



Responding to More Distortions of Air Traffic Control Reform

Mark Scribner

February 10, 2017

Last year, I wrote at length on a small number of conservative critics of air traffic control reform proposed by the House Transportation and Infrastructure Committee (see [here](#), [here](#), [here](#), [here](#), [here](#), [here](#), [here](#), and [here](#) for my responses to misguided conservative critics). Then and now, these critics made inaccurate claims about the reforms and the state of air traffic control. The latest example comes from Andrew Langer, president of the Institute for Liberty, and was published on *The Hill's* Congress Blog. I'll address each of his bolded claims below.

With President Trump's promise to pass a massive new infrastructure package, there's been a lot of renewed talk about a proposal to scrap the current Air Traffic Control system in favor of a new quasi-government entity. Proponents of the plan characterize it as a privatization, but as usual, the devil is in the details.

First, it's important to be honest about what is actually being proposed here under the guise of "privatization." The proposal, which is being pushed almost exclusively by the big commercial airline lobby, would actually create a new quasi-governmental, public-private entity similar to a government sponsored enterprise (think Fannie Mae or Amtrak). The history of such GSEs is hardly private. From their codified monopolies to their government-appointed leadership and powerful unions, GSEs usually represent the worst of both worlds: none of the profit motivation of the free market, but none of the oversight or political accountability of a federal agency. And when they fail, taxpayers are on the hook.

In reality, reform proponents generally reject the "privatization" label, preferring "corporatization" or "commercialization." The only example worldwide of a partially privatized air navigation service provider is Britain's NATS. As the libertarian Reason Foundation's Bob Poole, the intellectual godfather of air traffic control corporatization (who first proposed the structure Langer is attempting to argue against in a [1982 Heritage Foundation study](#) requested by the Reagan White House following the illegal PATCO strike), [noted in an article](#) for *National Review* last year, "Like any investor-owned utility, [NATS] faces cumbersome rate regulation by

a government board. . . . A stakeholder board, like Nav Canada's, has every incentive to run a tight ship so as to keep its fees low and affordable. There is zero support in the U.S. aviation community for a for-profit ATC corporation, so conservatives who urge this are raising an irrelevant point."

Under the proposal from House Transportation and Infrastructure Committee Chairman Bill Shuster (R-PA), the non-profit ATC Corporation would be required to structure its cost-based fee schedule in a manner consistent with the International Civil Aviation Organization's "Policies on Charges for Air Navigation Services," 9th ed. (2012).

A leading opponent of adherence to cost-based user fees is the corporate jet lobby represented by the National Business Aviation Association (NBAA). The reason for NBAA's opposition is quite simple: under the current aviation tax system, bizjets pay less than 1 percent of total aviation taxes that support air traffic control even though they account for more than 10 percent of controlled operations. This massive taxpayer subsidy from the traveling public flying commercial to the ultra-wealthy would be eliminated under any cost-based user fee structure, so it is not surprising that NBAA and its allies from Wichita to Washington are using every tactic to tar air traffic control reform.

And Langer's comparison of the proposed nonprofit ATC Corporation to a GSE is inapt. Responding last year to another inaccurate conservative critique of Chairman Shuster's proposal, Poole noted:

What I find especially disturbing is the piece's misunderstanding (or misrepresentation) of what the proposed corporation actually is. It is not a government-sponsored enterprise (GSE) like Fannie Mae, as the piece claims. It would be a federally chartered private nonprofit corporation, analogous to the American Red Cross or federal credit unions. It would receive zero government funding, and its bonds would not be backed by taxpayers, only by the revenues that it generates from providing ATC services (just like private or public toll roads—or like utility companies).

I would also note that Langer's claim that "when they fail, taxpayers are on the hook," makes little sense when one considers the actual legislation. Section 90304 of the bill specifically provided:

(a) Non-Federal Entity.—The Corporation is not a department, agency, or instrumentality of the United States Government, and is not subject to title 31.

(b) Liability.—The United States Government shall not be liable for the actions or inactions of the Corporation.

(c) Not-For-Profit Corporation.—The Corporation shall maintain its status as a not-for-profit corporation exempt from taxation under the Internal Revenue Code of 1986.

(d) No Federal Guarantee.—Any debt assumed by the Corporation shall not have an implied or explicit Federal guarantee.

The new "non-profit organization" is also a gift to organized labor. It would be overseen by a board with heavy union representation, and would preserve existing labor benefits and contracts.

It would also prohibit personnel changes or layoffs without sign-off from the union, and even prevent the consolidation of facilities without union approval.

As I noted in the past to conservative critics, this is an air traffic control reform bill—not a union-busting bill. Anyone familiar with aviation policy in the U.S. knows that air traffic control reform will not happen without a buy-in from the controllers’ union. In the previous iteration, the board would be governed by a 13-member stakeholder board, two seats of which would be set aside for representatives of the controllers’ union and largest airline pilots’ union. That’s just 15 percent of the board, hardly indicative of “heavy union representation.”

The proposal will preserve existing contracts and benefits for current Federal Aviation Administration (FAA) controllers. But, again, these were previously negotiated at the FAA. Does Langer believe controllers would accept wiping out their collective bargaining agreements and pensions, questions of law aside? As for the other matters Langer claims pose problems, the answer is: we don’t know what the future holds with respect to labor-management relations at the ATC Corporation. Contracts will be regularly negotiated following a transition period, and nothing in the bill prevents controllers from decertifying their union in the future. That said, the experience in Canada suggests a productive relationship between the ATC Corporation and its unions is possible.

Further, as the Cato Institute’s Chris Edwards noted last year, it is “perplexing” that conservatives like Langer are in effect favoring a unionized government agency over a unionized private corporation. Langer and others can claim whatever they want, but the practical result of their opposition if they succeed is preserving the status quo unionized taxpayer-funded government monopoly. That is certainly the goal of leading opponents NBAA and Delta Air Lines.

Sound like a far cry from a free market solution? It actually gets worse. This proposal was “scored” by the Congressional Budget Office last year and CBO found that this proposal would actually raise mandatory spending by \$89.0 billion and increase the deficit by \$19.8 billion over the next 10 years. Some privatization!

Langer should read the CBO score more closely—as even the CBO suggests that its scoring was nonsensical. I explained the problem last March when the score was released:

CBO assumes aviation taxes will remain the same following the spinoff of the FAA’s Air Traffic Organization into the new independent nonprofit ATC Corporation. This is because the House Ways and Means Committee, which has tax-writing jurisdiction, has not yet contributed its tax title to the bill. As a result, per CBO procedure, the taxes authorized under the current law were included in the score because a change has not yet been formally proposed.

While there is a simple logic to this internal scoring policy, in this case it fails to reflect reality. This is because it assumes Congress will keep tax rates constant to support an FAA budget that is now nearly two-thirds smaller due to air traffic control responsibilities being transferred to the ATC Corporation, and then *adds those taxes on top of the user fees* projected to be charged by the ATC Corporation. It treats the expected ATC fees as *new taxes* and calculates that adding the fees on top of the existing taxes will result in a reduction in the base of income and payroll taxes.

So, the score is the result of completely unrealistic assumptions about how reform would actually be enacted.

CBO acknowledges this problem on pages 16 and 17:

The estimated changes in direct spending and revenues under H.R. 4441 reflect CBO's assessment of the budgetary impacts of enacting H.R. 4441 as a stand-alone measure. Ultimately, however, the net budgetary impact of activities related to air traffic control under H.R. 4441 would depend on the details of subsequent legislation that lies beyond the scope of this cost estimate. CBO cannot predict whether such additional legislation will be enacted pursuant to H.R. 4441, but expects that the overall net budgetary impact of shifting responsibility for air traffic control to the ATC Corporation would not necessarily increase future deficits by the amounts reflected in this cost estimate *if additional legislation consistent with H.R. 4441 was enacted....*

...to reduce existing aviation-related excise taxes by amounts equivalent to new user fees that would be charged by the ATC Corporation under H.R. 4441, the resulting amount of revenues available to support air traffic control (and other aviation activities) would be largely unchanged and could continue to cover most, if not all aviation-related spending.

Setting aside the false privatization and big labor giveaways, maybe it's a matter of efficiency. You might think that countries with ATC systems similar to this proposal are operating more efficiently now that they have "privatized". Think again. The only two truly comparable systems are in the U.K and Canada. Our system is ten times the size of the Canadian system, and is still cheaper to run.

All that expense will have to be paid for somehow. While the new system would be funded by user fees, the 13 person private-public board running the new ATC would have the ability to raise taxes with no accountability to Congress or the taxpayers. Sooner or later air passengers will bear the burden of this expensive new entity in the form of more expensive air fare.

Setting aside the fact that dozens of countries have corporatized their air navigation service providers over the last three decades, Langer unintentionally undermines his point on costs. First, the fact that the U.S. national airspace system is larger and denser than Canada's works in U.S. cost control's favor, as the U.S. can benefit from substantial economies of scale. Second, on measures of cost efficiency, Nav Canada significantly outperforms the FAA. As I noted just weeks ago:

Since Canada corporatized air traffic control more than 20 years ago, inflation-adjusted user fees are one-third lower than the aviation taxes they replaced.

And according to the Civil Air Navigation Services Organization's Global Air Navigation Services Performance Report 2016, NAV CANADA's cost per IFR flight hour (a measure of cost efficiency) is approximately one-third lower than the FAA's[.]

As for Langer's conflation of taxes and user fees, as I noted above, the ATC Corporation would be statutorily required to adhere to a strict cost-based fee schedule for commercial flights. Langer

here is essentially complaining that the problem with the proposal is the lack of political meddling—which, to free-market supporters of air traffic control reform, is a feature, not a bug.

The only justification left for such a proposal is that the ATC system is in need of modernization, but the Government Accountability Office has already cautioned that any type of restructuring could actually delay the deployment of new technologies.

Reams of official reports from the Department of Transportation’s Inspector General, National Academies, and the Government Accountability Office have found that the FAA as an institution is the leading cause of failure to modernize air traffic control. Independent aviation researchers concur. As I highlighted in December:

Nav Canada is now regarded as the most efficient and advanced air navigation service provider in the world, winning three Eagle Awards from the International Air Transport Association since 2001. Since taking over air traffic control responsibilities from the Canadian government, the inflation-adjusted user fees charged by Nav Canada are more than 30 percent lower than the taxes they replaced. Nav Canada is also leading an effort to launch a new constellation of 10 air traffic control satellites in partnership with U.S.-based Iridium Communications, scheduled to launch later this week. Iridium originally approached the Federal Aviation Administration several years ago, but the FAA was unable to commit due to the chronic failures plaguing the rollout of its NextGen air traffic control modernization effort.

Another example of this failure is even sadder. Thanks to its inability to modernize air traffic control in a timely manner, the FAA projects it will continue using paper flight progress strips until at least 2025. That’s right. Rather than a digital flight strip system like the one developed and sold by Nav Canada, U.S. controllers physically pass back-and-forth strips of paper to track aircraft in the skies.

If the concerns about spending, accountability and technology weren’t enough, there’s also the issue of national security. The Department of Defense recently raised “serious concerns” about the ATC proposal, due to shared infrastructure issues such as interoperable communications and military special use airspace.

This is a bogus concern that has been trumpeted by Senate Commerce Committee Ranking Member Bill Nelson (D-FL), a left-wing ideological opponent of reform. As Poole noted last summer, these concerns are completely unfounded. All the Pentagon said is that interoperability and shared facilities agreements must be maintained. Under any ATC reform proposal, regardless of shape, they would be. As Poole noted, dozens of countries have successfully continued civil and military airspace management cooperation following the corporatization of civil air navigation service providers. Is Langer suggesting that the U.S. military is uniquely incompetent relative to 60 other nations’ militaries?

As I hope to have shown, Langer’s claims have little basis in reality. Free-market transportation researchers strongly support the air traffic control reforms proposed by Chairman Shuster, as do taxpayer advocates at groups such as the National Taxpayers Union and Citizens Against Government Waste. While the corporate jet lobby NBAA, Delta Air Lines, and a smattering of left-wing ideologues will continue to vigorously oppose any effort to spin off air traffic control

from the federal bureaucracy, we hope the dwindling number of conservative opponents will take the time to take these facts into account and reconsider their opposition.