ATC Restructuring Options

ATC Principals Mtg 4-13-94

Cutter summarizes options.

- DOT supports option 3

Opt 2 ← Option 3 → opt 4

2 management objectives

(1) Management of capital

(2) " " Personnel & Procurement

Flexibility

How do we go forward?

- when
- How
- with options, or with one proposal

VP: comes out of NPR - NPR called for moving forward quickly with govt corporation

Intellectually option 4 has merit but a non-starter politically

- Whole Airline Industry is gung-ho behind option 3, so are unions
- Both oppose option 4, as does Hill

Privatization also makes us have to fight to prove safety case -- even if it is a red-herring

- Option 4 - Monopoly issues (fees, etc)

opt 3 - even with Govt Corp, airlines will be leary of user-fee raising issue

opt 4 - Labor opposition is thorniest issue

Cutter - Biggest problem w/ opt 3 is, no private market discipline built-in

add ~~private~~ access to private borrowing to opt 3 -- gets market discipline

UP — Biggest Problems

(1) Right to strike is difficult to finesse in private corp

(2) How much do you ~~have~~ gain in having private corp if you have to add whole regulatory regime to regulate

Rubin — How does all this relate to BEA

Breaking BEA => Virtual end of Deficit Reduction

BEA — Pandora's Box Question

in opt 3 — Creating Capital Budgeting for one agency

why for FAA, not for others

no other industry depends completely on Govt control (FAA ATC)

— How do you insulate this BEA exemption from other possible Exemptions

Must be a way to minimize risk to BEA,
make distinctive case for this
Points to reconciliation strategy

Doing it this year would be difficult

OMB Panetta -- pursuing report/hearings/delay approach until next year --

VP: we have geared up industry on this -- can't just go to delay tactic.

But if we keep heat on, try for action early next year, best of both years

Rubin
Danger of Markets reacting badly to us skirting the BEA

Tyson worry of Timing -- do we come out with BEA-affected bill in current context of Deficit Reduction

Panetta — pushing for report / hearing & strategy / — report sets stage for serious reform
take time to build public campaign, build groundwork,

VP — Move forward to get process moving
- do not move so rapidly that we spook markets/ we BEA
- but move fast enough to satisfy industry
— Build support, define terms on our grounds

- also build in public ~~$~~ support

unlikely we will get it this yr, assume we must fold it into reconciliation next yr.

Elaine
- report now
- ~~hearings~~ - push for Bill
-> Bill in Summer - problem
-> lay low in fall
-> always building support/pressure.
(A) Avoid markups, or Floor action until next yr.

VP report w 4 options

Penny
-> already disaster coming out w/report

Spending
don't use BEA or capital budgeting terms -- too much emotion.
-> Focus on user-fee issue

Tyson
Constraint on borrowing of Govt Corp -- private borrowing by Govt corporation is tricky
~ markets still knows that it is a Govt corp

Govt corporation will always be seen as having implicit govt sponsorship / guarantee
\ no discipline

VP -> - move forward w/ report of options
\ pass around for clearance
- Build public support
- go forward with insider strategy
- Don't rule out

1st wk in may
deadline for report

OPTIONS FOR RESTRUCTURING AIR TRAFFIC CONTROL SERVICES

The President's *Civil Aviation Initiative* and the National Performance Review proposed that the Federal Aviation Administration (FAA) be restructured so that air traffic control (ATC) services could be modernized and managed more efficiently. This memorandum explains the arguments for restructuring; outlines the substantive and political merits of various options; and lists legislative strategies for achieving the Administration's goals.

The need for restructuring. Current law provides the FAA with neither the incentives nor the freedom to modernize the ATC system in a manner that is not only safe, but also cost-effective.

Budget constraints. The efficient modernization of ATC services requires that capital spending be "lumpy," i.e., large initial outlays followed for some years by much lower levels investment. Under the annual appropriations process, however, large capital spending programs are more likely to change slowly over time than to fluctuate as sharply as needed for the most cost-effective investment in a new generation of air traffic control facilities.

Agencies are uncertain about the extent to which the ATC modernization effort has been underfunded. In recent months, the FAA has identified \$3-\$5 billion in additional capital expenditures that the agency would undertake over the next ten years if sufficient funding were available. Some agencies find this conclusion credible, and argue that an independent review of the FAA's capital program might identify substantial further investments that would be cost-effective; these agencies believe that the FAA, as currently structured, cannot ascertain the needed investments. These agencies also argue that it is difficult to implement a lumpy investment plan through the Congressional appropriations process.

Whatever the need for increased funding of ATC modernization, the Congress might be hard pressed to find additional resources within the discretionary caps set out under the BEA. For this reason, the NPR and some agencies recommend that ATC modernization be financed with borrowing that is unrestricted by the current budget rules. The resulting long-term debt would be repaid through user charges on airlines.

Other agencies argue that the need for borrowing has not been established. First, these agencies regard the shortfall in ATC funding as largely unproven: these agencies believe that the FAA has offered no credible evidence for their underfunding estimates; moreover, studies by GAO, CBO and the Office of the Inspector General cite poor management, not a lack of funding, as the primary reason for delays in the modernization of ATC services. Second, past Congressional actions suggest that funds can be found for priority infrastructure projects: Congress increased the highway budget, for example, by more than \$2 billion in 1994; similarly, Congress more than doubled FAA's capital budget between 1987 and 1993. Finally, the Administration could accelerate somewhat the pace at which budget authority for ATC is obligated by exempting the FAA from a general budget policy: the FAA now follows the general practice of requesting appropriations for the full cost of the project in its first year; instead, the FAA could include in their annual budget requests only the amount that they expect to obligate in that given year. Accelerating ATC obligations would not, however, ease the overall outlay constraints imposed by the BEA; budgetary offsets would have to be found for any increase in outlays.

Congressional Micromanagement. The current budget process not only limits the *aggregate* amount of funding available for ATC modernization, it also encourages Congressional micromanagement of that funding. The FAA receives annual appropriations through five separate accounts involving numerous line items. This multiplicity of accounts and line items encourages Congressional micromanagement of modernization efforts, and reduces the FAA's ability to meet changing needs by reallocating funds.

Insufficient User Control. All agencies agree that ATC customers -- commercial airlines, general aviation, and the travelling public -- do not have sufficient input into the FAA's investment plan. Greater user input could make ATC services more responsive to user needs. In addition, paying for ATC services through user fees rather than taxes would give ATC users a greater economic incentive to monitor the cost-effectiveness of the ATC modernization program.

Personnel and Procurement Rules. All agencies agree that current personnel and procurement rules unreasonably constrain ATC management and strategic planning.

Options. All of the options listed below would reform personnel and procurement rules. The options differ principally in the degree to which the ATC corporation is freed from budget constraints, and the extent and manner in which users and the government are able to exercise control over spending for ATC services.

OPTION 1. REFORM WITHIN FAA

Under this option, more flexible rules would be promulgated to govern the FAA's personnel and procurement spending for ATC services. In addition, an "Advisory Board" of ATC customers (commercial airlines, cargo carriers, general aviation, etc.) would be established to inform the investment decisions made by the Secretary of Transportation. Some acceleration in capital spending would be possible through *administrative* changes to the budget process, but ATC spending would remain subject to all of the *statutory* constraints of the annual appropriations process.

Effect on the Provision of ATC Services

- ATC spending would be made more cost-effective by the procurement and personnel reforms, by the input from the Advisory Board, and the acceleration in capital spending that would follow the budget policy changes.

- ATC modernization could not be financed through borrowing and spending outside of the usual appropriations process. Differing views on the importance of borrowing authority are noted above.

- The Advisory Board would have less control over ATC spending than would the "Board of Directors" proposed under Options 2, 3 and 4; ATC spending therefore would not be as responsive to user concerns as it would be under Options 2, 3 and 4.

Political Considerations

- This option would encounter the least Congressional opposition. Indeed, the Chairs of the authorizing committees probably would support this proposal, and may credit the Administration with recommending useful reforms. Since ATC programs would remain within the existing FAA, however, even the support of the authorizing committees may not be sufficient to persuade the Government Operations committees to pass personnel and procurement rules that are significantly different from the rules governing other government agencies and programs.

- The airlines and controllers may be largely indifferent about these reforms; they would prefer that the Administration ~~did not~~ pursue Option 3.

- Because no amendment to the BEA would be sought, critics could not use this proposal to question the Administration's commitment to the budget disciplines of that statute.

- The NPR report called for an ATC corporation with borrowing authority; this option would not meet that goal.

OPTION 2: A GOVERNMENT CORPORATION FINANCED BY A MANDATORY REVOLVING FUND BUT WITHOUT BORROWING AUTHORITY

A government corporation would be established within DOT. As in Option 1, ATC spending would be subject to new, more flexible personnel and procurement rules. Option 2 would differ from option 1 in two important regards:

- *Governance*. The corporation would be governed by a Board of Directors, appointed by the President, that included ATC customers, the Secretaries of Transportation and Defense, and an ex-officio member to assure federal financial oversight. The Board would set fees for use of the ATC system.

- *Budget Constraints*. To provide some measure of added budget flexibility, corporation spending would be financed by a new mandatory "revolving fund," and annual ATC outlays would be limited only by each year's receipts; outlays would not be subject to the annual appropriations process. To establish the revolving fund, ATC outlays would be shifted from the discretionary to the mandatory side of the budget. This shift would require either budget offsets of more than $5 billion annually, or Congressional approval of a "technical" amendment to the BEA (the amendment would be "technical" in the sense that it would not increase the deficit -- the PAYGO spending increase would exactly equal the reduction in discretionary outlays.) (current taxes on Airlines would fund)

Effect on the Provision of ATC Services

- Procurement and personnel reforms would make ATC spending more efficient.

- Because the corporation would have a permanent appropriation, its outlays would be limited only by receipts to the revolving fund; Congressional micromanagement would be discouraged. Just as under current law, however, budgetary offsets would have to be found for any increase in outlays; moreover, the corporation could not borrow and spend outside of BEA constraints.

- ATC customers would have more influence over ATC investments through the Board of Directors than they would through the "Advisory Board" of Option 1.

- Because the corporation would be "governmental", and because the government -- through its representatives on the Board -- could influence the corporation's decision-making, the corporation may not be sufficiently independent of the Executive Branch and the Congress to make truly "business-like" investment decisions, even with a Board of Directors dominated by private sector interests.

Political Considerations

- The Chairs of the authorizing committees openly oppose this option. The Chairs of the appropriations committees, however, have expressed support "in principle" for establishing a corporation, while reserving final judgment until they can examine a specific proposal.

- Setting ATC services in a separate government corporation might give the Administration a better chance at persuading the Government Operations committees to pass personnel and procurement rules that are flexible enough to allow the corporation to achieve significant efficiencies in the provision of ATC services.

- Although the airlines and controllers are likely to support these reforms, they would be disappointed that the Administration did not pursue Option 3.

- Compared to the amendment needed for Option 3, this "technical" amendment is less likely to be interpreted as an attempt to evade the budget discipline imposed by that statute. On the other hand, the amendment still would open up the BEA (with all the attendant political complications that implies) and still would require 60 votes on the Senate floor to overcome a point of order. Moreover, this option would set a precedent for using a reduction in the discretionary caps as a PAYGO offset on the mandatory side, and may thereby encourage those in Congress who would like to use a reduction in the discretionary caps as an offset for a reduction in income taxes.

- Would not meet the NPR goal of allowing ATC modernization to be financed through borrowing.

OPTION 3: GOVERNMENT CORPORATION WITH BORROWING AUTHORITY

A government corporation would be established within DOT. As in Options 1 and 2, the corporation would be subject to more flexible procurement and personnel rules. As in Option 2, the corporation would be governed by a Board of Directors, appointed by the President.

Option 3 differs from Option 2 only in the budgetary freedom given the corporation: the Administration would seek **a BEA waiver that allowed the corporation to borrow and spend funds without regard to BEA constraints; in addition, the corporation's spending would be excluded from calculations of the budget deficit.**

Effect on the Provision of ATC Services. Same as for Option 2, with the following exception:

- The ability to borrow and spend funds without any BEA constraints would free the corporation from the spending restrictions that are a normal part of the federal budget process.

Political Considerations. Same as Option 2 with the following exceptions:

- Airlines and controllers both support the creation of a governmental corporation with borrowing authority.

- This option would exempt a single government activity from the constraints of the BEA. Because this option would create pressure to exempt other government activities from BEA constraints (e.g., some might seek the creation of the Inland Waterways Development Corporation, in which a federal corporation builds, maintains and operates the inland waterway system that is now the responsibility of the Corps of Engineers), critics are likely to call into question our commitment to deficit reduction. In addition, this option would set the further precedent of effectively allowing capital budgeting for a single federal entity. For all of these reasons, the needed BEA amendment might be more difficult to achieve than the "technical" amendment needed under option 2 or 4.

- This option most closely resembles the NPR recommendation.

OPTION 4: NON-GOVERNMENT CORPORATION WITH GOVERNMENT OVERSIGHT

The government would charter a nongovernmental, non-profit corporation governed by a Board of Directors or Trustees. The charter would specify mechanisms by which ATC users would elect representatives to the Board (under Options 2 and 3, the President would appoint the Board). The federal government would exercise control over the corporation only through regulatory oversight, either through the administrative powers of the DOT or through a new regulatory commission. As a nongovernmental entity, the corporation would be freed from all government personnel and procurement rules, and would be free to incur long-term debt in private capital markets and to raise revenue through fees for the use of the ATC system (existing ATC assets would be transferred to the corporation).

Establishing the corporation may require only a "technical" amendment to the BEA: the discretionary caps would be reduced by an amount equal to the reduction in the government's ATC outlays; the reduction in the caps would be used as PAYGO savings to offset a corresponding reduction in aviation excise taxes (the taxes would no longer be needed since the corporation could assess user fees). CBO may contend, however, that the corporation is inherently "governmental," thereby complicating Administration efforts to argue that the desired BEA amendment was merely "technical."

Effect on the Provision of ATC Services

- Of all the options considered here, a nongovernmental corporation would be most responsive to its customers, and would have the greatest institutional freedom to pursue cost-effective ATC investments. In addition, the discipline of private capital markets would encourage the corporation to manage its investments efficiently.

- Critics will argue that a nongovernment corporation would jeopardize either safety or national security. All agencies agree, however, that these fears are without merit -- all public interests could be safeguarded through strict regulatory oversight.

Political Considerations

- The authorizing committees, and especially the committee Chairs, are likely to cite safety as their reason for opposing this option more strongly than any other. A few Republican members have expressed a philosophical preference for true privatization, but none have yet openly supported this option.

- The main union representing air traffic controllers has cited safety in publicly opposing the creation of a nongovernmental corporation. In private, unions have also expressed concerns that this option would set a precedent by limiting the right to strike of nongovernmental employees. The airlines' view of this option is uncertain.

- Establishing a more independent corporate entity would avoid the charge that the government corporation is designed principally to keep the ATC system within the government while evading the BEA. Similarly, this option would avoid establishing a capital budget for a single federal entity. On the other hand, this "technical" amendment still would open up the BEA (with all the attendant political complications that implies) and still would require 60 votes on the Senate floor to overcome a point of order. Moreover, this option would set a precedent for using a reduction in the discretionary caps as a PAYGO offset on the mandatory side, and may thereby encourage those in Congress who would like to use a reduction in the discretionary caps as an offset for a reduction in income taxes.

- Although not the "governmental corporation" called for by the NPR report, this option -- if enacted -- could best achieve the broader goals sought by NPR: safe and efficient modernization of the ATC system.

Legislative Strategy. Congressional critics are seeking assurances that the Administration has considered all possible options for restructuring the FAA. All agencies agree that the Administration therefore should submit a report detailing the reasons why it believes that ATC services must be corporatized rather than simply reformed within the FAA. This leaves two issues: when to submit legislation and when and how hard to push for legislative action. Options include:

- *Seek passage this year of specific legislative proposal.*

- *Submit legislation this Spring; do not push Congress to act before January.*

- *Submit a report this Spring outlining more than one option for corporatization; restate Administration goals for restructuring; and indicate a willingness to work with the Congress on a mutually acceptable legislative proposal.*

FAA RESTRUCTURING AND THE BUDGET ENFORCEMENT ACT

As the draft VP decision memo makes clear, the driving factor in restructuring the FAA is the Budget Enforcement Act (BEA). All options, except Option 1 which is a minimalist option, requires PAYGO offsets, and thus effect the BEA in some way.

Government-Owned Corporation (Options 2 & 3)

- A government-owned ATC corporation (as defined in Options 2 and 3) would be funded in the Budget as a mandatory revolving fund, where its fees or receipts (ie -- the current ticket tax and freight waybill tax) are "permanently" appropriated on the mandatory side of the Budget, and its outlays are moved from the discretionary to the mandatory side of the budget (Currently, 75% of FAA's receipts are on the mandatory side, but its outlays and 25% of the receipts are on the discretionary side).

- Establishing this mandatory revolving fund for a government-owned corporation would increase mandatory outlays for the corporation (as described above). This would create a need for a PAYGO offset under the BEA. Congress would have to find offsets, or modify the BEA to balance the mandatory increase with the corresponding decrease in receipts and outlays on the discretionary side (after all, we are simply moving receipts and outlays from the discretionary side to the mandatory side); this would require 60 votes in the Senate, as the memo makes clear.

Non-Government Corporation (Option 4)

- If the ATC corporation were non-governmental, it would not be part of the Federal Budget. However, this approach would call for the elimination of current receipts (ticket tax, etc) and replace them with some kind of user fee. This would reduce receipts (and spending) to the Budget and hence require PAYGO offsets under the BEA. Congress could modify the BEA to balance the tax decrease with corresponding decreases in discretionary outlays, but this would require 60 votes in the Senate.

Borrowing Authority (Options 3 (Government) and Option 4 (Non-Government)

- Issuing debt is a budget issue, because the debt finances direct spending by a government entity (in Option 3). Spending by a government corporation, financed by borrowing from the Treasury or from the public, is counted as a Federal outlay under the BEA. It could be offset by reductions in other Federal outlays, or the outlay could be exempted from the BEA. But exemption would be difficult politically.

- Borrowing by a non-government entity (Option 4) would not affect the Federal Budget. However, the CBO and the Budget Committees would look closely at any proposed non-government ATC corporation. If they considered it an extension of the government, its borrowing would be treated as agency borrowing and require an offsetting decrease elsewhere under the BEA.

DATE: April 12, 1994
TO: Bruce Reed
FROM: Mike Schmidt
RE: Principals Meeting on the Restructuring of Air Traffic Control Services

As you know, there will be a Principals meeting tomorrow afternoon from 5:00 - 6:00 in the Vice President's Ceremonial Office to discuss the Administration's legislative position on the restructuring of air traffic control (ATC) services (the infamous "FAA" issue). I have attached a copy of an briefing paper on the options for restructuring ATC services that will be the focus of tomorrow's meeting. The VPOTUS will be chairing the meeting, and it will be attended by Secretaries Pena, Bentsen, Reich, and Brown, as well as a number of WH Principals (Panetta, Rubin, Tyson, etc.). Carol cannot attend the meeting, and asked me to see if you could attend in her place. If you can attend, I will schedule some time this afternoon or tomorrow to give you some more information on the issue and on the meeting itself (I will also attend the meeting with you). If you can't attend, Carol has asked me to attend as an observer and recorder only (since it is a full-blown Principal's meeting), and DPC will not have a voice on the final decisions made on this issue.

The paper that I have attached is an excellent and easy-to-understand summary of the issues that surround the restructuring of ATC services. It lays out the four options that will be considered at the meeting tomorrow afternoon:

- Option 1: Promulgate More Flexible Personnel and Procurement Rules for ATC.

- Option 2: Create a Government Corporation Financed by a Mandatory Revolving Fund but Without Borrowing Authority.

- Option 3: Create a Government Corporation with Borrowing Authority.

- Option 4: Create a Non-Government Corporation with Government Oversight.

They are, for the most part, the same issues I discussed with you several weeks ago when I gave you a briefing on this issue. At tomorrow's meeting, final decisions will be made on which of the four options the Administration will support and on political and timing issues surrounding our introduction of an ATC restructuring bill. The Vice President is chairing the meeting because the NPR recommended the creation of a Government Corporation to provide ATC services.

Other items of interest about the meeting:

- The consensus at the staff level seems to be that Option 3 is the closest thing to the letter of the NPR recommendation (NPR called for a Government Corporation with borrowing authority), but that Option 4 is closer to the spirit of the recommendation.

- Secretary Pena will be pushing hard for Option 3, as well as for quick legislative action. Rubin and Tyson will likely be leaning toward Option 4, but the feeling seems to be that we will end up at Option 3 in the end.

- WH Leg Affairs and OMB will probably be pushing for some delay in the timing of any legislative action, given our full legislative plate this spring. Given the political sensitivity surrounding these options, that may not be a bad idea.

- The key policy issues that the options revolve around are: (1) the extent to which we want to open up the Budget Enforcement Act (BEA), and (2) the extent to which ATC users (airlines, customers) are involved in a new ATC entity. The political difficulty regarding the BEA is most prevalent in Options 3 and 4, while at the same time these two options provide the most user involvement.

If you are able to attend, let me know and we can schedule some time to sit down and discuss all of this in more detail. I think there are a number of issues still up in the air on this one, and that the meeting tomorrow will be quite lively and important.

DATE: April 13, 1994
TO: Bill Galston
FROM: Mike Schmidt
RE: Additional Background Information on Today's ATC Meeting

Here are some more insights/information that Michael Deich (NEC) passed on to me. I hope they are helpful to you in preparation for today's meeting.

Recapitulation of the Problem: The Federal Aviation Administration's air traffic control modernization program is behind schedule and over budget. All agencies agree that these problems stem from two causes:

- Lack of funding flexibility. The annual appropriations process has limited the FAA's ability to modernize in the most cost-effective manner. All agencies agree that ATC modernization would follow a different time path if no funding constraints existed; however, the magnitude of the hypothesized funding shortfall is unknown.

- Insufficient control by ATC customers. The modernization plan has proceeded without adequate input from, or coordination with, users of the ATC system.

Four Options:

- OFF-BUDGET GOVERNMENT CORPORATION (Option 3 in background memo). DOT and NPR recommend the creation of an off-budget government corporation that can borrow and spend without regard to BEA constraints (Option 3 in background memo). The Administration would propose an amendment to waive the relevant BEA constraints.

  Benefits: increased control by ATC customers and greatly increased flexibility for ATC outlays.

  Problems: this would put a government entity off-budget and would direct the Congress and OMB to ignore the resulting increase in the deficit. Moreover, this option would effectively allow a single government entity to adopt a capital budget. This option therefore would create pressure to provide a similar BEA waiver whenever a government activity could be financed by user fees.

- NONGOVERNMENT CORPORATION (Option 4 in background memo). Compared to Option 3 this would: (1) have greater user control (the ATC customers, not the President, would elect their representatives to the Board); and (2) require the corporation to borrow in private capital markets.

  Benefits: by increasing the control of ATC customers, this option would better achieve the two goals of NPR, without in the process setting untoward BEA precedents.

Problems: this option still would require amending BEA, though only in a "technical" or deficit-neutral fashion. In addition, substantial political groundwork would need to be done to overcome the strong opposition of controllers and Congress (airlines probably would support the option -- unions would probably oppose over right-to-strike and other issues).

- ON-BUDGET GOVERNMENT CORPORATION WITHOUT BORROWING AUTHORITY (Option 2 in the background memo.

  Benefits: like the DOT/NPR proposal, this would increase control by ATC customers, but it would require only a technical, deficit-neutral BEA amendment.

  Problems: this would not address budget constraints in any meaningful way; would still require opening BEA; and would disappoint airlines and controllers.

- *REFORM WITHIN FAA (Option 1 in background memo)*.

  Benefits: No BEA amendment would be necessary. Authorizing Committee chairs would be supportive. Marginal reforms are possible.

  Problems: No fundamental reform is possible.

Basic Policy Tradeoff: To solve the BEA problem raised by the current DOT/NPR recommendation, the Administration either could propose a nongovernmental corporation -- which would allow meaningful reform, but would also encounter strong political opposition --or could propose reforms that would encounter less political opposition but would provide only a limited remedy to the problems with the existing system.

Issues of Timing and Legislative Strategy: How can the Administration best pursue its legislative agenda? Options include:

(1) Propose legislation now and push for early action.
(2) Propose legislation now but let the issue ripen until next year.
(3) Submit a report to Congress now and propose legislation in January.

TALKING POINTS

Our offices have been working with the Executive Oversight Committee at the Department of Transportation (DOT) to develop a sound legislative proposal to restructure the nation's air traffic control (ATC) system. In the course of these efforts, two issues have arisen for which we would like your guidance: whether enabling legislation should be submitted this year or next, and whether the goals of the NPR could best be achieved through a government or a nonprofit private corporation subject to strict regulatory oversight.

On Timing.

- While submitting legislation this spring would build on the momentum you generated through your outreach to the Air Transport Association and other groups, we believe that our chances for legislative success would increase if we waited until January to submit enabling legislation.

- As you know, Hollings, Ford, and Oberstar all have been openly hostile to this effort. Some of their staff have suggested that -- given this opposition, the short legislative calendar, and our crowded legislative agenda -- it would be better to submit the Administration's bill in January, after passage of bills on health care, telecommunications reform, welfare reform, GATT, and crime.

- The BEA presents problems of both timing and substance. The timing issue is this: Since last year's reconciliation bill, the Administration has fought all attempts to amend the BEA. Having a vehicle for BEA amendments on the floor would risk opening the door to amendments that were hostile to the Administration's broader agenda, e.g., using a reduction in the discretionary caps as mandatory offset for lower income taxes. Waiting until next year would allow us to consider the BEA changes as part of the larger reconciliation bill that will likely be needed.

- If you chose to delay the legislation, we could take advantage of the requirement now in the Senate AIP (Airport Improvement Program) bill that would require the Administration to produce a study of FAA reforms.

On the Need for Options

- As we understand it, the primary goal of the NPR proposal was establishing a corporation that could borrow and charge user fees, and thus have an incentive to make more efficient ATC investments. Toward this end, the EOC is developing legislation for a government corporation with borrowing authority. A governmental corporation -- rather than a nonprofit private corporation -- raises both substantive and political concerns.

- Substantive and Political Problems with a BEA Waiver for a **government** corporation: All other government corporations must comply with the BEA. The budget thereby acknowledges that the debt of *government* corporations is *government* borrowing. The EOC option, however, would treat the debt of the ATC corporation as if it were nongovernmental debt. As a result:

- First, the EOC proposal would allow capital budgeting for a single government activity; the rest of the federal government would continue to budget on a cash basis. A governmental ATC corporation therefore would set a precedent in favor of a particular approach to capital budgeting, an approach that the Administration has not yet fully reviewed.

- Second, the EOC proposal opens the Administration to the charge that it is seeking a BEA waiver solely to escape the disciplines of the BEA. Some Members may use our proposal as an excuse to seek waivers for other infrastructure programs, such as inland waterways and highways, which are funded just as the corporation would be: with a combination of direct user fees, dedicated taxes, and general funds.

• "Business-like" investments are more likely to be made by a nonprofit private corporation than by a governmental corporation A governmental corporation may not be sufficiently independent of the Executive Branch and the Congress to make truly "business-like" investment decisions. Since the Secretary of Transportation presumably must have veto power over the corporation's investment and business plan, even having a Board of Directors controlled by private sector interests will not make the corporation suitably free of government interference.

A nonprofit corporation would be more reponsive to its customers, and would have the greatest institutional freedom to pursue efficient ATC investments. In addition, it would require only a technical amendment to the BEA, and would allow us to avoid the problem of having only a single government corporation allowed to adopt a capital budget.

While a nonprofit corporation would answer one set of problems, it would pose another: the air traffic controllers currently oppose this option. It is our judgment that you could overcome this opposition just as you have overcome the opposition of others in the past.

We believe that the NPR goal -- and broader Administration goals -- could be achieved more fully through a not-for-profit corporation. We would like you to direct the EOC to develop for your consideration an option for a private corporation that would meet the goals of NPR.

FAA RESTRUCTURING AND THE BUDGET ENFORCEMENT ACT

As the draft VP decision memo makes clear, the driving factor in restructuring the FAA is the Budget Enforcement Act (BEA). All options, except Option 1 which is a minimalist option, requires PAYGO offsets, and thus effect the BEA in some way.

Government-Owned Corporation (Options 2 & 3)

- A government-owned ATC corporation (as defined in Options 2 and 3) would be funded in the Budget as a mandatory revolving fund, where its fees or receipts (ie -- the current ticket tax and freight waybill tax) are "permanently" appropriated on the mandatory side of the Budget, and its outlays are moved from the discretionary to the mandatory side of the budget (Currently, 75% of FAA's receipts are on the mandatory side, but its outlays and 25% of the receipts are on the discretionary side).

- Establishing this mandatory revolving fund for a government-owned corporation would increase mandatory outlays for the corporation (as described above). This would create a need for a PAYGO offset under the BEA. Congress would have to find offsets, or modify the BEA to balance the mandatory increase with the corresponding decrease in receipts and outlays on the discretionary side (after all, we are simply moving receipts and outlays from the discretionary side to the mandatory side); this would require 60 votes in the Senate, as the memo makes clear.

Non-Government Corporation (Option 4)

- If the ATC corporation were non-governmental, it would not be part of the Federal Budget. However, this approach would call for the elimination of current receipts (ticket tax, etc) and replace them with some kind of user fee. This would reduce receipts (and spending) to the Budget and hence require PAYGO offsets under the BEA. Congress could modify the BEA to balance the tax decrease with corresponding decreases in discretionary outlays, but this would require 60 votes in the Senate.

Borrowing Authority (Options 3 (Government) and Option 4 (Non-Government)

- Issuing debt is a budget issue, because the debt finances direct spending by a government entity (in Option 3). Spending by a government corporation, financed by borrowing from the Treasury or from the public, is counted as a Federal outlay under the BEA. It could be offset by reductions in other Federal outlays, or the outlay could be exempted from the BEA. But exemption would be difficult politically.

- Borrowing by a non-government entity (Option 4) would not affect the Federal Budget. However, the CBO and the Budget Committees would look closely at any proposed non-government ATC corporation. If they considered it an extension of the government, its borrowing would be treated as agency borrowing and require an offsetting decrease elsewhere under the BEA.