



## **Experimental Aircraft Association (EAA) Statement for the Record**

**United States House of Representatives  
Committee on Transportation and Infrastructure  
Hearing to Review Air Traffic Reform Proposals - HR 4441  
February 10, 2016**

The Experimental Aircraft Association (EAA), representing the aviation interests of more than 190,000 aircraft owners, pilots, and aviation enthusiasts, strongly opposes privatizing, corporatizing, or otherwise removing the U.S. air traffic control system from the Federal Aviation Administration (FAA) as proposed in the Aviation Innovation, Reform and Reauthorization (AIRR) Act of 2016, H.R. 4441. We believe that it is neither necessary or wise to undertake such a disruption to a national airspace system that is the most complex yet the safest in the world. It is designed well and works well for the benefit of the entire American public. We believe that ATC privatization would deliver few of the promised benefits while introducing serious foreseeable risks and potential unforeseen consequences that will be detrimental not only to general aviation but to the entire U.S. economy.

EAA supports the assertion by ATC privatization proponents that the FAA needs stable and predictable funding in order to manage an efficient and safe national airspace system, as well as successfully implement extensive capital programs such as NextGen. However, we believe that far from improving the predictability and stability of funding, ATC privatization will introduce serious new economic risks to the system as a whole and specific threats to airspace access and service availability for general aviation, which represents 1.1 million jobs in this country and more than \$200 billion in economic activity.

The Airport and Airway Trust Fund (AATF), whose revenue is derived from direct users of the system, today pays for 92.77 percent of the FAA's total annual budget. According to the Congressional Joint Committee on Taxation AATF revenue is expected to grow at 4.8 percent over the next decade. We maintain that the AATF should continue to be supported by existing

Experimental Aircraft Association – Statement for the Record  
February 10, 2016

user excise taxes and fees and that those revenues should be walled off for their intended purpose of funding capital improvements to the U.S. airport and airways system as well as funding the bulk of the FAA annual operating budget. We further believe that an automatic annual appropriations process should be legislated so that AATF revenue is distributed to the FAA on an annual basis without congressional intervention, thus eliminating the vast majority of funding risk and uncertainty introduced by the highly unpredictable congressional authorization and appropriations processes.

Lastly, we believe that the General Fund contribution, currently at an all-time low of 7.23 percent of the FAA budget, represents a minor risk to future funding in times of budget cuts or government shutdown. Under our proposal, money would continue to flow to the FAA from the AATF to maintain ATC operations uninterrupted. That said, EAA also believes that it is imperative that some General Fund contribution continue to be authorized and appropriated by Congress because the national airspace system represents a benefit to all of society. The General Fund contribution also serves as a shock absorber of sorts to fill the gap in funding during periods of aviation industry or national economic downturn when Trust Fund revenue declines due to reduced aeronautical activity as experienced during the period of Fiscal Years 2009 through 2013. The nation's airspace and air traffic system are too vital to the U.S. economy and commerce to leave entirely to the vagaries of economic cycles. On that basis alone, proposals to fully privatize the funding of the air traffic system would introduce potentially greater uncertainty and inconsistency in funding than exists today.

The following is a detailed analysis of our concerns and recommended solutions.

## **Most Complex Airspace System in the World**

The United States operates by far the most complex airspace in the world with the densest and most diverse traffic mix to be found anywhere. The nation's air traffic system safely separates and directs the movement of approximately 6,000 aircraft in the air at any one time flying to and from more than 13,000 airports. There are more airports in the U.S. system than the next ten largest countries combined. During EAA AirVenture, our annual weeklong convention each summer at our headquarters in Oshkosh, Wisconsin, our home airport becomes the busiest in the world, handling an average of 2,000 operations per 10-hour day and exceeding 3,300 operations on peak days. This evolution rate can reach a takeoff or landing every 17 seconds, significantly eclipsing such densely congested areas as Chicago and Dallas and requiring special procedures and significant additional air traffic resources to manage safely and efficiently. Nowhere else in the world can or does something like this occur and a privatized ATC system is highly unlikely to support such world-class activities.

The U.S. airspace system is not only complex but it is also diverse in terms of the types, speeds, and capabilities of aircraft using the system, climatology and meteorological impacts, and airspace types from some of the densest to some of the most remote in the world. This

diversity, complexity, and density makes for the world's most challenging environment for air traffic control technologies and workforce.

Proponents of ATC privatization often reference the privatization experience of other nations such as Canada and the European Union as examples of systems that have successfully implemented privatization. While individual parallels are often drawn to specific locations or circumstances, all of the foreign privatized ATC systems of the world combined do not handle the traffic density and mix of the U.S. national airspace system. Privatization proponents point most often to Canada in the belief that a privatized ATC system can be scaled up to U.S. standards. But the U.S. has 11 times more airports, five times more general aviation aircraft, 32 times more military aircraft, and operates seven times more flight hours than Canada. Not one single Canadian metropolitan airspace area even approaches the traffic density and mix of any of the dozen or so densest metropolitan airspace areas in the U.S. Scaling existing privatized air traffic systems exponentially to the size and complexity of the U.S. National Airspace System would prove to be daunting at best. That also accepts at face value that privatized systems in other countries work well in the eyes of the direct users of the system, which is deeply debatable.

## **Safest and Most Effective Air Traffic System in the World**

There can be no argument that the U.S. enjoys the safest national airspace system and air traffic control operation in the world, while at the same time meeting the challenge of effectively handling the greatest number of flights and moving the largest number of passengers to be found anywhere. Each day, the U.S. ATC system handles 70,000 flights and safely moves more than two million passengers. This is an astounding feat that is largely taken for granted by the American public as being commonplace, because it is. The FAA air traffic system enjoys the complete faith of the American public because it works so well. Like aviation safety as a whole, it is big news when something goes wrong because it happens so rarely. Safety is the primary focus of the government operated air traffic system with efficiency being a secondary motivation. The FAA does not share any of the conflict of interest inherent in privatized systems where cost reduction or profit motives creep in as a primary or secondary motive.

The next closest comparison to the U.S. in terms of complexity, traffic density, and safety can be found in the European Union. As complex and vast as Eurocontrol is, the US air traffic management system handles 57 percent more traffic and our hub airports handle about one third more flights per hour than comparable airports in Europe. Delays attributable to air traffic services are significantly lower in the U.S. than in Europe and, according to the Bureau of Transportation Statistics, have improved dramatically in the past five years. The US ATC system is not only effective at moving aircraft and people safely, it is doing so in a cost effective manner when compared to the rest of the world. According to CANSO, who present themselves as the global voice of air traffic management services, the U.S. air traffic cost per flight hour is currently 10 percent lower than the international average. There can be no argument that

Experimental Aircraft Association – Statement for the Record  
February 10, 2016

compared with other air traffic management (ATM) systems worldwide, the American public is getting their money's worth for a safe, effective, and efficient air traffic system.

## **NextGen is Moving Forward**

The U.S. enjoys an excellent air traffic system today but there is always room for improvement. The FAA has embarked on a long-term modernization program called NextGen that will further improve performance and capacity. Considerable criticism has been levied at the FAA over its ability to field complex, high-risk, technologies and there is no doubt that there has been room for improvement in that regard. But not all of the blame rests with the FAA. Much of the difficulty in fielding major long-term infrastructure and capital investment rests with the sporadic short-term funding that continually halts progress or precludes the issuance or maintenance of contracts necessary to support NextGen implementation. The congressional funding environment over the life of the NextGen program has made effective management nearly impossible. Congress must accept some level of responsibility and culpability for the failures in this regard. Indeed, this is the rationale used by supporters of a privatized ATC system for addressing funding concerns.

That said, despite the near impossible funding situation, the FAA has moved NextGen forward. The current FAA leadership has done an admirable and successful job of engaging private industry and aviation stakeholders to prioritize near-term improvements and garner immediate positive results while continuing to advance the long-term plan. This has served to build confidence with the private sector and today there is a generally unified view of the path that ATC modernization is on.

The irony of calling for privatization to advance the interests of ATC modernization and improve the funding of major capital programs is that in our estimation, it is very unlikely that NextGen would have ever been started, let alone advanced far, under any privatized funding system. The FAA has often had to drag industry and the private sector into modernization using every regulatory and policy tool it has, not the other way around. Over time there have been consistent calls for ATC modernization but when industry has been called upon to incur direct costs for equipment installation or other necessities, there has been considerable reluctance or outright opposition. It is unlikely that an ATC system governed by the very stakeholders on whom new costs will be incurred would have entertained NextGen, let alone funded it. Implementation of NextGen has occurred because of the national imperative to invest in a modernized air traffic system at the congressional and federal level, not because private industry clamored to underwrite it. Left in the hands of industry it is unlikely that ATC modernization would have begun let alone progressed to the point that it has.

## ATC Privatization Poses Serious Risks and Unlikely Benefits

### ***Airspace and Air Traffic Services Belong to the People***

The nation's airspace and air traffic control system is a national asset and utility that serves or impacts in one way or another every U.S. citizen. This includes those who directly use the system (airlines, cargo haulers, passengers, general aviation, military), those who benefit indirectly from its existence (mail, commerce, employment, package delivery, medical transport, agriculture, police, fire, and rescue services), and those on the ground who are only impacted by it (community access, employment base, noise, pollution concerns). As a national asset that touches every citizen of the country in one way or another, airspace and air traffic control requires policy decisions that reflect the greater good of the nation and not just direct users of the system or a subset thereof. The only way for such diverse interests and concerns to be adequately heard and represented is through our elected officials at a national level and by an impartial federal agency whose mandate is to fairly weigh the input of all concerned citizens. This is the case with the existing government run air traffic system under the Federal Aviation Administration.

Privatized ATC or any system that is governed by a board of industry representatives has no mandate or interest in representing the broader concerns of the public, only the cost effectiveness and efficiency of providing ATC services to direct users of the system. Such a board would engage in resource allocation and policy setting with little public input and largely for the benefit of those on the board with the greatest financial resources. A board with such power to set priorities and assess or avoid fees would control who can access what airspace and the terms on which that access is predicated.

In a privatized system, those entities that generate the greatest percentage of revenue will fundamentally call the shots. This, according to sponsors of privatization legislation, is the entire point. So while some interests other than airlines, such as general aviation, may have a seat at the board room table, they will be largely marginalized in any discussion of resource allocation by virtue of the relatively small contribution made to the AATF by general aviation. Those without representation on the board at all will be fundamentally shut out of any policy setting or resource allocations discussion. The concerns of rural communities and airports, private citizens on the ground, and public interest groups such as passenger rights and environmental organizations would go largely unheard and unheeded.

ATC privatization means not only delegating to private interests the authority to manage the system and allocate resources, it also has the power to tax by another name in the form of implementing and adjusting rates for user fees (another name for taxes by a non-government agency) to suit its desires or needs without input from the broader public. Further, flight paths and procedures will be set by the corporate entity with little or no input from the affected public on the ground. Community input will be all but non-existent. The fundamental policy question is: in the absence of Congress and an impartial federal agency listening and

Experimental Aircraft Association – Statement for the Record  
February 10, 2016

responding to public input and concern, who looks out for the public interest under a privatized national airspace and air traffic system? As the legislation is currently constructed it would be the handful of major air carriers whose primary aim is to maximize efficiency of the system and minimize costs to themselves for the highest possible profit margins.

***Control and Access Will Be Compromised for Non-Airline Users of the System***

Historically the U.S. ATC and airspace system operates on a first-come, first-served basis provided that an aircraft is properly equipped for a given type of airspace. This fundamental principle of equal access for all has been arbitrated and protected by the FAA since its inception, sometimes in the face of relentless pressure to do otherwise when a profit motive was at stake. Airspace is considered a national resource that is guarded and apportioned by the federal government. It takes into account the needs of all stakeholders both direct and indirect.

Any ATC system that removes the FAA as the national arbiter of fair and equal access and places it in the hands of private enterprise is destined to disadvantage small and marginal users of the system. Proponents of ATC privatization have been known to say that the airlines and their customers pay the most into the air traffic system and therefore get to call the shots. That is how the governance of the proposed ATC corporation is structured and precisely why privatization is a clear and present threat to other system users' long-term access. Ultimately, ATC privatization is all about who gets to control the system, who has access to it, and at what price. Under the current proposal the ATC corporation would be governed by a board that is economically dominated by a handful of airlines and an airline pilot union who already routinely refer to the NAS as "their" airspace, long before they are ever handed the keys to the system.

Multi-billion dollar companies have specific goals for airspace access and control and would dominate the decision making of any privatized system. That is, after all, the goal of the primary proponents of ATC privatization. Airlines want to control access for the benefit of their bottom line, driving other users out of the system in congested airspace. This is not new. There has been longstanding pressure by air carriers to exclude other users from what they perceive to be "their" airspace. Further, air carriers want to offload cost onto other users of the system, which in the past had been the primary argument for privatization but now is artfully cloaked in arguments for stable and predictable system funding.

Meanwhile, advocates for unmanned aerial systems (UAS), as relatively new users of the system, seek access and control of lower levels of airspace outside of congested areas where general aviation has historically operated without conflict with the airlines. The UAS advocates include some of the world's largest companies by capitalization who have the deep pockets necessary to ensure such access in a privatized system. Meanwhile, the FAA has been accused of impeding UAS access to the NAS in its honest bid to ensure the continued safety of manned flight and fair airspace access for all. Under the current proposal there are up to two non-governmental seats on the governing board to be appointed by the DOT Secretary. It is not much of a leap to believe that political pressure and economic might would allow these multi-

Experimental Aircraft Association – Statement for the Record  
February 10, 2016

billion-dollar drone advocates to be represented on the board as DOT appointees. Under this scenario it can be reasonably anticipated that over time general aviation, with its comparatively low level of economic might and political clout, will be squeezed out of congested airspace by the airlines and from lower altitudes where it traditionally operates by the commercial mass appeal of drones.

Finally, governed by a board that is economically dominated by air carriers and possibly UAS proponents, a privatized ATC system is unlikely to invest in airports and ATC services where commercial airline traffic is not present or where such investment does not favorably impact the bottom line of an airline or drone operator. Rural airport funding and general aviation ATC services will be the first to be cut even if the privatized ATC system defies predictions and actually reaches revenue goals. The airlines will simply refuse to have “their” revenue support infrastructure and services that do not directly serve them. The national airspace system as a whole will suffer tremendous degradation. General aviation as we know it today will slowly wither away, taking the form it has in nearly every other country with a privatized ATC system; which is, all but non-existent.

***Transition to a Privatized System Threatens Current Modernization Progress***

While there is much gnashing of teeth in Washington over the success and merits of ATC modernization through the NextGen program, the fact of the matter is that NextGen is progressing at a rate greater than or equal to the rate of industry acceptance and adoption of new technologies. An ATC system run by stakeholders, particularly those whose primary interest is their own corporate bottom lines, is necessarily focused on current costs and revenue. It does not have the drive or capacity to implement nationwide infrastructure necessary for system-wide modernization for the benefit of all. This is especially true when the implementation of modernization comes with significant direct costs to the very system users planning and governing the system.

As previously stated, it is highly unlikely that new ATC technologies now being fielded successfully by the FAA under NextGen would have ever garnered initial investment under a privatized system. This includes foundational technologies of NextGen such as Automated Dependent Surveillance - Broadcast (ADS-B) which imposes significant cost transfer from the ground based ATC system to the airplane cockpit. Were it not for the FAA’s ability to mandate equipment requirements and implementation deadlines by rulemaking, firmly standing by those implementation dates in the face of industry opposition, ADS-B as a cornerstone of NextGen would never have made it to fruition. This is a fundamental flaw in the argument that privatization or industry corporate governance will lead to accelerated and more efficient adoption of NextGen and other modernization technologies. The stakeholders have to actually want it badly enough to pay for it.

Long term investment in national infrastructure can rarely be supported on the basis of current quarterly corporate earnings and profits. Such endeavors require national will and resolve to

Experimental Aircraft Association – Statement for the Record  
February 10, 2016

invest in the future. Current pressure to reduce cost and maximize profits have led the airlines to attempt to delay installation of ADS-B equipment and the cost to individual general aviation aircraft owners has made the prospect equally unpalatable. In the absence of federal government rulemaking, mandates, and safety oversight, introduction of modernization technology would be chaotic or even unlikely. Ironically, it was the airlines who initially pressed for ADS-B and general aviation who opposed it. As the FAA deadline for installation and the consequent bill for doing so approaches, it is general aviation that is adopting ADS-B technology in large numbers and the air carriers who in many instances are balking or seeking deadline extensions. That does not bode well for implementing modernization under a system of governance dominated by those same air carriers.

Some technologies that have dramatically improved the safety and utility of general aviation in recent years would likely never have seen investment under a user-paid system economically dominated by the airlines. A clear example of this was FAA investment in the GPS Wide Area Augmentation System (WAAS) that made satellite based precision and non-precision instrument approaches widely available for GA including at airports that previously never had instrument approaches available. This life-saving technology has also improved access to GA airports across the country in weather conditions that previously would have precluded operations of any kind. As important and successful as this program has been, it is highly unlikely that an airline-driven and funded ATC system would have ever fielded this efficiency driving and safety enhancing technology.

These are past and current examples of where an ATC system that is governed by private enterprise would be unlikely to allocate resources in a manner that is in the best interest of all users of the NAS and in the best interest of the nation as a whole. Profit motive and provincial interests will dominate a board where not all board members are created equal. Economic self-interest will necessarily trump the greater good without an impartial federal agency and congressional oversight whose interest is in meeting the needs of all users of the system. Modernization under the FAA may not be perfect and perhaps in hindsight could have been done better, but it is happening and doing so at a pace ahead of industry. In our view a privatized ATC system would not have even undertaken the challenge or initial investment.

***Privatized ATC is Not a Business***

Proponents of ATC privatization tout extensive cost savings and increases in efficiency as a basis for radically changing the system of governance of the ATC system by removing it from the federal government. There is no doubt that this appeals to many who believe strongly in free enterprise and the power of capitalism over government control, and for most things we would tend to agree. But the U.S. air airspace and air traffic system is not a business in the classic sense of the word because it does not exist in a competitive marketplace. In fact, a privatized ATC system more closely resembles a congressionally mandated monopoly managed by private interests, dominated by airlines, but subsidized by the U.S. taxpayer.

Experimental Aircraft Association – Statement for the Record  
February 10, 2016

Under this scenario, the ATC corporation would not be run by market discipline for greater efficiency, except when the self-interest of the most economically powerful members of the board stand to gain. Under the proposed governance, fees will be ever escalating or services will be cut to the detriment of some users, most likely those with the least influence on the board, i.e. those who of necessity make the smallest financial contribution to the system. Also standing in the way of true corporate governance and marketplace motives is that fact that the ATC corporation would be a monopoly that all users are forced to rely upon regardless of efficiency or cost. There is no true incentive to be efficient and operate under genuine business principles when there is near limitless opportunity to raise fees to cover costs and no alternative source of service for customers.

This is especially troubling when considering the fact that all existing infrastructure, labor, contracts, agreements, retirement plans and benefits are slated to transfer to the privatized system and remain in place for some time. Such are the promises made to the affected labor unions and federal employees by proponents of the legislation.

There are strikingly conflicting goals and benefits of ATC privatization that are being touted by its proponents. It is a stated goal of the airlines and their supporting elected officials that ATC service costs should be cut and efficiencies increased while at the same time those same proponents are promising to hire more controllers in a privatized system. With all the same labor, infrastructure, and contracts in place as is currently the case under FAA management, it is difficult to fathom that costs can be cut by adding more controllers. At the same time the airlines consistently call for passenger fees and ticket taxes to be lowered. Someone is being duped.

Experience has shown that privatization of national air traffic management services around the world has rarely if ever resulted in reduced costs. The experience in Canada is one of the best and yet when taking all taxes, fees, and charges into account the cost of ATC services increased 50 percent under the transition to Nav Canada. In the U.K., this combination of fees and taxes resulted in a 140 percent increase in cost. Far from cutting costs and improving efficiency, the more likely outcome of privatization in the U.S. is that costs will increase at the same time there is mounting pressure by the airlines to lower passenger fees and taxes. Under this scenario there is but one outcome: services will have to be cut. Under an airline dominated governance system, clearly it would be services for general aviation and rural airports and communities that would be cut first and most often. Few other service cuts would be tolerated by the airlines or their customer base.

***ATC Corporation Open to Unlimited Civil and Tort Liability***

Liability under the current federally managed air traffic system is underwritten by the good faith and credit of the U.S. government which itself enjoys some measure of protection from suit, as do many of its employees. The national shared assumption of liability for the NAS is consistent with running a utility that serves every citizen of the country. This system would be

Experimental Aircraft Association – Statement for the Record  
February 10, 2016

radically threatened under the proposed legislation by making the privatized entity fully open to civil and tort liability, able to be sued at will. Consequently, the privatization proposal also requires that the proposed ATC corporation carry insurance to cover near unlimited liability for the entire national airspace system.

When one contemplates liability in the air traffic system the most obvious concern is for a major aircraft accident where ATC is implicated as a causal factor. In an instance such as this, the potential damages awarded could be staggering. But there are actually even greater threats and insidious smaller but more numerous expenses from liability. Imagine the potential liability on a privatized air traffic system stemming from the events of 9/11 such as direct damages from perceived ATC liability from the terrorist acts themselves, to the potential liability from losses incurred due to shut down of the ATC system on the airlines and the prolonged grounding of general aviation. The door is also open to more insidious suits for losses incurred by perceived underperformance such as delays, diversions, or other damages. Also, like any business, the ATC corporation would be open to employee suits for any number of workplace-related grievances of which there are many filed today under government employee policies. Many of these employee grievances today would be tomorrow's lawsuits. Further, there will be the costs associated with suits stemming from vendors, contractors, and other outside interests such as environmental, civic, and labor groups.

It is difficult to fathom what the cost of commercial liability insurance would be to cover all of the potential exposures of the entire national airspace system, air traffic operations, and their employees and contracts. Regardless, insurance represents an entirely new cost to the system in addition to necessary private sector legal representation, court costs, and the like. These new and highly expensive costs will have to be borne by the direct users of the system in the form of new or increased fees and taxes under this proposal.

However, it is unlikely that such comprehensive insurance could be obtained at any price in the commercial insurance marketplace given the near unlimited nature of the liability and the litigious tort system in the U.S. Other countries that do not have a court system as freely accessible and prone to issuing massive settlements and judgements in the tens and hundreds of millions of dollars are perhaps able to insure their privatized or corporatized air traffic management systems. However, this would be nearly impossible in this country. As an example, U.S.-based aircraft manufacturers often cannot obtain liability insurance for their products at any price and are forced self-insure with as much as 30-40 percent of a new aircraft's sales price being set aside to cover future lawsuits. One can only imagine that liability insurance costs and availability for a privatized ATC system would be even worse.

The cost of litigation and/or insurance would be forced upon direct users of the ATC system in the form of new and higher fees rather than spread across all of society that benefits from the NAS directly and indirectly as is the case today. This greatly calls into question the likelihood of cost savings in a privatized system. The federal government has paid out \$225 million for air crash claims alone over the past 10 years, a period when there has not been one single major

Experimental Aircraft Association – Statement for the Record  
February 10, 2016

air carrier accident. But as mentioned above, the risk of catastrophic liability losses is sufficiently high that the availability of insurance would be questionable without some form of government subsidized guarantee or backstop. Only in this instance the taxpayer would be on the hook for either subsidizing insurance or bailing out a potentially bankrupt privatized ATC system. The costs of such a backstop or bailout would be orders of magnitude greater in the commercial tort liability arena than would ever be borne by the taxpayer under a federalized ATC system as it exists today.

***ATC System, Too Important to Fail***

The national airspace system and its operational arm of air traffic control is such an integral part of the U.S. economy and an engine of commerce that it is without question too important to fail. The implication is that in the event of mismanagement, serious economic downturn leading to drastically reduced revenue, catastrophic liability losses, or default on loans for failed or poorly executed capital investments, the American taxpayer is going to be on the hook for a massive bailout all the while risking the continued operation and safety of what is arguably one of this nation's most important infrastructures. While loan guarantees have been explicitly written out in this proposed legislation, the reality of "too important to fail" is an implicit federal guarantee. The proposed ATC corporation has an unlimited potential to borrow in the capital markets but limited risk for failure to pay due to what has in other industries been referred to as moral hazard.

This is not unheard of in the experience of privatized air traffic systems. In 2002, the U.K. taxpayers had to bail out their privatized ATC system after revenues plummeted in the wake of drastically reduced international air travel after 9/11. Indeed, during the economic downturn in the U.S. from 2008 to 2013, revenue to the Airport and Airways Trust Fund dropped, requiring a larger contribution from the General Fund to make up the difference. While this was technically not a bailout of the system, it points out the difficulty a privatized ATC system would have in times of economic downturn. The only choice for continued operation would be to dramatically raise fees on already stressed airlines and other aviation businesses or drastically cut services jeopardizing economic recovery, service levels, and potentially safety. This is not an acceptable way to run one of the nation's most safety critical pieces of infrastructure. In the absence of the ability to raise fees and/or cut services, the only option is to seek a government bailout by which point the situation will have become dire.

***Prohibition on Government Loan Guarantees – Cost of Debt Service***

The current proposal for a privatized ATC system is often supported on the basis that such an entity would be able to access the capital markets for NextGen modernization and other system or airport capital costs. Proponents of privatization tout the stability and predictability of capital markets versus the vagaries of the congressional authorization and appropriations processes. While this may be true to a certain degree, investments in nationwide infrastructure projects, especially those with a high degree of political or technological risk, such as NextGen, have

Experimental Aircraft Association – Statement for the Record  
February 10, 2016

rarely been accomplished without government loan guarantees. Yet the legislation for ATC privatization explicitly prohibits such loan guarantees.

The closest parallel for tapping capital markets was during the frenzy to build nuclear power plants in the late 1960s and early 1970s. These infrastructure projects represented massive investments in the billions of dollars that also contained high levels of technological and political risk. The capital markets alone would not underwrite these projects and government backed loans were necessary to fund these large infrastructure efforts. NextGen carries similar scale, technology risks, and political risks from those who do not agree with or desire to fund ATC modernization. While some elements of modernization or airport improvements might be able to access the capital markets, it is unlikely that national programs on the scale of wholesale system modernization could be readily funded.

In the event that massive modernization infrastructure investments were able to be funded in the capital markets, such funding would introduce still more new costs to the ATC system that would have to be borne by direct users of the system in the form of interest costs on debt service. Debt service today is carried by the nation as a whole at U.S. Treasury rates and is part of the national debt to the degree that money is borrowed. A privatized ATC system will be required to borrow at commercial rates in the capital market, presumably higher than Treasury rates and the debt serviced solely by the direct users of the system. It is difficult to see how cost to the system would be reduced under such a scenario.

***Compromised Safety Oversight/Duplication of Effort***

Under the existing federally managed air traffic system the FAA has the mandate to ensure safety first and foremost while enhancing efficiency as a secondary priority. We believe this is as it should be for a system as safety critical as the national airspace system. Advocates for privatization argue that safety will continue to be assured because FAA will still hold an arms-length regulatory relationship with the privatized organization. Also at arms-length, though, will be observation and oversight of the day-to-day operations of the system. In effect, FAA will only be able to take action to address safety issues that are reported to it by the privatized entity. This separation from ongoing operations to one of distant oversight can do nothing to improve safety in the system. The regulator will be far removed from the actual operation of the system.

So to ensure safety itself, the newly privatized entity will also have to establish a separate and distinct safety organization within itself. That will result in significant duplication of effort and bureaucracy, with attendant increases in overall cost just to maintain what is already done well today by the FAA. In addition, the separation of safety and efficiency motivations into two entities will lead to distinct cultures that have obvious conflicts with one another. The private entity will be primarily driven to increase revenue and cut costs, while the government in the form of the FAA will become solely interested in safety without accountability for system efficiency. We do not see this as being good for either safety or operational efficiency and attendant costs.

***Remaining FAA Will Be Substantially Diminished and Harmed***

The national airspace system is more than just air traffic control. It is an intricately interwoven complex system that involves not only airspace and traffic management services but also aircraft, airmen, safety oversight and regulation, medical certification, continued airworthiness and maintenance, meteorology, charting, and a host of curbside services performed by the FAA to keep the system moving. These various functions are far more intertwined and interdependent than most outside observers could ever appreciate.

Removing ATC and other operations of the National Airspace System from the FAA will emasculate the agency leaving many functions disjointed and unaccounted for. Further, carving out ATC from the FAA will dramatically reduce the agency's relative importance leaving it more vulnerable than ever to continued congressional funding difficulties and budget cuts. In the absence of the national imperative for a functioning an efficient air traffic system, the FAA's other critical safety and service functions will dramatically shrink in importance in the eyes of Congress and the public.

The FAA performs many functions beyond air traffic services upon which the U.S. economy and commerce are heavily dependent. Airmen and aircraft certification services are crucial to keeping the aviation system moving and for aircraft manufacturers to remain in business and stay competitive. With an emasculated FAA no longer funded by the Airport and Airways Trust Fund and even more reliant upon General Fund contributions so much a part of the privatization debate today, pressure will continually mount for a user fee-based system of self-funding for certification and other services similar to the disastrous system in place in Europe today. This is something that EAA and most of the aviation industry is deeply opposed to. The net result would likely be extremely disruptive to aviation businesses and the aviation community as a whole outside of air traffic control.

***DOD Control of the NAS in Times of War or National Emergency***

On the surface, turning control of the national airspace system and air traffic services over to the Secretary of Defense in times of war or national emergency as proposed in this legislation seems like a logical thing to do, given that the NAS would be placed into the hands of private enterprise under H.R. 4441. However, direct experience in the post-9/11 period has shown how disastrous to the future of aviation in this country that would have been had this proposal been in place at that time.

The national airspace system is the property of the citizens of the United States. The FAA has been charged by Congress with the mission of administering the safe and efficient use of that national asset for the benefit of the nation. That includes facilitating commerce, interstate transportation, and freedom of personal movement. After the tragic events of 9/11 the FAA worked hand-in-hand with the national defense and security establishment in the

Experimental Aircraft Association – Statement for the Record

February 10, 2016

unprecedented move to shut down the NAS and ground all flights in the country. This was done efficiently and effectively despite having never been attempted before. While the nation's airspace remained shut down entirely for three days, at no time did the civilian arm of the federal government (FAA) relinquish its authority and "ownership" of the airspace to the Department of Defense (DOD) or any of the other dozens of security and defense agencies working together at the National Security Council (NSC) to ensure the security of the nation.

For the sake of the long-term health of aviation in this country, FAA retention of its authority over airspace and air traffic control, combined with its mandate to facilitate commerce and interstate travel, proved to be a most fortuitous happenstance. As days stretched into weeks following 9/11, the major air carriers were permitted to operate once again but general aviation remained largely shut down, particularly in the vicinity of major metropolitan areas where a new class of airspace called Enhanced Class B fundamentally kept the majority of general aviation aircraft grounded and unable to operate in the most traveled airspace in the country. The defense and security interests at the NSC were absolutely opposed to letting general aviation, including most non-scheduled commercial operations, fly anywhere within 30 miles of any major city, and at one point proposed to prohibit any flights within 150 miles of the nation's capital without first passing through security portal airports. Indeed, those discussions began at a radius of 300 miles. These restrictions lasted for weeks and some stretched on for months.

The only voice of reason at the NSC in these discussions was the FAA. In fact, the agency's persistent efforts to reopen the airspace to general aviation and small commercial operators was met with such violent opposition by the defense and security establishment as to be openly branded by some as traitorous. General aviation owes its existence as we know it today to the dogged persistence of the then FAA leadership in maintaining their authority over the airspace and sticking to their mandate of facilitating commerce and freedom of movement. Had the national airspace system and air traffic control been blindly handed over to the Secretary of Defense at that time there is no question whatsoever that there would be no recognizable general aviation as we know it today.

Having lived through the painful prolonged period post 9/11 of being grounded and fighting tooth and nail against near unanimous opposition to letting personal and small commercial aircraft fly, EAA is opposed in the strongest terms to separating the control, stewardship and authority over the national airspace system from the FAA. Under no circumstances should that authority be transferred out of civilian hands to the Department of Defense or any other government agency with a sole mandate for security or national defense. The result after 9/11 would have been tantamount to the implementation of martial law against general aviation. Without the authority and perseverance of the civilian FAA, it would likely still be in place today as it is in the nation's capital where members of the NSC partially had their way.

***Protracted Period of Budget, Operational, and Program Management Disruption***

Proponents of privatization promise no disruption of “core ATC operations” on the basis that all existing facilities and personnel would transfer to the private entity. This demonstrates a shallow understanding of the complexity of the NAS and the myriad contracts, programs, and services that do not fall into the category of “core ATC operations” that would likely be disrupted and perhaps even jeopardized by such a transition. Currently there are considerable research and development efforts underway at the FAA, many of them crucial to safety or the long-term health of the aviation system, that do not fall under “core ATC operations” nor would likely be relevant to any privately funded ATC system.

An example of this is the Piston Aviation Fuels Initiative (PAFI) that has leveraged considerable FAA, petroleum and aviation industry expertise and resources to advance the prospect of developing, and most importantly authorizing the fleet-wide use of, novel new high octane unleaded fuels for general aviation. This program evolved out of the recognition that without pivotal government involvement in the evaluation and approval process, aviation would never be able to make a wholesale transition to unleaded fuels, something that is in the best interest of the nation. PAFI is a program universally lauded and supported, and is an extremely high performing effort. Yet because of the way the FAA budget process works this programs’ R&D funds are allocated through the NextGen budget. This is but one example among potentially hundreds that would be significantly disrupted or even unfunded despite congressional line item authorization in the move from FAA to a privatized ATC system. There is no question that private ATC would have no interest in unleaded fuel development, nor should it, but the point is that the move of NextGen funding to a private entity would disrupt or even discontinue a program vital to the future of general aviation. This is but one simple example of the complex web of funding, program management, and accountability, that will be seriously disrupted under this legislation many times over.

The Aviation Innovation, Reform and Reauthorization (AIRR) Act of 2016, or H.R. 4441, proposes a three-year phase out of FAA involvement in air traffic operations and the phase in of privatized operations and the implementation of user fees to fund the system. This three-year period is bound to be fraught with peril and disruption. But it is what is proposed in year four that should really attract the attention of all, including the labor unions representing federal employees who have been promised that jobs and operational personnel will not change during the transition. In the fourth year after passage of the Act, the privatized ATC corporation is authorized to readjust bargaining agreements to a “non-government setting.” The corporation is also authorized to adjust user fees, employment agreements, and operational service levels, indicating that there is likely to be a long period of resizing and reprioritizing with attendant service disruption ahead. If labor unions become discontent with the readjusted bargaining agreements or resizing or reprioritizing of the ATC system, under a privatized system one has to assume that they have the authority to strike, paralyzing the nation once again as the controller strike did in 1981. This is in no way good for the nation or its economy.

## Funding Concerns Do Not Justify Privatization – There Are Far Simpler Solutions

Inconsistency and instability of FAA funding is cited most often as the primary justification for privatization of the nation's air traffic and national airspace system. The belief seems to be that if the nation simply places the entire system in the hands of private enterprise all of the financial ills associated with congressional funding and FAA management of ATC modernization will go away despite the fact that all the people and facilities will remain the same. But as we have mentioned throughout this testimony, privatization introduces new funding risks that in many instances greatly eclipse those the supporters of H.R. 4441 are trying to solve. It also introduces operational, organizational, and safety uncertainty and risk throughout the system at every level.

EAA believes that if Congress is actually serious about addressing concerns over the stability and predictability of funding for FAA operations and system modernization, there are a handful of things that can be achieved with little or no disruption to the aviation industry or national airspace system. Key among these changes is the need to fundamentally alter the way money flows from the users who already pay for the vast majority of the national airspace system and the operating budget of the FAA today to the FAA itself in a reliable and consistent manner. There is no real shortage of funds. In Fiscal Year 2015, direct users of the system funded 92.77 percent of the airport and airways system and the operating budget of the FAA. That left 7.23 percent to be funded from the General Fund. Yet the entire amount is subject to the congressional authorization and appropriations processes and the threats they pose to stability.

We maintain that Congress should ensure that the money in the Airport and Airway Trust Fund be walled off for its intended purpose by statute and that the revenue in the AATF should be transferred to the FAA in its entirety in the form of an automatic annual appropriation. Undertaking this relatively simple legislative initiative would ensure that today in excess of 90 percent of the FAA budget would automatically be funded and not be subject to legislative delays, budget cuts, government shut-down, or sequestration. The Airport and Airways Trust Fund was created so that direct users of the system could fund capital improvements and a portion of the FAA's operating budget and it has done so admirably to date including funding an ever larger percentage of the FAA operating budget over the years. There is no reason why these funds collected from direct users of the system should be held hostage by Congress and withheld from the FAA in the authorization and appropriations process.

*EAA urges Congress to undertake legislation to wall off the Airport and Airways Trust Fund for its intended purpose and implement a process for automatic annual appropriation of AATF funds to the FAA thus ensuring continued and predictable ongoing operations and capital investment.*

In addition, EAA believes that it is appropriate to continue the General Fund contribution for the operation of the FAA in that such contribution represents the benefit of the NAS to American society as a whole and also serves as a shock absorber for those periods of economic

Experimental Aircraft Association – Statement for the Record

February 10, 2016

downturn when AATF revenue naturally declines due to reduced air travel and other economic activity. Failure to combine this ongoing General Fund cushion with user derived revenue has been the downfall of privatized ATC systems elsewhere and necessitated expensive bailouts when user fee revenue could not meet the needs of the existing system. General Fund contributions can rationally be expected to be small in periods of economic prosperity when aviation activity and the movement of the public are at their greatest. But in times of serious economic slowdown, it is in the country's best interest to maintain its air traffic system and not attempt to continually upsize and downsize the system based on current economic events. Such efforts will only lead to continual disruption in the system and one that is never scaled for current needs.

EAA maintains that privatizing the U.S. air traffic system or otherwise splitting off from the Federal Aviation Administration would prove disastrous to the long-term survival of general aviation and the overall health of the national airspace system as whole. We believe that the right approach is to ensure funding of the FAA through unfettered access to AATF revenue which today makes up that vast majority of the FAA budget, while at the same time continuing to authorize and appropriate the comparatively small General Fund contribution. Doing so will ensure continued smooth operation of the ATC system, predictable ongoing funding for modernization efforts free from disruption by a chaotic and at times ineffective budget process, while still maintaining congressional oversight, budget authority, and the power of the purse over the FAA. This will address the vast majority of funding concerns while maintaining the safest and most effective air traffic system in the world for the benefit of all American citizens that we enjoy today.

We thank you for your time and consideration of this matter vital to general aviation and our nation's interest. We stand ready to answer any questions or address any concerns you may have.