Testimony of Marc Scribner
Senior Fellow
Competitive Enterprise Institute

Before the Committee on Transportation and Infrastructure
U.S. House of Representatives

Hearing: The Cost of Doing Nothing: Why Investment in our Nation's Airports Matters

March 26, 2019

Chairman DeFazio, Ranking Member Graves, and Members of the Committee, thank you for giving me the opportunity to testify before you today. My name is Marc Scribner. I am a senior fellow at the Competitive Enterprise Institute (CEI), where I focus on transportation, land use, and urban growth policy issues.[1] CEI is a nonprofit, nonpartisan public interest organization dedicated to the principles of free enterprise and limited, constitutional government. CEI has supported pro-market approaches to infrastructure investment and management through analysis and advocacy during its 35-year history.

The passenger facility charge (PFC) is a congressionally authorized, federally regulated local airport user fee. Under current law, public airports in the U.S. can charge a maximum PFC of $4.50 per passenger enplanement for the first two enplanements of a one-way itinerary. The PFC exists alongside the Airport Improvement Program (AIP), a federal grant program funded through aviation taxes. Together, the PFC and AIP account for approximately half of total airport funding available for capital projects.

AIP funds generally can only be used for airside projects, such as runways, taxiways, aprons, noise abatement, and land acquisitions. In contrast, the PFC funds can be used for AIP-eligible projects plus numerous landside projects, such as passenger terminal and ground transportation improvements, and can be used to service debt. For commercial airports with sizeable passenger volumes, these differences in flexibility have led to a strong preference for the PFC over AIP funding.

Two recent research findings support the expansion of the PFC. First, evidence suggests that PFC use has a positive effect on airport productive efficiency while AIP use has a negative effect. Legislation introduced in the previous Congress would have uncapped the PFC while proportionately reducing AIP authorized spending, with this change in the PFC/AIP mix expected to result in greater airport productive efficiency. Second, major non-aeronautical revenue sources—namely revenue from parking and rental car fees—are facing heightened risks and declining prospects as travelers opt for new ride-hailing ground transportation services to and from airports.

1. My biography and writings are available at https://cei.org/expert/marc-scribner.

Since the PFC charges airport users regardless of their use of airport concessions, it represents a low-risk, predictable, and sustainable revenue source.

In addition to providing airports with predictable and sustainable revenue, the PFC was also designed to promote airline competition. Beginning in the 1950s, airports turned to their airline customers to retire debt and finance airport improvements. In exchange for this financial support, incumbent airlines received long-term exclusive-use gate leases, which were then used to restrict access to new and often lower-cost entrants.

In more recent years, the trend has shifted. The granting of long-term exclusive-use gate leases has become less common, but limited gate availability at large and medium hub airports has still been estimated to raise consumer airfares by billions of dollars every year. In this way, the PFC serves as an important airport self-help tool that can dilute price-setting power by dominant incumbent airlines, thereby benefiting air travelers in the form of improved airport facilities and lower airfares.

A Brief History of U.S. Airport Passenger User Fees

The debate over passenger user fees like the PFC began more than two decades before the PFC was even authorized by Congress. In the late 1960s and early 1970s, some public airports began charging passenger enplanement fees of 50 cents to $1 per passenger in an effort to recoup capital, operations, and maintenance costs from their users. Airlines filed suit against an airport authority in Indiana and the state of New Hampshire over these fees. State courts in Indiana in 1970 and New Hampshire in 1971 arrived at different conclusions on the question of whether or not these fees constituted unreasonable burdens on interstate commerce in violation of Art. I, § 8 of the U.S. Constitution. The U.S. Supreme Court granted certiorari in 1971.

In *Evansville Airport v. Delta Airlines, Inc.*, 405 U.S. 707 (1972), the Supreme Court ruled in favor of the airports. It held user fees for state-provided facilities were constitutional in that they were reasonably related to the costs of those facilities and did not discriminate between intrastate and interstate commerce. In response, Congress enacted the Anti-Head Tax Act as part of the Airport Development Acceleration Act of 1973 and made clear this law was in direct response to the Court's ruling a year earlier.[2] This law remains on the books today and generally prohibits airports from imposing taxes or fees on air travelers.[3]

By the mid-1980s, the Reagan administration and members of Congress were concerned that federal aviation policy was having adverse impacts on airports. Airports had become heavily reliant on federal grant funding, and this funding relationship led to reduced airline competition at large airports to the detriment of the traveling public. Rather than eliminating the Anti-Head Tax Act, supporters of increased airport self-help and airline competition sought to create a narrow exemption to the general prohibition for a federally authorized local passenger enplanement fee.

2. *See* S. Rep. No. 12, 93d Cong., 1st Sess. 12 (1973), reading in part: "The provision is in response to a situation which has been brought about by [*Evansville Airport v. Delta Airlines, Inc.*], upholding passenger head taxes enacted by New Hampshire and by Evansville, Indiana, for 'aviation-related purposes.' While this decision has invited state and local governments to enact head taxes or fees on air travelers, the Court decision does not provide adequate safeguards to prevent undue or discriminatory taxation."
3. 49 U.S.C. § 40116.

In its 1990 National Transportation Policy, known as *Moving America*, the Bush administration formally proposed the PFC.[4] This proposal called for "[r]elax[ing] restrictions on the ability of State and local governments to raise revenues and use them for transportation facilities and services," but ignored the competition benefits of this policy.[5] This omission was noted by Thomas Gale Moore, an economist who served as a member of the Council of Economic Advisors during 1985-1989, who wrote in 1990 that "[PFC] revenue would also make airports less financially dependent on their tenant carriers and would encourage them to provide more facilities for new carriers…. Competition at airports that are dominated by one or two carriers could thus be enhanced."[6]

In 1990, Congress passed the Aviation Safety and Capacity Expansion Act, which established the PFC.[7] Airports began collecting PFCs in 1992. Initially, the maximum PFC was set at $3 and airports charging the $3 PFC were required to return 50 percent of their AIP apportionments. In 2000, Congress passed the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century, which increased the maximum PFC to $4.50 with an increased AIP apportionment turn-back of 75 percent for imposing PFCs greater than $3.[8] This was the last time the PFC cap was raised. Efforts to increase the cap or eliminate it entirely have been unsuccessful.

The PFC Is Superior to Alternative Revenue Sources

Airports in the U.S. have a variety of aeronautical and non-aeronautical revenue sources, but the largest sources are the PFC and AIP. According to a Government Accountability Office (GAO) review of FAA data and interviews with airport officials, these two sources combined account for half of total airport funding available for capital projects.[9] The PFC is a local user fee collected by airlines and remitted directly to airports, with those funds never touching the federal treasury. In contrast, AIP is a federal grant program under the Airport and Airway Trust Fund that is funded by aviation taxes on tickets, flight segments, cargo waybills, fuel, international arrivals and departures, and frequent flyer awards.[10]

PFCs and AIP funds complement one another by supporting different classes of airport projects, which is largely a function of differences in project eligibility.[11] AIP is generally used to fund airside construction projects (e.g., runways, taxiways, aprons, noise abatement, and land acquisition). In contrast, PFCs are generally used to finance landside improvements such as passenger terminals that

4. U.S. Department of Transportation, *Moving America: New Directions, New Opportunities - A Statement of National Transportation Policy Strategies for Action* at 57 (Feb. 1990), *available at* https://rosap.ntl.bts.gov/view/dot/531.
5. *Id.*
6. Thomas Gale Moore, *Good Enough for Government Work: Why Moving America Is Unsatisfactory*, 13 REGULATION 2, 15 (Summer 1990), *available at* https://object.cato.org/sites/cato.org/files/serials/files/regulation/1990/7/v13n2-2.pdf.
7. Presently codified as amended at 49 U.S.C. § 40117.
8. 49 U.S.C. §§ 40117(b)(4) & 47114(f)(1)(B).
9. Statement for the Record to the Subcommittee on Aviation Operations, Safety, and Security, Committee on Commerce, Science, and Transportation, U.S. Senate of Gerald L. Dillingham, Ph.D., Director, Physical Infrastructure Issues, Government Accountability Office at 7 (Mar. 23, 2017), *available at* https://www.gao.gov/assets/690/683640.pdf.
10. *See* Federal Aviation Administration, *Current Aviation Excise Tax Structure*, *available at* https://www.faa.gov/about/budget/aatf/media/Excise_Tax_Rate_Structure_2018.pdf (last accessed Mar. 19, 2019).
11. *See* Federal Aviation Administration Order 5500.1, *Passenger Facility Charge* at 12-13 (Aug. 9, 2001), *available at* https://www.faa.gov/documentLibrary/media/Order/PFC_55001.pdf.

often are not eligible for AIP funding. This is because AIP-eligible projects are PFC-eligible projects, but not vice versa. Importantly, the PFC can be used to service debt, unlike AIP funds.[12] And because the PFC is a local user fee, federal statutory and regulatory requirements on labor and procurement that impact AIP funding do not apply to projects solely funded or financed by PFC revenue.[13] The table below provides a comparative breakdown of the use of these complementary programs:

Distribution of PFC Approvals and AIP Grants, FY2016

Type of Project	Percentage of PFC	Percentage of AIP
Airside	15.7%	71.1%
Landside	60.2%	12.3%
Noise	0.0%	4.4%
Roads/Access	2.6%	0.6%
Interest on bonds	21.4%	—
Unclassified, state block grants, misc.	—	11.7%
Total	100.0%	100.0%

Source: FAA, Airports Branch.

The flexibility of the PFC vis-à-vis AIP also has consequences for airport productivity. Recent research has found that increasing airport reliance on PFC revenue while simultaneously decreasing airport reliance on AIP revenue increases airport productive efficiency.[14] The implication is that leaving the PFC cap at the current $4.50 while increasing AIP funding by spending down the unobligated funds in the Airport and Airway Trust Fund would have a negative efficiency impact.

This also suggests that a bipartisan legislative proposal from the 115th Congress to eliminate the PFC cap, require 100-percent AIP funding turn-back for charges over $4.50, and proportionately reduce the total annual AIP authorization by $400 million would not only reduce federal spending and promote local self-help, it would raise airport productivity.[15]

It has been claimed that airports should rely more on non-aeronautical revenue as a substitute for raising or eliminating the PFC cap.[16] Certainly, airports should examine opportunities to generate non-aeronautical revenue, as the collection of revenue from these sources generally does not impact airfares and air travel demand. In 2017, nationwide PFC collections totaled $3.29 billion.[17] In the

12. Rachel Y. Tang, *Financing Airport Improvements*, Congressional Research Service at 14 (May 10, 2017), *available at* https://crsreports.congress.gov/product/pdf/R/R43327.
13. Federal Aviation Administration, *PFC and the AIP*, *available at* https://www.faa.gov/airports/central/pfc/pfc_aip/ (last accessed Mar. 19, 2019).
14. Bo Zou et al., *US airport financial reform and its implications for airport efficiency: An exploratory investigation*, 47 JOURNAL OF AIR TRANSPORT MANAGEMENT 66 (2015).
15. Investing in America: Rebuilding America's Airport Infrastructure Act, H.R.1265, 115th Cong., 1st Sess. (2017).
16. *See, e.g.,* Letter from Pete Sepp, President, National Taxpayers Union to Reps. Peter DeFazio and Sam Graves (Feb. 7, 2019), *available at* https://www.ntu.org/publications/detail/ntu-pens-letter-to-transportation-committee-regarding-the-passenger-facility-charge.
17. Federal Aviation Administration, *Key Passenger Facility Charge Statistics as of February 28, 2019*, *available at* https://www.faa.gov/airports/pfc/monthly_reports/media/stats.pdf.

same year U.S. commercial service airports generated $21.94 billion in total operating revenue.[18] Of that total, 46 percent came from non-aeronautical revenue sources.[19] The table below breaks down non-aeronautical revenue of the 500 reporting commercial airports:

Land and non-terminal facility leases/revenues	$760,852,386 (07.5%)
Terminal-food and beverage	$805,431,354 (07.9%)
Terminal-retail stores and duty free	$779,640,479 (07.7%)
Terminal-services and other	$483,976,328 (04.8%)
Rental cars-excludes customer facility charges	$1,855,840,802 (18.3%)
Parking and ground transportation	$4,249,127,555 (41.9%)
Hotel	$226,723,723 (02.2%)
Other	$979,542,945 (09.7%)
Total Non-Aeronautical Revenue	**$10,141,135,572 (100%)**

Source: Form FAA-5100-127 Report data (2017)

As the data show, 60.2 percent of non-aeronautical airport revenue came from rental cars, parking, and ground transportation. Yet this dominant portion of non-aeronautical revenue also carries the greatest revenue risk. In recent years, Americans have been increasingly using ride-hailing services such as Uber and Lyft to and from airports. A recent study from the Airport Cooperative Research Program found that the introduction of ride-hailing has led to an 18 to 30 percent decline in the use of shared-ride vans, a 4 to 13 percent decline in rental car transactions, and a 5 to 10 percent decline in parking transactions.[20]

While these estimates are based on a limited sample and research is ongoing, preliminary data suggest these declines in revenue are likely to exceed any new airport fee revenue generated from ride-hailing.[21] This means that as ride-hailing services continue to grow in popularity, this ground transportation net revenue decline may accelerate. Increasingly risky non-aeronautical airport revenue is not a viable substitute for proportional and predictable passenger user fee revenue.

Competition Benefits of the PFC

As was noted above in the discussion of the history of the PFC, a second non-fiscal aim of the PFC was to enhance airline competition and promote lower consumer airfares. In the 1950s and 1960s, in exchange for airlines assuming existing airport debt and other financing arrangements, many airports granted incumbent airlines long-term exclusive-use gate leases. This led to a minority of gates being available for new carrier entrants.[22]

---

18. Federal Aviation Administration, CATS, Form FAA-5100-127 Report data, *available at* https://cats.airports.faa.gov/Reports/reports.cfm.
19. *Id.*
20. Peter Mandle and Stephanie Box, *Transportation Network Companies: Challenges and Opportunities for Airport Operators*, AIRPORT COOPERATIVE RESEARCH PROGRAM SYNTHESIS 84 at 5, National Academies of Sciences, Engineering, and Medicine (2017), *available at* https://www.nap.edu/catalog/24867/transportation-network-companies-challenges-and-opportunities-for-airport-operators.
21. *Id.* at 28, 33.
22. Steven A. Morrison and Clifford Winston, *Delayed! U.S. Aviation Infrastructure Policy at a Crossroads*, in AVIATION INFRASTRUCTURE PERFORMANCE: A STUDY IN COMPARATIVE POLITICAL ECONOMY at 20-22, eds. Clifford Winston and Gines de Rus (2008), *available at* https://www.brookings.edu/wp-content/uploads/2016/06/Winston_aviation_chpt2.pdf.

These gate access limitations harm consumers. Economists have estimated that airfares are $5.6 billion higher in 2017 dollars than they would be with adequate gate access to support new carrier entrants at large and mid-sized airports.[23] This figure dwarfs the $3.29 billion in nationwide PFC collections in 2017.[24]

That the PFC serves as a sustainable revenue source insulated from airline control is uncontroversial. Further expanding the purchasing power of the PFC by eliminating the statutory cap and with a focus on improving airline competition—especially through the expansion of common use gates available to new carrier entrants—could result in substantial airfare savings for consumers. These savings could more than counteract the modest negative marginal impact on travel demand of increased PFCs, as estimated by the Government Accountability Office, especially if airline ancillary fees were to be included in the full price unit of analysis.[25]

Thank you for the opportunity to testify before the Committee, and I welcome your questions.

23. *Id.* at 22. $4.4 billion in 2005 dollars adjusted by Consumer Price Index to 2017 dollars via Bureau of Labor Statistics' CPI Inflation Calculator, https://data.bls.gov/cgi-bin/cpicalc.pl.
24. Federal Aviation Administration, *supra* note 17.
25. Government Accountability Office, *Raising Passenger Facility Charges Would Increase Airport Funding, but Other Effects Less Certain*, GAO-15-107 (Dec. 2014), *available at* https://www.gao.gov/assets/670/667444.pdf.