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NATA National Air Transportation Association

Statement of the

National Air Transportation Association

before the

Subcommittee on Aviation

Committee on Transportation and Infrastructure

U.S. House of Representatives

Hearing on

Residential Through-the-Fence Agreements

at Public Airports

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Chairman Costello, Ranking Member Petri, and Members of the Subcommittee:

Thank you for the opportunity to appear before you today to discuss Residential Through-The-Fence agreements at federally obligated airports.

My name is James K. Coyne, and I am president of the National Air Transportation Association (NATA). NATA, the voice of aviation business, is the public policy group representing the interests of aviation businesses before the Congress, federal agencies and state governments. NATA's over 2,000 member companies own, operate and service aircraft and provide for the needs of the traveling public by offering services and products to aircraft operators and others such as fuel sales, aircraft maintenance, parts sales, storage, rental, airline servicing, flight training, Part 135 on-demand air charter, fractional aircraft program management and scheduled commuter operations in smaller aircraft. NATA members are a vital link in the aviation industry providing services to the general public, airlines, general aviation and the military.

Summary

The Federal Aviation Administration (FAA) has issued a proposed policy related to Residential Through-The-Fence (RTTF) agreements at federally funded airports. This policy would subject existing RTTF agreements to closer oversight and scrutiny and prohibit federally obligated airports from entering into any new RTTF agreements.

NATA supports the FAA's proposed policy and believes it is in the long-term interest of the air transportation system to adopt such a policy. The association believes the FAA proposal comports with existing federal grant assurance requirements and applicable case law with regard to prohibiting new RTTF agreements, while providing a reasonable accommodation for existing agreements to continue.

Background

Over the past year, beginning with the FAA release of a draft guidance letter regarding through-the-fence operations at federally obligated airports in late 2009, RTTF agreements have become quite contentious[1]. Simply stated, an RTTF agreement is a legal document between a residential property owner and an airport owner that allows the property owner to access the airfield directly from the residential property by aircraft. In the draft guidance letter, the FAA stated that there "are no forms of acceptable" RTTF agreements. The FAA's determination that RTTF agreements were unacceptable revolved around the premise that the signing of these agreements violated the federal grant assurances signed by the airport sponsor (owner) in return for federal funds being expended for development at the airport[2].

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[1] It should be noted that RTTF agreements at non-federally obligated airports (private airports) are beyond the regulatory purview of the FAA. In the interest of brevity, all references to RTTF agreements in this statement refer to agreements at federally obligated airports (public airports) unless otherwise noted.

[2] There are also other activities, such as the granting of federal surplus property to an airport, that trigger the requirement for an airport sponsor to sign and abide by the federal grant assurances.

Following the release of this draft guidance letter, there was significant debate throughout the general aviation industry regarding the role and appropriateness of RTTF agreements. In objecting to the draft guidance letter, supporters of RTTF agreements pointed to the fact that many such agreements currently exist and in some cases they had been approved by the FAA at the local or regional level. RTTF proponents claim that these agreements provide revenue and security benefits to airports. Some supporters of RTTF operations have urged Members of Congress to intervene and override the FAA's authority to determine whether RTTF agreements are in compliance or conflict with federal grant assurances.

Last week, a proposed policy on RTTF agreements was published in the *Federal Register*[3] as a further response to the draft guidance letter the FAA released in 2009. The proposed policy explains that numerous RTTF agreements currently exist at public-use airports and in some cases may not be easily revoked by the airport. The basic framework of the proposed policy prohibits airport sponsors from entering into any new RTTF agreements while allowing existing RTTF agreements to continue under tighter federal oversight.

Federally Obligated Airports

Congress has recognized the value of maintaining and developing a network of airports across the nation through the establishment of the Airport Improvement Program. This program provides federal funds for the maintenance and development of airports that are deemed important to the National Airspace System. This investment of taxpayer dollars in airport development is protected by the federal grant assurances. These assurances require airport owners (called sponsors) to operate the airport in a manner that best serves the interest of the entire transportation system. Without these assurances, the federal investment in airport infrastructure would be subject to the whim and preference of local politics and local consideration.

The grant assurances, as administrative law, have been subject to repeated judicial and FAA clarification through the decisions resulting from cases brought under Title 14 of the Code of Federal Regulations, Part 16. The resultant case history has established a solid framework that airport sponsors, airport users and the federal government depend on to ensure that airports receiving federal funds are operated for the general benefit of the public.

The general theme of the grant assurances is that the federal investment in airport development is best realized when airports remain flexible enough to meet the changing transportation needs of the nation. Activities such a providing exclusive rights to airport users or encouraging incompatible land uses around the airports are prohibited because they lessen the long-term utility of the airport and thus degrade the federal investment.

Effects of RTTF Agreements

As a legal document, the RTTF agreements confer access and other rights, depending upon the specific language used in the agreement, to individuals owning residential property adjacent to an airport. These access rights, at their core, do not necessarily conflict with the idea of

[3] 75 FR 54946

maintaining airport utility in the public interest. Conflicts can, however, occur when the transportation needs of the surrounding communities and region dictate a change in the airport environment. Changes in the volume and type of aircraft operations at an airport or the need to expand airport facilities can pit the transportation requirements of the region or nation against the interests of a few homeowners with RTTF agreements.

Due to the unique legal rights of residential homeowners, in comparison to commercial property owners, significant challenges can occur if RTTF agreements need to be modified or terminated in the future due to airport expansion. Groups of homeowners with RTTF agreements can exert significant political pressure on airport sponsors to act in a fashion that limits the future utility and function of these airports in favor of acting to satisfy local constituents. The resultant loss of future utility of these public airports degrades the investment of taxpayer dollars by changing the management of airport development from a regional and national focus to a purely local, and likely status-quo, environment.

NATA Member Prospective

NATA's member companies have invested billions of dollars in creating on-airport service facilities that cater to the needs of the flying public. This investment, much like the federal investment, is protected by the federal grant assurances from unreasonable or unjust loss. Businesses, the majority of them small businesses, across the nation have created service facilities, jobs and economic activity based upon the idea that public-use airports are maintained and operated for the benefit of the transportation needs of the region and nation. These on-airport businesses are subject to tight oversight from the airport sponsor to ensure that their activities are aligned with the needs of the airport and the public. These businesses accept the fact that the needs of the airport, as a public-use facility, supersede the plans of the business owners. This is acceptable because the needs of the commercial operation usually align with the growth and development of the community and region. Activities such as the creation of RTTF agreements, which reduce the future utility of airports, can devastate the investment in on-airport facilities made by these businesses.

Congressional Action

Supporters of RTTF operations have suggested that congressional action is necessary to override the FAA and allow the creation of additional RTTF access agreements at airports. NATA believes such action is unwarranted and dangerous to the future of public-use airports. Remedies suggested by RTTF supporters include preventing the FAA, by statute, from enforcing the grant assurances in regards to RTTF agreements. This course of action represents an extreme threat to the federal investment in airport development as well as the private investment from aviation businesses in building general aviation infrastructure. The long case history regarding federal grant assurances establishes a well understood foundation of how public-use airports must be operated. Any statute exempting RTTF agreements from that framework, regardless of how well written, substitutes a new standard in place of the assurances. This new standard will be subject to countless interpretations by the FAA and the judiciary and will introduce a level of uncertainty in airport operations and utility that is unacceptable. The long-term dangers to both public and

private investments in airports threaten the future of the public airports system. NATA believes the proposed FAA policy on RTTF appropriately addresses future and existing RTTF agreements.

Closing

NATA understands the position of RTTF proponents. General aviation is an industry that was born in the United States and has grown from the ground up. It is successful because of the passion and devotion of countless aviation enthusiasts and entrepreneurs across this nation. It is these same individuals who, because of their passion for aviation, desire to reside near their local airport and operate their aircraft directly from their homes. Nothing in the federal grant assurances or other federal law prevents RTTF operations from occurring at the many private airports around the country. However, allowing private rights of access, via RTTF agreements, from residential properties adjacent to federally funded airports threatens the investment of public funds made in those airports. The vision of public airports must extend beyond the current use of the airport and account for the various possible future needs of the nation and traveling public.

While RTTF agreements may provide a short-term benefit to airports through additional revenue and community goodwill, NATA believes those benefits are far outweighed by the risk posed to the long-term usability of airports. NATA supports the FAA's proposed policy on RTTF agreements and believes that it provides a solution that protects the value of the taxpayer investment in airport development while allowing existing of RTTF agreements to continue.

NATA believes that the FAA has proposed a policy that well serves the long-term interests of airports, airport business and the public. Any attempt to override that policy by statute could result in unintended consequences that damage the future utility of public-use airports and could call into question the future of all grant assurances and the FAA's ability to ensure that those obligations are followed by all airports receiving federal funding.