report recommended sweeping changes for all government agencies. In addition to that recommendation, however, the NPR report specifically rejected the reorganization of FAA as a government agency and endorsed the establishment of a government corporation to provide ATS services.

In an era of growing demand for services, rapidly changing technology and increasing automation of ATC systems, the agency requires more flexible procedures to be efficient. The ATC system should emulate the best practices of private industry and be more responsive to all users of the aviation system.

The EOC concurs with the NPR report that reform within the existing system is not enough. In the last 10 years there have been 24 different reforms and reorganizations of FAA, none of which have significantly alleviated the acquisition, financing, personnel and oversight problems of the agency. Only one of these significantly affected FAA's structure. This was the transfer of Washington National and Dulles International airports to a regional authority. The transfer of the airports has been viewed as a success by their workforce, airlines and their passengers and the general public. Freed from federal budget constraints, the airports have been able to undertake an extensive modernization program.

In fact, constant piecemeal reorganizations have disrupted on-going operations as well as demoralized a highly skilled and dedicated workforce and FAA's senior management has spent far too much time trying to fashion stop-gap measures to address ATC system problems rather than planning to meet the challenges of the future. If FAA had acted on the recommendations of a decade ago that the ATC system be restructured, instead of initiating another internal reorganization, the modernization of the ATC system would be much further along.

3.6 International Precedents

New Zealand, Australia, Britain and Germany have already reorganized their ATC systems as government corporations. The motivation in each case was to give the air traffic service greater financial independence from government and to provide incentives for the corporation to be more efficient in capital budgeting and financial management.

By operating their ATC systems on a businesslike basis, these countries have been able to increase investment and more rapidly modernize the systems, while at the same time reducing delays and/or reducing costs to users. There have been no safety problems associated with these reorganizations--in fact, most of these countries say that safety has been improved. Aviation professionals from every country that has corporatized ATC functions believe that the changeover has been successful.

3.6.1 New Zealand

In New Zealand, the Civil Aviation Authority and the Airways Corporation believe that separating the air traffic services and regulatory aspects has clarified roles and helped to reduce costs.

The Airways Corporation replaced its 30-year-old radar and communications system with a fully-integrated automated system while simultaneously constructing three new air traffic control centers. The entire modernization project was financed through borrowing on the commercial market and was completed on time and under budget.

The Airways Corporation has reduced its fees for ATC system users in two consecutive years. In its first year of operation the corporation lowered its fees by 10 percent and in its second by another five percent. It will also pay a dividend of \$2.5 million to the government. The chairman noted recently that "any profits above target should be returned to our customers. We are conscious of our monopoly status and therefore must not only be efficient but fair and equitable as well."

The Civil Aviation Authority also funded the installation of satellite avionics equipment for much of the general aviation fleet to accelerate the transition to a satellite-based system and the shut-down of the more expensive ground-based system. Although equipping private aircraft with advanced equipment may seem to be an inappropriate subsidy, the CAA determined that it would actually save money by doing so and had the freedom to make that decision based upon its financial analysis and not on the political impact.

3.6.2 Australia

In Australia, the Civil Aviation Authority both regulates and provides air traffic services, but keeps funding of regulatory activities and air traffic control services clearly separated.

In consultation with the aviation industry the Australian CAA has rationalized its assets to meet service requirements and established a program to modernize the system (after many years of delays and frustration as a government agency). Personnel costs were reduced by flattening the CAA's managerial structure.

3.6.3 Britain

In Britain, safety regulation is provided by the Safety Regulation organization within the Civil Aviation Authority and ATC services are provided by the National Air Traffic Services.

The British CAA's relative freedom of capital budget planning has successfully supported major modernization programs, although it has encountered governmental restrictions in its borrowing authority this year. As a result, there are now proposals to make the British ATC system more private to alleviate those government restrictions on borrowing.

3.6.4 Germany

In Germany, ATC services have recently been restructured. Preliminary indications are that the restructuring has significantly reduced delays. Much of this is attributable to removing controllers from civil service so that they could be paid at levels appropriate to their occupation. As a result, productivity has increased reducing delays.

3.7 Financial Benefits of Change

The restructuring of the ATC system as a corporation would result in reductions in user taxes and in appropriations from the general fund. The accelerated investment made that would be possible for a corporation would also produce an increase in user benefits. The EOC estimates the following financial benefits from restructuring FAA:

- A reduction in the appropriations from the general fund of almost \$16 billion from 1996 through 2005; and,
- An increase in benefits of \$11.3 billion from accelerated investments.

These benefits are discussed in greater detail in the sections 11 and 12 below. The substantial savings would come from using a number of new practices, including the following:

- Using long-term debt to finance the acquisition of some equipment in the modernization of the air traffic control system;
- Drawing down the uncommitted portion of the Aviation Trust Fund;
- Accelerating modernization to reduce operating costs; and,
- Moving away from the current practice of pre-funding investments to one where costs are recovered over the useful life of the investment.

3.8 Support for Change

The principal users of the ATC system--the commercial airlines--strongly support the change to a government corporation. Airline traffic generates the vast majority of the funds used to invest in and operate the current ATC system through the passenger ticket tax. Those who work within the existing system--air traffic controllers, technicians and support staff--advocate change and have been actively engaged in the development of the ATS Corporation. They believe that a corporate structure would permit the acceleration of system modernization, improve working conditions and enable them to perform their jobs--ensuring the safety of almost 500 million passengers annually--more effectively.

From FAA's perspective, there is only a tenuous link between the tax receipts paid into the trust fund and the level of services it provides. The tax rates are essentially fixed by law. Total receipts rise or fall as a function of ticket sales. Funds must be appropriated by Congress from the trust and general fund into a large number of appropriation categories for FAA programs. Trade-offs and reallocations among categories are limited to specific reprogramming amounts within FAA's authority. Reallocations above those limits require going back to Congress for specific authority. Further, because tax receipts are used to fund all capital programs first and a fixed proportion of operating costs (currently 50 percent), there is little opportunity to trade between capital and operating expenses. FAA has little latitude to find the most productive use for the funds appropriated.

The current system effectively makes airlines tax collectors for the federal government. Since user taxes bear little or no relationship to the real costs of producing specific services, there is no link between what services are really needed, how they should be produced, and what should be charged for them. If users see a direct relationship between what they pay and the service they receive, there will be a natural pressure to make the system more efficient and reduce costs for users, the government and consumers.

3.9 Conclusion

The EOC believes that the ATS Corporation will maintain and improve FAA's high standards of safety and performance. Further, the EOC believes that without greater flexibility in buying new technology, in recruiting a top-flight managerial and technical workforce and in planning long-term investments, the nation runs a serious risk of jeopardizing the system it relies on today.

At a time when governments are being asked to do more with less, it is essential that federal agencies focus on what they do best, examine alternative ways to deliver the services that the public expects and to take a fresh look at whether the job can be more effectively managed outside the federal bureaucracy. Air traffic control is precisely the kind of critical commercial service that can be more effectively managed as a government corporation. Developing a government corporation to provide air traffic services is in-

tended to blend an existing dedication to public service with the entrepreneurial energy and disciplined rationality of American business.

4. RECOMMENDED STRUCTURE OF THE ATS CORPORATION

4.1 Introduction

A number of models were considered as the means to achieve the benefits of a government corporation for the ATC system. The primary goals in developing any model were to create an ATC structure to manage more efficiently the portions of FAA that provide operational rather than public-policy services and to ensure the continued high level of ATC system safety. One model stands out as the most effective option--an ATS Corporation independent of FAA except for safety regulation, certain rulemaking authority and national security. This model can be designed to meet the safety, security, development and efficiency needs of the nation's aviation system. Key issues regarding this model are discussed in this section. Figure 4-1 shows a schematic of the models considered, with the recommended model at the left side of the figure.

The EOC also considered three other corporate models and a streamlined FAA model. The corporation models included an ATC Corporation with ATC safety regulatory responsibility, an FAA Corporation, and an Airway Development Corporation with only equipment modernization and maintenance responsibilities. The ATC model considered including airport development investments with the corporation. The streamlined FAA model assumed that all NPR recommendations would be implemented within the existing organization. Because FAA has undertaken internal reform many times in the last decade without solving its fundamental problems, the EOC directed the majority of its analysis to the corporation models. A discussion of the models that were not selected is included later in this section.

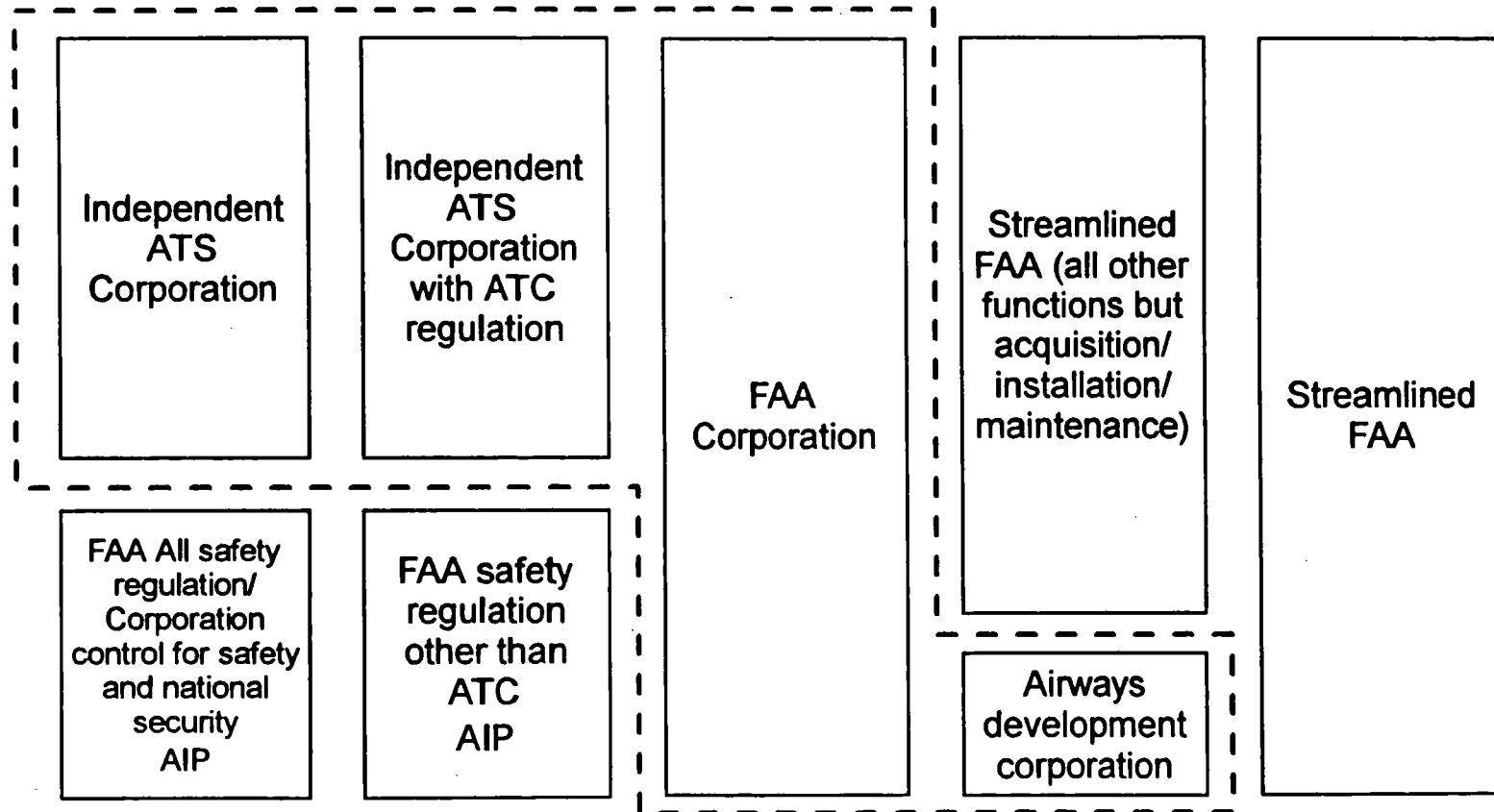
The EOC found that it was important to create an independent ATC function to improve efficiency. It also found that the authority to manage airspace and resolve disputes on safety and national security should be retained in a government agency. An ATS Corporation under the regulatory oversight of FAA ensures system safety while allowing the ATC function the independence to operate like a business.

4.2 Recommendation: An Air Traffic Services Corporation and an FAA Government Agency

In conducting its work, the EOC found the ATC system to be more like private sector entities that FAA regulates rather than like the rest of FAA, of which it is a part. The EOC recommends that an independent ATS Corporation be established that would be responsible for controlling air traffic, maintaining ATC equipment, modernizing facilities, performing research into future ATC system needs and supporting national defense activities. The ATS Corporation would have delegated authority from the FAA Administrator to manage airspace rulemaking. Currently airspace rulemaking procedures are coordinated with the following

Figure 4-1

Schematic of Models



----- Government Corporation

FAA offices: Airports, Flight Standards, Air Traffic, Airway Facilities, and System Development. These organizations would be divided between FAA and the corporation, but it is important to maintain the involvement of the interested parties in decisions about airspace. The corporation would have the primary responsibility for developing airspace regulations. The FAA would continue to give full consideration to safety and national defense requirements.

As it does with respect to the hundreds of other entities it oversees, FAA would retain its historical mission of ensuring safe and secure aviation, including its current regulatory and safety functions, along with safety oversight of the ATS Corporation. It would also manage the safety and security research and facilities and equipment, and the promotion of airport safety and development including the Airport Improvement Program (AIP) and the Passenger Facility Charge (PFC). Figure 4-2 provides a schematic of how the ATS Corporation would relate to FAA and DOT.

The corporation would be accountable to the Secretary of Transportation, who would retain oversight through representation on the Board of Directors and would have limited direct control of the ATS Corporation through disapproval authority of rates and fees. The corporation would be free from day-to-day management by FAA or DOT. However, the FAA Administrator could intervene in compelling safety or national security issues that are unresolved. The Administrator would not be directly involved in the business of the corporation but would have the authority to ensure safety, national security and adequate coordination of airspace management decisionmaking. The corporation would be structured to include many of the incentives of a business, such as the ability to borrow on private markets, responsibility for paying liability settlements and the establishment of user fees.

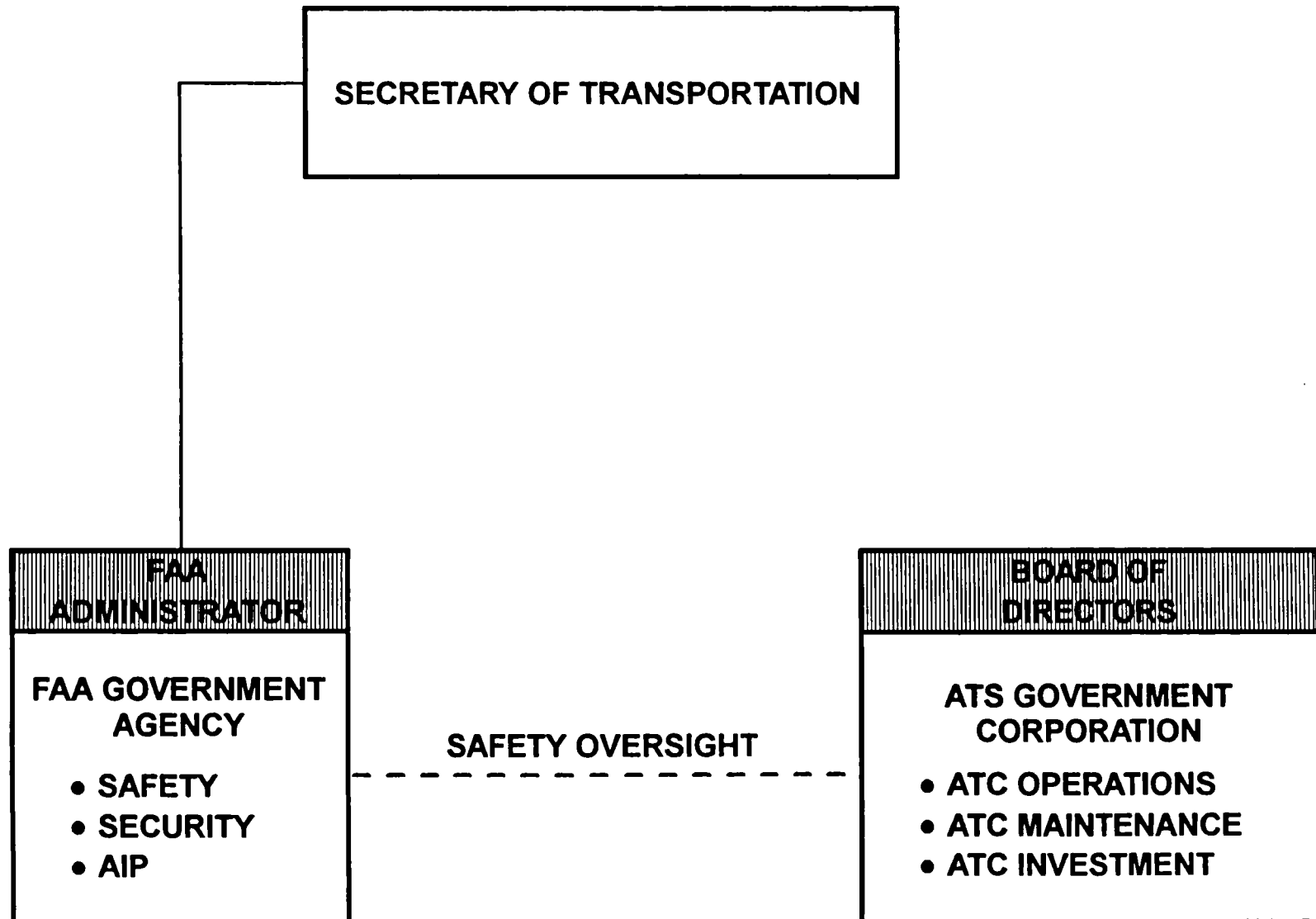
4.2.1 The ATS Corporation

The ATS corporation would be financially self-sufficient and supported by user fees. It would be governed by a Board of Directors with 9 members. The Board would comprise the CEO, Secretary of Transportation (or designee), Secretary of Defense (or designee) and 6 members appointed by the President and confirmed by the Senate. The appointed members would represent commercial and noncommercial aviation interests, airports and labor. The CEO would be selected by the Board. All non-designated Board members would serve five-year staggered terms. The Board would have a permanent safety committee of three members. Key issues for the corporation are discussed below:

- Maintaining Accountability for Safety--The ATS Corporation would be responsible for the safe and secure operation of the ATC system, subject to the regulatory oversight of FAA. The ATS Corporation would receive the same oversight regarding air traffic operations from National Transportation Safety Board as FAA does today. The corporation would be responsible for compliance with regulations, just as aircraft manufacturers ensure that aircraft design and manufacture meet FAA standards today. This is done through a

Figure 4-2

STRUCTURE OF THE ATS CORPORATION



process of both detailed FAA review and self-certification by the manufacturer. FAA has the authority to intervene at any point in the process. Consistent with existing practices, the Administrator would have the authority to intervene in compelling safety issues where they are unresolved between the FAA and the corporation. The safety committee on the Board would be established to place safety concerns at the highest level in the corporation.

- Supporting the National Defense Mission--Under the ATS Corporation there would be no break in the operation of the joint civil-military ATC system. National defense interests with regard to Special Use Airspace and acquisition would be protected and the existing authority of the Secretary of Defense concerning the use of the national airspace system would be maintained. The Department of Defense (DOD) would have input in the corporation via representation on the corporation's Board of Directors. The ATC system, along with the FAA, would be transferred to DOD in times of crisis or war. The corporation's enabling legislation would require it to cooperate with DOD on joint acquisitions of ATC equipment and in other areas.
- Preserving Political Oversight--DOT would retain oversight of the ATS Corporation through its representation on the corporation's Board of Directors and the Secretary of Transportation's authority to disapprove the level of user charges. FAA/DOT and Congress would also retain safety oversight through the FAA's authority to intervene in compelling safety and national security issues.

The corporation would generally be subject to the Government Corporation Control Act and would be required to submit an annual business-type budget to Congress that would be subject to annual public review. The corporation would have an annual financial audit performed by an independent public accountant.

- Be Responsive to Users--Users would be represented on the ATC Corporation's Board of Directors and would have a voice in the decisionmaking process, as would other members of the Board. Users currently have the ability to present their views to FAA through a number of formal and informal methods. The corporation would be required to operate under public notice procedures before it could close facilities, discontinue safety services, or change fees.
- Encourage Cost/Productivity Improvements--The efficient operation of the ATS Corporation would be encouraged through user membership on its Board of Directors, more direct linkage of user charges to the cost of producing services, and management of the corporation's performance. This structure is designed to provide autonomy for the corporation while ensuring safety.

Controlling interest.

- Meet International Commitments--The ATS Corporation would provide technical expertise to support international agreements where appropriate. The corporation would be reimbursed for matters it undertakes for other parties. The FAA and the Assistant Secretary for Aviation and International Affairs would be the focal point for matters related to international agreements.
- Environmental Issues--The ATS Corporation would comply with environmental standards appropriate for a federal corporation. The FAA would be responsible for setting the standards for compliance with any laws or standards, and the ATS Corporation would be responsible for implementation. Enabling legislation would authorize the ATS Corporation to provide support and technical assistance to the FAA where FAA has environmental authority such as environmental research and certification standards.

4.2.2 The FAA Government Agency

The FAA's regulatory programs, safety research, and facilities modernization, and the promotion of airport safety and development, including PFC and AIP, would be funded through the conventional authorization and appropriations process with trust fund revenues and general treasury revenues. Current relationships with DOT, DOD, NTSB and Congress would be maintained.

FAA operates two facilities that would have major functions supporting both the ATS Corporation and the FAA: the Aeronautical Center in Oklahoma City, OK and the FAA Technical Center in Atlantic City, NJ. The Technical Center engages in test and development activities in support of the RE&D program, including both ATC- and non-ATC related efforts. The Aeronautical Center conducts technical training for FAA as a whole, most of which is for technicians, engineers and controllers who would be employed by the corporation. The Aeronautical Center also operates an extensive logistics supply activity in support of the National Airspace System. Other activities are conducted at both locations that would bridge both corporation and FAA responsibilities in the future.

The EOC recommends that the FAA Technical Center stay with FAA and the Aeronautical Center be transferred to the corporation. The ATS Corporation would fund those activities that FAA conducts on its behalf at the Technical Center for a period of five years. After that time, the corporation could continue to use the facilities or find alternative sources of supply for these ATC-related services. For those organizations that remain part of FAA, it would lease space at the Aeronautical Center from the corporation. Specific arrangements will be worked out during the transition to the corporation. Key issues for the FAA are discussed below:

- Maintaining Accountability for Safety--Safety regulation of the aviation system would remain with FAA. It would continue to promulgate regulations, which would be implemented under the provisions of the Administrative Procedures

Act and Executive Orders that govern regulatory programs and procedures. The FAA would oversee the ATS Corporation's safety performance and develop enforcement and oversight mechanisms to carry out this authority. Consistent with existing practices, the FAA Administrator would have the authority to intervene in the corporation to resolve issues between the corporation and FAA to ensure the safety of the system.

The FAA would be subject to the same safety oversight from DOT, NTSB and Congress that FAA has today.

- Supporting the National Defense Mission--The FAA would continue to support national security. The FAA Administrator would have the authority to intervene in the corporation to resolve national security issues between DOD and the corporation. The FAA and the ATS Corporation would be transferred to DOD in times of crisis or war.
- Preserving Political Oversight--The FAA would continue to be subject to the same budget and oversight processes as it is today, subject to any government-wide reform that may result from the current NPR initiative.
- Meet International Commitments--DOT and the State Department would continue to retain authority for international agreements. It would use the ATS Corporation's technical expertise where appropriate.
- Environmental Issues--The FAA would continue to be subject to all current environmental laws, and for setting certain environmental standards for the ATS Corporation. There are numerous environmental issues that would require the involvement of both the ATS Corporation and FAA. These include environmental research, international representation, certification standards for aircraft noise and engine emissions and operational issues such as noise in national parks. The FAA would retain responsibility for these issues. The corporation would have statutory responsibility to support and implement them as applicable, and these responsibilities would be explicit in its enabling legislation.

4.3 Evaluation of the Recommended Alternative

- The recommended approach of a government corporation for ATC responds to the NPR/National Airline Commission recommendations.
- To reach the goal of creating a businesslike ATS Corporation and retaining the safety responsibility within the traditional government organization, FAA would be divided into an ATS Corporation and a remaining FAA. Users

would be required to work with two organizations but they generally work with specific offices today, since most contacts with FAA today fall into unique channels such as the Airports, Air Traffic, the Flight Standards or Aircraft Certification organizations. Potential disagreements caused by the differing views of the two organizations could be resolved by the Administrator.

- USERS!
8
- The corporation would be freed from government acquisition, personnel and budget constraints because it would not be spending general treasury revenues. The remaining FAA would gain some freedoms through the government-wide revisions that result from the current NPR initiatives. This would result in two different systems for the two organizations, but the aim of both efforts would be similar--to provide flexibility through less specific but more functional requirements.
 - The recommended ATS Corporation maintains continuity of the organization with regard to safety. It continues a recognized aviation authority (the Administrator) to ensure safety and national security. It provides a single source for oversight and conflict resolution.
 - The corporation contains many attributes of a business that a government agency would not be able to attain. These attributes provide incentives that could significantly improve the efficiency and effectiveness of providing ATC services.

4.4 Other Models Considered by the Task Force

Four additional models were studied by the Task Force in its efforts to develop an optimal structure. They were:

- An ATC Corporation with ATC safety regulatory responsibility (including an option involving airport development);
- An FAA Corporation;
- An Airway Development Corporation including only the equipment modernization and maintenance responsibilities; and,
- A Streamlined FAA with reforms made within the basic existing structure.

A discussion of these models follows.

4.4.1 An ATC Corporation Outside FAA with No Regulatory Responsibility

In this model, FAA would be split into an ATC Corporation and a remaining FAA that included non-ATC safety regulation, AIP and research and facilities and equipment modernization for safety and security. The corporation would have authority for ATC safety regulation and be regulated by the FAA for non-ATC safety areas.

The ATC Corporation would be financed by user fees and the Secretary would have the authority to disapprove its rates. The FAA would be funded by the Trust Fund for AIP and safety research and facilities and equipment, and by general treasury revenues for the regulatory function.

A variation of this and the ATC Corporation model that follows included placing responsibility for the management of the AIP within the ATC Corporation. This variation envisioned that the corporation would manage appropriated AIP funds from an investment services standpoint and gain efficiencies by combining airspace/navigational aids capital improvement planning with airport planning and development. Although gaining these efficiencies could result in some enhanced responsiveness to the aviation industry, the variation was discarded to preserve the added oversight determined essential in conventional public works funding. Key issues for this model included the following:

- Maintaining Accountability for Safety--The ATC Corporation would be responsible for the safe and secure operation of the ATC system and also for its ATC safety regulation. The corporation would be responsible for compliance with safety regulations other than for ATC, just as aircraft manufacturers ensure that aircraft design and manufacture meet FAA standards today. The ATC Corporation would receive the same oversight from NTSB as FAA does today.

The FAA would oversee the ATC Corporation's safety performance but would not develop and issue ATC safety regulations. The FAA would develop enforcement and oversight mechanisms to carry out its oversight authority. The corporation would receive the same safety oversight from DOT, NTSB and Congress that FAA has today.

- Supporting the National Defense Mission--Under an ATC Corporation there would be no break in the operation of the joint civil-military ATC system. National defense interests would be protected and the existing authority of the Secretary of Defense concerning the use of the national airspace system would be maintained. The Department of Defense would have input in the corporation via representation on the corporation's Board of Directors. The ATC system, along with FAA, would be transferred to DOD in times of crisis or war. The corporation's charter would require it to cooperate with DOD on joint acquisition of ATC equipment and in other areas.

- Preserving Political Oversight--DOT would retain oversight of the ATC Corporation through its representation on the corporation's Board of Directors and the Secretary of Transportation's authority to disapprove the level of user charges. FAA/DOT and Congress would also retain safety oversight through FAA. The corporation would generally be required to submit an annual business-type budget to Congress, and have an annual financial audit performed by an independent public accountant. The FAA would be subject to similar budget and oversight processes as the current FAA, subject to any government-wide reform that may result from the current NPR initiative.
- Be Responsive to Users--Users would be represented on the ATC Corporation's Board of Directors and would thereby have a voice in decisionmaking.
- Encourage Cost/Productivity Improvements--The efficient operation of the ATC Corporation would be encouraged through user membership on its Board of Directors, eventual linkage of user charges to the cost of producing services and management of the corporation's performance.
- Meet International Commitments--The ATC Corporation would provide technical expertise to support international agreements where appropriate. The corporation would be reimbursed for matters it undertakes for other parties. The FAA and the Assistant Secretary for Aviation and International Affairs would be the focal point for matters related to international agreements.

The EOC's evaluation of this model concluded that it responds to the NPR/National Airline Commission recommendations. The corporation would be freed from acquisition, personnel and budget constraints. The remaining FAA would gain some freedoms through the government-wide revisions that result from the current NPR initiatives. This would result in two different systems for the two organizations, but the aim of both efforts would be similar--to provide flexibility through less specific but more functional requirements.

This model was not pursued because of concerns about establishing the ATC safety function outside the traditional government organization, and because it would divide the safety regulatory functions. The FAA Administrator would have no direct authority to intervene in ATC safety issues.

4.4.2 An FAA Corporation

An FAA Corporation, within DOT, would hold the entire organization together. It would have the responsibility to continue the mission of operating and modernizing the ATC system and of ensuring safe, secure and efficient air transportation. The ATC function of the corporation would be financed completely by user fees, outside the normal authorization and appropriations process. The AIP would be financed by the Trust Fund and safety regulation

would be funded by general treasury revenues, both within the authorization and appropriation process.

- Maintaining Accountability for Safety--The FAA Corporation would be responsible for safety regulation. The corporation would receive safety oversight from DOT, NTSB, and Congress as does FAA today. Any issues related to safety or capacity would be resolved within the corporation. It is likely that a limited safety oversight function would be established in DOT to oversee the corporation.
- Supporting the National Defense Mission--Under an FAA Corporation, there would be no break in the operation of the joint civil-military ATC system. National defense interests with regard to special use airspace and acquisitions would be protected and the existing authority of the Secretary of Defense concerning the use of the national airspace system would be maintained. The Secretary would be represented on the corporation's Board and existing provisions for the transfer of the ATC system to DOD's control in times of crisis or war would be retained. The corporation's charter would require it to interface with DOD on joint acquisitions of ATC equipment and in other areas.
- Preserving Political Oversight--DOT would retain oversight of and influence over the FAA Corporation through its representation on the corporation's Board of Directors. The Secretary of Transportation would have the authority to disapprove the level of user charges. The corporation would also be subject to the Government Corporation Control Act and thus would be required to submit an annual business-type budget to Congress. Those parts of the corporation funded through appropriations would remain under the direct oversight of Congress.
- Be Responsive to Users--Users would be represented on the FAA Corporation's Board of Directors and would thereby have a voice in decisionmaking. A degree of user input is likely to be reflected in all the FAA Corporation's activities, including the safety regulatory area. Final decisions on all broad safety/regulatory policy matters would, of course, remain with the Board.
- Incentives for Cost/Productivity Improvements--The efficient operation of the FAA Corporation would be encouraged through user membership on its Board of Directors, the eventual linkage of ATC user charges to the costs of producing services, and management of the corporation's performance. However, the FAA Corporation would have some activities that remain funded through the Trust Fund and general fund-based appropriations.

- International Commitments--There may be a need to establish a new function within DOT or to expand the responsibilities of the Assistant Secretary of Aviation and International Affairs to assume governmental responsibilities under international agreements. DOT would rely on the FAA Corporation for technical input to support these commitments.

This model was perceived as less than optimal for several reasons. While there would have been benefits in keeping the FAA together as an organization, there was concern about establishing the safety regulatory and oversight functions outside the traditional government organization. There was also a concern that users, through Board membership, would have had some authority to oversee safety regulation. It was likely that a new safety oversight function would be required in OST to oversee the corporation.

There also was concern that the corporation's independence and flexibility, especially with regard to the ATC function, would have been greatly diminished by the fact that the CEO and Board would have been directly accountable to the Executive Branch and Congress for major portions of the organization's funding. It would be more difficult to isolate the ATC function as a business and achieve the associated benefits.

4.4.3 An Airway Development Corporation

Under this model a separate Airway Development Corporation would be established to acquire, install and maintain, and dispose of ATC and navigation system facilities and equipment. The corporation would develop and acquire the necessary equipment and provide equipment maintenance from requirements established by FAA. The FAA would retain the mission of operating the ATC system and ensuring the safety of the system. This model would allow for acquisition and personnel reform for facilities and equipment modernization and maintenance.

- Maintaining Accountability for Safety--The FAA would be responsible for the safe and secure operation of the ATC system and all safety regulation. The Airway Development Corporation would be responsible for compliance with all regulations that apply, just as aircraft manufacturers ensure that aircraft design and manufacture meet FAA standards today. The FAA would oversee the corporation's ability to acquire, install and maintain safe and effective ATC equipment and develop enforcement and oversight mechanisms to carry out this authority. The FAA would have the authority to intervene directly with the corporation, as it does with other contractors, to ensure the safety of the system.
- Supporting the National Defense Mission--Under this model there would be no break in the operation of the joint civil-military ATC system. National defense interests would be protected and the existing authority of the Secretary of Defense concerning the use of the national airspace system would be

maintained. The Airway Development corporation, along with FAA, would be transferred to DOD in times of crisis or war. The corporation's charter would require it to cooperate with DOD on joint acquisitions of ATC equipment. DOD would require the same relief from Federal acquisition laws and regulations as provided to the corporation for joint acquisitions.

- Preserving Political Oversight--FAA would oversee the Airway Development Corporation as it would a major contractor. DOT and Congress would continue their existing oversight of FAA.
- Be Responsive to Users--Users would provide input to FAA as they do today. This structure would be more responsive to users if facilities and equipment modernization were accelerated.
- Encourage Cost/Productivity Improvement--The acquisition process could be carried out more efficiently without the constraints imposed by Federal acquisition laws and regulations.
- Meet International Commitments--The FAA and the Assistant Secretary for Aviation and International Affairs would continue to be responsible for matters related to international agreements.

This model was not pursued for several reasons. It would be difficult for the corporation to develop and operate like a business since it would have little autonomy. The corporation would be completely dependent on FAA for funds and FAA would be dependent on the existing authorization and appropriations processes. As such, while parts of organizations might resolve acquisition and personnel problems, there would be no increase in financial autonomy. The benefits of dividing the agency in such a manner would be limited, but the problems resulting from dividing the ATC operations and modernization/maintenance functions could be great.

4.4.4 A Streamlined FAA

Under this model FAA would remain a Federal agency within DOT and be streamlined through enhancements from the NPR recommendations on personnel, acquisition and budgeting. FAA would continue to operate and modernize the ATC system and ensure safe, secure and efficient air transportation. The FAA would also continue to be funded by the Trust Fund and general treasury revenues within the normal authorization and appropriations process.

- Maintaining Accountability for Safety--The FAA would retain existing responsibilities for safety and would receive safety oversight from DOT, NTSB, and Congress as it does today.

- Supporting the National Defense Mission--FAA and DOD would maintain existing agreements and working relationships. The FAA would be transferred to DOD in times of crisis or war.
- Preserving Political Oversight--Political oversight by DOT and Congress would remain the same as it is today. FAA would continue to be funded through the existing authorization and appropriations process.
- Be Responsive to Users--Users would provide input to the FAA as they do today.
- Incentives for Cost/Productivity Improvement--The efficient operation of FAA would be encouraged through personnel, acquisition and budget reforms along the lines of the NPR recommendations as described later in the sections on each of these areas.
- International Commitments--The FAA and the Assistant Secretary for Aviation and International Affairs would continue to be responsible for matters related to international agreements.

This model would have retained FAA intact as a government agency and improved the efficiency and effectiveness of the organization by implementing the NPR recommendations for personnel, acquisition, and budgeting. Existing safety and national security assurances would be maintained. The EOC believes that reform within the existing FAA structure would not result in the changes necessary to allow FAA to most effectively respond to user needs and modernize the ATC system. In the last ten years there have been 24 different reforms and reorganizations of FAA, and none of them have significantly alleviated the acquisition, personnel and budgeting problems of the agency. FAA's senior management has spent far too much time trying to fashion stop-gap measures to address its problems rather than to meet the challenges of the future. It is clear that incremental change will not produce the desired reforms.

The goal is to change an existing entity and make it more businesslike and responsive to its customers. Some sort of fundamental change is necessary or the reforms would be viewed by FAA and users as simply one more reorganization. By retaining the existing structure, governmental practices that are typically conservative, avoid risk taking and constrain staff to following elaborate standardized procedures would be maintained. The Metropolitan Washington Airports Authority has made significant advances since it was separated from the Federal government budget, acquisitions and personnel constraints.

While the NPR recommended sweeping changes for all government agencies, it specifically rejected the reorganization of the FAA as a government agency and endorsed the establishment of an ATC Corporation. It was questionable whether the personnel, acquisition and budgeting reforms recommended by the NPR were far-reaching enough to allow the

ATC system to be operated in a way to deliver services to users efficiently and to rapidly respond to technological change. It is also unlikely that the changes recommended for all government agencies would meet the specific needs of the ATC system. The ATC system is fundamentally different than the rest of FAA. Leaving it within the existing structure would limit being able to address its unique problems as a package. In addition, while the NPR proposes to make the budget process less burdensome, FAA would still be required to seek annual appropriations and would not have the ability to tie fees to the services provided to accelerate capital funding in order to provide benefits to users of the system more quickly. The FAA operates a service that is unique in the government and it requires unique solutions for financing, acquisition and personnel.

4.5 Conclusions

The development of an independent ATS Corporation under the safety oversight of FAA is the EOC's recommended approach. This form of restructuring provides the best opportunity to resolve FAA's acquisition and personnel problems, which have hampered the operation and modernization of the ATC system. It also provides the ATS Corporation with the necessary financial autonomy to operate this important national function on an efficient, businesslike basis. Figure 4-3 shows a summary of the EOC's evaluation of the models. The recommended approach also maintains the linkages necessary to assure that aviation planning takes place in a coherent and coordinated manner. Most importantly, it allows these improvements to take place while maintaining, and most likely enhancing, the high level of safety in the U.S. ATC system.

Figure 4-3

SUMMARY EVALUATION OF MODELS

	ATC Corporation	ATC Corporation with ATC Safety Regulation	FAA Corporation	Airway Development Corporation	Streamlined FAA
Financial Independence	Excellent	Excellent	Good	Poor	Poor
Adequacy of ATC Funds	Excellent	Excellent	Good	Fair	Fair
Tenure	Excellent	Excellent	Excellent	Poor	Poor
Safety Accountability	Excellent	Good	Good	Excellent	Excellent
Personnel	Excellent	Excellent	Excellent	Fair	Fair
Procurement	Excellent	Excellent	Excellent	Good	Fair
Micro Management	Good	Excellent	Good	Poor	Poor
Culture Change	Excellent	Excellent	Good	Poor	Poor
Improved Effectiveness	Good	Excellent	Excellent	Fair	Fair
Integrated Aviation Planning	Excellent	Good	Excellent	Fair	Excellent
National Security	Excellent	Good	Good	Excellent	Excellent

5. THE ATS CORPORATION AND AVIATION SAFETY

5.1 Introduction

The ATC system's primary responsibility is to maintain separation between aircraft under its control, providing both airborne separation of aircraft in flight and surface separation of aircraft on taxiways and runways. Despite the large number of aircraft handled by the ATC system daily, there are very few accidents. This impressive safety record is the product of the ongoing collaboration of the private sector, quasi-governmental entities and government entities that comprise the aviation community. Recognizing this excellent performance, the EOC made maintaining that outstanding level of aviation safety its principal objective in developing an ATS Corporation.

The EOC specifically designed the Corporation and its policies and procedures to ensure that safety would be maintained and enhanced well into the future. The EOC commissioned reviews of ATC safety issues by both FAA and independent safety experts and examined the safety of corporatized ATC systems in other countries. The EOC also reviewed existing mechanisms of safety regulation and used that regulatory model as the basis for its proposed system of oversight of the ATS Corporation.

Based on its research, outreach and analysis, the EOC concluded that its recommendation to establish a government corporation to provide air traffic services will maintain or improve on the existing high levels of aviation safety in the U.S. In fact, to the extent that the Corporation makes more effective use of technology and personnel, the EOC believes that safety could be enhanced.¹ The remainder of this section describes the current safety regulatory process and the proposed process for safety regulation of the ATS Corporation, and discusses how the design of the ATS Corporation resolves key safety issues.

5.2 Existing Safety Regulatory Process

The current system by which FAA ensures aviation safety is based on statutory authority granted by Congress under the Federal Aviation Act of 1958. The Act directs FAA to operate the nation's ATC system and ensure airport safety and aviation security. The Act also authorizes FAA to regulate the design and manufacture of aircraft and spare parts; airline operations and maintenance; training and crew qualifications; and flight schools, repair stations, and other types of certificate holders. In doing so, Congress recognized that there are certain functions, such as safety regulatory oversight, that are best carried out by

¹For example, aviation safety will be significantly enhanced when improved navigational systems such as GPS can be used in Alaska, where land-based coverage is limited and accident rates are relatively high.

government. Other functions can and should be performed outside of the traditional government structure, with regulatory oversight if appropriate.

The FAA addresses these areas in rules that are compiled in the Federal Aviation Regulations (FARs), consistent with the principles of due process and public notice required under the Administrative Procedure Act. The FAA also operates an extensive system of surveillance to ensure that regulations are met, and may revoke certificates or take civil actions against individuals or corporations that fail to comply with regulations.

The FAA's safety oversight of the ATS Corporation would be an extension of this model, by which FAA regulates a large number of aircraft manufacturers, airline operators and aircraft maintenance facilities. Among the FAA-regulated manufacturers and suppliers are 70 Production Certificate holders (manufacturers of aircraft, engines and accessories), 8 Approved Production Inspection Systems; 1,045 Parts Manufacturer Approval holders (manufacturers of FAA-approved replacement parts); and 310 Technical Standard Order Authorization holders (manufacturers of standard parts). Further, FAA regulates some 8,418 air carriers (including airlines, commuters, air taxis and others) and over 6,000 other air agencies (flight schools, repair stations and maintenance technician schools.) The Bureau of Labor Statistics estimates that more than 730,000 people were employed in the production and operation of commercial (non-military) aircraft in the U.S. in 1992.

These activities, like the provision of air traffic services, are critical to safety and the private firms involved are intensely competitive and under strong cost pressures. In these areas, however, the "arms-length" regulation and oversight by FAA works well. It has not been necessary for FAA to build, operate or maintain aircraft for them to be safe. Similarly, the EOC believes that it should not be necessary for FAA to build, operate or maintain the ATC system for it to operate safely, either.

5.2.1 Aircraft Certification

The FAA does not prescribe how aircraft are designed or built. Rather, FAA requires aircraft to meet certain standards and achieve specific results, such as in the number of and performance of back-up systems, use of fire-resistant materials, handling characteristics and many others. The several separate steps in this process are described below.

Manufacturers must first submit their designs and documentation to FAA for detailed review. If all designs and proposed processes meet the requirements of the FARs, FAA will issue a "Finding of Compliance".

After this initial approval, the manufacturer must produce a prototype aircraft, which is then subjected to extensive test flights. The test flights may or may not reveal necessary design changes, but the basic purpose is straightforward: the manufacturer must demonstrate

that the aircraft, in fact, meets the standards specified by the FARs. If these tests go well, the aircraft receives a Type Certificate.

The manufacturer must then show, in detail, how its quality assurance program will maintain quality equal to that of the certificated prototype when the aircraft enters production. FAA must find the process meets all FAR requirements. The manufacturer then receives a production certificate, authorizing it to produce and sell the aircraft. FAA provides continued surveillance of the manufacturer's quality assurance system as long as the aircraft remains in production. FAA uses the manufacturer's production certificate as the criteria against which to audit ongoing production. The principle again is straightforward: does the manufacturer follow its approved processes?

As a practical matter, FAA recognizes that aerospace technology changes rapidly, and those on the front line are best positioned to stay current. Consequently, FAA relies extensively on a system of Designated Engineering Representatives (DERs) and Designated Manufacturing Inspection Representatives (DMIRs) to certify that designs and production processes remain airworthy. Designees usually are employees of the manufacturers, but are designated by the FAA Administrator to verify that safety policies are being carried out. If FAA were to determine that a manufacturer had pressured such an employee to "look the other way," the Administrator could protect the designee and take punitive action against the company. However, this system has been audited several times by FAA and others, and no such conflicts have ever been found.

The 1958 Act also gives FAA extensive enforcement powers in aircraft certification. First, if designs, production processes or test flights are not convincing, FAA can simply withhold type certification, thus delaying production. If production processes are not followed, or if a new problem emerges in an aircraft after it enters service, FAA can issue airworthiness directives, which mandate specific action to correct a problem, or FAA can take action against the manufacturer's certificate for that aircraft.

Under this system of FAA regulation and certification, American aircraft and engine manufacturers have become the dominant producers in the world market. Accidents resulting from problems in design or manufacture are very rare. Clearly, regulatory procedures for assuring the safe design and manufacture of aircraft work well for private companies.

5.2.2 Airline Regulation

FAA regulates air carriers in a conceptually similar way to that used for regulating aircraft and engine manufacturers. Before an airline can offer its first flight, a carrier must meet demanding requirements in the FARs. A carrier must adopt an organizational structure that includes a director of operations and a director of maintenance. The carrier must then develop manuals for operations, maintenance and training to identify exactly how business will be conducted, followed by a compliance manual, in which the carrier relates each safety requirement in the FARs to a specific reference in the company's manuals. FAA must approve the safety compliance portion of all manuals.

In addition, a carrier's flight crews, flight attendants, maintenance technicians, dispatchers, and other key employees are subject to the FARs, which define minimums for initial qualifications and recurrent training. Pilots also must meet separate requirements to be "rated" for each type of aircraft in a carrier's fleet. Finally, a carrier must undertake "proving flights," in which it must demonstrate that its system will indeed operate properly. Operations are also strictly regulated: duty time limitations, minimum crew sizes and other requirements ensure safe flight.

The FAA ensures continued safe operation by assigning a Principal Operations Inspector (POI) and a Principal Maintenance Inspector (PMI) to each air carrier. A Principal Inspector is charged with knowing everything about a carrier's safety performance. Geographic inspectors support POIs and PMIs with day-to-day surveillance of the air carrier system. To supplement FAA surveillance, airlines conduct self-audits, which FAA monitors. If a self-audit identifies violations of the FARs, a carrier must report them within 10 days and document that it has taken or is taking action to correct the problems. FAA then takes no punitive action; the goal is to ensure safety, rather than let enforcement and punitive action become goals in their own right. FAA also routinely analyzes its inspection data and other data to identify troubled carriers. Troubled carriers may be subject to a full review under the National Aviation Safety Inspection Program, in which all aspects of the airline are inspected.

When regulations are violated, FAA may exercise its considerable enforcement powers, including civil action against airmen or airlines and the authority to suspend or revoke the certificates of airmen or airlines. Suspension or revocation of an air carrier's operating certificate is a dramatic action that FAA must approach with some prudence, but FAA does revoke certificates when necessary.

5.2.3 Safety Assurances in the ATC System

Aviation safety is further ensured by the ATC system, which provides safe separation of aircraft in the air, and on the surface, at the 400 busiest airports. The ATC system includes nearly 30,000 navigational aids that are maintained by FAA technicians. The FAA specifies minimum qualifications and recurrent training requirements for controllers and technicians as it does for pilots and other airmen.

Numerous redundancies are added to the system to provide an ample margin of safety. For example, any commercial flight with more than 10 seats must operate with two or more pilots. Aircraft, too, are designed with redundant systems; if a system should fail in flight, commercial aircraft will have one or even two backup systems. The ATC system also has redundancies to ensure safety, including company dispatchers to follow flights and provide in-flight information to pilots. Similarly, ATC computers provide conflict alert to automatically notify controllers if safe separation is breached.

The ATC operations and maintenance organizations also operate their own well-developed quality assurance programs, as do FAA's regulatory organizations. The FAA's flight inspection program tests the operation and accuracy of navigational aids every day using FAA crews and aircraft. Similarly, FAA investigates every accident to determine whether regulations were violated and to reduce the likelihood of accidents in the future. In addition, FAA's safety office provides data and analysis to the Administrator and others, independently of FAA's operational organizations.

These internal checks and balances are supplemented by the NTSB, which independently investigates accidents to determine probable cause, and is free to study and report on any issue deemed to affect safety. Based on its investigation of accidents or its independent studies, NTSB may recommend changes in procedures and regulations to improve safety.

5.3 Safety Regulation and Oversight of the ATS Corporation

The proposed ATS Corporation would separate the operation of the ATC system from the regulatory oversight of those functions. This represents a change from the present situation, established by the Federal Aviation Act of 1958, where FAA both operates the ATC system and provides oversight of its safety performance. However, the aviation system has changed dramatically since that consolidation. Technological developments and the introduction of better and more reliable equipment have revolutionized operations and resulted in a steadily declining accident rate. The aircraft manufacturing and airline industries are now mature and well-established. Their safety record is excellent and is based largely on voluntary compliance with safety regulations rather than enforcement.

The 1958 Act also consolidated a number of government entities to address concerns about the lack of a single focus of responsibility and accountability. The EOC's design for an ATS Corporation maintains this single point of accountability in the FAA Administrator, who would have authority to ensure safety, national security and adequate coordination of airspace management policy, and to resolve any safety-related disputes between FAA staff and the Corporation. The EOC believes that its proposed structure not only will maintain the high level of aviation safety, but is likely to improve safety performance.

Under this structure, the ultimate responsibility for aviation safety, security, regulation, and oversight would remain within a traditional government organization. The FAA Administrator would retain control over U.S. airspace, and ultimate authority in all issues related to safety and security. The FAA Administrator would oversee and regulate the corporation by promulgating regulations or other requirements to ensure the highest levels of safety and security in actions performed or prescribed by the corporation. The Administrator would also resolve disputes between the corporation and elements of FAA.

The corporation would prescribe air traffic rules governing flight of aircraft, for the navigation, protection, and identification of aircraft, for the protection of persons and property on the ground, and for the efficient utilization of airspace. The FAA Administrator would review such rules and, if approved, provide for their implementation. The corporation would exercise day to day supervision/control over the movement of aircraft in U.S. airspace, and would assign by order or directive the use of airspace, including airways, and air traffic and navigational aids.

The FAA Administrator would enforce the corporation's rules, orders, and directives, but the corporation is not prohibited from enforcing its rules, orders and directives through delegation from FAA or otherwise. The Administrator would have the authority to modify or revoke an airspace assignment of the corporation, or may direct the corporation to withdraw or revise a rule, order, or directive, for reasons of safety, security or the national defense. The Administrator could direct the corporation to cease any action that the Administrator determines may compromise aviation safety or security, or to undertake any action to ensure aviation safety or security.

5.3.1 Structure of Safety Oversight

The EOC recommends that the ATS Corporation be treated in much the same way as aircraft manufacturers and air carriers are today. The FAA would not oversee the Corporation by prescriptive regulation, but would instead use tools comparable to those it already uses to oversee manufacturers and air carriers.

The enabling legislation for the ATS Corporation would grant FAA the statutory authority to regulate the Corporation. The FAA would provide oversight by building on the ATC organization's existing policies and procedures. Major changes to present procedures would be subject to public processes. The FAA would also have authority for surveillance of the system, assessing the corporation's internal quality control and enforcement. Under this system, FAA would have to approve any substantial change in airspace procedures, just as it must now approve substantial changes in procedures made either by manufacturers or air carriers.

5.3.2 Resolving Disagreements

Under the proposed organizational structure, both the ATS Corporation and FAA would have access to the Administrator in safety and regulatory matters. In the event that there were disputes between the two parties, the Administrator would have the authority to resolve the disputes if safety were at issue. For example, if there were a disagreement between the Corporation and FAA on changing separation standards, which could not otherwise be resolved, the Administrator would have the authority to determine the final outcome.

The authority of the Administrator to resolve safety issues exists within the agency today. Carrying this aspect forward in the new organizational structure ensures that any organizational rivalry that might arise between FAA and the ATS Corporation would not affect public safety.

5.3.3 Enforcement and Sanctions

Not only would FAA set the safety standards that would govern the operations of the ATS Corporation, it would also have enforcement powers. These powers would be manifest through the authority of the Administrator to impose sanctions or override any corporation decisions that could negatively affect safety. This authority would be expressed in something akin to airworthiness directives (ADs), perhaps termed "air traffic directives." Like ADs, these directives could require new, specific action or could constitute cease and desist orders, supported by the full effect of law.

5.4 Safety, Cost and System Capacity Issues

Currently, FAA is responsible for both safety and system capacity and cost. Decisions are made internally within FAA. If these decisions are split between two organizations, with safety the primary concern of FAA and system cost and capacity the primary concern of the ATS Corporation, then the result could be a change in the balance among these concerns and an over-emphasis on one or the other. The EOC identified a number of key safety, cost and system capacity issues and reviewed the policies and procedures of the ATS Corporation to address those concerns. The remainder of this section discusses how the design of the ATS Corporation resolves those key safety issues.

5.4.1 Aircraft Separation in the Air and on the Ground

Issue: Improved radar or other technological developments may well make it possible for aircraft separation standards to be reduced while still maintaining the current level of safety. In congested airspace, reducing separation standards could increase capacity and a separate ATS Corporation could have an incentive to reduce separation, if it were not too costly to do so. Under many different financing mechanisms, increased capacity means increased revenue. But if separation standards are reduced by more than is warranted by the technological development or are reduced in the absence of technological development, the risk of collision, either in the air or on the ground, may be increased. Thus, the question becomes under what conditions and by how much should separation be reduced? The question is multifaceted because separation standards can be different under different weather conditions, in different terminal airspace, and at different airports because of runway configuration and different local conditions.

Resolution: The EOC's recommendation provides for regulatory oversight by FAA of those decisions that have a potential impact on safety. Before changing methods of

operating, the ATS Corporation would have to demonstrate that changes in procedures--including separation standards--would not result in decreased safety performance. Because the Administrator would have absolute authority to approve or disapprove such changes, the public's concern with safety in these matters should be well represented.

5.4.2 Navigation Aids and Precision Approaches

Issue: The decisions involved in selecting navigation aids and precision approaches are primarily quality versus cost. How much precision is enough and, to the extent that added precision comes with added cost, how much is a little extra precision worth? A second question is how reliable should the equipment be and how much redundancy should be provided to compensate for equipment failure? Here again, added reliability and added redundancy come with added cost. The choice is similar to the decision airlines make in equipping their aircraft for Category II versus Category III approaches. With more precise, and expensive, equipment, aircraft operations can be conducted in lower visibility weather conditions. Whether it is worth the additional cost depends on how often these weather conditions are found in the cities the aircraft operator serves and what it is worth to the aircraft operators not to have to delay, divert, or cancel flights. The issue with reliability and redundancy of the equipment is similar. The less often the equipment fails or the more backup equipment is available in the event of failure, the more often aircraft operations can continue.

The cost versus reliability and redundancy issue raises questions of how the ATS Corporation would decide on the equipment in which to invest. Another issue with navigation and especially approach aids is setting the conditions when the aids can and must be used. How is the decision made about when equipment must be used to operate and how are the weather limits when operations are permissible to be set? As with separation standards, some sort of regulatory oversight by FAA are needed. Both FAA and the corporation would have an incentive to require use in marginal conditions. However, the responsibility for setting the safety requirements for both ground and airborne equipment would remain with the FAA.

Resolution: Under the proposed organizational structure, the current levels of safety performance should be maintained because current ATC operating procedures form the basis for the safety standards that the ATS Corporation will be required to meet by FAA. Changes in those procedures would require FAA approval. The FAA would be able to disapprove the use of new equipment or procedures if they were unreliable or otherwise unable to meet at least current levels of safety performance. The final authority in these areas would rest with the FAA Administrator.

5.4.3 Air Traffic Control Equipment Performance, Redundancy, and Reliability

Issue: Cost, performance, redundancy, and reliability differences are found in ATC equipment including radars, computers, weather displays, and communications equipment.

How good does this equipment have to be and at what cost? Which equipment improvements are well worth while and which add little, if anything, to system performance? Which improvements would be useful, but are so expensive that they shouldn't be made? Many of the decisions on air traffic control equipment are conventional decisions about capital expense and operating expense. More reliable equipment means less repair expenses. In many cases, more sophisticated equipment could also mean savings in operating costs.

Resolution: The organizational challenge is making sure the safety element is an integral part of the investment decision. As has been noted previously, by using current ATC operating procedures as the basis for the safety standards for which FAA will hold the ATS Corporation accountable, it will maintain existing levels of safety in both its operations and in its investment decision-making functions. Any adverse decisions would be subject to review and reversal by FAA.

5.4.4 Training of Air Traffic Control Personnel

Issue: FAA currently sets the standards for selection and training of the personnel to operate the ATC system, provides both initial and recurrent training, and employs the trained personnel. With the air traffic control system operated by a separate air traffic control organization, these arrangements will have to be continued by the corporation. FAA would have the authority to set standards for the qualifications of people eligible to operate the air traffic control system, while the ATS Corporation would have final authority with respect to hiring and promotion decisions. There might well be disagreements between FAA and the corporation over the appropriate training standards.

Resolution: The review of controller training and qualifications by FAA already takes place at private control towers and those operated by private companies under contract to FAA. With airline pilots, the FAA delegates much of the authority to the airlines themselves, subject to FAA performance standards. The airlines provide both initial and recurrent training. Airline employees act in lieu of FAA examiners and certify that the pilots have successfully completed the necessary training satisfactorily and are qualified to fly. Similarly, in aircraft manufacture, the FAA designates an engineering representative that is a company employee but functions as a representative of FAA in the design approval process. The FAA then examines the system the airlines and aircraft manufacturers use, rather than performing continuous monitoring of the detailed operations themselves. Under the proposed plan, a similar set of certification procedures would be developed by the ATS Corporation for its personnel. Initially, current training methods would be adopted. The process would be approved much as the processes for manufacturers and airlines are currently approved. Any changes in these processes would be subject to review and revision as necessary by the FAA. As is the case with airline personnel such as pilots and flight attendants, FAA would establish standards which the corporation would have to meet.

5.4.5 Special Procedures

Issue: Air traffic control capacity is influenced by concern for special procedures. For example, the minimum separation between two parallel runways required for independent operations during IFR conditions is governed in part by concern about adequate airspace to execute missed approaches without undue threat of collision. A question likely to be asked increasingly as capacity fails to keep pace with demand is how much do these and other considerations add to cost and reduce capacity. With a separate ATS Corporation, these questions will no longer be internal discussions within FAA, but will be posed between organizations. Moreover, the costs of providing for these procedures will be borne by the ATS Corporation while the FAA sets the standards. As with issues of separation standards, there is a potential tension between the conflicting incentives of FAA and the ATS Corporation. As a result, FAA would likely be called upon to provide a much more explicit rationale for the regulations it sets and the corporation for the procedures it specifies.

Resolution: This issue is not very different from those found in FAA's regulations of aircraft operators, manufacturers and other parties. The current level of safety in existing special procedures would be transferred to the ATS Corporation as part of its existing policies and compliance with these would be overseen by FAA. Major changes would be subject to regulatory review.

5.5 Implementation Issues: Assuring Safety in Air Traffic Control

FAA has always had the responsibility to ensure safety throughout the aviation system. When ATC is moved to a separate organization, FAA could face new problems in assuring the appropriate level of safety in the ATC system; these are discussed below.

Oversight and Enforcement. In regulating the ATS Corporation, FAA would face the same sort of oversight and enforcement issues it faces in regulating manufacturers, operators, and maintenance facilities. An early decision, and one that will require periodic review in the early years, is the level of resources needed to provide oversight of air traffic control safety. The greater the standardization of facilities and procedures, the fewer the number of inspectors needed. Similarly, greater automated oversight of performance parameters would allow more careful targeting of inspectors at facilities having difficulties. FAA's experience with other inspection and enforcement programs should guide the design of the ATC oversight and regulatory programs. FAA would develop criteria for applying various levels of sanctions against the ATS Corporation, modeled on FAA's experience under the current regulatory structure.

Public Perception of Safety Levels. In addition to operating safely, it is important that the public believes the air traffic control system is safe. The EOC has been careful to design appropriate safety mechanisms for the ATS Corporation. For example, the EOC has

recommended that the ATS Corporation establish a permanent Safety Committee within the Board of Directors.

Standardized Facilities and Procedures. FAA's oversight and regulatory task will be strongly affected by whether the air traffic control operator retains the high degree of standardization in ATC facilities, equipment, and procedures. Standardization allows procedures developed for and lessons learned in one facility to be immediately adopted throughout the system. It also greatly simplifies the oversight and inspection process. However, standardization limits the flexibility to adapt to varying regional or local conditions and can raise costs by providing features where they may not be needed. It also limits experimentation and innovation. The regulatory model proposed requires that the ATS Corporation justify any major changes in facilities or procedures. As a result, FAA will likely be called upon to provide a much more explicit rationale for the regulations it sets and the ATS Corporation will be required to provide a corresponding rationale for the procedures it employs.

5.6 Safety Implications of User Fees

The EOC has recommended that direct user fees be assessed only in those cases that would not discourage the use of ATC services. As a consequence, commercial aviators would be primarily responsible for paying user fees. Other users, who have discretion about whether to use ATC services, will continue to pay the current aviation taxes. This should mitigate adverse safety incentives attributable to the changeover to a direct user fee system.

User fees would be set initially in the enabling legislation and in time ratified by the Board of Directors, subject to disapproval by the Secretary of Transportation.² Users would have direct input into the process because of their direct participation on the corporation's Board. The broader public interest issues--including safety--could be addressed when changes in fee levels or rate structures come before the Secretary.

5.7 Conclusions

The significant benefits that can be realized through the corporatization of ATC operations include an enhanced level of aviation safety. The proposed reorganization plan includes safeguards against the diminution of safety that some might assert would take place with the separation of regulatory and operating functions. Under the EOC recommendations, current ATC operating procedures and methods would establish the baseline to which the

²Current bilateral agreements require the U.S. Government to encourage consultation between users and charging authorities and to encourage charging authorities to provide users with information necessary to establish the reasonableness of the charges. The FAA and the Corporation would be required to meet existing international obligations. These issues are discussed in Section 16 of this report.

ATS Corporation would perform, and would be initially binding on the ATS Corporation. The FAA would institute regulatory oversight mechanisms similar to those which it already exercises with respect to air carriers and manufacturers.

Under the EOC's recommendations, the Administrator would retain ultimate authority in all issues related to safety. If there are disputes between FAA staff and the ATS Corporation, the Administrator would have the legal capability to resolve the disputes when safety issues were involved. The Administrator's authority would also extend to issuing sanctions, including air traffic directives, which would directly modify procedures of the ATS Corporation.

Although there are a number of specific issues that must be resolved, the general framework proposed here has worked in similar circumstances with respect to air carrier services and in the manufacture of aviation components and aircraft. Given the extensive experience that FAA has built up in the regulation of these private entities, it is likely that this expertise could be transferred to the regulation of another operator, the ATS Corporation. In addition, other countries have reorganized their ATC systems in a similar manner without any adverse safety consequences. Ultimately, because the corporation would have greater freedom to implement new technologies more efficiently and rapidly, safety performance should improve as a result of corporatization.

FAA now ensures the safety of the ATC system through internal checks and balances. This mechanism works well but is not apparent to outside observers. With FAA providing safety oversight of the ATS Corporation, these links between regulation and operations would be explicit. As a result, FAA will likely be called upon to provide a much more complete rationale for the regulations it sets and the ATS Corporation will be required to provide a corresponding rationale for the procedures it employs.

6. NATIONAL SECURITY

6.1 Introduction

In restructuring air traffic control as a government corporation, the EOC recognizes that existing arrangements for joint civil and military operation of the ATC system must be maintained. The ATC system plays an important role in national security. It is vital to the movement of U.S. military forces and equipment, particularly in times of crisis or war. The DOD relies on national airspace to train, operate and conduct testing in support of military capability and readiness. Providing ATC services to the DOD is important for the testing of weapon systems and evolving tactics, and it is vital in training armed forces personnel. The U.S. national policy for deployment of forces worldwide directs the requirement for the DOD system of ATC personnel and equipment.

To support the joint system, an extensive relationship is currently maintained between FAA and DOD. This extensive relationship governs joint civil and military operation and use of the national airspace system, joint ATC equipment acquisition, DOD provision of ATC service to civil users, shared facility maintenance responsibility, exchange of personnel, and transfer of the ATC system to DOD control in times of national emergency. Particular care would have to be exercised to ensure that this relationship is maintained and the transition to a corporation would be transparent in terms of protecting national security interests. The EOC believes that this is achievable.

6.2 Supporting the National Defense Mission

The recommended ATC corporation is designed to continue support of the national defense mission.

6.2.1 The ATS Corporation and the Remaining FAA

Under the ATS Corporation model, there will be no break in the operation of the joint civil-military ATC system. National defense interests with regard to Special Use Airspace and acquisition will also be protected and the existing needs of the Secretary of Defense concerning the use of the national airspace system will be maintained. The ATC system and the remaining FAA will be transferred to DOD in times of crisis or war. The corporation's charter would require it to cooperate with the DOD in joint acquisitions of ATC equipment and in other areas. Legislation will restate the remaining FAA's continued national defense responsibility as well.

6.2.2 DOD Representation on the Board

The Secretary of Defense would be represented on the ATS Corporation's Board of Directors. DOD board representation will assure that the corporation addresses national security interests. Corporation enabling legislation will clearly define the corporation's role in supporting national security efforts and the FAA Administrator's authority to ensure that support.

6.3 DOD Legal Access to Airspace

Placing the air traffic control function in a wholly-owned government corporation will not reduce DOD access to airspace. Mutual cooperation and coordination between the two government entities and the recognition of the DOD mission by all concerned are cornerstones of the current system. While the corporation's fiscal objectives may conflict with national defense interests, these relationships must be maintained by the ATS Corporation and the FAA. The EOC believes that potential concerns can be adequately addressed. One concern for potential conflict of interest is with Special Use Airspace. Special Use Airspace provides critical training and testing capability and, as such, is vital to military readiness and national defense. Legislation will be carefully drafted to ensure full consideration for national defense requirements. As part of that obligation to national security interests, policy and procedures for delegation of airspace will remain basically unchanged. DOD's capabilities to train, operate, and conduct testing in national airspace will be preserved.

In accordance with legislated responsibilities in this area, the Secretary of Transportation will provide oversight for those policies and procedures. The FAA Administrator, who serves as the airspace "trustee" (recognizing that airspace itself is in the public domain), will retain overall authority on airspace issues and will resolve disputes as may be required.

Special Use Airspace policies and procedures, as outlined in the Federal Aviation Regulations (FARS) and handbooks will be maintained. The policy requirement for public notification allows DOD input into the proposal and approval process. Also, an established military and FAA personnel structure supports the procedures of the current airspace management system and will be retained. There will be no attempt to create a system, be it FARS or handbooks or other documents, that would allow unilateral action or give the corporation autonomous authority to deny previously approved or newly proposed airspace actions.

6.4 Joint Acquisition System

Enabling legislation for the corporation will seek limited exemption for DOD, restricted to the acquisition of ATC systems interoperable with the FAA/corporation. The DOD would only acquire equipment or services using contracts awarded by the corporation if the Secretary of Defense (or designee) determines that such acquisitions further the interests of commonality, interoperability, supportability, efficiency, or aviation safety. Interoperable air traffic systems account for a very minor part of DOD's overall acquisition, and are critical to the safety of the system.

New acquisitions procedures would be developed by the corporation to support the new procurement system. This would be done in consultation with DOD. The corporation would also consult with DOD on any changes to joint contracts and seek DOD agreement before taking action.

6.5 Costs of the Joint Civil-Military System

DOD estimates that it provides 20% of total (combined military and civilian) U.S. ATC services. Activity is measured at FAA ATC facilities for four major user types: air carrier, commuter air taxi, general aviation and military. The military accounts for 14% of the activity at Centers, 9% at TRACONS, 4% at Towers and 2% at Flight Service Stations. The integrated federal system results in an effective use of airspace and minimizes investment in ATC facilities and equipment. Civil traffic accounts for 18 percent of the activity at military ATC facilities.

Although the ATC system serves both civil and military users, prior FAA cost allocation studies have considered only FAA budget costs and not DOD costs. Since DOD is both a provider and a user of ATC services. The EOC recommends performing a cost allocation study for the entire civilian and military ATC system.

6.6 Operations and Support

The ATC corporation will have the statutory authority to initiate operational rules and regulations governing procedures, standards and certifications. It would have the same operational responsibilities regarding national security as FAA handles today. The remaining FAA would retain the statutory authority to issue safety and security regulations. The FAA Administrator would have oversight authority over national security, as well as for safety issues. Unresolved safety and national security issues could be brought by either the corporation or DOD to the Administrator for resolution.

The Federal Aviation Act of 1958 requires the Secretary of Transportation to give full consideration to the requirements of national defense. National security concerns would

The Federal Aviation Act of 1958 requires the Secretary of Transportation to give full consideration to the requirements of national defense. National security concerns would receive an equal level of consideration under the new organization. The FAA and the ATS Corporation would have national defense responsibilities that will be prescribed by law. The corporation would have statutory responsibility for activities such as directly assisting in detection and monitoring known and unknown aircraft, cooperating as partners in the national drug interdiction program and sharing the cost of radar facilities used for both civil ATC and defense purposes. Legislation will provide for continuation of interagency agreements and joint contracts involving national defense and security.

The corporation and DOD would work cooperatively to manage the nation's airspace and to accommodate the needs of all users. The key goal would continue to be transparent ATC services for all users and enhancing civil access to special use airspace on a real-time basis, i.e., when no military activity is being conducted. The corporation would be responsible for approving exemptions to standard national operational procedures and policy for unique military missions. The FAA would approve exemptions in any of its oversight regulatory areas. During wartime both FAA and the corporation would be placed in the direct chain of the national command authority. The current practice, governed by public law, where military officers are detailed to FAA to ensure national defense interests are safeguarded and the agency is advised about military requirements will be continued in the FAA and corporation. This will enhance the national system, directly benefitting both civilian and military uses.

6.7 International Experience

Where air traffic control corporations have been established in other countries, addressing national defense issues was part of the process. However, it is difficult to draw any parallels or lessons learned in the national security arena since the U.S. policy of worldwide military deployment capability and the joint federal ATC system differ dramatically from other countries.

7. OUTREACH

7.1 Introduction

The Executive Oversight Committee (EOC), the Corporation Task Force and the four Working Groups conducted extensive outreach activities to help the EOC in developing its recommendations on the form of the ATS Corporation. To gather information on precedents, key personnel from other government corporations and foreign aviation authorities were interviewed. Aviation system users, FAA labor unions, and other governmental entities which would be affected by the development of an ATS Corporation were also contacted. In addition, many private sector organizations provided information on the financing of the ATS Corporation, and best practices in budget/finance, acquisition and personnel.

7.2 Executive Oversight Committee Outreach Activities

The Executive Oversight Committee, comprising senior officials from FAA, DOT and other organizations, was tasked with examining organizational models for restructuring FAA. In addition to FAA and DOT, the EOC had representatives from: other government agencies (the Department of Defense, the Office of Personnel Management, the Office of Management and Budget, the Treasury Department, and the Department of Labor), representatives of other government corporations (the St. Lawrence Seaway Development Corporation and the Tennessee Valley Authority), and representatives of the National Airline Commission and the National Performance Review.

The EOC was briefed by the United Kingdom's Civil Aviation Authority on how air traffic services are provided in Britain and by Morgan Stanley on possible means of financing an ATS Corporation. The EOC also held an open meeting to obtain comments from the public, at which fifteen speakers presented their views. Two written statements were also submitted as a result of the public meeting. The speakers represented FAA unions, airlines, airports, general aviation, and passengers. Each speaker provided valuable input to the EOC's deliberations.

The commenters' positions varied, but generally supported retaining safety regulation and airport grants within the government. Most speakers supported the need for fundamental change in FAA. Further, many supported the idea of a government corporation, but did not support a completely privatized ATC service providing organization. General Aviation representatives voiced their concerns about increased cost, reduced access to the system, and a need for assurances that safety would not be diminished.

7.3 Corporation Assessment Task Force Outreach Activities

The Task Force conducted a detailed analysis of how ATC could be restructured and reported its findings to the EOC. The Task Force was led by FAA and DOT managers, but also included representatives of the Departments of Justice, Treasury, and Defense; the Office of Management and Budget, and FAA unions. The Task Force attended briefings by representatives of ATC organizations from New Zealand, the United Kingdom, Australia, Canada and Germany. In addition, representatives of the U.S. Enrichment Corporation and the Tennessee Valley Authority briefed the Task Force on the organization and operation of government corporations. The Task Force also met with Marsh McLennan Insurance, the National Academy of Public Administration, and aviation industry representatives to gather information on the restructuring of FAA and the development of an ATS Corporation. Individually, many Task Force members also took part in the outreach conducted by the Working Groups.

7.4 The Personnel Working Group Outreach Activities

The Personnel Working Group (PWG), recognizing that outreach needed to include interviews with executives from the FAA organizations directly affected by a move to corporate models, developed an internal outreach questionnaire/interview guide and conducted a series of interviews with headquarters and regional managers and union representatives. Members of the PWG also attended presentations by representatives of the aviation community, ATC corporations and aviation authorities from other countries and other interested groups. Outreach was conducted with the following organizations¹:

Government Agencies

*Metropolitan Washington Airports
Authority
DOD/U.S. Air Force/U.S. Navy
General Accounting Office
Central Intelligence Agency
Department of Veterans Affairs
National Aeronautics and Space
Administration

*Office of Personnel Management
Nuclear Regulatory Agency
Federal Reserve Board
National Institute of Standards and
Technology

¹The asterisk denotes organizations where extensive outreach was conducted.

Government Corporations

*Tennessee Valley Authority
U.S. Enrichment Corporation
Federal Deposit Insurance Corporation
St. Lawrence Seaway Development
Corporation
Office of Thrift Supervision

Pension Benefit Guarantee Corporation
Export-Import Bank
U.S. Postal Service
Federal Prison Industries
Bonneville Power Administration

FAA Unions and Other Labor Organizations

National Air Traffic Controllers
Association
National Association of Government
Employees

National Association of Air Traffic
Specialists
Professional Airways System Specialists
National Partnership Council

7.5 The Governance Working Group Outreach Activities

The Governance Working Group developed a set of core outreach questions to collect information from government corporations and international ATC organizations on precedents, their internal structures and how they handled their external relationships. The Governance Working Group's outreach included:

Government Agencies

*Metropolitan Washington Airports
Authority
Treasury Department
Nuclear Regulatory Commission

Federal Reserve Board
*DOD/U.S. Air Force/U.S. Navy
Department of Justice
Office of the Secretary of
Transportation

Government Corporations

*Tennessee Valley Authority
*U.S. Postal Service
*St. Lawrence Seaway Development
Corporation

*Amtrak
*Farm Credit Banks

Users/Stakeholders

Air Transport Association
Martin Marietta

Airport Council International
General Aviation Coalition

International and Other Organizations

Transport Canada
*United Kingdom CAA
New Zealand ATC Corporation
Australia ATC Corporation

*National Academy of Public
Administration
National Airline Commission
American Bar Association

Private Organizations

Morgan Stanley & Co.

7.6 The Budget Finance Working Group Outreach Activities

The Budget and Finance Working Group conducted outreach sessions to determine the budget and financial practices of numerous government corporations, foreign government ATC corporations, and private corporations. The Working Group met with representatives of the Treasury Department and two investment banking firms to discuss financing methods and best business practices. The Working Group also contacted various aviation trade associations concerning the budget and financial practices of a restructured FAA. The Budget and Finance Working Group outreach sources included:

Government Agencies

Metropolitan Washington Airport
Authority
DOD/U.S. Air Force/U.S. Navy
Department of Energy
Federal Accounting Standards Advisory
Board
Securities and Exchange Commission

Office of the Secretary of
Transportation
Office of Personnel Management
*Treasury Department
Congressional Budget Office
*General Accounting Office
Office of Management and Budget

Government Corporations

Tennessee Valley Authority
Rural Telephone Bank
Amtrak
*Federal Deposit Insurance Corporation
Farm Credit Banks
Commodity Credit Corporation
Federal Home Loan Mortgage
Corporation
Federal Housing Administration Fund
Government National Mortgage
Association

Student Loan Marketing Association
*Overseas Private Investment Corp.
Pension Benefit Guarantee Corporation
*U.S. Enrichment Corporation
U.S. Postal Service
St. Lawrence Seaway Development
Corporation
Corporation for Public Broadcasting
Resolution Trust Corporation
Federal National Mortgage Association
Federal Crop Insurance Corporation

Private Organizations

Morgan Stanley & Co.
Arthur Andersen & Co.

Bankers Trust
American Management Systems

Users/Stakeholders

Air Transport Association
American Association of Airport
Executives
Air Line Pilots Association

Airport Council International
Regional Airline Association
General Aviation Coalition

International and Other Organizations

EUROCONTROL
United Kingdom CAA
*National Academy of Public
Administration

Reason Foundation
Logistics Management Institute
Missouri State Revenue System

7.7 The Acquisition Working Group Outreach Activities

The Acquisition Working Group met with representatives of government corporations that have gone through major acquisition reform to learn from their experience. The Working Group also met with stakeholders and private corporations to gain their particular insights. An industry survey of best practices for acquisition was prepared for the Working Group by Arthur D. Little. Among the organizations contacted by the Acquisitions Working Group were:

Private Organizations (through Arthur D. Little)

Allen-Bradley
General Electric
Evans & Sutherland
Ford
Florida Power & Light
Motorola
Chrysler

Xerox
Honda
Boeing
Texas Instruments
Hewlett-Packard
Fluor Daniel
Conrail

Users/Stakeholders

Air Transport Association
Airport Council International
Electronic Industries Association

CSSI
US Air
Martin Marietta

International and Other Organizations

British Rail
Canada Post

Massachusetts Bay Transportation
Authority

Government Agencies and Corporations

Metropolitan Washington Airports
Authority

DOD, U.S. Air Force
Tennessee Valley Authority

7.8 Summary

The extensive outreach conducted by the EOC and Task Force played an important role in developing the specific recommendations for the ATS Corporation in the areas of acquisition, budget/finance, governance and personnel. The Working Groups were able to compare existing FAA procedures and policies with best practices in private and public sector organizations. In addition, the study team was able to benefit from the experiences of other U.S. Government corporations and foreign ATC service providers in the design of the ATS Corporation. Finally, the outreach provided valuable input on the concerns of all parties--including commercial and non-commercial aviation, labor unions, air passengers and the general public--about ATC restructuring and how it could best be carried out.