

103

FEDERAL AVIATION ADMINISTRATION'S PASSENGER FACILITY CHARGE PROGRAM

(103-26)

Y 4. P 96/11: 103-26

Federal Aviation Administration's P...

HEARING

BEFORE THE
SUBCOMMITTEE ON
INVESTIGATIONS AND OVERSIGHT
OF THE
COMMITTEE ON
PUBLIC WORKS AND TRANSPORTATION
HOUSE OF REPRESENTATIVES

ONE HUNDRED THIRD CONGRESS

FIRST SESSION

JULY 28, 1993

Printed for the use of the
Committee on Public Works and Transportation



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JACK SCHNEIDER Minority Staff Director

TO: Members, Subcommittee on Investigations and Oversight

FROM: Committee's Investigations and Oversight Staff

RE: SUMMARY OF SUBJECT MATTER for Investigations and Oversight hearing on the Federal Aviation Administration's (FAA's) Stewardship of the Passenger Facility Charges Program, Wednesday, July 28, 1993, Room 2167 Rayburn Building, 10:00 a.m.

With passage of the Aviation Safety and Capacity Expansion Act of 1990, Congress authorized airports to impose new departure taxes on airline passengers. Funds from these departure taxes, termed Passenger Facility Charges (PFCs), must be used to enhance the capacity, safety, or security of the air transportation system, promote competition, reduce noise, or expand passenger facilities.

The first PFC collections began on June 1, 1992. As of June 22, 1993, 108 airports had received approval from the FAA to collect PFCs. Of the more than \$15 billion in collection authority requested by airports, FAA approved about \$6.4 billion. This is the total amount authorized to be collected over the life of the authorization — in some cases stretching out for more than 30 years. FAA estimates that the annual amount collected will be \$471 million in FY 1993. GAO estimates that the annual PFC revenue will rise to more than \$1 billion in 1995. FAA currently has 46 PFC applications awaiting decision that request approximately \$2.4 billion in collection authority. An additional 32 airport operators have started the application process.

This hearing will provide general oversight of the Passenger Facility Charge program. It will focus on FAA's implementation of the PFC program, with specific attention to the types of projects PFCs are funding and whether FAA's implementation of the program satisfies statutory requirements. In addition, the hearing will address the role local citizens have in developing PFC proposals and the projects they fund. Testimony will be received from FAA officials and representatives of the Air Transport Association, American Association of Airport Executives, Airport Council International of North America, and citizens groups affected by airport noise.

A background summary of how the Passenger Facility Charge program works and a discussion of the issues expected to be addressed at the hearing follows.

(V)

BACKGROUND

In the late 1960s, airports began imposing charges on airline passengers. These charges, which were strongly criticized by airlines and airline passengers, ranged from \$0.25 to \$2.00 per passenger and by 1973 were being levied at 44 airports. Objections to the charges included administrative problems for the airlines in collecting the charges, inconvenience to passengers that had to make a separate payment of the charge at the airport,¹ and use of the money collected for off-airport projects or purposes unrelated to aviation.

Congress responded to these problems by passing Section 1113 of the Federal Aviation Act in 1973, prohibiting local governments, state governments, or airport authorities from imposing charges on airline passengers.

By 1990, however, concerns about the lack of airport capacity had become widespread. Hearings before the Aviation Subcommittee that year indicated that airport development needs during the 1990s would be greater than ever before, and that, realistically, federal funding would be unlikely to meet more than 20% to 30% of those needs. Historically, federal funding for airport development had comprised approximately one-third of the total capital used for this purpose. Because of anticipated increased airport development needs, a new source of local funding was desirable. An additional rationale for new local funding was that under the existing mechanisms for local funding airlines frequently had the power to delay or prevent needed capital development at airports, some of which could be used to promote competition.

As a result, Congress eliminated the prohibition on these passenger charges through the passage of the Aviation Safety and Capacity Expansion Act of 1990 [PL 101-508]. The legislation, enacted on November 5, 1990, authorized public agencies controlling commercial service airports (those with regularly scheduled service and enplaning 2,500 or more passengers per year) to levy a PFC of up to \$3 per enplaned passenger to undertake specific airport planning or development projects approved by FAA.² On June 28, 1991, the FAA issued regulations governing the procedures for public agency applications for authority to

¹Funds were collected by both airlines and airport authorities.

impose PFCs; for FAA processing of such applications; for collection, handling, and remittance of PFCs by air carriers; for recordkeeping and auditing requirements; for terminating PFC authority; and for reducing Airport Improvement Program funds apportioned to large and medium hub airports imposing PFCs.³

HOW THE PFC PROGRAM WORKS

The Application Process

Under the final rule promulgated by FAA, the authority to impose a PFC may be granted in advance of an approval to use PFC revenue on specific projects. A public agency may make an initial application for authority to impose a PFC before it has finalized plans and studies for a project or projects to be financed with PFC revenue. The application to use the PFC revenue on particular projects may be submitted after all needed plans are complete and prerequisite approvals have been obtained. Alternatively, if a public agency is ready to begin a project using PFC revenue, it may apply to do so concurrently with its application for the authority to impose the PFC.

The application to impose a PFC requires information about the public agency, the airport at which the PFC is to be imposed⁴ and at which the revenue is to be used; the PFC level to be imposed (\$1, \$2, or \$3); the proposed beginning and ending dates of collection; a summary of consultations with affected airlines, including reasons for proceeding in the face of carrier opposition; a request, if applicable, for a carrier class to be exempted; the project description, including justification and schedule; and certification that National Environmental Policy Act (NEPA), airport layout plan (ALP), and airspace requirements are met. If the application is for the authority to impose PFCs only, with specific project approval to follow later, the application must also include a description of alternative projects for PFC use in the event the proposed project is not approved.⁵

²There are approximately 550 commercial service airports in the United States.

³The Act provides for AIP funds apportioned to large and medium hub airports to be reduced by 50% of the PFC revenue that the airport authority estimates will be collected in the upcoming fiscal year.

FAA Review and Approval

After an application for PFC authority and/or project approval is submitted by a public agency, FAA reviews the application for completeness. If the application is judged to be incomplete, FAA must so advise the applicant within 30 days. Once FAA receives a complete application, it reviews the application for conformance with regulatory requirements, criteria, and objectives of the Act and, by law, must approve or deny the application within 120 days. Upon receiving a complete application, FAA also must publish a notice in the Federal Register announcing the PFC application and inviting public comment.

Consultation with Airlines

Before submitting an application to impose a PFC, a public agency must consult with all air carriers operating at the airport for which PFC authority is being sought. A public agency is required to send all affected carriers a notice of intent to impose a PFC. The notice must include a description of proposed projects, the specific PFC to be levied on each passenger, the proposed beginning and ending dates of collection, the total amount of revenue to be collected, a list of carriers to be excluded from collection requirements,⁶ and an invitation to a consultation meeting within 30 to 45 days. No later than 30 days after the consultation meeting, carriers provide the public agency with written certification of agreement or disagreement with the PFC proposal. If the public agency applies for authority to impose a PFC in advance of project approval, an additional consultation must occur prior to the project approval request. Consultation with carriers must also occur prior to amendments of approved PFCs and to requests for time extension for project approval.

⁴ A public agency controlling more than one airport may use PFC revenues imposed at one airport at a different airport, provided that the project funded preserves or enhances safety, security, or capacity; reduces or mitigates noise impacts; or furnishes opportunities for enhanced competition between carriers.

⁵ In this case, the application will not include NEPA, ALP, and airspace certifications.

⁶ Carriers making up less than one percent of an airport's total enplanements may be excluded from PFC collection requirements.

It is significant that while the airlines have consultation power, they do not have veto power over airport planning and development under the PFC program. Congress concluded in 1990 that the PFC law should be crafted to give airports a greater say than airlines in deciding whether to proceed with airport development projects. Testimony before the Aviation Subcommittee at that time indicated that some airlines were resisting worthwhile development projects for cost and competitive reasons, even though the projects were clearly in the interest of the travelling public. Congress, therefore, decided that under the PFC program airlines need only be consulted about projects requested by airport authorities. The 1990 Act requires only that disagreements between airlines and public agencies over PFC projects be fully documented in the application submitted to FAA. FAA is the final arbiter on project eligibility.

Consultation with the Public

The PFC implementing regulation is silent with regard to consultation with the public. Although the public is not guaranteed consultation on proposed PFC projects in the same manner as the airlines are, in practice public involvement tends to manifest itself when there are environmental concerns associated with PFC projects. Airport and airline representatives, in meetings with subcommittee staff, expressed a willingness to provide for additional local input early in the PFC process by voluntarily publishing newspaper advertisements announcing potential PFC projects. One major airline sends postcard announcements to potentially affected citizens whenever there are PFC projects proposed at its hub airport.

Project Eligibility

By law, projects funded with PFC revenue must meet at least one of the following criteria: (1) preservation or enhancement of safety, security, or capacity of the national air transportation system; (2) reduction of noise or mitigation of noise impacts resulting from an airport; or (3) provision of opportunities for enhanced competition between carriers. In addition, projects must be eligible under the Airport Improvement Program [AIP]. AIP-eligible planning projects would include the preparation of integrated airport system plans to identify aviation facilities needed to meet current or future air transportation needs. Individual airport planning projects might include the preparation of airport master plans and noise compatibility plans. AIP-eligible development projects may include facilities

or equipment associated with the construction, improvement, or repair (excluding routine maintenance) of an airport. Typical work items would include: land acquisition; site preparation; construction, alteration, and repair of runways, taxiways, aprons, and roads within airport boundaries; construction and installation of lighting, utilities, navigational aids, and weather-reporting equipment; safety equipment required for certification of an airport facility; security equipment required of a sponsor by the Secretary of Transportation by rule or regulation; snow removal equipment; limited terminal development at commercial service airports; or equipment to measure runway surface friction. Examples of projects that are not AIP-eligible would include construction of hangars, automobile parking lots, buildings unrelated to the safety of persons on the airport, art objects, or decorative landscaping.

The final rule implementing the PFC program specifies no eligibility restrictions on the mode of transportation for airport access projects, nor does it impose any requirements on the geographical proximity of the project to the airport. Again, FAA is the final judge on project eligibility, and reviews projects on a case-by-case basis.

Collection and Remittance of PFCs

Once a public agency receives authority from FAA to impose PFCs, the public agency provides written notification to all carriers that are required to collect PFCs. The notification is issued at least 60 days before the effective date of the charge and specifies the level of PFC to be imposed, the total revenue to be collected, the proposed expiration date of the charge, a copy of the FAA Administrator's notice of approval, and the address at which remittances and reports are to be filed by carriers.

The airlines collect PFCs as a part of airline ticket charges. Carriers note as a separate item on each airline ticket the total amount of PFCs paid by the passenger and the airports for which the PFCs are collected. For each one-way trip shown on the complete itinerary of an air travel ticket, air carriers collect a PFC from a passenger only for the first two airports at which PFCs are imposed. For each round trip, a PFC is collected only for the first two enplaning airports and the last two enplaning airports where PFCs are imposed. Thus, an airline passenger may be charged a maximum of \$12 per round trip.

Carriers remit PFC revenue monthly to airports, keeping \$0.12 for each PFC remitted before June 28, 1994 and \$0.08 thereafter for compensation of costs incurred in the collection process. Carriers also keep any interest or other investment return earned on PFC revenue between the time of collection and remittance to the public agency.

Carriers are responsible for establishing an accounting system with separate subaccounts for each public agency for which they collect PFCs. Although carriers may commingle PFC funds with their own funds between the time of collection and remittance, PFC funds are considered held in trust for the public agency. Carriers are obligated to disclose the existence and amount of funds subject to the PFC trust in any financial statements.

Recordkeeping and Reporting Requirements

Public agencies imposing PFCs submit to each collecting carrier and to FAA a quarterly report showing PFC revenue received, interest earned and PFCs expended for the quarter and cumulatively, the amount of PFC funds committed to each approved project, and current project schedules. For airports enplaning 0.25 percent or more of the total annual enplanements in the U.S. for the prior calendar year, the public agency provides to FAA, by August 1st of each year, an estimate of PFC revenue to be collected for each such airport in the ensuing fiscal year. This information is used by FAA to determine reductions in Airport Improvement Program [AIP] apportionments for the ensuing year.

Each public agency collecting PFCs is required to have its PFC account audited at least annually by an independent public accountant. The audit must express an opinion of the fairness and reasonableness of the public agency's procedures for receiving, holding, and using PFC revenue. The audit must also draw a conclusion regarding whether quarterly reportings of public agencies fairly represent the net transactions within their PFC accounts. A copy of the audit is provided upon request to each collecting carrier that remitted PFC revenue to the public agency in the period covered by the audit, and to the FAA Administrator.

Air carriers are also required to file quarterly reports to each public agency for which they are collecting PFCs. Such reports must show the total funds collected for each airport, the total amount refunded to passengers,⁷ amounts withheld for compensation, and the dates

and amounts of monthly remittances. The carrier is not required to report interest earned on PFC collections.

Each carrier collecting more than 50,000 PFCs annually must also have an audit performed by an accredited independent public accountant. The accountant must also decide whether the quarterly reports submitted by the carrier fairly represent the net transactions within the PFC account. As is the case with public agencies, carriers must, upon request, provide a copy of the audit to each public agency for which a PFC is collected.

Expiration of PFC Authority

The authority to collect PFCs expires when the amount of PFC revenue collected, plus earned interest, reaches the allowable cost of all approved projects, or upon reaching the charge expiration date. PFC authority also expires three years after the collection process begins unless an application for authority to use PFC revenue (project approval) has been received by FAA or an extension has been granted. In any case, if project work has not started within 5 years of collecting PFCs, the authority expires or will be terminated by FAA. FAA may also terminate PFC authority if a public agency violates the terms of approval.

FEDERAL OVERSIGHT OF THE PFC PROGRAM

Under the implementing regulation for the PFC program, the FAA Administrator may periodically audit and/or review the use of PFC revenue by a public agency and the collection and remittance of PFC revenue by collecting carriers. Any authorized representative of the FAA Administrator, the Secretary of Transportation, or the Comptroller General of the United States has access to the pertinent books, documents, papers, and records of public agencies and collecting carriers for this purpose. This provision is in addition to the earlier stated requirement for independent audits, and is particularly

⁷ Itinerary changes requested by passengers which require fare adjustment are subject to PFC refund or additional collection as appropriate.

important since carriers collecting less than 50,000 PFCs annually are not required to provide for an independent audit.

Testimony of an official from the American Association of Airport Executives before the Aviation Subcommittee on May 19, 1993 indicated that there were "a number of recent reports of discrepancies between passenger enplanements and PFC payments by carriers to airports." The testimony also indicated that PFC collections were lagging enplanements by almost 20 percent, and that it was unclear why this was happening. Speculation was that this discrepancy could be attributable to computer programming, a lag in the way payments are made, or the collection practices of foreign carriers. Reportedly FAA, the airlines, and airport authorities are looking into this problem.

Needs Test

Some critics of the PFC program have asserted the desirability of a "needs test" for PFC project approval. The Air Transport Association, for example, believes that while FAA has done a reasonably good job in disapproving inappropriate project applications, there are a number of "excessive and unrealistic" projects being submitted by airport authorities with little concern for the interests of the fare-paying public. As an example of one such project, ATA cites the application of the Port Authority of New York and New Jersey for more than \$6 billion in PFC authority for the construction of a rail link between two airports and two subway stations (one of which is Shea Stadium, an unlikely intermediate stop for the average airline passenger). Although the Port Authority has withdrawn its request for this project, FAA approved \$21 million for feasibility studies. To date, air carriers have opposed portions of PFC projects which have been approved at 16 airports, including Minneapolis, Buffalo, Philadelphia, Baltimore, Cleveland, Detroit, New Orleans, and Los Angeles.

In testimony before the Aviation Subcommittee on May 26, 1993, ATA requested that legislation be enacted requiring an "enhanced regulatory definition" of the criteria for justification and approval of PFC projects. "There needs to be an increased burden," ATA stated, "on both the proponents and the Secretary to evaluate proposals against some objective standards." Approval should be forthcoming, ATA added, "only after a finding that a project is not only eligible, but it also is necessary and will provide needed enhancements in capacity, security, noise mitigation, or enhanced competition between or among air carriers."

Chair Mineta, while not explicitly calling for a needs test, has encouraged airports to critically examine the need for potential PFC projects. In a speech before the American Association of Airport Executives/Airports Council International of North America on March 23, 1993, Mineta urged airports to "continually examine what they are trying to accomplish with PFC money, whether those projects are timely, and whether those projects represent genuine needs -- or a more lofty wish list."

Proponents of the PFC program maintain that since PFC projects must be AIP-eligible, a de facto needs test is already being applied by FAA. Proponents also state that while airports have applied for more than \$15 billion in PFC revenues, FAA has approved less than \$6.4 billion and is, thus, ensuring that unnecessary or frivolous projects are not being funded with taxpayer dollars. In trying to account for the dollar disparity between proposed projects and approved projects, airport representatives contend that in making PFC applications, many airports tend to list long-range planning needs, believing that it is much easier to delete a project if it turns out to be unnecessary than to submit a supplemental application for the project at a later date.

In analyzing PFC project applications, FAA seems to have taken the opposite approach, "jawboning" airport authorities into withdrawing or deferring projects that are not needed in the short term.

PUBLIC INVOLVEMENT IN THE PFC PROGRAM

As noted above, an airport authority that wants to impose PFCs must first consult with airlines serving the airport. The law requires a mandatory meeting between airline and airport staff to discuss PFC projects being applied for and provides airlines an opportunity to formally comment on the proposed projects subsequent to the meeting and prior to FAA review of the PFC application. After receiving a completed application, FAA places a Notice for Public Comment in the Federal Register, receives comments for 30 days, decides whether the airport followed the requirement for consultation with airlines, and determines the eligibility of projects in the PFC application.

Under the law, there is no requirement for FAA, airport authorities, or airlines to consult with local citizens in the PFC process, either as to whether a PFC should be imposed at all or on the impact of proposed projects on the local community. No public hearings are required in the PFC process. No public notice must be printed in the local newspaper

inviting the public to submit comments. Although there is a requirement for a public comment notice in the Federal Register, the fact that the average citizen does not read the Federal Register means that this is not a credible way of inviting participation of the people who will have to pay PFCs.

This lack of provision for substantial citizen involvement in the PFC process has given rise to at least one circumstance in which a PFC project was proposed, local citizen opposition was encountered, and the project was voluntarily withdrawn and subsequently prohibited in a House appropriations bill. The Tulsa Airports Improvement Trust (TAIT) submitted a PFC application to the Federal Aviation Administration on January 10, 1992 for the construction of a third runway. On May 6, 1992, TAIT withdrew its application, but reserved the right to submit a future application for the project. Subsequently, the Fiscal Year 1994 Department of Transportation Appropriations Bill, as recommended by the Committee, prohibited FAA from expending any funds on the design or construction of a new air carrier runway at Tulsa.

ANTICIPATED WITNESSES

Representatives of the following organizations have been invited to present testimony at the hearing:

- * Federal Aviation Administration
- * Air Transport Association
- * American Association of Airport Executives
- * Airports Council International-North America
- * National Airport Watch Group

FEDERAL AVIATION ADMINISTRATION'S PASSENGER FACILITY CHARGE PROGRAM

WEDNESDAY, JULY 28, 1993

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON INVESTIGATIONS AND OVERSIGHT,
COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION,
Washington, DC.

The subcommittee met, pursuant to call, at 10:05 a.m., in room 2253, Rayburn House Office Building, Hon. Robert A. Borski (chairman of the subcommittee) presiding.

Mr. BORSKI. The subcommittee will come to order. The subcommittee today will be examining one of the most significant issues in air travel today, the Passenger Facility Charges levied by 96 airports to raise funds for capacity expansion projects.

The enactment of the PFC legislation in 1990 produced a new era in our aviation system. The PFC process gave the Nation's airports a new tool to support increases in capacity, to catch up with the remarkable growth in passengers that took place in our aviation system during the 1980s.

Instead of relying on the extremely limited appropriations from the Airport and Airways Trust Fund, airports could impose a passenger facility fund of up to \$3 to fund their projects. While many people, including Members of the Public Works and Transportation Committee, had serious misgivings about the PFC when it was enacted, there have clearly been notable success stories.

In my own city of Philadelphia, the operators of Philadelphia International Airport and USAir, the major airline, have reached an agreement for a \$279 million plan to construct a new runway and new terminal that will include substantial funding for PFCs.

Ultimately, the PFC gives airport officials much more capability to develop an integrated, unified transportation system in and around the airports. Airport officials now have greater flexibility to plan and fund projects as they are needed, whether on the air side or the land side.

The PFCs reflect the understanding the airports are much more than runways. They also include terminals, ground transportation within the airport and the absolutely essential connections for people to reach the airports.

There have also been some frustrations and some disputes. In particular, concerns have been raised about unneeded projects being funded and about a lack of public involvement in the PFC approval process.

With a full year having passed since the first PFC collections began, now is an appropriate time for the subcommittee to review

the manner in which the PFC process is being conducted. We expect to hear both the pros and the cons of the program in this hearing.

Before I recognize the gentleman from Oklahoma, our Ranking Republican Member, Congressman Inhofe, I would like to place in the record a statement by our Full Committee Chair, Norman Y. Mineta, of California.

[Mr. Mineta's prepared statement follows:]

CHAIRMAN NORMAN Y. MINETA

SUBCOMMITTEE ON INVESTIGATIONS AND OVERSIGHT
COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION

OPENING STATEMENT

HEARING ON PASSENGER FACILITY CHARGES

JULY 28, 1993

PASSENGER FACILITY CHARGES WERE AUTHORIZED AS PART OF THE AVIATION SAFETY AND CAPACITY EXPANSION ACT OF 1990. THE CONGRESS HAD RECEIVED NUMEROUS REPORTS OF AIRPORTS NOT BEING ABLE TO EXPAND THEIR FACILITIES BECAUSE OF LACK OF FUNDS AND OPPOSITION FROM AIRLINES, SO THE CONGRESS AGREED TO ALLOW AIRPORTS TO CREATE THEIR OWN SOURCE OF REVENUE, WITH FAA APPROVAL, TO FINANCE THOSE PROJECTS THAT COULD NOT BE FINANCED IN ANY OTHER WAY.

I HAD SOME MISGIVINGS ABOUT THE PROPOSAL AT THE TIME IT WAS ADOPTED, AND I HAVE SOME RESERVATIONS STILL, BUT THE PROGRAM IS IN PLACE, AND WE ALL WANT IT TO WORK AS EFFECTIVELY AS POSSIBLE.

CERTAINLY IT WAS NEVER THE INTENT OF THE PROGRAM TO FINANCE PROJECTS THAT DO NOT CONTRIBUTE EFFECTIVELY TO THE GOALS OF CAPACITY EXPANSION, SAFETY AND SECURITY, NOISE REDUCTION, AND ENHANCEMENT OF COMPETITION. WHILE WE DID NOT WANT TO GIVE THE AIRLINES OR ANY OTHER PARTY A VETO OVER THESE PROJECTS, IT WAS CERTAINLY OUR INTENT TO ENSURE THAT ALL INTERESTED PARTIES WERE CONSULTED BY THE AIRPORTS AND GIVEN AN OPPORTUNITY TO COMMENT ON THE AIRPORTS' PLANS.

THE FAA REAUTHORIZATION BILL, TO BE MARKED UP TOMORROW IN OUR AVIATION SUBCOMMITTEE, HAS A MODEST PROVISION TO REINFORCE OUR ORIGINAL INTENT. IT REQUIRES THAT FAA ENSURE THAT AN AIRPORT'S APPLICATION TO IMPOSE A PFC INCLUDE ADEQUATE JUSTIFICATION FOR EACH SPECIFIC PROJECT. WE PROPOSE THIS CHANGE NOT TO IMPOSE A NEW "NEEDS TEST" ON AIRPORTS, BUT TO CONVEY OUR APPROVAL FOR WHAT WE SEE AS THE POLICY THAT FAA IS ALREADY FOLLOWING. IN THE CASES WE HAVE SEEN SO FAR WHERE AIRPORTS HAVE REQUESTED PFC AUTHORITY FOR PROJECTS THAT WERE CLEARLY NOT NEEDED, FAA HAS REJECTED THE APPLICATION, OR IT HAS BEEN WITHDRAWN BY THE AIRPORT. I BELIEVE THAT FAA HAS BEEN FOLLOWING THE RIGHT POLICY, AND THIS LEGISLATIVE CHANGE IS INTENDED ONLY TO REINFORCE FAA'S AUTHORITY TO FOLLOW THAT POLICY.

I LOOK FORWARD TO THIS HEARING AS AN OPPORTUNITY TO REVIEW HOW THE PFC PROGRAM HAS WORKED OUT IN PRACTICE, TO SEE IF THERE HAVE BEEN ANY CASES WHERE AIRPORTS HAVE ASKED FOR AUTHORITY TO FINANCE PROJECTS THAT WERE CLEARLY ILL-ADVISED, TO SEE IF AIRLINES AND COMMUNITY GROUPS HAVE BEEN ADEQUATELY CONSULTED AND TO SEE IF THEY HAVE HAD AN ADEQUATE OPPORTUNITY TO EXPRESS THEIR VIEWS, TO SEE IF FAA'S ADMINISTRATION OF THE ACT HAS MET THE NEEDS OF ALL THE PARTIES INVOLVED, AND TO SEE IF THE AIRPORTS HAVE BEEN ABLE TO TAKE ADVANTAGE OF THE OPPORTUNITIES PRESENTED BY THE ACT TO MEET THEIR LEGITIMATE NEEDS TO EXPAND CAPACITY, PROMOTE COMPETITION, ENHANCE SAFETY AND SECURITY, AND REDUCE NOISE.

I COMMEND YOU, MR. CHAIRMAN, FOR SCHEDULING THIS HEARING, AND I LOOK FORWARD TO THE TESTIMONY.

Mr. BORSKI. Now Mr. Inhofe, you may proceed.

Mr. INHOFE. Thank you, Mr. Chairman.

I appreciate your willingness to accommodate my request for this hearing. Allow me to begin by clarifying that I am not opposed to PFCs. In fact, as perhaps the only Member of the subcommittee who has served on an airport authority board, I probably have a better understanding than most on how difficult it is to fund airport projects.

PFCs are an important funding tool that airports need to respond to pressing infrastructure projects, nonetheless, PFCs must be able to withstand public scrutiny. They cannot be used as a device to fund unpopular or unnecessary projects.

During the consideration of the Aviation Safety and Capacity Expansion Act of 1990, I supported giving airports the authority to impose PFCs. However, my support was predicated on the assumption that the sponsor of the PFC would be held accountable to the public for imposing the new fee or tax.

My personal knowledge of PFCs is limited to my hometown of Tulsa, Oklahoma, and I recognize that other PFC airports may have handled the PFC application differently. In fact, I have heard that they have, perhaps in your area, Mr. Chairman.

Unfortunately, my experience with PFCs has not been particularly positive. The Tulsa Airport Authority submitted a PFC application to the FAA in March of 1992. The application was approved with modifications in May of 1992. A vast majority of the citizens of Tulsa knew nothing of the PFC tax until they went to purchase a ticket.

I believe this violates one of the most fundamental rights of citizens of a democratic society, the right to comment on increased taxes. When made aware of the new tax, the citizens of Tulsa disagreed with the proposal to build a third runway which initially was one of the projects the tax was to fund.

The third runway was originally proposed over a decade ago when I was mayor of the City of Tulsa. At that time, the traffic in Tulsa International Airport had exceeded 80 percent of capacity. Then in the middle 1980s we went into a recession and things started turning down and after a period of time, that dropped down to the present level of about 58 percent capacity.

Obviously the runway is no longer needed and it would be a waste of Federal dollars and AIP dollars and PFC dollars to build a runway. Additionally, the public did not know who to hold accountable for the decision because sufficient public disclosure never occurred.

In the case of Tulsa, the responsible public official is the mayor who appoints the airport authority board. After reviewing the statute, I came to the conclusion that the Tulsa Airport Authority did not violate the law.

Unfortunately, the law does not sufficiently protect the public's right to know. I think that perhaps they violated the intent of the law. At the time we passed the PFC, I articulated that a person who is an elected official has to take responsibility for this so that people know who to hold accountable.

You can't blame an appointed member of the airport authority because they don't respond to the public. Who appoints them? In

the case of Tulsa, Oklahoma it is the mayor. We believe we have stopped Tulsa's third runway through the appropriation process, however, other communities may not be as fortunate.

Therefore, it is my intention to offer an amendment to the FAA reauthorization bill which will be marked up by the Aviation Subcommittee tomorrow requiring a public hearing on a PFC application before it is submitted to the FAA. I believe that the level of public involvement on PFC applications should be similar to public notification required for the AIP projects. At a minimum, PFC applications should involve a public hearing.

Finally, Mr. Chairman, I regret that Barbara Lichman from the National Airport Watch Group will be unable to join us this morning. She will or I believe she has already submitted written testimony for the record. I believe we will find her position to be consistent with my concerns that increased public involvement in the PFC process is needed.

Again, Mr. Chairman, I appreciate your holding this hearing.

Mr. BORSKI. The Chair wants to thank the Ranking Member and particularly express appreciation for your leadership in this issue.

The Chair would now like to recognize the gentleman from Pennsylvania, Mr. Blackwell.

Mr. BLACKWELL. Thank you, Mr. Chairman.

Mr. Chairman, I am extremely pleased that the subcommittee has brought the issue of Passenger Facility Charges to the forefront of the subcommittee agenda.

As a relatively new program, this is one of the first times that we have had the opportunity to review the outcome of PFCs at the Federal level. More than half of the planet's busiest airports in terms of passengers enplaned, deplaned and transferred are in the United States, including seven of the top ten.

In my home city of Philadelphia alone, our airport, Philadelphia International, sees more than 16 million people annually pass through our terminals. This is double the amount of passengers compared to what we had a few years ago in the 1980s. One can imagine that an increase of this volume strains the infrastructure of our Nation's busiest airports.

Our airports are vital to every facet of American life and must remain healthy and operate to the fullest extent of their ability in order to ensure a strong and healthy economy. Airport projects which are undertaken today can be viewed as proactive measures which will keep our Nation's vital transportation hubs running smoothly as we rapidly approach the 21st century.

It is for that reason that the PFC program is in existence. The mere \$3 charge per passenger may seem like an inconvenience for some, but the PFC has been nothing short of a breath of new life for America's airports. Desperately needed programs which had been put off for financial reasons are now under way.

Let us not forget that safety must be our number one concern and implementing the PFC program to provide our Nation's airports with an effective tool to ensure safe airports throughout the Nation for years to come.

In addition, the PFC program has stimulated local economies through the construction of new facilities, and the renovation and improvement of already existing ones.

Today's hearing will allow us to provide oversight for the PFC program and review its performance so far.

By receiving testimony from the experts who have first-hand experience with the PFC program, we will be able to fine tune the PFC program so that it may continue to work to the benefit of consumer, airlines, and airports alike.

I commend you, Mr. Chairman, on your excellent work on this issue.

Mr. BORSKI. The Chair thanks the gentleman.

TESTIMONY OF QUENTIN S. TAYLOR, ACTING ASSISTANT ADMINISTRATOR FOR AIRPORTS, FEDERAL AVIATION ADMINISTRATION, ACCOMPANIED BY LOWELL H. JOHNSON, MANAGER, AIRPORTS FINANCIAL ASSISTANCE DIVISION, FEDERAL AVIATION ADMINISTRATION, AND DALE McDANIEL, ACTING ASSISTANT ADMINISTRATOR FOR POLICY, PLANNING, AND INTERNATIONAL AVIATION

Mr. BORSKI. We would like to welcome our first witness this morning, Quentin Taylor, Acting Assistant Administrator for Airports, Federal Aviation Administration, Mr. Taylor is accompanied by Mr. Lowell Johnson, Manager of the Airports Financial Assistance Division, Federal Aviation Administration and Mr. Dale McDaniel, Acting Assistant Administrator for Policy, Planning, and International Aviation.

Gentlemen, would you please stand and raise your right hand.

[Witnesses sworn.]

Mr. BORSKI. Mr. Taylor.

Mr. TAYLOR. Mr. Chairman and Members of the subcommittee, I welcome the opportunity to appear before the subcommittee today to discuss the implementation of Passenger Facility Charges and to provide you with an overview of how the PFC program is progressing.

Accompanying me today, is Mr. Lowell Johnson, my associate in our airports organization, and Mr. Dale McDaniel, our Acting Assistant Administrator for Policy, Planning, and International Aviation.

Nationwide, we expect during the next fiscal year, that the PFC collections will approximate somewhere between \$700 and \$800 million that will accrue to airport development projects. This year in fiscal year 1993, we expect some \$471 million to accrue to airport development projects across the Nation. PFC revenues in conjunction with the grants issued under the Airport Improvement Program provide an investment in the infrastructure that is critical to the economic well-being and growth of our air transportation industry.

As intended, the PFCs are beginning to make an important contribution to our Nation's airports by assisting in major safety as well as capacity-enhancing projects around the country. In addition, PFCs, Passenger Facility Charges, provide a funding stream that gives airports the added flexibility that they need for long-term planning, and development projects.

Before I discuss the progress that has been made under the program, however, I would like to briefly discuss the history behind

Congress' decision to authorize collection of Passenger Facility Charges.

In the late 1980s, the Administration, as well as the Congress, certainly recognized the need for additional capital funding sources to provide for expansion of the national airport system. The continued growth of air traffic was straining the capacity of the existing aviation infrastructure. Delays were increasing, new airport security requirements were established, needs for mitigating the effects of aircraft noise increased along with air traffic, and the safety of the airport system, as always, had to be maintained at higher levels of activity and enhanced as advancing technology would allow it.

The traditional sources of airport revenue for capital improvements, that is, revenue bonds, landing fees, leasing and concession income, Federal and State airport grant programs, and general tax revenue began to appear to be inadequate to meet these particular demands, and therefore, the Congress did indeed enact legislation that would allow certain airports to charge enplaning passengers a \$1, \$2, or \$3 facility charge to help support airport planning and development projects.

However, the Congress wisely, I believe, limited the type of development that could be funded with PFC's by requiring that projects funded with Passenger Facility Charges either preserve or enhance safety, security or capacity of the national airspace system, or they would also reduce noise or mitigate noise impacts resulting from airport operations, or they would furnish opportunities for enhanced competition among the air carriers, a subject still important to our Nation today.

To guarantee that these requirements are met, Congress set forth a consultation and public notification process in the legislation which would provide airlines and interested persons with an opportunity to review and comment on applications, as well as provide the FAA with the necessary oversight and review of that process.

Before submitting its application to collect Passenger Facility Charges, the airport must consult with the air carriers operating at the airport. After this consultation, the application is submitted and it is reviewed by the FAA to determine whether sufficient information has been provided.

If the application is deemed to be sufficient, then the FAA publishes a notice of completed application in the Federal Register and a 30-day public comment period begins. After the public comment period closes, the FAA then reviews the application, the comments submitted, and either approves the application in whole or in part, or it might disapprove the application.

Congress did not grant the FAA the authority to direct an airport to select a particular project. The airport selects which projects it will seek to fund with the Passenger Facility Charges. The FAA's review assures that the proposed project meets the statute's objectives and requirements for eligibility.

Approximately 130 airports have already undergone this review and have received approval for passenger facility charge collections, and although over 1,000 individual projects have been approved, many projects to date have been disapproved, revised or withdrawn

following the FAA review. To date, airports have applied for a total of about \$16.4 billion in passenger facility charge collections.

The FAA has approved approximately \$7.2 billion in collection and has disapproved \$2 billion in terms of PFC collections. A total of \$6.3 billion in applications has been withdrawn after consultation with the FAA.

Frequently an airport will withdraw a project after FAA's review has concluded that the project is not approvable. For example, Las Vegas Airport withdrew a project to acquire a reliever airport due to FAA's concerns regarding the project sponsorship. Tulsa Airport, as has been noted, withdrew a third parallel runway after the FAA questioned its project justification as well as its financial plan. And Daytona Beach Airport withdrew two projects, development of a general aviation apron and concourse expansion after further discussions with air carriers and the FAA regarding, again, project justification.

Passenger Facility Charges are beginning to make an important contribution to our Nation's airports. PFCs have assisted in major safety and, capacity enhancement projects around the country. Over the next 34 years, PFC's will provide approximately \$2.3 billion for construction of a new airport at Denver. The Detroit Metropolitan Airport is using PFCs to rehabilitate its existing terminal and to build a new terminal to keep up with domestic demand and increased international traffic.

And San Jose California International Airport is building a runway extension funded with Passenger Facility Charges that will allow air carriers to operate without weight restrictions.

PFC's have also opened up additional development capabilities for smaller airports. Westchester County Airport in New York and Worcester Municipal Airport in Massachusetts, for instance, now have funds to build taxiways, eliminating the need to taxi on runways. Passenger Facility Charges are helping small airports build suitable airport terminals, which will serve as gateways to these particular communities.

And, at many small airports, Passenger Facility Charges are being used as the local match for Airport Improvement Program grants to finance runway and taxiway reconstructions, aircraft rescue and firefighting vehicles and taxiway guidance signs.

In the future, numerous safety and capacity enhancement projects will be funded with the Passenger Facility Charges. Airports now have greater flexibility than ever in their capital development programs.

With the Passenger Facility Charge program, airports can now make local decisions about airport improvements and use PFC revenue as a dependable local revenue stream to finance those particular improvements.

Mr. Chairman, that completes my prepared statement. My associates and I will welcome and attempt to respond to any questions that you might have.

Mr. BORSKI. Thank you very much, Mr. Taylor.

Air Transport Association officials who will appear next as witnesses will advocate the imposition of a needs test for PFCs. ATA will suggest that the Federal Aviation Act be amended to require PFC justifications to include existing total capacity limits, the basis

of growth estimates, expected passenger demand, the expected date of existing capacity depletions and the estimated time needed to plan and complete airport construction to avoid an imbalance between supply and demand for airport facilities.

What is your reaction to this proposal?

Mr. TAYLOR. It is this: We have had just over a year's experience with the implementation and use of Passenger Facility Charges.

We feel that our experience has provided us with a rational way to select approve, and review projects that would be funded via Passenger Facility Charges. We feel that our review process has resulted in, through consultation, a withdrawal of a certain amount of projects, the approval of a certain amount of projects, the revision of certain projects and so on.

My reaction to the Air Transport Association proposal is this then: We feel that our experience has been good, it has been healthy for the Nation, but we are open to any suggestions as to how that process might be improved.

Mr. BORSKI. Let me ask, the collection of the PFC revenues has been under way for a little over a year now. How has FAA changed the way it administers the program, particularly with regard to the review and approval process for PFC proposals?

Mr. TAYLOR. How have we changed the program?

Mr. BORSKI. Yes. Are you operating the same way as you did in the beginning? How has the program evolved?

Mr. TAYLOR. We are operating essentially as we began.

Mr. BORSKI. There have been no particular improvements in the review process?

Mr. TAYLOR. No.

Mr. BORSKI. Let me ask, more than \$16 billion in collection authority has been requested by airport authorities. FAA has not approved more than \$9 billion.

I would like to have more information concerning FAA's analysis of the unapproved projects. Did FAA fail to approve these projects because they did not meet eligibility criteria or they met the criteria but, in FAA's judgment, would be more appropriately undertaken at a later date?

Mr. TAYLOR. Right. I would like to have Mr. Johnson respond to that.

Mr. JOHNSON. There have been a variety of reasons for that \$9 billion figure. We do look at each application to make sure that it meets the statutory test of eligibility as well as the PFC test, that it benefits the capacity, safety, of the air transportation system, et cetera.

The kinds of projects that we have looked at that are included in that difference between approvals and disapprovals, or ones that haven't been approved, include projects that were not eligible.

We have had a number of projects that were not AIP eligible, so a certain amount fall in that category. We have had other kinds of projects that do not fall within the guidelines of the regulation. For example, the project time line wasn't right. The regulation specifies that a project must be started two years after use authority has been granted or that the project is going to get started in three years after authority is granted.

There are some statutory or regulatory requirements, and some airports, especially at the beginning, did not always meet those kinds of tests. So some were disapproved or turned back to airports because of that.

At other locations, we have raised questions to the airport about the basis for the project that they are proposing and airports have elected either to withdraw some of those projects. We have also denied projects where there hasn't been a basis for, or a rationale, for the project.

The other airports had withdrawn projects after consultation with the FAA and there was a possibility that the airport was looking to collect or expect a Letter of Intent and we weren't prepared to issue a Letter of Intent. The timing wasn't right from a financial point of view, so airports have withdrawn from that point of view.

So there is no one single thing you can point to as why the difference between approvals and applications, but it is a combination of the FAA's review and working with airports to try to do good projects.

Mr. BORSKI. Let me yield now to distinguished Ranking Member, Mr. Inhofe.

Mr. INHOFE. Thank you, Mr. Chairman.

Closely related to the question that the Chairman asked on needs test is found on page 13 of the bill that is going to be marked up tomorrow in the Aviation Subcommittee that is the Aviation Infrastructure Investment Act of 1993.

On page 13 it says that a provision to permit PFCs be imposed only if the Secretary finds that the application includes adequate justification for each of the specific projects. Now, we are talking about each of the specific projects.

Do you feel, Mr. Taylor, that this particular provision is desirable?

Mr. TAYLOR. I feel that it is appropriate. We are reviewing that language within the FAA presently. Desirable? Yes. Appropriate? Yes.

Mr. INHOFE. Since my interest on this was spurred from a local situation whereby those PFCs were going to be used for a local match for a third runway which the cost would be about \$118 million and it was one that clearly was not—could not, I don't believe, pass any needs test—maybe it could have in 1979 but it couldn't now.

Under the process that is used in the AIP programs, they require public hearings to consider the economics, social and environmental effects of the airport or runway location and its consistency with the goals and objectives of local planning.

I can only speak for myself and not to the legislative intent which is a myth that exists in the minds of appellate judges. In my mind, it was very clear that a PFC application would not necessarily have to undergo the same scrutiny as projects under the AIP process; but certainly a public hearing would be advisable given that PFCs are local taxes.

Do any of the three of you see a problem with requiring a public hearing? You mentioned of course, Mr. Taylor, the users. I am talking about now the general public.

Mr. TAYLOR. Let me respond to that in a rather complicated sort of way, but I will be brief. The Airport Improvement Program, as it is normally and generally managed, requires that a runway project such as would have existed at Tulsa be examined environmentally, that that runway be presented in a master plan as well as an airport layout plan, and there are many instances whereby the public can be made aware of an anticipated development.

We had in the past and do presently view those processes as providing sufficient public input into the airport development projects.

Now, having said that, I do not want to suppose that that public airing of airport projects is sufficient, it may or may not be. I am not adverse to additional public input regarding airport development projects.

Mr. INHOFE. Good. Isn't the particular hearing you just referred to after the fact though?

Mr. TAYLOR. No, sir, it is not.

Mr. INHOFE. All right. When you mentioned notification to the public, now, I know that there is notification but it is printed in the Federal Register.

Mr. TAYLOR. Yes.

Mr. INHOFE. Which nobody reads the Federal Register. My concern is, and it goes back to my personal experiences sitting on the airport authority, at the time I was doing this, because my background is in aviation, I took more of a hands-on involvement in it and we did have and encouraged a lot of public involvement.

And that is really the only area that I am concerned with at this time, and I think an appropriate place to have that inserted would be in the bill that is going to be—have a hearing tomorrow in the Aviation Subcommittee.

Mr. TAYLOR. I see.

Mr. INHOFE. How about Mr. Johnson or Mr. McDaniel. Do any of you have any problems with having a public notification in a local newspaper at a public hearing similar to what would be required in an AIP program?

Mr. MCDANIEL. Yes, Congressman, in concept I think we would welcome the full public involvement. Whether or not there are additional steps which should be legislated in order to make that a requirement I think is an issue that we would need to take a look at in terms of the expectations, both in terms of time requirements of involvement and what expense might be imposed.

Our experience in general with regard to the PFC program is that there has been a very active interchange, both from the public and from tenants at the airport that might be concerned about the charges themselves.

So I think that we would—we haven't given a serious look as to whether or not there should be an additional step. That is something we would certainly be willing to look at, but I think we should weigh both the costs of doing that as well as the benefits and make a determination as to whether or not in every situation that would be appropriate.

Mr. INHOFE. When you mention active interchange, I am glad to hear that. Perhaps this active interchange you refer to with the public has taken place in other areas and maybe ours is just a unique situation where the public was left out.

Mr. MCDANIEL. The idea of having public input—when I say public interchange, that could be either written or oral input, and I think airports have used a variety of techniques to do that.

But making available the information and the opportunity for people to be aware of it, I think is a good thing and one which we would endorse.

Mr. INHOFE. Yes, I have a hard time in my own mind seeing the difference, if we think it is good and beneficial and desirable to have a public hearing with the normal type of notification to the public for an AIP project, which is paid for with taxpayers' money, why treat it differently with a PFC? That is the only concern I have.

Mr. MCDANIEL. The only qualification that I would make is whether or not a hearing itself is a necessary vehicle for that to take place, or whether or not it can be done through written notification or some other way. Whether or not, in fact, Tulsa is an aberration which should be dealt with in the course of the way we do business, or whether it should be dealt with through a mandated requirement in the process, I don't know.

Every requirement that is added to the process does add time, expense, and difficulties in making sure that that particular loop is complied with, and so I would just question that that be balanced against the desire of having the public input.

Mr. INHOFE. Well, that may be true, but when we make an application in March to the FAA and the application is approved in May of the same year, you are only talking about two months.

I can't see that a public hearing, even if it doubled that time, is going to have any real detrimental effects to the project. Openness is all I want.

Thank you very much.

Mr. JOHNSON. I would also like to point out, in the AIP legislation, the public hearing is a requirement only for new runways, new airports or major runway extensions, so the public hearing provision in the AIP is limited to a set of specific instances where you have to hold a public hearing.

Now, as part of the environmental process, if a project becomes controversial during the course of an environmental analysis, then it behooves the airport to hold a public hearing under that circumstance as well.

But the requirement in the AIP is a rather narrowly defined requirement as to when a public hearing has to be held by statute.

The second thing I point out, in the case of Tulsa, the application was for imposition only. It was an application not to give them the go ahead to use the funds on the runway, but basically to begin collection, and at the same time, work toward the completion of the planning and the environmental process.

A number of airports do it that way, and during that period, even though collection had started, the airport, in the case of Tulsa where a major runway was being contemplated, would have conducted a public hearing because of the environmental requirements associated with the runway project.

So if that would have played through all the way, there would have been a public hearing sometime before the project was actually finally approved. So there are some—

Mr. INHOFE. Yes, but that again would be after the fact and after you had already imposed the PFC charge and started the collection process.

Mr. JOHNSON. That is true. The way we administer the program now is that we ask an airport to provide alternatives to the projects that are in this uncertain state.

If the runway would have been ultimately found unacceptable for whatever reason, environmental or otherwise, we do build into the process a requirement for the airport to submit to us backup projects, if you will, that would be able to be—you know, where the funds would be able to be used. They are looked at to a lesser degree, but we at least establish that they are eligible projects.

Mr. INHOFE. Mr. Johnson, let me ask you a question. What happens, you start collecting a PFC, say \$3, and then those projects are ultimately not approved.

What happens to the money you have collected?

Mr. JOHNSON. We try to make sure that we are comfortable that they are likely to be approved.

But say possibility does arise where an airport ultimately decides not to go through with the project that has been approved. We ask the airport at the time of application to submit backup projects, and so we have a group of backup projects that we look at to make sure that if the airport's main projects don't materialize, we have a set of backup projects.

If we get to that point—and we haven't had that occur yet—we would then ask the airport to go through a new consultation phase with the carriers on that, and we would go through a kind of a rereview of those backup projects.

So we have tried to plan for that contingency.

Mr. INHOFE. But there really are in fact then two levels of approval that they go through. One is when you feel confident enough to go ahead and let them start charging the PFC that some projects will be approved, and then when they are ultimately approved?

Mr. TAYLOR. Mr. Inhofe, there is a distinction between the imposition of a Passenger Facility Charge, and the actual use of it.

In the case at Tulsa, though it was proposed that we impose a Passenger Facility Charge, it would have been impossible for us to, in fact, approve use of Passenger Facility Charge revenue prior to that runway passing the environmental test that it would have had to have passed.

Mr. INHOFE. But in Tulsa you had adequate backup projects, as Mr. Johnson referred to.

Mr. TAYLOR. Yes. Yes.

Mr. INHOFE. So I guess—I have the answer to my question. It is a new twist I was not aware of, as to the levels of approval.

I don't have any more questions.

Mr. BORSKI. I thank the gentleman.

Mr. Taylor, I want to take advantage of your appearance here today to follow up a question I asked of you in the Subcommittee on Aviation on the issue of Letters of Intent.

Mr. TAYLOR. Yes.

Mr. BORSKI. I had an opportunity to look at your answer and your answer essentially states that the cupboard is bare for new Letters of Intent.

Philadelphia is about to apply for a LOI of \$120 million over four years to build a new runway that would increase capacity by 40 percent. There is general agreement that this is a classic airport improvement project at an airport that ranks among the 20 most congested airports in the country.

Of the 25 airports that have already received Letters of Intent, only six are on the most congested list with Philadelphia. My question is, how do you plan to reconcile the existing Letters of Intent for lower priority airports with the needs of a high priority airport, such as Philadelphia for a funding commitment of \$120 million?

Mr. TAYLOR. With a degree of difficulty.

Mr. BORSKI. I think that is similar to your answer in the Aviation Subcommittee.

Mr. TAYLOR. Mr. Chairman, let me ask Mr. Johnson to give me a hand there.

Mr. BORSKI. Please do.

Mr. TAYLOR. He is the manager who is familiar with the details of our financing program.

Mr. JOHNSON. We have actually approved 40 Letters of Intent and we believe that each of the 40 Letters of Intent has met the criteria of the law.

They are all different and all the airports come to us with what I would consider to be valid projects that meet the requirements of law. So we have been fortunate in having many high quality projects to deal with under the Letter of Intent program.

We are mindful though of the future and Philadelphia certainly would fall in that wait-and-see category, along with a number of other airports. We are structuring Letters of Intent pay-outs, to try to compensate or to reflect what we might expect in the appropriations process.

We had been operating under the general sense that we were dealing with about a \$1.8 billion type program level and if we, in fact, are faced with a lesser program level, it does have impacts on whatever is available in the way of discretionary funding.

So we are going to try to continue to work with communities to do the best we can in meeting their needs. It may involve spreading out payments over a longer period of time. It may require more creative financing by the airport. We are not intending to freeze out everybody that doesn't have one, but we are going to have to work hard to try to fit these new ones in down the road.

Mr. BORSKI. I think there is an amendment or a part of the bill coming up shortly that would increase the funding for smaller airports from \$400,000 to \$500,000.

Are you familiar with that?

Mr. JOHNSON. I believe that provision is in Chairman Oberstar's bill, yes.

Mr. BORSKI. How do you think that will work, particularly if there is less money to distribute than for the larger airports?

Mr. JOHNSON. We estimate that the difference between \$400,000 and \$500,000 per, as a minimum, has an impact of somewhere around \$18 million annually, and so it does change the availability of funds.

Depending on what funding level you are at, though, there are some limits that have come into play at certain levels. There is the

limit that you can spend no more than 44 percent of the total amount on passenger enplanements and cargo entitlements, and that could become a factor depending on what appropriative and authorization level you have.

So it is hard to give you a precise answer, but it does cost more to take the floor from the current \$400,000.

Mr. TAYLOR. Mr. Chairman, let me add to that just a bit more detail relating to Passenger Facility Charges.

As you are aware, as Passenger Facility Charges are implemented, a certain amount of monies become discretionary dollars that we can apply to smaller airports. So smaller airports will be advantaged to that degree also. I believe it is the case that this year, fiscal year 1993, we expect to have something on the order of \$57 million returned to our discretionary coffers.

Next year we are expecting that to double and that will provide us some relief in terms of funding smaller airports also.

Mr. BORSKI. And will that help in the increase—if we increase from \$400,000 to \$500,000? Is that what you are suggesting?

Mr. TAYLOR. To a degree yes, it would, and I didn't mean to be facetious in responding to your question, but I did want to say this: The satisfaction of Letters of Intent is nearly wholly dependent upon the level of appropriations. It is really quite that simple.

The lower the level of appropriation, the lower the level of discretionary dollars that we can apply to Letters of Intent. It is no more complicated than that.

The less the amount of money that would be appropriated in any one particular fiscal year, the less the satisfactions that would be gained from Letters of Intent in place or Letters of Intent that would be in place.

Mr. BORSKI. Okay. Thank you.

Mr. Inhofe.

Mr. INHOFE. Just one last comment. I hope you recalled in my opening statement I said that you folks are carrying out, as near as I can determine anyway, what was passed and what is put in front of you.

My question was, did we do a thorough enough job in terms of mandating public scrutiny to justify some of the very large increases? And you stop and realize who pays these. Yes, it is ultimately passed on to the flying public and those are the people that I represent in Tulsa.

In the meantime, there is a collection hardship that goes through the process with the airlines, and so I just want to be sure that this system is what we intended it to be and I appreciate the work that you both have done on it.

Mr. TAYLOR. Thank you.

Mr. BORSKI. Okay, thank you very much, Mr. Taylor, Mr. Johnson, Mr. McDaniel, I appreciate your help.

TESTIMONY OF JAMES E. LANDRY, PRESIDENT, AIR TRANSPORT ASSOCIATION OF AMERICA, ACCOMPANIED BY THOMAS J. BROWNE, MANAGING DIRECTOR OF AIRPORTS, AIR TRANSPORT ASSOCIATION OF AMERICA

Mr. BORSKI. We would like to welcome our second witness, James Landry, President of the Air Transport Association of America.

Mr. Landry, could I ask you to stand, and raise your right hand, please.

[The witnesses were sworn.]

Mr. BORSKI. Thank you, sir.

Welcome, and could you please introduce your associate?

Mr. LANDRY. Right, Mr. Chairman. My name is Jim Landry and I am accompanied here this morning by Tom Browne, the association's managing director of airports.

I am the President of the Air Transport Association. I appreciate the opportunity to discuss with the subcommittee issues concerning the implementation of the PFC program.

Funding for needed airport capacity improvements is indispensable for the consumer, the airport operator and the airline industry. All parties have a fundamental interest in assuring that these improvements are achieved economically and in a timely manner.

Airport projects initiated today will affect the nature, extent, and cost of air transportation services in this country for decades to come. Because of that, airport capacity decisions must be undertaken with great discipline and must be scrutinized by all who would be affected by them, including the FAA. We will all pay dearly for airport capacity mistakes.

Consequently, it is the responsibility of each of us to help formulate capacity improvement decisions that properly respond to future air transportation demands.

Both before and after the advent of PFCs, the relationship between airports, the FAA, and the airlines concerning airport capacity issues has been basically sound. As a result, airports by and large work well.

Airlines are committed to building upon that success. We want to avoid actions that would jeopardize the future well-being of consumers, airports, or air carriers.

In particular, airlines want capacity investments to be well justified and properly directed. We agree that necessary improvements must be funded. What we object to are projects that are inadequately justified, excessively costly, or which do not contribute directly to commercial aviation capacity enhancement.

We will literally be paying for decisions made today for years to come. Not only does the PFC payment period at an airport often extend for decades into the future, but the operations and maintenance costs of projects funded through PFCs, which the airlines must bear, will continue indefinitely.

That sobering reality makes airlines cautious examiners of airport expansion plans and unreceptive to the disappointingly common hope that if only an expansion project is built, the airlines will flock to the airport.

"Field of Dreams" arguments have no place in airport expansion deliberations.

Our sober analysis of these projects does not mean that we are knee jerk naysayers when it comes to evaluating PFC's applications. Quite the contrary. Airlines have supported approximately 75 percent of the applications that the FAA has approved.

This figure is unmistakable evidence that airlines support appropriately justified PFC projects. The airlines' experience in evaluating PFC applications prompts me to make three general observations about this program.

First, the U.S. airline industry cannot afford unnecessary costs. Our industry is in deep financial distress. Between 1990 and 1992, we lost \$10 billion and financial problems persisted in the first quarter of 1993, during which we lost \$799 million.

The road back to profitability for the airline industry is proving to be a long and tortuous one.

Unfortunately, in the past decade, the rate of increase of airport-related costs has far outstripped that of other operating costs for airlines. Between 1982 and 1992, airport costs per passenger, exclusive of PFCs, rose from \$4.16 cents to \$7.62 cents. That represented an 83 percent increase.

In contrast, all other per passenger operating costs collectively rose by only 20 percent during the same period. To place the rise in airport charges in another perspective, producer prices rose 18 percent between 1982 and 1992 and consumer prices increased 46 percent during the same period. That is in comparison to 83 percent.

Obviously the trend in airport costs is worrisome to us. It reinforces our belief that because PFC projects are sources of substantial future expenses, they must be closely scrutinized.

My second observation is that there is an assumption that PFCs do not cost airlines anything. Unhappily, that is not true. In this age of bargain hunters, airlines have great difficulty in passing on costs to their customers. Soft customer demand for airline services and intense competition among air carriers too often do not permit them to do so.

As a result, airlines frequently are forced to absorb all or part of additional costs, such as PFCs. Hence, although it may be named a Passenger Facility Charge, in any city-pair market, particularly one enjoying inter-hub competition along the way, it can easily become an airline charge. That is another reason why we believe that PFC applications must be rigorously evaluated.

Third, the PFC program can only fulfill its promise if the FAA assumes a more aggressive role in the application approval process. Although we appreciate its efforts to dissuade airport operators from pursuing certain projects that we regard as unauthorized under the PFC enabling legislation, we believe that the FAA has far more authority under that law than it has exercised to date.

In our view, the FAA should function as an umpire that unabashedly calls them as it sees them. A PFC is such a large and readily accessible source of funding that it seems to exert upon some airports an irresistible temptation to use it.

That is not what Congress intended nor is it what a healthy air transportation system can tolerate. Hard analysis, not the attraction of obtaining funding from a voiceless constituency, should be what propels PFC decisions. Otherwise enormous sums of money

will be committed to projects that have no or only marginal air transportation capacity benefits. Should that occur, the PFC program will be transformed from an aviation capacity enhancement device to a general public works scheme.

The stakes are too great to allow the program to proceed without discipline and uniformity being firmly exerted. The FAA is the only entity that can fulfill that mission.

Now, I would like to turn to the specific PFC-related issues that the subcommittee has raised. As to the adequacy of the consultation process, our experience with how airports fulfill their consultation responsibilities varies from excellent to poor.

The PFC regulations require an airport seeking to impose a PFC to send a written notice to the air carriers that serve it. The notice must describe the projects being considered for PFC funding, the proposed PFC level, the proposed effective date of the charge, the estimated date of the expiration of the charge, the projected total PFC revenues, information about any class of carrier that is sought to be excluded from the charge, and the date and place of the consultation meeting.

Some airports have done a far better job than others in describing the proposed projects. Airlines tend to react with considerable skepticism to proposals that appear incomplete or ambiguous. Providing thorough justification—full disclosure, including projected costs of upkeep—makes for a much smoother consultation process.

As to the adequacy of public notification requirements, the lack of meaningful involvement of the public in PFC decisions is a major shortcoming of the program. As a practical matter, airlines serve as surrogates for the traveling public during the consultation process.

Since the interests of the passenger and the carrier coincide, we perform this function willingly. Nevertheless, it is no substitute for having the public actively participate in decisions that literally will affect the welfare of travelers for decades to come.

Since we are dealing with a tax on an air transportation, it is only right that the object of that taxation should have a voice in its imposition. We believe that the PFC regulations should be amended to require public notification of pending PFC applications and to encourage public comment upon applications.

Public hearings would be the most efficacious way to assure the participation of the public in this process.

We therefore support the amendment to the FAA reauthorization bill which Mr. Inhofe said he would be offering tomorrow. That includes the provision that the notice be in local newspapers and not rely on the Lilliputian print in the widely unread Federal Register.

As to changes that should be made to the PFC program, three changes that should be made are the introduction of a needs test, the proper application of the congressional ban on applying PFCs to frequent flyer awards, and making airlines whole when they handle a ticket refund.

In my prepared statement I set forth in some detail the rationale for those recommendations. In particular, I want to emphasize that the needs test we recommend will subject every PFC application to the type of rigorous justification that any substantial capital

project should experience, especially one that is dependent upon public funding.

Moreover, it would ensure that PFC funds are channeled toward capacity enhancements and would preclude ground side projects of dubious or no capacity value.

The PFC program provides a way to fund needed capacity improvements at U.S. airports. Unfortunately not all projects that are proposed meet that standard. Most troublesome to us are those ground side projects that are designed to produce the bulk of their benefits off of the airport.

Examples of this category of project are roadway and transit proposals that clearly promise to advantage the surface traveler who has no connection to the airport, rather than the air traveler. The problem with this type of project is obvious. It seeks to apply PFC revenues to surface transportation purposes that Congress never intended to be permissible under the PFC program.

Even on-airport projects can be unjustifiable. Just because a proposed project is designed to expand facilities at an airport does not make it appropriate. There has to be a demonstrable capacity need for the project before it should be permitted to proceed.

For example, the lengthening of a runway or the expansion of a passenger terminal can cost tens of millions of dollars but provide no meaningful enhancement to capacity at the airport. Neither the air traveler nor the airline should be required to underwrite such wasteful projects.

My prepared statement concludes with our pledge to work with the airport community to attempt to resolve discrepancies between passenger enplanements and PFC payments and some possible explanations for the disparities.

Mr. Chairman, we believe that the PFC program holds the promise of providing needed airport capacity improvements. However, that promise will only be realized if greater discipline in the approval process is achieved. We urge all concerned to work toward accomplishing that goal, and we promise that we will do our part.

Thank you, Mr. Chairman.

Mr. BORSKI. Mr. Landry, thank you for your statement.

There is a vote on the House Floor. The subcommittee will stand in a brief recess. We will come right back and have some questions for you.

Mr. LANDRY. Okay, thank you.

Mr. BORSKI. Thank you, sir.

[Recess.]

Mr. BORSKI. The subcommittee will reconvene. Thank you, Mr. Landry, for your testimony, and let me yield now to the distinguished ranking Member, Mr. Inhofe.

Mr. INHOFE. Thank you, Mr. Chairman.

Mr. Landry, during the testimony of FAA, I learned something that I wasn't aware of and that is that we have what seems to be two levels of approval.

One is the approval that they are optimistic enough, they can go ahead and start the collection process and the other is the final approval and, of course, I asked the question, what would happen if they found the final approval would not be justified to the money that was there.

I think that the answer there is obvious, that an airport authority can always find something to spend money on.

Mr. LANDRY. That is right.

Mr. INHOFE. Once they start charging, it is a new crop coming in, you got to spend it.

You made three recommendations. I notice one of your three recommendations didn't happen to be a public hearing.

Mr. LANDRY. Yes, it was. It was intended—it is in there. In fact, Mr. Inhofe—

Mr. INHOFE. That is right. You said to have notification someplace, as I had mentioned.

Mr. LANDRY. Yes, and also to have a public hearing. That was in there. We want a public hearing and we want a notification in a local newspaper or someplace where people read it.

Mr. INHOFE. When one of your airlines makes a decision to service an area, there are a lot of things that they consider in making that determination.

Wouldn't it be logical that one would be the level of users taxes, the level of PFCs and others in the local community?

Mr. LANDRY. Well, that—I think that inevitably has to be part of the considerations that are put on the balance, if you will, because as you well know, Mr. Inhofe, the passenger market in air transportation is a very price elastic market.

For every 1 percent that you add to the cost of the transportation to the consumer, you lose seven-tenths of 1 percent of the market. That is the coefficient that is commonly acknowledged. In fact, the FAA uses it in its own traffic forecasts.

Mr. INHOFE. It would certainly be to the benefit of the airports and the flying public and the community to make it as attractive as possible to attract airlines to come in.

Mr. LANDRY. Absolutely, and every \$3 counts, as we suggested to you. You know, you can't—it is wrong to belittle the small fee that is involved here as \$3, if you will, or as only 5 percent of the operating cost of the airlines.

Five percent of the operating costs of the airlines is \$4 billion per year, and that is a lot of money. That is real money when you get up there. Actually in the last three grim years that the airline industry went through, if we had been able to cut our costs, our operating costs by 2.5 to 3 percent in each of those three years, we would have broken even.

Mr. INHOFE. I heard that same argument made by the presidents of three airlines, Delta, American and United, only it was relating to the gas tax increase and what that is going to do and it is just incredible, number one, how it affects the profit picture, maybe 1 cent a gallon or 2 cents or something like that.

Mr. LANDRY. That is absolutely true. We can't collectively get together and do anything about our revenues without heading directly off to jail and not stopping at go, but we can try to convince the government, convince the Congress, convince the FAA to stop loading unnecessary costs on us.

Mr. INHOFE. Lastly, Mr. Landry, from an airline perspective, can you see any justification that a process involving the passing of a PFC charge should be any different than an AIP in terms of public disclosure?

Mr. LANDRY. No, I don't. I think the public should be involved. It is a tax and the taxpayer ought to have the voice in dealing with that tax.

Mr. INHOFE. Tomorrow there is going to be a mark-up on a bill in the subcommittee.

Have you had a chance to look at that 1993 bill? What is your feeling about that?

Mr. LANDRY. Well, we certainly support both what has been added to the bill in terms of a modified needs test, if you will, and certainly the amendment that you proposed this morning.

Mr. INHOFE. Thank you, very much, sir.

Mr. LANDRY. Thank you, Mr. Inhofe.

Mr. BORSKI. Mr. Landry, in your testimony you said that in some instances the airlines eat the Passenger Facility Charge.

Mr. LANDRY. That is particularly the case when you have, let's say, a city-pair market which involves the possibility, the choice for the flying public of going via one intermediate hub or another intermediate hub. There is intense inter-hub competition between the carriers involved and if one of those hubs doesn't have a PFC, then the carrier ends up swallowing through his own hub so that he can remain price competitive.

Mr. BORSKI. Is it similar to the cut-throat policies we see in reducing airline tickets, that airline A follows airline B even though they are going to lose some more money?

Mr. LANDRY. Well, retaining and maintaining market share has been certainly a very important factor in the era of deregulation. I might say that even back in the era of regulation, carriers matched each other in price.

Mr. BORSKI. But that is where the problem is most significant, when there is competition head-to-head?

Mr. LANDRY. You have to match the other fellow's price or get out of the market.

Mr. BORSKI. Let me just ask one other question. The projects that you believe have not been appropriately approved, would you say they are mostly land side projects or air side projects?

Mr. LANDRY. Mostly land side. Let me ask my colleague here, Mr. Browne, but I believe most of them would fall in the land side category and certainly some of the most expensive ones.

Mr. BROWNE. Of the ones that have been approved that we disagreed with, the majority of them are actually on the air side. Several of the projects that have been withdrawn that we think are inappropriate are on the ground side, withdrawn or deferred.

Mr. BORSKI. My question was, on the ones that were approved.

Mr. BROWNE. Correct.

Of the ones that we have disagreed with that were ultimately approved, again, I have to say that most of them are probably on the air side because we believe that the timing is not appropriate or it is an inappropriate project for passengers to be paying for, or whatever it might be, but there are a significant number of projects that have been approved that we disagreed with that are ground side or land side projects.

The majority, however, is on the air side.

Mr. LANDRY. The largest volume, I guess, in terms of the expenditures that have been approved. I was thinking of the stand-out

ones, for example, of the Port Authority of New York and New Jersey, in which most of that money would go to mass transit and the mass transit line that would theoretically just go sailing right by Shea Stadium. I can't imagine that sailing by for too long before the public pressures will say stop at Shea Stadium. And the international terminal up at BWI, for example—that is \$113 million out of the \$130 million that PFCs have been authorized for, and that—it strikes me that since the BWI people have themselves put that entire project on hold, I would have thought perhaps the collection of the PFCs should be put on hold as well, but—

Mr. BORSKI. I am sorry. In the New York and the BWI projects, did you say they were approved projects?

Mr. LANDRY. They are approved projects, yes. So I am talking about the largest expenditures, the ones that sort of leap out at you quite often are on the land side.

Mr. BROWNE. The Port Authority project, they have approved studies for those trains, but the ultimate application is likely to include the construction of the trains to the tune of about \$6 billion, and it is \$6.2 billion and the bulk of that would go for something that is on the land side.

Mr. BORSKI. But again I just want to be clear, that is pending?

Mr. BROWNE. That is a project that has been officially withdrawn by the Port Authority for the time being, pending the completion of the studies.

Mr. LANDRY. But the BWI has been approved.

Mr. BROWNE. BWI is approved. They are collecting money for a project that the airport itself put on hold. The money is still being collected.

Mr. BORSKI. Further questions?

Thank you very much, Mr. Landry, I appreciate your help.

Mr. LANDRY. Thank you.

[The following was received from Mr. Landry:]

AIR TRANSPORT ASSOCIATION OF AMERICA,
Washington, DC, July 28, 1993.

Hon. ROBERT A. BORSKI,
Chairman, Public Works and Transportation, Subcommittee on Investigations and Oversight,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: I wanted to drop you a note to clarify, for the record, our responses to one question you posed at the Investigations and Oversight hearing this morning.

Your question, as I recall, was "Of the PFC projects that FAA has approved which were disagreed with by the carriers, were most of those projects landside or airside?"

The answers my colleague and I provided may have caused you some confusion, but I believe we were both correct, depending on the standard measurement. For the first 58 PFC airport application approvals which we have analyzed, FAA has approved 366 projects with which the airlines agreed, and 119 projects with which the airlines disagreed. Of the projects with which we disagreed, 53 of those projects were airfield projects, and 10 were landside. However, in terms of dollars, the 53 airfield projects were approved at \$88 million, while the 10 landside projects were worth \$302 million. We are in the process of updating our database, and would be pleased to provide more current figures when that exercise is completed.

I have attached a table breaking out several types of approved projects and the carrier agree/disagree ratios for your information.

Please advise me if we can be of further assistance.

Sincerely,

JAMES E. LANDRY, *President.*

AIRLINE AGREE/DISAGREE RATIO FOR PFC APPROVED PROJECTS AT FIRST 58 AIRPORTS
APPROVED ¹

Project type	Agree	Agree value (millions)	Disagree	Disagree value (mil- lions)
Airfield	163	\$268	53	\$88
Terminal	56	132	28	889
Landside	15	47	10	302
Planning	21	719	7	4
Noise	34	128	4	95
Environmental	5	8	3	6
Maintenance/ARFF Vehicles	62	12	12	6
Financing ²	10	709	2	7
Total	366	2,041	119	1,397

¹ Does not include the New Denver Airport approval of \$2.3 billion, with which a majority of carriers disagreed.

² Not every airport specifically identified financing as a line item project, therefore there are likely to be significant financing dollars included in other project categories.

Mr. BORSKI. We would like to welcome our final panel today, Mr. George Doughty, Chairman, Airports Council International—North America and Mr. Larry Cox, President of the Memphis—Shelby County Airport Authority.

I understand you will also be joined by Mr. Hauptli and Mr. Howard. Would you gentlemen please rise?

[Witnesses sworn.]

Mr. BORSKI. Thank you, you may be seated.

TESTIMONY OF GEORGE DOUGHTY, EXECUTIVE DIRECTOR, LEHIGH-NORTHAMPTON AIRPORT AUTHORITY, CHAIRMAN, AIRPORTS COUNCIL INTERNATIONAL—NORTH AMERICA, ACCOMPANIED BY GEORGE HOWARD, PRESIDENT, AIRPORTS INTERNATIONAL—NORTH AMERICA, AND TODD HAUPTLI, VICE PRESIDENT, FEDERAL AFFAIRS, AMERICAN ASSOCIATION OF AIRPORT EXECUTIVES; AND LARRY COX, PRESIDENT, MEMPHIS-SHELBY COUNTY AIRPORT AUTHORITY ON BEHALF OF AMERICAN ASSOCIATION OF AIRPORT EXECUTIVES

Mr. Doughty, you can proceed in any fashion you wish. Let me remind you that your statement is part of the record and you may proceed in any way you feel comfortable.

Mr. DOUGHTY. Mr. Chairman, thank you very much.

I have only a few, since we have prepared the written statement that has been received, I had only a few comments, oral comments, and will take only a few minutes and be more than pleased to answer any questions that you may have about our position.

As you know, the PFC program is a very new program. It has essentially been in operation for less than two years—following the regulation, preparation and issuance of regulations. It represents we believe a very, very important potential funding source for the long term for airports.

It was designed and is a source of revenue that is independent of other sources—in other words, not dependent on lease agreements with airlines, concession arrangements, or other local tax funds, and it gives airports an opportunity to move ahead with projects that are critical to the long-term development of the air-

port and to reduce delays and improve capacity and improving competition at the airport and in the national system.

We think the program is working very well. The FAA is doing an excellent job of assuring that the projects proposed meet the legislative intent and the specifics of the law.

We disagree strongly with the ATA that the FAA should serve as a referee or an umpire ruling on issues between airlines and airports. The FAA's job, which they are doing well, is to determine whether the project meets the legal requirements and we believe they have requested and received in all cases adequate documentation and have made those decisions wisely.

With regard to coordination and communication with the airlines and with the users of the airport and with the public at large, our experience has been that that has been an effective process. The ATA has indicated that they felt the coordination with airlines has—ranged between poor and excellent. I would suggest that the excellent ones are the ones where the airports ultimately agree with the ATA or the airlines, and the poor ones are the ones where the airports chose not to agree with the comments of the airlines.

However, a process was developed in cooperation with ATA for coordination, and to my knowledge, the provisions of the law as well as the recommended procedures are followed by airports in communicating and coordinating with the airlines and with regard to the public.

We listed for you a number of ways in which airports must coordinate with the public in order to do various kinds of projects. They must comply with a whole series of requirements based upon the sources of funds or the type of project or the environmental impact or whatever—also local public meeting laws are a common requirement with airport boards and cities and other bodies that operate airports.

So I think it is safe to say there has been no PFC project approved or no PFC imposed without first having substantial public communication either through hearing processes fulfilling another requirement or through normal media attention that these projects receive.

In my personal experience at two airports where PFCs were implemented, there was substantial press about the implementation of the PFC and also about the projects that the PFC was to be used for, and in those cases, despite the enormous amount of publicity, I do not recall receiving one letter from one citizen objecting to investing \$3 of their airline ticket into developing the airport. I think that is generally the case, at least it has been as reported to us around the country, very little negative public reaction to the paying of \$3 to improve and maintain airports.

I would suggest that in response to the comments expressed by the ATA panel with respect to land-side projects, land-side projects are clearly allowed under the current law, and a number of airports have chosen to use the PFC for that purpose. I don't think that you will find any of those projects are unneeded.

The largest being New York, and I don't think anybody in this room would disagree that it is difficult to get from Manhattan to Kennedy or LaGuardia Airports and some other form of transportation to those airports would be valuable to the airport and ulti-

mately to the airlines serving those airports. The question may be: Who pays for it?

We think that the PFC is a very logical thing to use because the passengers who are benefitting from the service are paying for it even if they don't use the public transportation provided.

It relieves congestion on roadways and other areas of the airport and therefore it benefits all users.

We think it is appropriate and certainly should remain part of the legislation.

I would be happy to answer any questions that you may have.

Mr. BORSKI. Thank you.

Mr. Cox.

Mr. COX. Thank you, Mr. Chairman, and members of the committee.

I represent Memphis International Airport in Memphis, Tennessee. Our airport is one of the most important economic generators in the State of Tennessee, with an annual impact in our community of over \$2 billion a year, with some 26,000 employees on the airport.

We are headquarters for Federal Express, and we are the largest air cargo airport in the United States. We have a large hub with Northwest Airlines as well.

We were one of the first airports to jump into the PFC waters, and we did so at the request of the airlines. We believe that the PFC program as is currently administered is a good program. It has worked well, and it is something that all airports need.

Because of the fact that the financing for airports is difficult, our particular project is a \$177 million project, it is for a new third parallel runway, and the reconstruction of another parallel runway.

The airlines are all supportive of the project and with differing views on the PFC. However, just to give you some idea of the airline and public involvement in our project, we started planning on our project for 1984. We expect to be completed in the year 2000. We have had to date over 150 public information meetings, public hearings, meetings before city councils, county commissions, and so we certainly feel like there has been ample public participation in the project.

We think it is good to have public participation because of the importance of the airport community, the importance of our air carrier airlines, and air service to our community and jobs, and so forth. We believe that the program is being administered very well by the FAA.

I would be happy to answer any questions that you might have, Mr. Chairman.

Mr. BORSKI. Thank you, sir.

Mr. Inhofe?

Mr. INHOFE. Thank you, Mr. Chairman.

Do I understand correctly that you had 150 public meetings; are some of those meetings where the public was advised to have input?

Mr. COX. Yes, at our own volition, we specifically went out into the various neighborhoods around the airport to explain the project to them. Of course, many of the meetings were required by the EIS.

Mr. INHOFE. I understand that, but also you say you went to the city commission, and one of the public meetings was with them, and you brought this up, discussed this and aired it?

Mr. COX. Yes. Anytime we do any financing at our airport we are required by the Federal law, TEFRA, for example, we were required to have a TEFRA hearing, as well as go before our city council and county commission even though we are an airport authority and we have autonomy, we still have a requirement to keep our elected officials informed.

Mr. INHOFE. Mr. Doughty in his printed statement commented that, the local communities may "impose their own requirements on public agencies which submit PFC applications."

It sounds to me like there in Memphis you did exactly that and had a series of public hearings so that people were really aware of it.

Mr. COX. Many of those meetings occurred prior to the actual application for the PFC. As I say, they were due to the fact we have a master plan, a Part 150 program, and environmental impact statement, and those sorts of things. Just the fact that our airport authority has a policy to maintain a close working relationship with our elected officials as well as the public, and the fact that the media cover them, we have an open meetings law, and of course the media widely covers our meetings and actions on a daily basis.

Mr. INHOFE. First of all, I don't want any of the four of you to think that I am in any kind of an adversarial relationship with you.

I was sitting there, I was—I served on an airport authority. I know how difficult it is and I know the difficulties you have in doing it. I also know that you have a responsibility, as I had when I was Mayor of Tulsa, of selling any funding mechanism to the people.

I have found if you open the doors and let them see it and have an open public hearing, that generally they are receptive, and in Memphis apparently they were receptive.

Mr. COX. Yes, however, we would be careful about putting additional legislative requirements because of the—well, there are requirements.

Mr. INHOFE. Let me ask you a question. I recognize as you said in your statement that the local communities may impose their own requirements on public agencies who submit the application. What if they don't? You talked about you have public hearings, you have a media that was interested.

Take Tulsa, Oklahoma, where there wasn't public hearings, the media was apparently not aware or didn't have a lot of interest in the PFC process. Do any of the four of you see any problem in making a requirement for a public hearing?

I don't mean where you advertise in the Federal Register that nobody reads, but just the normal time type of public hearing process so the people will know what you are doing?

Do you, Mr. Cox?

Mr. COX. Well, I am representing the American Association of Airport Executives and the Association is currently polling its board members to get an official position. The real concern is the

potential burdensome cost and delay that an additional requirement might have given the fact that we do acknowledge that public involvement is an important part of any airport program.

Mr. INHOFE. Now, the additional time, this was mentioned twice now, going from my own memory on what is required, 30-days notice on open meeting laws, public forums; in the case of Tulsa, between March and May, which we only had two months between the time that they initiated it and then we had the first tentative approval where they could go out and collect them; why would that not work very well?

Why are we so concerned about additional time and money? Is there any additional time and money sacrificed in reality in having a public hearing?

Mr. COX. All I know is my runway project put a lot of gray hairs on my head from the bureaucracy and various things you have to do to bring forth a project that was well-developed and justified, and putting another barrier, it seems to me, is icing on the cake.

Mr. INHOFE. Well, some of you were at the hearing in 1990 when we passed the legislation that made it permissible to use that funding mechanism of the PFC. You might recall that in my testimony, speaking as the only Member of this panel who served on an airport authority board, I supported it.

I was one of the strong supporters for the installation of the PFC system. The reason is that I know from personal experience that somewhere in each airport authority is an elected official that has to answer to the public.

I assumed without reading it as closely as I should have, that the same requirements for PFC funding would match the requirements for the AFDP process.

Mr. DOUGHTY. If I could respond to that, Congressman.

I don't think that any of us would sit here and say that the implementation of the public hearing, adding that to the process would kill the program, by any means, or make it impossible for us to move forward.

As a matter of policy of our association, we are opposed to any change in the PFC law. We think the law is working well as it is.

We could poll our members for you, but I would believe—and maybe Tulsa is an exception—but I would believe that there was adequate public notice and the opportunity for public comment on probably all the PFC applications that had been received.

I would like to go back for a minute, if I can, to 1972, I believe, when we lost the right that we had to charge the PFC. In fact, we are probably the only local entity that is restricted on how it can charge people in interstate commerce, other than the restriction of undue burden.

Really what we are talking about is the right to charge passengers at a local airport that pass through that airport, that use the facility, for a certain amount of money to be used to build and improve that facility. The local boards, the local city councils, the people involved who have to make those decisions ultimately have to answer to their constituents who are there. And, frankly, this has not been an unpopular program, there is not a groundswell of folks saying: I hate this \$3 fee I am paying on the ticket.

So I think as long as people understand it is going to improve the facility, that it is not going to Washington and turning around and coming back, at 50 cents on the dollar or 20 cents on the dollar, in some cases, I think people feel pretty good about it. I don't see a need to change the process.

With regard to the airlines support of this additional action, frankly, their best tactic on all the things they are involved in is to stall. If they are opposed to a project, they will stall it as long as they can.

The addition of another hearing requirement gives them another bit of ammunition to do that and we don't think that is needed.

Mr. INHOFE. Mr. Doughty, I don't disagree with the statements you made about how this is working in most areas. I am saying in some areas, it isn't.

When they are taking the precautions that Mr. Cox has taken in Memphis, I can see that there is not a problem. I certainly am not one to induce red tape or hardship. Read the NFIB ratings and you will find out.

But I want to remind you there are exceptions to that and places where adequate public scrutiny is not occurring.

So I think you answered my question, you wouldn't have an objection if you merely had to have a public hearing.

Mr. DOUGHTY. I can't say it would be a terribly serious problem, but it would be something else we would have to deal with in the process. If we had a choice, we would not. We would choose not to.

Mr. INHOFE. I understand.

Thank you very much.

Mr. BORSKI. Thank you.

How would you describe FAA levels of scrutiny in evaluating PFC applications now as opposed to when the program first began?

Mr. DOUGHTY. I would say with all due respect to the FAA, that the scrutiny at the beginning of the program was generally appropriate. I would say the level of scrutiny at this time in the program tends to approach excessive. It, however, has not been a burden in most cases and projects have been able to move ahead without delay.

It also, frankly, and again with all due respect to my colleagues in the Federal Aviation Administration, there is considerable concern in the FAA about the pressure being applied to the agency by the airlines on projects they oppose. That has increased their level of attention to some details that probably they would not otherwise bother with.

Mr. BORSKI. The previous panel suggested the FAA needed to be more aggressive. I take it, you would disagree with that?

Mr. DOUGHTY. Yes, I would disagree with that strongly.

Mr. BORSKI. Can we talk about the New York situation raised by the previous panel and the subway line that is proposed?

Mr. DOUGHTY. I can discuss it, but I am not familiar with the details. Mr. Howard might be more familiar with that.

Mr. BORSKI. Mr. Howard, it seems clear that with any direct transit line to the airport, there shouldn't be much question about that, but if there were stops added at the ball park, for instance, it is hard to imagine who that would benefit other than the players, maybe.

Mr. HOWARD. Mr. Chairman, I am not knowledgeable about the stops, but I don't think there are any contemplated stops at the ball park. I think the key thing that the ATA has raised here is to question all of the ground access projects of this nature.

These types of projects are key to increasing the capacity of certain airports and to the efficiency of certain airports. Obviously, exclusive access is something which I think is highly desirable; that is what is being talked about; that is what is being striven for. But certainly I think the ATA is missing the boat here when they say that ground access projects should not be supported, should not be part of the PFC program.

In the long run, they are going to gain from this and the passengers and the entire national transportation system.

Mr. BORSKI. I am a big supporter of mass transit, and the project sounds like a really good idea to me. But I am curious if your options were not to have it at all, or perhaps have split funding; is that something that could work?

Mr. HOWARD. I would hope that—in terms of where they are getting the funds from?

Mr. BORSKI. Yes.

Mr. HOWARD. I would hope they are exploring that and I am sure they are.

Mr. BORSKI. Further questions?

Mr. INHOFE. No.

Mr. BORSKI. If not, thank you gentlemen very much.

There being no further business, the subcommittee hearing is adjourned.

[Whereupon, at 11:50 a.m., the subcommittee was adjourned.]

PREPARED STATEMENTS SUBMITTED BY WITNESSES



Statement of

Airports Council International - North America

and

American Association of Airport Executives

Before the House Public Works and Transportation Committee
Investigations & Oversight Subcommittee

July 28, 1993

by

George Doughty
Executive Director
Lehigh-Northampton Airport Authority
Chairman
ACI-NA

and

Larry Cox
President
Memphis-Shelby County Airport Authority

on

Implementation of the Passenger Facility Charge Program

AIRPORTS COUNCIL INTERNATIONAL

1220 19th Street NW, Suite 200
Washington, D.C. 20036
(202) 293-8500
Fax (202) 331-1362

AMERICAN ASSOCIATION OF AIRPORT EXECUTIVES

4212 King Street
Alexandria, VA 22302
(703) 824-0504
Fax: (703) 820-1395

Statement of the Airports Council International - North America and the
American Association of Airport Executives Before the
Subcommittee on Investigations and Oversight
House Committee on Public Works and Transportation
On Implementation of the Passenger Facility Charge Program
July 28, 1993

Mr. Chairman and Members of the Subcommittee:

I am George Doughty, Executive Director of the Allentown-Bethlehem-Easton Airport Authority and Chairman of the Airports Council International - North America. With me is Larry Cox, President of the Memphis-Shelby County Airport Authority.

We are pleased to be here representing the Airports Council International - North America and the American Association of Airport Executives, and the local, regional and state governmental bodies and men and women who manage our nation's airports. We appreciate this opportunity to discuss the status and progress of the Passenger Facility Charge (PFC) Program. Our major concern with the PFC program is that the Congress and the Administration preserve its intent and integrity and give the program a chance to work.

As you know, in 1990 the House Aviation Subcommittee and Public Works and Transportation Committee developed, and Congress enacted, a landmark aviation bill that authorized airports to raise badly needed additional funds for important capital improvement projects by imposing modest passenger facility charges (PFCs) on air travelers using the airport. This was done to help bridge the gap between airport capital

development funding needs – which exceed \$10 billion annually – and continued inadequate funding from the federal Airport Improvement Program (AIP).

The PFC program has begun to help bridge the gap, but the program has been in operation only a short time. The first ten airports which received FAA approval have been collecting PFC revenues for only one year. As of July 22, the FAA had approved 123 applications to impose PFCs at 120 locations. The total revenue that will be raised over the life of the various collection periods is approximately \$7.3 billion.

More than half of the large and medium hub airports throughout the country have submitted PFC requests; while 40 percent of the small hubs and 30 percent of the non-hub airports have applied for PFC approval. Of the top 100 U.S. airports (based on 1992 passenger enplanements), 41 have been approved, 7 are presently applying, 27 have indicated an interest in applying or have taken the initial steps toward applying, and 25 have no current plans to impose a PFC.

PFCs are critical to provide airports with the financing tools and greater independence to respond to the air traffic and expansion needs of the airlines and the air service needs of the air travelers and communities they serve. PFCs are building worthwhile projects – those that preserve or enhance safety, security and capacity, reduce noise impacts, or enhance competition among air carriers. Since a PFC is a local charge that can only be applied to local airport projects, the PFC program enables airports to respond to the

demands and needs of their communities and the air travelers who rely on the airport. In addition to airside projects, such as runways and taxiways, PFCs are being used by airports to effectively address long-neglected and underfunded needs for noise mitigation for neighboring communities and residents, terminal improvements and expansions, ground access projects to relieve congestion for travelers getting into and out of the airport, and the expansion of gates to increase air service for their communities and expand competitive opportunities for the airlines. Airports can now undertake projects that communities and air travelers need, which otherwise could not be funded because of limited Airport Improvement Program (AIP) funds or lack of support from the airlines because of their financial constraints or because they don't view the project to be in their interest.

PFC-funded projects are also creating jobs and stimulating business investment and opportunities for the airlines and many other airport-related businesses. Investment in airport development fosters a competitive, efficient and growing air transportation system, and contributes to economic revitalization and growth throughout the country. Airport development creates jobs and spins off broader economic benefits in the localities and regions served by the airport. For each \$1 billion invested in airport development, approximately 40,000 to 50,000 jobs are created and sustained, with related multiplier spending and tax revenue benefits for local and state governments and the federal government.

Without PFCs, many projects would go unfunded or would be delayed. The long-term capacity improvements and benefits they provide would not be available when the airlines and traveling public need them, and the jobs and economic benefits they provide would not be available now when the nation's economy needs them.

The airport community continues to work with the airlines and the FAA in the implementation of this fledgling program. Last year, AAAE, ACI-NA and the Air Transport Association (ATA) developed and issued joint consultation guidelines to help ensure that the consultation process between airports and airlines was meaningful and constructive. As a result, there has been substantive dialogue between airports and their carriers about PFC project proposals. Our three organizations and representatives of the individual carriers and airports continue to meet regularly – and as recently as earlier this month – to discuss PFC implementation issues as well as other issues of mutual interest.

Airports and airlines are also working together, and with the FAA, to better resolve discrepancies and anomalies in PFC collection and remittance by carriers. ACI-NA has established a Task Force, comprised of airport representatives working with ATA and FAA, to deal with PFC collection, remittance and reporting issues that arise. One product of this ongoing effort will be the "ACI-NA Passenger Facility Charge Reporting and Control Guidelines" for use by airports and airlines to achieve as uniform a reporting format as possible. The Guidelines are now in final draft, and will be issued in

early September.

In response to airline and FAA concerns, airports are modifying their applications and revising or withdrawing projects. The FAA is rigorously scrutinizing proposed PFC projects and disapproving or deferring projects. Whereas the FAA has approved \$7.3 billion in PFCs to date, airports actually applied for over \$16 billion in PFC projects. \$113 million in PFC projects were disapproved; \$141 million was deferred; and more than \$6.3 billion in applications were withdrawn following consultation with the FAA.

When the legislation creating the PFC program was adopted in 1990, the annual revenue to airports from the program was estimated at \$1 billion a year. In 1992, airports received \$113 million from PFCs and the FAA estimates this figure will grow to at least \$517 million in 1993 based on the locations already approved, still far short of the original estimates. FAA projects that PFC collections nationwide will be between \$700-800 million in 1994, based on approved and pending locations.

These funds are critical to the future of our airports and the national air transportation system. This is especially so as we face the daunting prospect of serious reductions in federal funding for airports, presented by the \$300 million cut in AIP funds in the House's DOT/FAA appropriations bill for fiscal 1994.

When there is disagreement from the carriers over specific airport PFC projects, it is

usually over terminal and ground access projects. Although the airlines may not perceive these types of projects to be of direct benefit to them, they are important and beneficial to air travelers. Airport operators must provide facilities that are safe, efficient, and in compliance with federal mandates to get passengers to, through and from their airports. Passengers pay federal ticket taxes and PFCs to contribute to the development and improvement of airport facilities that benefit them throughout their entire travel experience, not just those facilities that are used by the airlines.

Airport operators and airlines will not always agree on the need for, scope or timing of a particular airport development project or program. Often, the individual tenant airlines at an airport will not agree among themselves about development priorities. This is understandable, since they are competitors and each has its individual corporate strategies and preferences. From a business stand-point, it is understandable that a dominant airline at a given airport may not want to see new gates added that will permit a competitor to increase or initiate service.

This is precisely why PFCs were created by Congress. Airport operators are the public bodies entrusted with developing the infrastructure serving all elements of the air transportation system. PFC programs enable them to proceed with needed development without first obtaining approvals from competing and diverse airline companies. The PFC program must be preserved and must remain procedurally unencumbered if airport development in the interest of the overall air transportation system, rather than of a

particular airline or group of airlines, is to be met.

Some airlines argue that the PFC program should be changed to add a so-called "needs test" to the evaluation of PFC applications. A needs test, no matter how artfully drafted, is likely to lead to prolonged administrative challenges to FAA action on PFC applications, as well as to litigation in the federal courts. Furthermore, the substance of the test is likely to be intended to reduce airports' ability to rely on PFCs as a financing mechanism, and limit their ability to undertake airport improvements that truly benefit air travelers and their communities.

We remain unconvinced of the necessity of a "needs test." The fact of the matter is that the FAA has and continues to exercise discretion and strong scrutiny before it approves PFCs. Call it what you want, the FAA already makes a needs and use review and requires substantial documentation and justification to assure compliance with existing law before it will approve an airport's project for PFC funding.

We fear that the airlines are really using the "needs test" argument as a thinly-veiled attempt to put a brake on the PFC program, and exercise greater control over the approval process. Time and again, the airlines have praised the FAA for its handling of the approval process. They have stated many times that they have agreed with more than 75% of the total PFCs the FAA has approved. We think that is remarkable, given the fact that the program is intended to give airports an independent funding source and

the inevitable fact that airports and airlines will not – and should not be expected to – always agree.

Airports strive to ensure that the public and communities have an opportunity to understand proposed projects, assess the benefits and impacts and express comments. This is in the airport operator's best interests, since community support and acceptance are often critical to whether or not the project moves ahead. Airports devote considerable time and resources to provide public information and undertake public notice, hearing and participation required by local practices and policies, political necessity and applicable federal, state and local laws and requirements.

There is already considerable public participation and involvement in the development of airport capital improvement projects, and in the assessment and mitigation of noise and other environmental impacts. Public involvement on proposed airport projects occurs long before decisions are made to use PFCs as the means to help fund the project.

We would like to summarize the various means and procedures currently in place for airport planning and development that ensure opportunities for public review and comment.

- o Airports have extensive master planning processes in which interested and concerned citizens and communities have the opportunity to review and comment

on proposed projects and their airport's overall development program.

- o PFCs are only one funding component; most often they are used in conjunction with AIP funds, in which case all applicable AIP public notice and hearing requirements apply. For example, Section 509(B)(6)(A) of the Airport and Airway Improvement Act states that no grant application for location of an airport, runway, or major runway extension may be approved unless there has been an opportunity for public hearings to consider the economic, social, and environmental effects of the airport or runway location and its consistency with the goals and objectives of local community planning.

- o FAA regulations implementing the above provisions require that airport project sponsors give notice of opportunity for a public hearing to consider the issues described above. The notice of opportunity for public hearing must contain a concise statement of the proposed development; be published in a newspaper of general circulation in the communities in or near the airport, provide a minimum 30 days notice, and state how interested parties can obtain a copy of any environmental assessment.

- o In the 1992 reauthorization of the Airport Improvement Program, Congress also adopted a new provision to strengthen the opportunities for public participation in airport development projects and ensure such communities are aware and

informed of the noise impacts of major runway construction and extension projects. The provision (Section 509(b)(6)(ii)) requires that airport sponsors must certify "that the airport management board either has voting representation from the communities where the project is located or has advised the communities that they have the right to petition the [Transportation] Secretary concerning a proposed project." The Senate Committee Report on the bill also urged FAA to continue its efforts to ensure active public involvement and identification and mitigation of noise impacts that are associated with runway construction or extension projects.

- o Under the FAA's regulation for the PFC program, the FAA must publish notice of every PFC application in the Federal Register (as required by 14 CFR 158.27(c)(2)) and provide opportunity for public comment.
- o The FAA regulations applicable to PFCs also require that the local government or public agency proposing a PFC must make publicly available a copy of the application, notice and other documents germane to the application.
- o Local communities impose their own requirements on the public agencies which submit PFC applications. Local governments and public agencies, for example, may hold public hearings on the decision to submit a PFC application. Most local governments and public agencies are subject to open meeting requirements which

require advance notice of consideration of the decision to submit a PFC application, and a public deliberation on that decision.

- o Some public airport sponsors include PFC revenues in their budgets; those budgets are also the subject of open meetings, and under the 1992 AAIA amendments (Section 511 (a)(11)), the airports' budget must be available to the public.

- o In order to obtain federal AIP assistance for noise mitigation and compatibility projects, airports undertake a Part 150 noise compatibility planning process, which involves extensive and comprehensive public and community participation and involvement. The Airport Safety and Noise Abatement Act of 1979 (ASNA) requires the FAA to provide for consultation between the airport sponsor and any public and planning agencies in the area covered by a Noise Exposure Map (NEM). In preparing Noise Compatibility Programs (NCP), the law requires notice and opportunity for a public hearing, as well as consultation with officials of public agencies and planning agencies in the area surrounding the airport, Federal officials, and air carriers using the airport. In addition, the airport operator must certify that it has afforded interested persons an adequate opportunity to review and comment on the proposed project and noise impacts.

- o The National Environmental Policy Act (NEPA) requires review of any "major

Federal action significantly affecting the quality of the human environment". Though the FAA generally acts as the lead agency and manages the NEPA process, all affected federal, state and local agencies and the public must be consulted. An opportunity for a public hearing and a published notice of opportunity to comment is required for a new airport, new runway or a major runway extension. The FAA may also require a public hearing for other projects if there is substantial controversy. All substantive issues raised by the public must be documented and responded to in the Environmental Assessment submitted by the airport operator to the FAA. If an Environmental Impact Statement (EIS) is required, a "notice of intent to prepare" must be published by FAA.

While it may be tempting to tinker with the PFC program, we strongly advise against such action. All the suggested changes we have heard thus far would result in adding obstacles to, delaying or eroding PFC projects and the program, contrary to Congress' intent that PFCs be used to expedite and advance airport capital development projects.

The PFC program is still in its infancy and is working well. We will continue to work with the FAA, the airlines and other interested parties to improve the implementation and effectiveness of the PFC program. ACI-NA and AAAE will also continue to assist airports applying for PFCs to develop and strengthen public outreach, and to advise and involve the public at the earliest practical stage in the project planning and development process.

Thank you. We would be pleased to answer any questions you may have.

STATEMENT OF JAMES E. LANDRY
PRESIDENT
AIR TRANSPORT ASSOCIATION OF AMERICA
BEFORE THE
SUBCOMMITTEE ON INVESTIGATIONS AND OVERSIGHT
COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION
U.S. HOUSE OF REPRESENTATIVES
CONCERNING THE IMPLEMENTATION OF THE
PASSENGER FACILITY CHARGE PROVISIONS OF THE
AVIATION SAFETY AND CAPACITY EXPANSION ACT OF 1990
JULY 28, 1993

Good morning. My name is James E. Landry. I am the President of the Air Transport Association of America. I appreciate the opportunity to discuss with the Subcommittee issues concerning the implementation of the Passenger Facility Charge program.

Funding needed airport capacity improvements is indispensable for the consumer, the airport operator and the airline industry. We take as a given that each party has a fundamental interest in assuring that necessary capacity improvements are achieved economically and in a timely manner. Airport projects initiated today will affect the nature, extent and cost of air transportation services in this country for decades to come. Because of that, airport capacity decisions must be undertaken with great discipline and must be scrutinized by all who would be affected by them.

Each of the affected parties--consumers, airport operators, airlines, and the Federal Aviation Administration--must come to that undertaking realizing that there is a genuine community of interest here: the welfare of each party is bound to that of every other party. We will all pay dearly for airport capacity mistakes. Consequently, it is the responsibility of each

of us to help formulate capacity improvement decisions that properly respond to future air transportation demands.

Both before and after the advent of PFCs, the relationship between airports, the FAA, and the airlines concerning airport capacity issues has been basically sound. As a result, airports, by and large, work well. Airlines are committed to building upon that success; we want to avoid actions that would jeopardize the future well-being of consumers, airports or air carriers.

In particular, airlines want capacity investments to be well justified and properly directed. We agree that necessary improvements must be funded. What we object to are projects that are inadequately justified, excessively costly, or which do not contribute directly to commercial aviation capacity enhancement. Great discipline in these matters is essential because we will literally be paying for decisions made today for years to come. Not only does the PFC payment period at an airport often extend for decades into the future but the operations and maintenance costs of projects funded through PFCs, which the airlines must bear, will continue indefinitely.

That sobering reality makes airlines cautious examiners of airport expansion plans and unreceptive to the disappointingly common hope that if only an expansion project is built, the airlines will flock to the airport. "Field of Dreams" arguments have no place in airport expansion deliberations.

Our sober analysis of these projects does not mean that we are knee-jerk naysayers when it comes to evaluating PFC applications. Quite the contrary: airlines have supported approximately 75 percent of the applications that the FAA has approved. This figure is unmistakable evidence that airlines support appropriately justified PFC projects.

The airlines' experience in evaluating PFC applications prompts me to make three general observations about this program.

First, the U.S. airline industry cannot afford unnecessary costs. Our industry is in deep financial distress. Between 1990 and 1992, we lost \$10 billion. Financial problems persisted in the first quarter of 1993, during which we lost \$711 million. The road back to profitability for the airline industry is proving to be a long and torturous one.

Unfortunately, in the past decade the rate of increase of airport related costs has far outstripped that of other operating costs for airlines. Between 1982 and 1992, airport costs per passenger--*exclusive* of PFCs--rose from \$4.159 to \$7.618.¹ That represented an 85 percent increase. In contrast, all other per passenger operating costs collectively rose by only 20 percent during the same period. To place the rise in airport charges in another perspective, producer prices rose 18 percent between 1982-1992 and consumer prices increased 46 percent during the same period.

¹ This is based upon actual airport costs increasing from \$1.208 billion in 1982 to \$3.582 billion in 1992.

Obviously, the trend in airport costs is worrisome to us. It reinforces our belief that because PFC projects are sources of substantial future expenses, they must be closely scrutinized.

My second observation is that there is an assumption that PFCs do not cost the airlines anything. Unhappily, that is not true. In this age of bargain hunters, airlines have great difficulty in passing on costs to their customers. Soft consumer demand for airline services and intense competition among air carriers too often do not permit them to do so. As a result, airlines frequently are forced to absorb all or part of additional costs, such as PFCs. Hence, although it may be named a passenger facility charge, in any city-pair market--particularly one enjoying inter-hub competition along the way--it can easily become an *airline* charge. That is another reason why we believe that PFC applications must be rigorously evaluated.

Third, the PFC program can only fulfill its promise if the FAA assumes a more aggressive role in the application approval process. Although we appreciate its efforts to dissuade airport operators from pursuing certain projects that we regard as unauthorized under the PFC enabling legislation, we believe that the FAA has far more authority under that law than it has exercised to date. In our view, the FAA should function as an umpire that unabashedly "calls them the way it sees them."

Such a decisionmaking role is essential if the PFC program is to remain focused upon funding demonstrably necessary capacity improvement projects. A PFC is such a large and readily accessible source of funding that it seems to exert upon some airports an irresistible

temptation to use it. That is not what Congress intended, nor is it what a healthy air transportation system can tolerate. Hard analysis, not the attraction of obtaining funding from a voiceless constituency, should be what propels PFC decisions. Otherwise, enormous sums of money will be committed to projects that have no or only marginal air transportation capacity benefits. Should that occur, the PFC program will be transformed from an aviation capacity enhancement device to a general public works scheme.

That transformation would occur on a gigantic scale. We assume that eventually most of the approximately 400 airports that our members serve will seek to impose PFCs. Given that breadth and the astonishing number of passengers who annually pass through the air transportation system--in 1992, we enplaned almost 430 million domestic passengers--if the PFC program loses its bearings, the economic consequences for airlines, and ultimately their customers, will be staggering.

The stakes are thus too great to allow the program to proceed without discipline and uniformity being firmly exerted. The FAA is the only entity that can fulfill that mission.

I would now like to turn to the specific PFC-related issues that the Subcommittee has raised.

Adequacy of the Consultation Process. Our experience with how airports fulfil their consultation responsibilities varies from excellent to poor.

The PFC regulations require an airport seeking to impose a PFC to send a written notice to the air carriers that serve it. The notice must describe the projects being considered for PFC funding, the proposed PFC level, the proposed effective date of the charge, the estimated date of expiration of the charge, the projected total PFC revenues, information about any class of carrier that is sought to be excluded from the charge, and the date and place of the consultation meeting.

Some airports have done a far better job than others in describing the proposed projects. Airlines tend to react with considerable skepticism to proposals that appear incomplete or ambiguous. Information that is more complete and provided earlier clearly enables carriers to perform an analysis of a proposal with much more confidence. Providing thorough justification--full disclosure, including projected costs of upkeep--simply makes for a much smoother consultation process.

Adequacy of Public Notification Requirements. The lack of meaningful involvement of the public in PFC decisions is a major shortcoming of the program. As a practical matter, airlines serve as surrogates for the travelling public during the consultation process. Since the interests of the passenger and the carrier coincide, we perform this function willingly. Nevertheless, it is no substitute for having the public actively participate in decisions that literally will affect the welfare of travelers for decades to come. Since we are dealing with a tax on air transportation, it is only right that the object of that taxation should have a voice in its imposition.

We believe that the PFC regulations should be amended to require public notification of pending PFC applications and to encourage public comment about applications. Public hearings would be the most efficacious way to assure the participation of the public in this process.

Changes That Should Be Made to the PFC Program. Three changes that should be made to the program are the introduction of a needs test, the proper application of the Congressional ban on applying PFCs to frequent flyer awards, and making airlines whole when they handle a ticket refund.

1. We believe that the discipline that is essential for the success of the PFC program can only be achieved through the inclusion of a needs test in the enabling legislation. We therefore suggest that section 1113(e) of the Federal Aviation Act be amended to require that all PFC project justifications provide the following information:

- the existing total capacity limits (passenger, aircraft and/or on-airport vehicular, depending upon the nature of the project);
- the basis of growth estimates, developed with and agreed to by the air carriers serving the facility or which have executed binding documents of intent to serve the facility;
- the expected passenger demand;
- the time when all such existing capacity is expected to be depleted; and
- the estimated total time needed to plan and complete any necessary airport

construction to avoid an imbalance between supply and demand for airport facilities.

Furthermore, the FAA's approval of a PFC application should specify in writing that, on the basis of the information that the airport applicant has supplied, the funding is necessary and appropriate for on-airport construction in the time period identified, in order to meet the demand objectively identified and quantified pursuant to the information that the applicant was required to submit.

The needs test will subject every PFC application to the type of rigorous justification that any substantial capital project should experience, especially one that is dependent upon public funding. Moreover, it would ensure that PFC funds are channeled toward capacity enhancements and would preclude groundside projects of dubious or no capacity value.

2. As the Subcommittee is well aware, the FY 1993 Department of Transportation Appropriations Act placed a statutory restriction upon the collection of PFCs from individuals travelling at no charge on airline frequent flyer bonus awards. Despite the clear intent of Congress to extend this prohibition to PFCs already in place, as well as to those that would be adopted in the future, the FAA has taken the position that the statutory restriction is of only prospective applicability. This has resulted in the untenable situation of some travelers enjoying the protection of the law but many others being denied its benefit.

We believe that this discriminatory treatment of passengers is wrong and plainly contravenes the intent of Congress.

3. My final point is technical but does cause airlines to lose money. Airlines are entitled to a fee for handling the collection of a PFC. It is twelve cents for every PFC remitted to an airport. However, if a passenger seeks a refund of his or her ticket, we are required to return the \$3.00 PFC but we can only reclaim \$2.88 from the airport. We thereby lose twelve cents on every refunded ticket that is subject to a PFC.

Simple equity demands that carriers be allowed to receive \$3.00 from an airport when a passenger obtains a refund.

Examples of Specific Projects that Violate the Intent or the Spirit of the Law. The PFC program provides a way to fund needed improvements to passenger capacity at U.S. airports. Unfortunately, not all projects that are proposed meet that standard.

Most troublesome to us are those groundside projects that are designed to produce the bulk of their benefits off of the airport. Examples of this category of project are roadway and transit proposals that clearly promise to advantage the surface traveler who has no connection to the airport rather than the air traveler. The problem with this type of project is obvious: it seeks to apply PFC revenues to surface transportation purposes that Congress never intended to be permissible under the PFC program.

Even on-airport projects can be unjustifiable. Just because a proposed project is designed to expand facilities at an airport does not make it appropriate. There has to be a demonstrable capacity need for the project before it should be permitted to proceed. For example, the lengthening of a runway or the expansion of a passenger terminal can cost tens of millions of dollars but provide no meaningful enhancement to capacity at the airport. Neither the air traveler nor the airline should be required to underwrite such wasteful projects.

Resolution of Discrepancies Between Passenger Enplanements and PFC Payments.

Some airports have reported discrepancies between the PFC collections that they projected and what they are actually receiving. The airlines have pledged to work with the airport community to attempt to resolve this problem.

Our preliminary reaction to these reports of disparities is that they may be attributable to the "first two, last two" provisions of the PFC law and to a higher proportion of international tickets being sold at foreign locations and therefore not subject to PFC collection.

More experience may provide firmer bases, especially at airports with significant international operations, to project PFC collections more accurately. In any event, we will work with airports to explore any disparities that they discover.

We believe that the PFC program holds the promise of providing needed airport capacity improvements. However, that promise will only be realized if greater discipline in the approval process is achieved. We urge all concerned to work toward accomplishing that goal.

STATEMENT OF QUENTIN S. TAYLOR, ACTING ASSISTANT ADMINISTRATOR FOR AIRPORTS, FEDERAL AVIATION ADMINISTRATION, BEFORE THE HOUSE COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION, SUBCOMMITTEE ON INVESTIGATIONS AND OVERSIGHT, CONCERNING PASSENGER FACILITY CHARGES, JULY 28, 1993.

Mr. Chairman and Members of the Subcommittee:

I welcome the opportunity to appear before the Subcommittee today to discuss the implementation of the Passenger Facility Charges (PFCs) and to provide you with an overview of how the PFC program is progressing. Accompanying me today is Mr. Lowell H. Johnson, Manager of our Airports Financial Assistance Division.

Nationwide, we expect PFC collections of approximately \$700-\$800 Million in FY 94, based on the number of airports that have indicated an intention to apply for PFC authority. PFC revenues, in conjunction with the grants issued under the Airport Improvement Program, provide an investment in the infrastructure that is critical to the economic well-being and growth of our air transportation industry. As intended, PFCs are beginning to make an important contribution to our Nation's airports by assisting in major safety and capacity enhancing projects around the country. In addition, PFCs provide a funding stream that gives airports the added flexibility they need for long-term planning and development projects.

Before I discuss the progress that has been made under the program, however, I would like to briefly discuss the history behind Congress' decision to authorize the PFC program.

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In the late 1980's, the Administration and Congress recognized the need for additional capital funding sources to provide for expansion of the national airport system. The continued growth of air traffic was straining the capacity of the existing aviation infrastructure. Delays were increasing, new airport security requirements were established, needs for mitigating the effects of aircraft noise increased along with traffic, and the safety of the airport system, as always, had to be maintained at higher levels of activity and enhanced as advancing technology allowed.

The traditional sources of airport revenue for capital improvements--revenue bonds, landing fees, leasing and concession income, Federal and state airport grant programs, and general tax revenue--began to appear inadequate to meet these demands. Therefore, Congress enacted legislation that would allow certain airports to charge enplaning passengers a \$1, \$2, or \$3 facility charge to help support airport planning and development projects. However, Congress limited the type of development that could be funded with PFCs by requiring that projects funded with PFCs either preserve or enhance safety, security, or capacity of the national airspace system; reduce noise or mitigate noise impacts resulting from airport operations; or furnish opportunities for enhanced competition among or between carriers. To guarantee that these requirements are met, Congress set forth a consultation and public notification process in the legislation that would provide airlines and interested persons with an opportunity to review and comment on applications as well as providing the FAA with the

necessary oversight and review of that process.

Before submitting its application to collect PFCs, the airport must consult with the air carriers operating at the airport. After this consultation, the application is submitted and it is reviewed by the FAA to determine whether sufficient information has been provided. If the application is sufficient, then the FAA publishes a notice of the completed application in the Federal Register and a 30-day public comment period begins. After the public comment period closes, the FAA reviews the application and the comments submitted and either approves the application, in whole or in part, or disapproves the application. Congress did not grant the FAA the authority to direct an airport to select a particular project. The airport selects which projects it will seek to fund with PFCs. FAA's review assures that the proposed projects meet the statute's objectives and requirements for eligibility.

Approximately 130 airports have already undergone this review and have received approval for PFC collections. Although over 1000 individual projects have been approved, many projects have been disapproved, revised, or withdrawn following FAA review. To date, airports have applied for a total of \$16.4 billion in PFCs. The FAA has approved approximately \$6.4 billion in collection and has disapproved \$2 million. A total of \$7.3 billion in applications has been withdrawn after consultation with the FAA.

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Frequently, an airport will withdraw a project after FAA's review has concluded that the project is not approved. For example, Las Vegas Airport withdrew a project to acquire a reliever airport due to FAA concerns regarding project sponsorship. Tulsa Airport withdrew a third parallel runway after the FAA questioned their project justification and financial plan. And, Daytona Beach Airport withdrew two projects, development of a general aviation apron and a concourse expansion, after further discussions with air carriers and the FAA regarding project justification.

PFCs are beginning to make an important contribution to our Nation's airports. PFCs have assisted in major safety and capacity enhancing projects around the country. Over the next 34 years, PFCs will provide approximately \$2.3 Billion for construction of the new Denver Airport. The Detroit Metropolitan Airport is using PFCs to rehabilitate its existing terminal and to build a new terminal to keep up with domestic demand and increased international traffic. And, San Jose International Airport is building a runway extension funded with PFCs that will allow air carriers to operate without weight restrictions.

PFCs have also opened up additional development capabilities for smaller airports. The Westchester County Airport in New York and the Worcester Municipal Airport in Massachusetts now have funds to build taxiways, eliminating the need to taxi on runways. PFCs are helping small airports build suitable airport terminals, which serve as "gateways" to these communities. And, at many small

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airports, PFCs are being used as the local match for AIP grants to finance runway and taxiway reconstructions, aircraft rescue and firefighting vehicles, and taxiway guidance signs.

In the future, numerous safety and capacity enhancing projects will be funded with PFCs. Airports now have greater flexibility in their capital development programs. With the PFC program airports can make local decisions about airport improvements, and use PFC revenue as a dependable local revenue stream to finance those improvements.

That completes my prepared statement. I would be pleased to respond to questions you have at this time.

ADDITIONS TO THE RECORD

Indianapolis Terry Airport (Reliever)
11355 E. State Road 32
Zionsville, IN 46077

July 24, 1993

Representative Robert Borske, Chairman
Sub-Committee on Investigation & Oversight
586 Ford House Building
Washington, D.C. 20515

Dear Rep. Borske:

Indianapolis Terry Airport is a private reliever airport and is a reliever to Indianapolis International Airport. Terry has received five FAA AIP grants for airport improvements to relieve general aviation traffic in the greater Indianapolis area.

Your public hearing on the Passenger Facility Charges (PFC) program that is being held on Monday, July 26th, is of interest to those of us that relieve general aviation traffic from a Hub Airport, such as Indianapolis International Airport. There are concerns that we have as private relievers, adjoining city or county sponsored relievers to these Hub Airports, that have not been addressed in the current law.

The concern that directly effects us is that the Indianapolis Airport Authority that operates Indianapolis International Airport and four relievers, Mount Comfort Airport, Indianapolis Metro Airport, Eagle Creek Airport, & Speedway Airport, can under the current PFC law, use PFC revenues from Indianapolis International Airport for projects on these relievers.

Under the current law that governs PFC's the other public sponsored and private sponsored relievers are at a distinct disadvantage as to funding that should be available for the airport improvement program. I can only ask, was this the intent of Congress when the PFC program was placed into law?

Allowing the PFC funds to go to all of the reliever airports that serve a Hub airport the total traffic situation is then addressed, further reducing congestion and delays for the airlines. The quicker the completion of Indianapolis Terry Airport, and the increase of number of based aircraft, the more relief of traffic to Indianapolis International Airport.

If this letter generates questions for you and other members of your committee, that need answers, please give me a call at 1-800-968-3779, 1-800-96TERRY.

Sincerely,


Ramon L. Van Sickle



Maryland Aviation Administration

"Striving to do our best in everything we do - dedicated to providing outstanding airport facilities and services"

Theodore E. Mathison Administrator

August 5, 1993

The Honorable Robert A. Borski
 Chairman
 Subcommittee on Investigations and Oversight
 House Committee on Public Works and Transportation
 585-89 Ford House Office Building
 Washington DC 20515

Dear Chairman Borski:

I am writing in response to recent testimony presented by the Air Transport Association of America (ATA) suggesting the State of Maryland, in its capacity as owner-operator of Baltimore/Washington International Airport (BWI), is not making prudent use of Passenger Facility Charge (PFC) funds. Please allow me to briefly set the record straight.

During the question and answer session with the ATA witness on July 28, 1993, Mr. Landry suggested that BWI was needlessly using PFC revenues to improve the existing terminal roadway when the PFC project this roadway was intended to support, the design and construction of a new international facilities, has been deferred by the State of Maryland. This ATA assertion is wrongheaded on both counts. First, regardless of the status of terminal building improvements, rehabilitation of the terminal roadway is required to preserve the existing ground access system. This critically important project is now underway, as is the extension of runway 10/28, consistent with the Federal Aviation Administration's July 27, 1992 "Record of Decision" approving PFC collections. Secondly, the State of Maryland is in fact proceeding with the design of new international facilities which will require further modification and expansion of numerous land and airside support systems, including public ground access.

In the face of overwhelming and compelling evidence that BWI must improve facilities which are today operating well beyond their design capacity, the ATA persists in its baseless efforts to use BWI as part of an apparent national campaign to call into question the merits of the PFC program enacted by Congress in 1990. Earlier this year, in testimony before the House Aviation Subcommittee, the ATA launched a similar diatribe on the PFC program generally, and BWI's international facilities expansion in

P.O. Box 8766, BWI Airport, Maryland 21240-0766 (410) 859-7100
 FAX:(410) 850-4729 TDD for the hearing impaired (410) 859-7227

The Maryland Aviation Administration is an agency of the Maryland Department of Transportation



The Honorable Robert A. Borski
August 5, 1993
Page Two

particular. During close questioning of the ATA witness by both Chairman Oberstar and Maryland Congressman Wayne Gilchrest, however, it was clear that BWI's active plans to use PFC's to expand international facilities were in fact very well-placed. Please let me set forth the basic facts.

This year alone, Mr. Chairman, approximately 650,000 international passengers will be inconvenienced by BWI international facilities designed to handle less than 400,000 annual passengers. Immigration and Naturalization Service/Customs Service facilities are undersized to accommodate existing demand, and cannot even handle simultaneous operations by just two widebody aircraft. As a consequence, federal passenger processing facilities at BWI can currently handle between 400 and 500 passengers per hour, yet current peak period demand already exceeds 500 hourly passengers. Existing holdrooms are likewise inadequate in both size and configuration. Further, two of the three gates cannot be used for simultaneous loading and unloading of passengers because of facility restraints. In sum, BWI is hard-pressed to handle existing demand, much less accommodate new entrant services or growth in services by carriers now serving BWI. In fact, very conservative traffic forecasts have BWI handling over one million international passengers by the year 2000.

Let the record also show we worked closely with ATA member airlines in exploring the widest possible spectrum of alternatives before pursuing construction of new international facilities. Two independent studies confirmed that the special facility requirements of international passengers made it technically and/or operationally infeasible to adapt, for international service, existing terminal areas built for domestic flights. For example, in response to a suggestion that we expand existing Concourses B, C or D, studies indicated these facilities lack sufficient width to provide the high capacity corridors and larger holdrooms needed to accommodate the numbers of passengers carried on a typical widebody aircraft operating internationally. Further, these studies indicated there is insufficient space for federal clearance facilities and there is insufficient wing clearance between the loading bridges on these concourses to accommodate widebody aircraft. As a practical matter, BWI currently lacks sufficient domestic space to relocate carriers from these existing facilities, even if it made structural and operational sense to do so for international purposes.

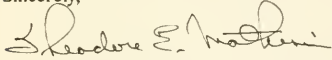
Based on these and other considerations, including an estimate that each additional international passenger at BWI means approximately \$1,223 in new economic activity in Maryland (measured in 1992 dollars), the Maryland General Assembly recently directed the Maryland Aviation Administration to proceed with the design of new international facilities at BWI and this design process is underway. Far from being defensive, Mr. Chairman, Maryland is moving forward on new international facilities at BWI. I respectfully submit that a financially prudent, operationally sound, capacity-enhancing

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project that responds to demonstrated need is precisely the kind of project that the Congress had in mind when it wisely created the PFC program in 1990. Construction of a new international terminal at BWI is exactly that kind of priority PFC project. I regret that the ATA testimony failed to recognize this reality.

Please let me know if I can provide you, the Subcommittee members, or staff with any additional information. Thank you for this opportunity to clarify the record, and for your interest in seeing that our Nation's airports are in fact able to enhance aviation safety, capacity and competition in an environmentally sensitive manner.

Sincerely,



Theodore E. Mathison
Administrator

TEM:tmb

CC: The Honorable Wayne T. Gilchrest
The Honorable James M. Inhofe
The Honorable O. James Lighthizer

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 NEW YORK, NY
 WASHINGTON, D.C.

TWO PARK PLAZA • SUITE 800
 IRVINE, CALIFORNIA 92714-5976

TELEPHONE
 (714) 263-3500
 TELECOPIER
 (714) 263-3533

WRITER'S DIRECT DIAL NUMBER

(714) 263-3530

August 12, 1993

Robert L. Borski, Chairman
 Subcommittee on Investigations and Oversight
 Committee on Public Works and Transportation
 U. S. House of Representatives
 2165 Rayburn House Office Building
 Washington, D. C. 20515

Re: Implementation of Passenger Facility Charges

Dear Mr. Borski:

The following constitutes the comments of the National Airport Watch Group ("NAWG") concerning the implementation of the Passenger Facility Charge provisions of the Aviation Safety and Capacity Expansion Act of 1990 ("PFCs"). These comments are submitted at the request of the Subcommittee on Investigations and Oversight as documentation for the hearing held on Wednesday, July 28, 1993.

NAWG wishes to begin by thanking the Subcommittee for soliciting these comments from NAWG. NAWG represents over 200 citizens and community groups across the nation, and, thus, has a significant stake in the way the PFC program is implemented and the uses to which the proceeds are put.

I. THE IMPOSITION OF PFCs HAS ECONOMIC CONSEQUENCES AND APPROVAL SHOULD BE SUBJECT TO A "NEEDS" TEST.

PFCs are a useful mechanism for supplementing ordinary airport improvement programs ("AIP") grant monies. However, they have economic impacts that AIP grants do not have. For instance, imposition of PFCs means increase in the price of tickets. While a one (1) to three (3) dollar increase may not seem significant taken alone, three fundamental facts must be kept in mind:

- (1) Passengers may pay PFCs in more than one airport on their routes;
- (2) Ticket pricing is a critical factor in the airline's financial calculations; and

Mr. Robert L. Borski
 August 12, 1993
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- (3) Where discount pricing prevails, a one to three or more dollar addition to the ticket price constitutes a noticeable increase in the total ticket price which is outside of the control of either the carriers or the passengers.

Because the relationship of price and demand is so critical to the economics of the airline industry, an airport's need to use PFCs must be carefully assessed before PFCs are approved. A needs test is not simply a case of preventing waste of government money, but also of carefully analyzing the reason for the grant application in the context of its impact on the airline industry. The substance of the needs test may be flexible. First, it should involve an analysis of the need for the proposed specific projects in light of the facilities already existing at the airport, and whether the project proposed for the PFCs is essential to the operation of the airport or merely a backup to existing facilities, anticipating an increase in traffic that may never materialize. Moreover, a cost benefit analysis should be required of the benefit of the project as against the costs in terms of diminution of demand due to higher ticket prices.

In short, neither the economy in general nor the airline industry in particular can afford the approval of PFCs on demand. Rather a "needs" criterion is essential to mediate between the operational capability the airport would like to have, and that which is realistically necessary.

II. PFCs ALSO HAVE ENVIRONMENTAL CONSEQUENCES AND SHOULD NOT BE APPROVED WITHOUT A PUBLIC HEARING AND PUBLIC TESTIMONY.

PFCs also have environmental consequences. In so far as they allow airport development and construction projects that might not otherwise take place, they have a public impact which should be subject to public comment. Publication of a PFC application in the Federal Register where it is virtually assured of going unnoticed by the affected public cannot be construed as sufficient information to the public. Rather, the public should be afforded the opportunity to comment on the PFC application and the project application at a public hearing, and should be given the opportunity to submit written comments for a record which will be available to the public at large.

Similarly, PFC applications should be subject to independent environmental review. It is not enough that the projects which they fund will themselves be subject to that review. Rather, the act of acquiring the funds, in so far as those funds make the projects possible, meets the definition of a major federal action which triggers the jurisdiction of the National Environmental Policy Act ("NEPA"). Once the funds are allocated through the PFC process, it is too late to stop the juggernaut of project execution, notwithstanding the results of the environmental impact statement for the project. In so far as the statutes that govern

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environmental review require that review to be carried out at the earliest possible time, it is entirely appropriate that the review begin with the application for PFCs.

III. PFCs WERE PASSED AS A PACKAGE WITH THE AIRPORT NOISE AND CAPACITY ACT AND PFC REVENUES SHOULD BE PRIORITIZED FOR USE IN NOISE MITIGATION PROJECTS.

Noise mitigation projects are, in some sense, the ugly step-child of airport planning. AIP funds may be used for noise abatement only if the airport operator has completed a federally approved airport noise compatibility program. However, there are many reasons why an airport proprietor might not want to use the federal program, including, but not limited to, the fact that once noise maps are prepared under that program, citizens who purchase homes within the map contours are precluded from legal relief for damages caused by the airport, no matter what level of operation the airport eventually reaches. Some political jurisdictions that run airports do not wish to participate in the program for that reason. Thus, they may not be eligible AIP funds for noise abatement.

In light of the above, there is substantial justification for the prioritization of PFC funds toward noise abatement projects. Such prioritization would create an incentive to airports to perform the noise abatement projects, since the money would be available on a priority basis.

Finally, since PFCs were, in fact, part of a package passed along with the Airport Noise and Capacity Act of 1990, it stands to reason that, if noise reduction is a principle goal of those statutes, PFC monies ought to be spent primarily on noise abatement projects.

Once again, NAWG thanks the Committee for soliciting its comments, and for its patience in awaiting them. NAWG will be happy to participate in any future hearings on this subject or on other aviation or airport regulatory topics. If you have any questions, please do not hesitate to contact me.

Sincerely,



Barbara E. Lichman

cc: Loren Simer
 Charles Price

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