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Privatization of the Air Traffic Control System - Its Rationale, Implementation and Implications

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I. VIEWS ON PRIVATIZATION

A. Introduction

MANY BELIEVE THE time is right to privatize the nation’s air traffic control system. Proposed privatization plans would allow the Federal Aviation Administration (FAA) to continue regulating standards in safety, public service, and efficiency, but would contract-out certain portions of delivery and maintenance. Proponents believe privatization will increase efficiency and safety and decrease cost. Privatization is timely, they say, for three reasons. First, the FAA has failed to perform its function adequately. Second, there are several thousand air traffic controllers in the labor pool who are not eligible to work as federal air traffic controllers but who could be

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2 Privatization Commission Recommends Reduced Federal Role, supra note 1, at 1.

3 Id.


5 See infra notes 87 to 103 and accompanying text.
employed by private companies. Finally, the installation of a whole new generation of air traffic control equipment presents an opportunity to phase out current federal maintenance personnel and to phase in contracting maintenance.

B. Recent Privatization Attempts

The Reagan Administration sought to reduce the size of the federal government, to reduce the role of the federal government in the nation’s economy, and to place into private hands those activities that are inappropriate to the government. Underlying the attempt to decrease the role of government was the belief that the government itself, by its great size, posed a threat to democracy. A basic premise of Reagan’s ideology was that the government can regulate the production of goods and services without providing them. Another basic premise was that government should not do anything private enterprise can do better. As one way to achieve these goals the Reagan

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6 E. Lynch & D. Hagerty, supra note 4, at 28-29. Private air traffic controllers come from the ranks of the 11,500 federally employed controllers fired by President Reagan, as well as from the ranks of retired military controllers. President Reagan refused to rehire the fired controllers. Retired military personnel are generally past the federal age requirement of thirty one. A private company which refused to hire them on the basis of age would be subject to liability for age discrimination. Id. at 26, 28-29.

7 Id. at 15-20. In 1982, the FAA proposed the National Airspace System Plan. The plan includes installing a new computer system at all twenty en route centers (en route centers direct traffic between airports), airport surveillance radar at many major airports, a voice switching and communication system enabling computer responses to voice messages, and other new technology. The new generation of equipment will be nearly all solid state, with improved reliability, easier repair procedures, and greater remote maintenance monitoring. The FAA anticipates that the new equipment will allow the FAA to reduce its need for technicians, increase its reliance on contractors, require that equipment manufacturers train the technicians, take advantage of the efficiencies of specialization, and save substantial funds. Id.

8 Smith, Reagan’s Budget: Selling Off the Government, FORTUNE, Mar. 3, 1986, at 70. The move away from central governmental control and operation reflected a global movement toward privatization. Id.; see also Bleiberg, From Public to Private Hands; Both at Home and Abroad, the Big Switch is On, BARRONS, Jan. 20, 1986, at 9.


11 Privatization Commission Recommends Reduced Federal Role, supra note 1,
Administration encouraged privatization of federal governmental activities. As an additional benefit, privatization would decrease or eliminate the federal expense of providing the privatized activities and would increase federal revenues through the sale of certain government enterprises and assets.12

The Reagan Administration proposed the sale of five federally owned Power Administrations in the South and West.13 The proposal included the sale of the Grand Coulee and Bonneville dams owned by the Bonneville Power Administration, which supplies half of the electric power to the Pacific Northwest.14 The other Power Administrations proposed for sale were the Alaska, Southeastern, Southwestern, and Western Area.15

Reagan’s privatization plans also included the sale of federally owned Washington National and Dulles International Airports.16 In addition, the administration wanted to sell the national petroleum reserve, the nation’s thirteen thousand four hundred miles of railroad freight lines, and the nation’s unprofitable passenger railway system, Amtrak.17 Finally, the administration studied the sale of government loan portfolios, postal services, prisons, and military commissaries.18

President Reagan attempted to implement privatization through a series of task forces. In 1981 the President

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12 Smith, supra note 8, at 70. The Reagan administration gained inspiration from and pointed approvingly to the United Kingdom’s Thatcher government. The Thatcher government successfully raised eleven billion three hundred million dollars by selling government owned properties, including Jaguar, British Aerospace, and part of British Telecommunications. In spite of the Thatcher government’s success, Smith states that the privatization measures will have little long term effect on the budget deficit. Id.; see also S. Butler, supra note 10, at 33-43.

13 Smith, supra note 8, at 71.

14 Id.

15 Id. at 71-72.

16 Id.

17 Id. at 72-74. On the other side of the world, Japan also has planned to sell its national railway system as well as its national telecommunications company. Id.

18 Miller, supra note 1, at 20.
formed the Task Force on Private Sector Initiatives. In 1982 the President set up the Federal Property Review Board, as a part of the Executive Office of the President, to facilitate the privatization of the federal government’s real assets. In 1983 Reagan dismantled the Task Force and set up the President’s Advisory Council on Private Sector Initiatives in its place. In 1985, he replaced the Advisory Council with the Presidential Board of Advisers on Private Sector Initiatives, which reported to the White House Office of Private Sector Initiatives. Finally, in 1987, the administration set up the Commission on Privatization as well as the Office of Privatization, however, within the Office of Management and Budget. The only tangible results were congressional approval of the sale of

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20 Exec. Order No. 12,348, 47 Fed. Reg. 8547 (1982). The Review Board functioned to “develop and review Federal real property acquisition, utilization, and disposal policies . . . .” Id. The Executive Order also directed all executive agencies to periodically review all of their real property holdings. The object was to identify properties that were not used or were under used. The Review Board then had the responsibility to recommend the disposal of surplus properties. Id.
21 Exec. Order No. 12,427, 48 Fed. Reg. 30,083 (1983). The Advisory Council reported to the White House Office of Private Sector Initiatives. Its function was to monitor the President’s private sector initiative policies. The Council focused on increasing public awareness of the importance of privatization, removing barriers to private sector delivery of social service programs, and strengthening the professional resources of the private social service sector. Id.
22 Exec. Order No. 12,528, 50 Fed. Reg. 32,589 (1985). The Board has the same functions as the Advisory Council plus an additional mission to study “options for promoting the long-term development of private sector initiatives . . . .” Id.
23 Exec. Order No. 12,607, 52 Fed Reg. 34,190 (1987). The President’s Commission on Privatization had more specific functions.

(a) The Commission shall study and evaluate:

(1) Past and current privatization efforts by the Federal government, State and local governments, and foreign governments, including asset sales by the Federal government;
(2) Literature and writing on privatization; and
(3) The environment for additional privatization efforts by the Federal government.

(b) The Commission shall review the current activities of the Federal government, including asset holdings, and identify those functions that:

(1) Are not properly the responsibility of the Federal government and should be divested or transferred to the private
Conrail and of college and rural housing loan portfolios.  

C. Struggles With Privatization: Individual Taxpayers vs. Organized Constituencies

Most political figures do not openly oppose the basic principle and theory of privatization. Privatization has not been successful for two reasons. First, highly motivated and well organized constituencies strongly oppose specific privatization proposals. Second, the individual

sector, with no residual involvement by the Federal government; or

(2) Require continuing oversight by an Executive Branch agency but can be performed more efficiently by a private entity, including the use of vouchers as an alternative to direct service.

(c) The Commission shall develop the framework for a privatization program, identifying:

(1) Privatization opportunities, including those identified in (b) above, listed in order of priority;

(2) Legislative and administrative actions necessary to effect the privatization initiatives or remove existing privatization restrictions;

(3) Needed improvements to personnel and administrative policy to create an environment conducive to privatization;

(4) Organizational and resource requirements necessary to implement successfully the privatization program; and

(5) Actions necessary to create broad-based support for privatization efforts.

Id.

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24 Miller, supra note 1, at 19.

25 Smith, supra note 8, at 70. "[T]he basic assumption — that government should not do what the private sector can do — is close enough to bedrock American thinking that so far the Democrats have not assailed it." Id. Republicans are more prone to favor privatization than Democrats, however, and the most active intellectual promoter of privatization is the conservative Heritage Foundation. Id. The Heritage Foundation describes itself as "dedicated to the principles of free competitive enterprise, limited government, individual liberty, and a strong national defense." The Heritage Foundation, 1988 Heritage Publications (inside the front cover).

26 S. Butler, supra note 10, at 14-18. These constituencies can be divided into four groups. First, beneficiaries and near-beneficiaries, which includes those who actually benefit from a particular program (i.e. Social Security recipients), and those who do not yet benefit but who believe they should be included (a person denied welfare because he has a tiny bit too much income). Second, administrators, or those who run the programs. Third, service providers, which includes, for instance, construction contractors, construction workers, defense contractors, human-service professionals (social workers, nurses, physical and psychological
taxpayers do not as individuals feel oppressed by the cost of individual federal programs. The cost of any one particular government program is spread too thin to generate the kind of concern in individual taxpayers that will sustain the offensive necessary to privatize that particular program. The individual taxpayer is likely to be concerned only with the general over-all level of government spending.

When a program faces a threat, however, organizations and coalitions are often already in place to defend it. Over the life of the program its proponents gradually accumulate a wider constituency and power, in what has been described as the "ratchet" effect. The people a program favors become aware of and depend on its existence. They have, relative to those who do not benefit, a lot at stake. Consequently, supporters of individual programs are strongly motivated to resist changes in those programs. Often, those supporters mobilize research and propaganda.

Program supporters, often the bureaucrats running the
program, direct the attention of the media to those cases of extreme hardship which a proposed change in the program would effect. The media sometimes focuses on these extreme cases, creating an unfavorable public image of the proposed change.

An organized resistance to privatization also means that an elected representative who feels that a program is ripe for privatization will, on the one hand, confront a well organized and motivated force working to discredit him and his ideas. On the other hand, that same elected representative will find that, because the costs are spread thin on any given issue, the supporters of privatization lack motivation. Thus, a politician's decision to support privatization can alienate an organized and motivated constituency while, at the same time, attract few supporters.

Public employee unions also offer strong resistance to privatization. The unions are motivated by concerns on Privatization. Each presented testimony against privatization, reflecting its own research. E. Lynch & D. Hagerty, supra note 4, passim.

S. BUTLER, supra note 10, at 29. Reagan budget cutting efforts were attacked by front-page stories of hardship cases. These included a story about a veteran cut from disability assistance and one about the suspension of a senior citizen's welfare check. Id.

Id. Sometimes the hardship is an unintended effect of a change which can be corrected. Id.

Id. at 28. In 1981, the Reagan administration proposed replacing some federal social welfare and urban assistance programs. The Urban Institute came forward with two studies claiming that private charities could not fill "the gap". The Institute also maintained that federal tax disincentives and service-contract cutbacks would take $45 billion in resources away from the nonprofit sector over four years. Id.; see also L. SALAMON & A. ABRAMSON, THE FEDERAL GOVERNMENT AND NONPROFIT SECTOR: IMPLICATIONS OF THE REAGAN BUDGET PROPOSALS (1981); C. CLOTFELTER & L. SALAMON, THE FEDERAL GOVERNMENT AND THE NONPROFIT SECTOR: THE IMPACT OF THE 1981 TAX ACT ON INDIVIDUAL CHARITABLE GIVING (1981)(the two Urban Institute studies mentioned).

S. BUTLER, supra note 10, at 28.

Id. An example of this phenomenon is the political damage suffered by President Reagan and David Stockman during and following their unsuccessful efforts from 1981 to 1984 to reduce federal spending. Unfavorable publicity eventually led to the resignation of Stockman. Id. at 27.

Miller, supra note 1, at 19. One example is the National Education Association, which has resisted alternatives to public education, such as tuition tax credits and vouchers. S. BUTLER, supra note 10, at 108. Another example is the effort of
over loss of jobs, benefits, and pay levels. In the past, unions have endorsed candidates, contributed to campaigns, and provided favored candidates with campaign workers. In return, federal employee unions have expected more money for their programs, higher wages, more favorable collective bargaining rules, more jobs, and generally an entrenchment for their constituencies. Some feel there is little difference between this and bribery.

Proponents of privatization argue that federal bureaucrats also have resisted privatization. They claim that federal bureaucrats tend to believe that the public is best served by an active government. Proponents of privatization claim bureaucrats believe that the larger the agency, the greater is that agency's power to accomplish its goals. As the number of people benefitted by an agency program increases, so does the base of support for that program. In addition, proponents of privatization argue, as a particular agency becomes larger, the opportunities for employee advancement also increase. Privatization proponents maintain that bureaucrats award


30 E. SAVAS, supra note 9, at 84.

39 Id.; see also Dionne, supra note 38, at B6, col. 1-4. After New York Governor Carey's 1978 election, public-employee union supporters expected to preserve and expand their influence. They expected extension of the state law mandating "agency shops", which requires the assessment of the equivalent of union dues from non-union public employees, in the state government. Id. at B6, col. 1-2. The unions also wanted a law allowing local governments to reach agency shop agreements. Id. In that election, the United Federation of Teachers won a pledge from Carey for increased state support of education. Id. at B6, col. 3-4.

41 E. SAVAS, supra note 9, at 84.

42 S. BUTLER, supra note 10, at 28-29.

43 Id. at 22.

50 E. SAVAS, supra note 9, at 20. Robert J. Myers, former chief actuary for the Social Security Administration, once stated that, "[o]ver the years, most of the . . . staff engaged in program planning and policy development have had the philosophy — carried out with almost a religious zeal — that what counts above all is the expansion of the program." M. DERTHICK, supra note 30, at 24.

45 S. BUTLER, supra note 10, at 21-23.

51 E. SAVAS, supra note 9, at 19-20.
contracts and research grants to those favoring their programs.\textsuperscript{47} They also claim that bureaucrats select research topics which produce data favorable to expansion of their own programs.\textsuperscript{48} Some of these research projects help identify the beneficiaries of the programs, enabling the agency to identify and target its support.\textsuperscript{49} In addition, agencies time the release of research information to support agency positions.\textsuperscript{50}

Privatization has appeal in the abstract but little support in reality. Privatization requires that individual federal programs shrink, disappear, or otherwise change. The people who already benefit by those programs react strongly against such changes. The people who would benefit from the privatization of those programs do not benefit directly enough or strongly enough to feel concern. In the next section, the author will discuss strategies suggested by the reality of the situation. The strategies suggested center on structuring individual privatization proposals to strongly and directly benefit specific targeted groups. The goal is to create a constituency or many constituencies for privatization.

II. STRATEGIES OF PROPONENTS OF PRIVATIZATION

In spite of the lack of even one major victory, proponents of privatization are apparently not dismayed.\textsuperscript{51} Taking a cue from some of their opponents, they have settled in for what has been described as political guerilla warfare.\textsuperscript{52} Content to gain ground a little at a time, proponents of privatization intend to concentrate first and

\textsuperscript{47} S. BUTLER, supra note 10, at 20.

\textsuperscript{48} Id. at 20-21.

\textsuperscript{49} Id.

\textsuperscript{50} Id. In 1982, when Reagan appointees brought in outside evaluators to study a discretionary grant program of the Department of Health and Human Services, the professional staff denounced the Administration’s efforts to the news media. Their complaint was that the new evaluators, who favored Administration objectives, had no experience working with the federal government. Id. at 28-29.

\textsuperscript{51} See supra note 24 and accompanying text for a discussion of the lack of results to date.

\textsuperscript{52} S. BUTLER, supra note 10, at 58.
primarily on convincing the public of the wisdom of their cause.\textsuperscript{53}

Proponents of privatization want to create a pro-privatization climate and constituency.\textsuperscript{54} They would achieve this by effecting a series of small successes, exploiting those successes through propaganda machinery, and slowly building a number of separate coalitions, each favorable to a particular privatization program. The sum of all these coalitions would, they believe, achieve a pro-privatization climate.

Proponents of privatization encourage the neutralization of opposition.\textsuperscript{55} They want to sell appropriate programs to the workers of the programs and to those who benefit from the programs.\textsuperscript{56} Where possible, proponents of privatization want to encourage ownership of privatized functions by a wide base of people outside the group of people who perform those functions.\textsuperscript{57} Proponents of privatization want the administration to contract out functions that the administration cannot sell.\textsuperscript{58} Proponents of privatization argue that encouraging wide-based ownership and privatized delivery of government services will create a "private-sector ratchet".\textsuperscript{59} Beneficiaries and near-beneficiaries will push for more privatization and strongly resist efforts to encroach on previously privatized

\textsuperscript{53} Id.
\textsuperscript{54} Id. at 58-62; see also Savas, The Efficiency of the Private Sector, in The Privatization Option 27-28 (S. Butler ed. 1985).
\textsuperscript{55} S. Butler, supra note 10, at 46.
\textsuperscript{56} Id. at 59-60.
\textsuperscript{57} When the British government privatized British Telecom, it encouraged as much ownership by ordinary citizens as possible. The aim of the British government was to make sure that re-nationalization would be impossible. Before the sale of British Telecom, the Post Office operated the telephone monopoly. Id. at 39, 42-43.
\textsuperscript{58} Id. at 53-56. For example, en route air traffic control center computer maintenance and weather briefings for air traffic controllers could be contracted out. En route centers direct aircraft between airports and in oceanic airspace adjacent to the continental United States. President's Commission on Privatization, Privatization: Toward More Effective Government 77-78 (1988) [hereinafter President's Commission].
\textsuperscript{59} Butler, Changing the Political Dynamics of Government, in Prospects for Privatization 8-13 (S. Hanke ed. 1987).
functions. If proponents of privatization cannot accomplish any of the above, they would promote the distribution of vouchers where practical. The government will still control the program, but the holders of the vouchers will obtain needed products and services from private providers. Voucher programs subsidize individual demand for privately produced products and services. Both providers and those who receive the vouchers would, presumably, support the privatized program. Voucher programs would encourage the public to view the government as a facilitator and not a provider.

As another strategy, privatization theorists want to shift the cost of each government program, as directly as possible, to those who actually use the products or services of that program. Theoretically, this should eventually ensure efficient allocation of resources. The users of those government products and services will force each government program to either work efficiently or perish. In addition, if goods and services currently provided by the government can be provided more cheaply or more efficiently by the private sector, direct user charges will shift

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60 Id. at 9. Proponents of privatization also want to deregulate statutory monopolies and to eliminate restrictive licensing rules. See S. Butler, supra note 10 at 36, 60. Proponents believe this would stimulate the creation of private firms and would encourage the government to operate more efficiently. Id. at 86.

61 Id. at 56-57. Under a voucher system the government issues a subsidy to individual taxpayers in the form of a claim upon the government in dollars, to be redeemed by the provider of goods or services whom the taxpayer chooses to patronize. Examples of voucher systems include food stamps, rent vouchers, the GI Bill of Rights tuition subsidies, Medicaid, and Medicare. The holder of the voucher chooses his own provider. E. SAVAS, supra note 9, at 67-69.

62 Id. at 68.

63 Id.

64 See S. BUTLER, supra note 10, at 56-57.

65 Id. at 59, 135; see also E. SAVAS, supra note 9, at 83, 131-33.


67 E. SAVAS, supra note 9, at 131-33. "If hidden subsidies for government-produced services are prohibited, and the full cost of the service is charged to the user, citizens will start looking for alternatives if they feel the service isn't worth the price." Id. at 132.
demand for publicly provided goods and services to private suppliers. Therefore, direct user charges should be implemented to the greatest extent possible.

Proponents of privatization no longer see "supply side" economics as the way to effect broad across-the-board budget cuts or a reduction in size of the federal government. They argue that the staggering increase in federal expenditures during the Reagan Administration proves that reducing revenues does not reduce spending. Proponents of privatization have shifted strategy to accommodate a long-term view of their struggle. They now emphasize the need to educate the public to view the government as a facilitator or administrator, and not as a provider. Proponents are now working to form a series of privatized programs, each with its own pro-privatization constituency. Proponents of privatization see the nation's air traffic control system as just one target upon which to focus.

III. THE AIR TRAFFIC CONTROL SYSTEM

A. Arguments Against ATC Privatization

Often air travelers assume that the air traffic control system is, by its nature, operable only by the federal government. Many fear private enterprise will compromise safety in order to control costs, and others claim that the

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68 Id. For example, in St. Paul, Minnesota the city lost virtually all of its customers to a private firm who charged 26% less than the city for residential refuse collection. Id.

69 S. BUTLER, supra note 10, at 5-6. During the Reagan Administration, federal spending reached an all-time high, unsurpassed even in war time. Id. at 6.

70 Id. at 5-6.

71 Id. at 25 (advocating a gradualist approach and seeking to win a number of small political victories, each of which extends and strengthens the coalition).

72 Id. at 57-62.

73 Id.

74 Miller, supra note 1, at 20. The President’s Commission on Privatization has given top priority to in-depth studies of housing, loan portfolios, educational vouchers, air traffic control, and to the contracting-out of postal services, prisons, and military commissaries. Id.

75 S. BUTLER, supra note 10, at 134.

76 Id. at 133.
system is a natural monopoly that can be run only by government. Most agree safety requires that all aircraft use one air traffic control system with the FAA maintaining responsibility for oversight and regulation. 

A second concern of critics of air traffic control privatization is the possibility of a strike by air traffic controllers. While federal controllers are prohibited from striking, private controllers, as employees of private companies, are not. Proponents of private air traffic control acknowledge that all controllers should have the freedom to form and join unions.

A third major concern is national security. The Department of Defense opposes privatization because it fears the loss of the high degree of coordination that currently exists between it and the FAA. It has also been suggested that the Department of Defense opposes privatization of air traffic control because it does not want to pay for airway use.

B. Proponents of Privatization: Deficiencies in Present System

Proponents of privatization of the air traffic control system concede the need for central procedural and regulatory control. Proponents argue, however, that privatization enhances safety, efficiency, and cost effec-

77 Id. at 133-34.
78 President’s Commission, supra note 58, at 73.
79 Taming the Federal Budget, supra note 29, at 56.
80 Id.
81 R. Poole, Privatizing the Air Traffic Control System 18 (1986). Poole suggests that contracting out to a number of firms at staggered intervals. Id. This, he claims, would lessen the possibility of a devastating nationwide strike. Id.
82 President’s Commission, supra note 58, at 77.
83 Id. at 71-72, 77.
84 R. Poole, supra note 81, at 57. Poole argues that privatized ATC would improve efficiency and therefore would enhance national defense. Id. Fred Smith of the Competitive Enterprise Institute testified before the President’s Commission on Privatization that changing to a private system “need not change any of [the] cooperative procedures” that have developed between the Department of Defense and the FAA. President’s Commission, supra note 58, at 77.
85 Privatization Commission Recommends Reduced Federal Role, supra note 1, at 1.
tiveness. They contend that problems in the nation's air traffic control system are systemic, a result of being organized and operated as a government bureaucracy. They claim that so far the bureaucracy has harmed overall safety to the extent that it has resisted new technology. The Bureau of Air Commerce, predecessor to the FAA, resisted airborne VHF radio, omnidirectional navigation beacons (VOR), and blind-landing systems (ILS), all of which were developed by the private company ARINC.

Another predecessor to the FAA, the Civil Aeronautics Authority, resisted replacing radiotelegraph communication with voice radio for overseas flights (also developed by ARINC) and the implementation of radar separation of air traffic. The system is doomed to inefficiency, they say, because it is operated as a monopoly, funded with taxes, protected by the civil service system, and subjected to political control and interference.

First, proponents of privatization argue, political control of the air traffic control system undermines long-range planning and personnel morale. Proponents claim that "leadership and direction change with almost every election." From 1961 to 1981 there were seven administrators of the FAA plus a number of short-term administrators, each serving an average of thirty-five months. Further, politically oriented groups have interfered with FAA planning. As an example, in the mid-70s a coalition of small aircraft users stopped the installation of

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86 See S. Butler, supra note 10, at 133-36; see also Taming the Federal Budget, supra note 29, at 57-58 ("The resources that can be devoted to safety necessarily depend upon the total amount of resources available. Under the current ATC system resources are ineffectively and inefficiently used, thus reducing the amount of resources available to ensure safety.")

87 R. Poole, Air Traffic Control: The Private Sector Option 1 (1982).

88 Id. at 2-3.

89 Id.

90 Id. at 2.


92 Id.

93 R. Poole, supra note 87, at 4.
collision-avoidance systems in small aircraft.94

Second, rigid bureaucratic management has caused serious morale problems within the ranks of government employed air traffic controllers.95 Current FAA procedures require a two year operating history before staffing changes are implemented at any given air traffic control facility.96 In addition, the present system does not allow an airport operator to hire additional controllers when needed, or to contract with an air carrier to establish a hub.97 As proof of low morale in the present federal system, proponents of privatization point to the fact that the current federal air traffic controllers voted to form the National Air Traffic Controllers Association in June of 1987.98

Proponents also insist that government support of the air traffic control system through taxes diffuses the motivation of individual users to demand efficiency.99 The air

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94 S. Butler, supra note 10, at 133. In 1978, the FAA proposed a plan that would have required the pilots of small aircraft to submit to radar guidance in sixty-five terminal control areas. A coalition of 220,000 small aircraft users, represented by the Aircraft Owners and Pilots Association, launched an immediate attack which killed the proposal. Collision Rules Attacked, N.Y. Times, Dec. 29, 1978, at A13, col. 4.

95 S. Butler, supra note 10, at 134. After the 1981 controller strike, Secretary of Transportation Drew Lewis appointed an independent task force to study the problem. The task force reported that the FAA's labor relations had been "very poor" for the previous fifteen years. Among the problems cited were "autocratic" and "impersonal" air traffic control managers, a civil service system that would not allow management to fire substandard employees, superfluous layers of management, lack of cost-consciousness, and top managers insulated from front line controller problems. R. Poole, supra note 87, at 8. Since 1981 the ratio of controllers to supervisory personnel has decreased from four to one to three to one. Phillips, supra note 91, at 96, col. 3. Proponents of air traffic control privatization claim that the FAA is currently demanding longer hours and mandatory overtime from its controllers in a semi-military style. User-Friendly Air Traffic Control, supra note 1, at 22, Col. 3.

96 E. Lynch & D. Hagerty, supra note 4, at 27. FAA controllers are rated according to the facility at which they work. This means that a controller might work at a facility experiencing a high level of activity and yet that controller will not be eligible for advancement for two years. Id.

97 Id. at 27-28. Even if a carrier moves its hub operations to another airport, the first airport will continue to be rated at the pre-move level for two years. Id.

98 Id. at 26.

99 Poole, supra note 1, at 22, col. 3. In addition, the FAA charges for landing slots by aircraft weight and not by time of day. This means that users have no
traffic control system is funded through the eight percent airline ticket tax and the general-aviation fuel tax. Proponents of privatization claim these taxes have little effect on demand. Even more alarming, because revenue from the taxes flows into the Airport and Airway Trust Fund, Congress, not the user, controls how the taxes are spent. As a result, proponents argue, the present system suffers from lack of funds because of the Gramm-Rudman atmosphere in Congress and the White House.

C. Arguments for Privatization

Proponents of privatization argue that privatization would partially alleviate the current manpower shortage in the federal system. President Reagan helped to create the shortage himself when he fired 11,500 members of

incentive to avoid peak-hour landing slots, doing nothing to alleviate peak-hour congestion. R. Poole, supra note 81, at 7. Supporters of privatization argue lack of competition in the present system also negates incentive to achieve efficiency. Proponents say that the current system operates on a "cost is no object" basis in a misguided effort to achieve safety. S. Butler, supra note 10, at 133-34.

100 Poole, supra note 1, at 22, col. 3.
101 Id. While fuel and ticket taxes are roughly proportionate to usage, they do not reflect the true proportional cost of air traffic control services to small aircraft. A small aircraft pays a small fraction of what a large commercial airline pays but the small aircraft requires the same amount of controller time as the large aircraft. R. Poole, supra note 87, at 12.
102 Poole, supra note 1, at 22, col. 3. The Trust Fund has an accumulated balance of approximately $5.6 billion. The Administration argues that as much as eighty-five percent of the fund should support operations of the FAA. Congress wants the money spent for equipment and facilities. The result is that the funds are not being utilized. President's Commission, supra note 58, at 69.
103 Poole, supra note 1, at 22, col. 3. The Gramm-Rudman-Hollings Act (Balanced Budget and Emergency Deficit Control Act of 1985) set a budget deficit ceiling. The Act gave the Comptroller General, a functionary of the legislative branch of the federal government, the power to force spending cuts if spending exceeded that ceiling. It required across-the-board cuts in spending to reach targeted spending levels. 2 U.S.C. §§ 901-922 (Supp. IV 1986). The Supreme Court has held the provision giving the Comptroller General the responsibility to tell the President where to cut spending is unconstitutional as a violation of the separation-of-powers doctrine. Bowsher v. Synar, 106 S. Ct. 3181 (1986).
104 Phillips, supra note 91, at 36, col. 3. The requirements for a private air traffic control tower operator certificate are the same as for those who work for the FAA with the exception that private controllers must have at least a second class medical certificate. 14 C.F.R. §§ 65.31-65.50 (1988).
the Professional Air Traffic Controllers Organization (PATCO) in 1981. Arguably, the manpower shortage existed even before the firing of the PATCO members. After privatization, private companies could employ private air traffic controllers.

Supporters of privatization also argue that safety will be enhanced because private companies will be liable for their negligence. Presumably, private air traffic control companies, for instance, would be liable to the same extent as other private companies. Tort liability of private air traffic controllers has several implications discussed later in this article.

Private air traffic control companies already operate control towers at several airports in the United States. After President Reagan fired 11,500 (80%) of the nation’s government employed air traffic controllers in 1981, the government was forced to close down sixty-six airports. Later, the FAA announced it would not reopen thirty towers.

At least four communities have private air traffic controllers. Part of the motivation for hiring private controllers is that insurance policies for corporate jets often

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105 S. Butler, supra note 10, at 134. On August 3, 1981, the Professional Air Traffic Controllers Organization (PATCO), representing the nation’s federally employed air traffic controllers, called a strike. PATCO called the strike because the FAA had denied a $681 million increase in salaries and benefits. In negotiations, the government had offered an 11.4% increase, twice what other government employees had received. The strike violated federal law forbidding strikes by government employees against public safety. Presidential Press Conference, 17 Weekly Comp. Pres. Doc. 845-46 (Aug. 3, 1981).

106 Phillips, supra note 91, at 36, col. 3. Before the strike, union members had complained of staff shortages and poor working conditions. Id.

107 E. Lynch & D. Hagerty, supra note 4.

108 S. Butler, supra note 10, at 135.

109 See infra notes 153-158 and accompanying text for a discussion of the tort liability of private air traffic controllers.


111 Id.

112 Id.

113 Id. Farmington, New Mexico; Enid, Oklahoma; Owensboro, Kentucky; and Hobbs, New Mexico all employ private firms. Id.
require the aircraft to operate from a field where there is a controller.\textsuperscript{114} The fact that several near collisions and at least one major accident have been blamed on tower closings provides additional motivation.\textsuperscript{115} Airport managers across the country have reported that many pilots fail to follow regulation landing patterns at uncontrolled airports, further emphasizing the need for air traffic controllers at those airports.\textsuperscript{116}

Proponents of privatization claim the Farmington, New Mexico experience proves that local air traffic control should be performed by private business.\textsuperscript{117} First, privatization of air traffic control in Farmington effected considerable cost savings.\textsuperscript{118} The city pays about one third of what it cost the FAA to run the facility.\textsuperscript{119} Second, a coalition of supporters formed to lobby the FAA to contract-out air control services at the small airports from which the FAA withdrew federal services.\textsuperscript{120} Proponents of privatization hope that the efficient and safe operation of the Farmington airport will leverage an expansion of the

\footnotesize
\begin{itemize}
\item \textsuperscript{114} Id.
\item \textsuperscript{115} Id. At Flagstaff, Arizona, a disabled airplane crash landed because there was another aircraft on the runway. A control tower could have cleared the runway and avoided the necessity of a crash landing. Id.
\item \textsuperscript{116} Id. The FAA believes that pilots have become overly dependent on air traffic controllers but will eventually be able to manage air traffic control at small airports for themselves. Id.; see also Operation at airports without control towers, 14 C.F.R. \textsection 91.89 (1988)(stating that aircraft approaching an airport without a control tower shall make all turns to the left unless the airport displays approved signals or markings directing otherwise).
\item \textsuperscript{117} S. BUTLER, supra note10, at 134.
\item \textsuperscript{118} Schlender, supra note 110 at 29, col. 4.
\item \textsuperscript{119} Id. The federal government spent an average of $287,000 per year to run the facility. The city pays $99,000 per year to Midwest Air Traffic Control Services of Olathe, Kansas. Farmington received additional savings from the fact that the FAA leased the tower and equipment to the city for $1 per year. Other private companies offering air traffic control service include Air Traffic Control Services, Inc., Owensboro, Kentucky, and Barton Air Traffic Control, Inc., Medina, Ohio. Id.
\item \textsuperscript{120} Poole, The Politics of Privatization, in The Privatization Option 43-44 (1985). The lobbying was achieved largely through the public relations efforts of such groups as the Heritage Foundation of Washington, D.C., the American Association of Airport Executives and the Chambers of Commerce of small cities wanting air traffic control services. Id.
\end{itemize}
D. Efforts to Privatize the Air Traffic Control System

1. System Originally Private

The air traffic control system in the United States was originally private. It was organized as Aeronautical Radio Inc. (ARINC), a not-for-profit firm owned jointly by the airlines with each company sharing costs in proportion to airport use. In 1935, ARINC set up the first air traffic control tower at Newark, New Jersey. This same firm today operates the world's largest private line intercity communications network, serving more than 135 airline users. The firm provides all airline-to-aircraft communications services as well as all air traffic control communications for all international flights out of New York, Miami, San Juan, San Francisco, and Honolulu. In 1936, the Bureau of Air Commerce assumed responsibility to establish a federal "uniform centralized system of airway traffic control." Nationalization of the system was intended to help the then budding airline industry through the Depression.

2. 1983 Heritage Foundation Proposal

A proposal to re-privatize the air traffic control system came in 1982 from Robert Poole, then working for the

121 See id. Several foreign countries have private air traffic control. Switzerland, Saudi Arabia, and other countries in the Persian Gulf and in the Caribbean Basin use private systems. Poole, supra note 1, at 22, col. 3. The system in Switzerland, Radio Suisse, is a government-chartered not-for-profit firm funded entirely from user charges. Id. Other private providers of air traffic control services include International Aeradio Ltd. of Great Britain, and Bendix, Lockheed, and Pan American World Services, Inc. in the United States. Id.
122 Poole, supra note 1, at 22, col. 3.
123 R. POOLE, supra note 87, at 9.
124 Id. The second and third towers were in Chicago and Cleveland respectively, each controlling a fifty-mile radius. Id.
125 Id.
126 Id.
127 Id.
128 R. POOLE, supra note 81, at 14.
Heritage Foundation of Washington, D.C. Poole estimated that the FAA spent approximately one million dollars to install a tower at a small airport, and approximately $275,000 per year to operate and maintain it. He further estimated that a private firm could generate the same service at a cost of around $120,000 per year, inclusive of amortization of capital investment.

Mr. Poole, now heading the Reason Foundation of Santa Monica, California, argues for a two tiered system. At the top would be a federally chartered not-for-profit corporation which would manage and supervise the overall system. The corporation would also operate the nation's twenty en route air traffic control centers. It would charge market prices, uncontrolled by Congress. Poole suggests widely based ownership of this entity, including airlines, private pilots, business aircraft owners, air traffic controllers, and the federal government. The second tier would be private for-profit companies which would contract with the federally chartered

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129 R. POOLE, supra note 87, passim. Glen A. Gilbert, who was the first controller for the Bureau of Air Commerce in 1936, made the first proposal to re-privatize the air traffic control system in 1968. Id. at 10. The aviation consulting firm based the proposal partly on the fact that Lear Siegler, Inc. successfully trained military controllers for service in Viet Nam. Phillips, supra note 91, at 36, col. 3.

130 R. POOLE, supra note 87, at 10. All figures in this paragraph are in 1979 dollars.

131 Id. Because they are not bound by civil service or union rules, private controllers can handle clerical tasks during light traffic periods. The private controller company Poole consulted, Barton ATC, also kept costs down by installing less expensive radios and by using modular, prefabricated building components. Id.

132 R. POOLE, supra note 81, at 13.

133 R. POOLE, supra note 87, at 14. The not-for-profit structure avoids the dangers of monopoly pricing by removing the reward. A single entity structure maximizes safety by insuring a unified air traffic control system. The corporate structure insures that managers will get strong feedback from the stockholders, who will be users. The corporate form would also help to get away from congressional control, civil service requirements, the presidential prohibition against re-hiring former striking air traffic controllers, and the governmental prohibition against strikes. Id. at 13-15. Poole would render the possibility of a disastrous strike remote by staggering expiration dates of facilities-management contracts. R. POOLE, supra note 81, at 18.

134 R. POOLE, supra note 87, at 14.

135 Id.

136 Poole, supra note 1; at 22, col. 3.
not-for-profit corporation to provide the actual services.\textsuperscript{137} Under this plan the FAA would remain responsible for certifying airlines and aircraft, licensing pilots and mechanics, developing and enforcing safety regulations for aircraft design and operation, and ensuring standard procedures and terminology throughout the system.\textsuperscript{138}

3. \textit{Commission on Privatization Recommendations}

In March of 1988, the President's Commission on Privatization made nine recommendations regarding the nation's air traffic control system.\textsuperscript{139} First, the FAA should continue to oversee system regulation and safety but portions of the system should be considered for privatization.\textsuperscript{140} Second, direct user charges should pay an increased portion of airport and airway expenditures.\textsuperscript{141} Third, the federal government should encourage airports to develop their own sources of funding.\textsuperscript{142} Fourth, federal regulations should allow airport operators to charge peak hour take-off and landing fees.\textsuperscript{143} Fifth, regulations should enable airports to charge passenger facility fees in

\textsuperscript{137} R. Poole, \textit{supra} note 87, at 14.
\textsuperscript{138} R. Poole, \textit{supra} note 81, at 13.
\textsuperscript{139} \textit{President's Commission, supra} note 58, at 72-82; see \textit{supra} notes 8 to 22 and accompanying text for a discussion of the origin and purpose of the President's Commission on Privatization.
\textsuperscript{140} \textit{President's Commission, supra} note 58, at 72. Even the strongest proponents of privatization testified before the Committee in favor of retention of the FAA as a "safety watchdog." \textit{Id.} at 73.
\textsuperscript{141} \textit{Id.} at 74. This would include charges for weather briefings, peak-hour pricing, and passenger facility charges. The Committee favored fee-for-service arrangements as the most efficient way to direct resources to points of greatest demand. \textit{Id.} Former FAA Administrator Donald Engen expressed concern that some pilots might not seek weather information if they had to pay for it, thereby creating a safety risk to themselves and others. \textit{Id.} at 81.
\textsuperscript{142} \textit{Id.} at 75. Airports could charge for peak-hour takeoff and landing, passenger facility use, rents from airport tenants, and baggage and freight handling for shippers. The Committee pointed to arguments that this would result in a more efficient allocation of airport resources. An airport should be able to support itself where there is a true demand for its services. \textit{Id.}
\textsuperscript{143} \textit{Id.} This would alleviate congestion and allocate the scarce resource of time in the fairest way possible. Those who are willing to pay for peak-hour takeoff and landing can have it, but must pay a premium for the privilege. \textit{Id.}
order to generate revenue and to fund airport needs.\textsuperscript{144}
Sixth, the FAA should contract out portions of the en route center system while retaining control of that system.\textsuperscript{145} Seventh, the FAA should gradually increase the percentage of privatized airport control towers, starting with the smaller airports.\textsuperscript{146} Eighth, the FAA should contract out its flight service stations, but should not allow them to charge fees from individual pilots for flight information.\textsuperscript{147} Last, the FAA should privatize its system maintenance service, taking advantage of the simultaneous aging of the work force and the equipment.\textsuperscript{148}

As evidence that the present air traffic control system

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\item \textsuperscript{144} Id. at 76. This recommendation is aimed at alleviating federal interference. Under the current system, when the federal government gives an airport grant funds, the airport must adhere to federal restrictions. If the airport were free of the grant funds, it would be free of many federal restrictions. \textit{Id.}
\item \textsuperscript{145} Id. at 78. This recommendation recognizes that the system is a natural monopoly. No one favors allowing competing firms to offer air traffic control in the same airspace. \textit{Id.} at 77. There is general agreement that price competition within the same airspace is impracticable. \textit{Id.} at 72. The recommendation reflects the view that the en route system is a tightly integrated national structure that has developed through historical experience in response to system requirements. Although the Committee cited an Office of Management and Budget study maintaining that, "the function of controlling en route air traffic is not inherently governmental," the Committee declined to recommend setting up a private, not-for-profit corporation to operate the en route center system, citing testimony before it relating to safety, national security, technical, legal, and financial concerns. The Committee did recognize, however, that some functions, such as computer maintenance and weather briefings, could be contracted out. \textit{Id.} at 77-78.
\item \textsuperscript{146} Id. at 79-80. The Committee expressed concern that privatization of airport traffic control towers received little support from aviation professionals. Chief among the critics were two former FAA Administrators who were worried about the potential for diverse standards and operating procedures. \textit{Id.}
\item \textsuperscript{147} Id. at 81. Flight service stations provide a variety of services to general aviation including weather briefings, filing and recording of flight plans, Notices to Airmen (regarding changes in FAA regulations and in airport facilities nationwide), and in-flight services. Over 95\% of these services are provided by telephone, and are thought to be highly amenable to automation and consolidation. All parties agree that Congress has been highly involved in selecting service facility sites, reversing FAA decisions to close facilities, mandating equipment requirements, and determining staffing levels. Proponents of privatization foresee operating the flight service station system on a fee-for-service basis, thereby imposing market place economies and demands on the system. \textit{Id.} at 80.
\item \textsuperscript{148} Id. at 82. The Committee cited testimony that contract system maintenance would take advantage of the efficiencies of greater specialization, save a substantial amount of FAA funds by requiring contractors to develop new equipment, and speed the training of systems maintenance technicians. \textit{Id.}
\end{itemize}
does not work properly, the Commission cited to the record number of complaints received by the Department of Transportation in 1987 from airline passengers and other system users, aviation legislation introduced in Congress, and the number of major commercial aviation accidents in that year.\textsuperscript{149} The Commission also referred to testimony from the Aviation Safety Commission, created by Congress in 1986, which indicated that problems with the air traffic control system stem from problems with resource management.\textsuperscript{150} As evidence that the air traffic control system is overburdened with governmental and political control, the Commission pointed out that the FAA is reviewed by the Department of Transportation, the Office of Management and Budget, the General Accounting Office, the Office of Technology Assessment, and the Congress.\textsuperscript{151} Witnesses pointed out that merely making the FAA independent of the Department of Transportation would not remove it from government procurement regulations, policies, and personnel procedures.\textsuperscript{152}

\textsuperscript{149} Id. at 65.
\textsuperscript{150} Id. For example, the Commission of Privatization reiterated charges that the FAA has mismanaged resources, poorly distributed personnel, and used inadequate procurement strategies. Id. at 67-68.
\textsuperscript{151} Id. at 67. Former FAA Administrator J. Lynn Helms testified that in 1987 congressional committees directed the installation of over thirty pieces of equipment that were neither authorized by Congress nor requested by the FAA. Id. J. Donald Reilly of the Airport Operators Council International testified that it is not uncommon to have twenty simultaneous investigations of an FAA project, nor to “have more people investigating a project than there are working on it productively.” Id. Congressional committees cover authorization, appropriations, investigations, and oversight. The FAA is also reviewed by the Office of Personnel Management and two Presidential commissions. E. Lynch & D. Hagerty, supra note 4, at 3. Merely making the FAA independent of the Department of Transportation, as it was from 1958 to 1967, would not remove it from budget review by the Office of Management and Budget and by the several congressional committees. Id. at 3-4.
\textsuperscript{152} E. Lynch & D. Hagerty, supra note 4, at 2-3.
IV. PRIVATIZATION: TORT LIABILITY IMPLICATIONS

A. Government Liability Under the Federal Tort Claims Act (FTCA)

Currently, liability for the negligence of federal air traffic controllers falls under the Federal Tort Claims Act (FTCA).155 The FTCA allows individuals to sue the federal government for the negligence of government controllers to the same extent as they could sue a private person.154 Cases arising under the FTCA are tried according to the law of the state where the wrong occurred, although brought in federal court.155 FTCA cases must be tried without a jury.156 Punitive damages are not allowed.157 Finally, the federal government cannot be sued for discretionary acts at a planning level.158

(b) Subject to the provisions of chapter 171 of this title [28 USCS §§ 2671 et seq.], the district courts, together with the United States District Court for the District of the Canal Zone and the District Court of the Virgin Islands, shall have exclusive jurisdiction of civil actions on claims against the United States, for money damages, accruing on and after January 1, 1945, for injury or loss of property, or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred.


155 Id.

156 28 U.S.C. § 2402 (1982). "Any action against the United States under section 1346 shall be tried by the court without a jury, except that any action against the United States under section 1346(a)(1)[concerning internal-revenue laws] shall, at the request of either party to such action, be tried by the court with a jury." Id.


The United States shall be liable, respecting the provisions of this title relating to tort claims, in the same manner and to the same extent as a private individual under like circumstances, but shall not be liable for interest prior to judgment or for punitive damages.

Id.


[T]his title shall not apply to —

(a) Any claim based upon an act or omission of an employee of the
B. Private Air Traffic Controller Liability Under State Law

There are no reported cases relating to the tort liability of private air traffic controllers. This section considers the tort consequences of private air traffic control. First, because private controllers are not federal employees, they presumably do not fall under the Federal Tort Claims Act. This means that, in the absence of federal legislation, actions for private controller's negligence must arise in state court under the law of the state where the wrong occurred. It also means that a jury can try the case. State courts, furthermore, may award punitive damages, which are not allowed under the FTCA. Most importantly, the FTCA does not protect discretion-
ary acts of private service providers from tort liability. This might mean that if a private company chooses to require its controllers to work overtime, and a controller makes a mistake because he is tired, that company would be liable to a charge of negligence. Under the current system the federal government is not liable for such a decision. Likewise, a private firm might incur tort liability for not installing brightscope radar or for using insufficiently trained controllers. For the above reasons, private air traffic controller firms are theoretically subject to a greater tort liability risk than is the federal government.

Liability insurance is sometimes the largest item of cost in the manufacture of a new aircraft. By analogy it is reasonable to assume that liability insurance would be a major cost of private air traffic control. Under the theory of privatization, efficiency demands that the users of the system bear that cost as directly as possible. Propo-

are recoverable in tort actions. Id. State legislatures may, however, restrict or deny the allowance of punitive damages. Id.

See supra note 158. The FTCA applies only to “an employee of the Government”. Id.

Cf. McCusker v. Curtis Wright Flying Serv., Inc., 269 Ill. App. 502, 1 Av. Cas. (CCH) 431 (1933). An airline might be negligent if it used a tired pilot. The first airplane accident to be reported in Illinois involved a pilot who had been instructed by his employer to, “[g]o thru as far as possible without stopping for sleep.” Id. at 510, 1 Av. Cas. at 433.

Dalehite, 346 U.S. at 42. Governmental decisions made at a planning level, as opposed to an operational level, do not subject the government to liability. Id.

Cf. L. KREINDLER, 2 AVIATION ACCIDENT LAW § 35.01 (1977). “It is difficult to conceive of anything more discretionary in character than the determination of where the greatest need exists for advanced equipment.” Id. The criteria for determining the need for navigational aids is set forth in the FAA publication, “Airway Planning Standard No. 1”. Id. But cf. S. SPEISER & C. KRAUSE, 1 AVIATION TORT LAW § 8:19 (1978). (An airline may have a duty to use radar.) Id. By analogy, a private air traffic control company may have the same duty.

Cf. American Airlines, Inc. v. United States, 418 F.2d 180, 11 Av. Cas. (CCH) 17156 (5th Cir. 1969). A pilot who had previously failed to execute a missed approach procedure to the satisfaction of an FAA examiner was allowed to take over a 727 on approach at night in marginal weather. The court stated, “There is ample support for allowing recovery for negligence in allowing insufficiently trained pilots to take over.” Id. at 197, 11 Av. Cas. at 17168.

Remarks by the Honorable Donald D. Engen, Twelfth Annual FAA Forecast Conference (Feb. 20, 1987).

See supra notes 65 to 68 and accompanying text for a discussion of direct user costs.
nents of privatization maintain that the costs will be there no matter how the system operates. The real question, they say, is whether the costs should be borne by the taxpayers as a whole or, through explicit, visible insurance policies by those who use aviation.

V. Conclusion

Proponents of privatization want to privatize the air traffic control system now. They believe that a combination of existing factors present a unique opportunity. A large pool of private air traffic controllers exists simultaneously with the phasing out of a huge and complex equipment system. In addition, privatization proponents are displeased with the current system. If too much time passes, the current pool of eligible private air traffic controllers will dwindle and the FAA will have to commit resources to training new equipment maintenance personnel.

In response, the President's Commission on Privatization has made several proposals. These proposals would create opportunity for private services. Contracting-out maintenance of the en route service system would create private sector jobs outright, as would increasing the number of privatized airport control towers. Additionally, there would be a change in who pays for the air traffic control system. In general, those who directly use the system would pay a higher percentage of the total cost in relation to the demands they make on the sys-

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170 R. Poole, supra note 81, at 25.
171 Id. of course, Congress could put a limit on private air controller liability, similar to nuclear power plant liability in the Price-Anderson Act or to international aircraft accident liability under the Warsaw Convention. Id. at 25-26.
172 See supra notes 1-7 and accompanying text for a discussion of factors favoring privatization.
173 See supra notes 6-7 and accompanying text.
174 See supra notes 85-103 and 149-152 and accompanying text for discussion of displeasure with the current system.
175 President's Commission, supra note 58, at 72-82; see supra notes 139-148 and accompanying text for a discussion of the nine recommendations of the President’s Commission on Privatization.
The consumer could expect to see additional charges for airport services, such as baggage handling. Those people who use baggage handling services could expect to pay extra for it. Those who have no luggage or carry their own will not have to pay for the luggage of others. In addition, private aircraft operators and owners would pay a larger percentage of the cost. Under the Commission's proposals, it might cost a small aircraft carrying one person the same to land at a large airport as it would a 747 carrying three hundred passengers. If landing fees were related to number of passengers, small private and corporate aircraft might be confined by economics to small airports. Furthermore, the average commercial passenger wanting to travel at peak hours would pay a premium. The implication is that fewer flights would be scheduled at peak hours and more at off-peak hours. Possibly cheaper fares in off hours would also result. Finally, the proposals mean that some airports would probably close. The proposals imply that airports would be expected to fund themselves.

The Commission acknowledges the need for centralized regulation and control with regard to standards and safety. Even under the Commission's proposals the FAA would continue to oversee safety and licensing. The FAA would still be responsible for determining who can be a pilot or an air traffic controller. It would continue to set safety standards regarding all phases of the air traffic control system. It would also continue to regulate and

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176 President's Commission, supra note 58, at 74; see supra note 141 and accompanying text.
177 President's Commission, supra note 58, at 75; see supra note 143 and accompanying text.
178 President's Commission, supra note 58, at 75-76; see supra notes 142 and 144 and accompanying text.
179 President's Commission, supra note 58, at 72-73; see supra note 140 and accompanying text.
control private maintenance companies as well as private air traffic controllers.

The fact that private firms would probably face considerable tort liability, that they would need to keep insurance costs down, and that they would need to keep claims low, suggest that private firms would have ample motivation to stress safety. The safer and more cost efficient the system, the cheaper it would be to the consumer. The cheaper it is to the consumer, the greater the demand for the product.

The insurance industry might regulate the system to some degree. Air traffic control provider firms that do not meet insurance company standards would probably lose their insurance coverage. Firms that lose insurance coverage would lose service contracts. Therefore, insurance companies would be likely to require that controllers work a minimal number of overtime hours, that they maintain a proper level of fitness and training, that the regulations and procedures they are subject to reflect a realistic concern for safety, and that they remain adequately equipped.

Likewise, airport operators would probably see to it that private firms which provide them air traffic control services meet insurance safety requirements. If their air traffic control provider loses its insurance, the airport would be required to either close down or operate without a controller. Without a controller an airport would probably lose consumer demand. Airport operators would therefore make sure that peak hour traffic, for instance, is held to a reasonable and safe level.

Privatization of the air traffic control system is only a small part of the overall effort to privatize. At present, proponents of privatization are looking for showcase ex-

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180 See supra note 114 and accompanying text.
181 Id.
182 See supra notes 13-18 and accompanying text for a discussion of recent privatization targets.
amples of successful privatization. They want to educate the public to see the government as a facilitator and regulator, and not as a provider. Proponents of privatization want to decrease the influence of politics and bureaucracy. People in both political parties want to cut federal expenditures and to increase federal bureaucratic efficiency.

To date, privatization has been an idea with few opponents but, unfortunately, fewer backers. Proponents of privatization have been forming theory, building a propaganda machine, and lobbying. They appear to anticipate a long struggle, with their focus being on winning popular support. The public can expect a long-term war of propaganda between those who favor individual government programs and those who want privatization.

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183 See supra notes 8-12 and accompanying text for a discussion of the privatization goals of the Reagan administration.
184 See supra notes 23-37 and accompanying text for a discussion of the political difficulties regarding privatization.
185 Miller, supra note 1, at 19; see supra note 24 and accompanying text.
186 Miller, supra note 1, at 19; S. Butler, supra note 10, at 58; see supra notes 51-53 and accompanying text.