

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of )  
 )  
Expanding Access to Mobile Wireless ) WT Docket No. 13-301  
Services Onboard Aircraft )  
 )  
 )

**COMMENTS OF AVIATION SPECTRUM RESOURCES, INC.**

Aviation Spectrum Resources, Inc. (“ASRI”) hereby submits comments in response to the Notice of Proposed Rulemaking (“NPRM”) in the above-captioned proceeding.<sup>1</sup> ASRI applauds the Commission’s “commit[ment] to working closely with other federal agencies that have expertise and may have more appropriate jurisdiction over some of these operational areas” as it weighs responses to the NPRM.<sup>2</sup> ASRI submits these comments to underscore three issues of utmost importance. First, the “Non-Exclusive License” methodology for authorizing Airborne Access System (“AAS”) service is superior because it would facilitate flexibility, encourage experienced communications entities to develop innovative product offerings, reduce administrative burden on aircraft operators, and maintain effective aircraft operator oversight. Should the Commission instead take the less preferable route and pursue authorizing AAS under Part 87, it should add AAS authority without requiring aircraft station licensees to apply for license modification and forbear from any common carrier regulation. Second, the Commission should explore whether it has discretion under the Convention on International Civil Aviation (“Chicago Convention”)<sup>3</sup> to authorize foreign-based aircraft to operate licensed AAS within the

---

<sup>1</sup> *Expanding Access to Mobile Wireless Services Onboard Aircraft*, Notice of Proposed Rulemaking, 28 FCC Rcd 17132 (2013) (“NPRM”).

<sup>2</sup> *Id.*, at ¶ 25.

<sup>3</sup> Convention on International Civil Aviation, signed Dec. 7, 1944 (“Chicago Convention”).

U.S. absent International Civil Aviation Organization (“ICAO”) standards or guidelines without the need for a duplicative U.S. license. Finally, any rules the FCC adopts must make clear that issues of passenger and crew safety dictate that the aircraft pilot must retain ultimate control over the AAS system. The FCC should heed parallel proceedings at the Federal Aviation Administration (“FAA”) and Department of Transportation (“DoT”) and avoid getting ahead of such efforts.

ASRI is the communications company of the U.S. air transport industry and is owned by U.S. airlines and other airspace users. It is the licensee for U.S. aeronautical operational control (“AOC”) frequencies<sup>4</sup> and the sponsor of the Aeronautical Frequency Committee (“AFC”).<sup>5</sup> This enables ASRI to draw on expertise and opinions from across the U.S. aviation sector, promoting the safe and efficient operation of commercial aviation radio communications systems operating within the U.S. By coordinating with the AFC, ASRI also supports the safe operation of U.S. aviation in an international environment through participation with ICAO, the International Air Transport Association (“IATA”), and International Telecommunication Union Radiocommunications Sector (“ITU-R”).

**I. NON-EXCLUSIVE LICENSING WOULD PRODUCE PUBLIC INTEREST BENEFITS AND REDUCE ADMINISTRATIVE BURDEN ON AIRCRAFT OPERATORS.**

ASRI supports the Commission’s authorization method that would establish a standalone AAS Service and allow applications for non-exclusive licenses to provide airborne mobile services.<sup>6</sup> This licensing method would ensure flexibility to allow applicants to include both

---

<sup>4</sup> 128.825 – 132.0 MHz and 136.5 – 136.975 MHz in VHF.

<sup>5</sup> Membership includes: Airlines for America (“A4A”); Aircraft Owners and Pilots Association (“AOPA”); Helicopter Safety and Advisory Conference; National Business Aviation Association (“NBAA”); National Air Transport Association (“NATA”); Helicopter Association International (“HAI”); Federal Aviation Administration (“FAA”); and all major U.S. airlines and helicopter operators.

<sup>6</sup> *NPRM*, at ¶ 49.

aircraft operators and non-aircraft operators. As a model, the Commission could look to the rules it adopted for Earth Stations Aboard Aircraft (“ESAA”), which implemented new licensing and technical rules in Part 25, including the availability of blanket licenses.<sup>7</sup>

The standalone AAS licensing method would produce public interest benefits by encouraging competition and innovation. Aircraft operators already engage in productive and differentiated commercial relationships with 800 MHz Air-Ground licensees and satellite-based licensees to enable WiFi connectivity during flight.<sup>8</sup> Potential AAS licensees could leverage these existing relationships to provide new and advanced product offerings.

As a licensing condition, ASRI agrees with the NPRM that eligibility should “be limited to applicants with appropriate commercial agreements with aircraft operators to operate such systems on specific aircraft.”<sup>9</sup> ASRI proposes that applicants would also need to demonstrate that they have appropriate commercial agreements with entities capable of providing the Air-to-Ground link, a necessary component of an AAS. In addition, equipment used as part of the AAS would require authorization of both the FCC and FAA.

Importantly, the Wi-Fi Internet access currently offered on aircraft is fully controlled by the aircraft operator and subject to FAA regulations. Similarly, FAA regulations and the policies of individual aircraft operators will ensure that in operating an AAS, aircraft operators will “retain sufficient control over the in-cabin environment” and maintain “the safety of passengers and crew aboard” the aircraft.<sup>10</sup> Public safety demands that aircraft personnel, under the

---

<sup>7</sup> *Earth Stations Aboard Aircraft*, Notice of Proposed Rulemaking and Report and Order, 27 FCC Rcd 16510 (2012).

<sup>8</sup> *See NPRM*, at ¶¶ 16-18; *see also Application of AC BidCo, LLC, Gogo Inc., and LiveTV, LLC*, 28 FCC Rcd 3362 (WTB 2013) (recognizing commercial agreements between aircraft operators and Gogo, Row 44, Inc., Panasonic Avionics, and ViaSat).

<sup>9</sup> *Id.*

<sup>10</sup> *NPRM*, at ¶¶ 39, 49.

authority of the captain, be able quickly and efficiently to cease all network connections. Therefore, the FCC must make clear that such personnel retain ultimate control over the AAS service on their aircraft. In addition, the FCC should acknowledge explicitly that this constitutes “proper network management” and is not “willful or malicious interference” under Section 333 of the Communications Act.<sup>11</sup>

Should the FCC choose the less desirable option to pursue the Part 87 aircraft license modification methodology, it should take two steps to ensure minimum administrative burden and maximum deployment of AAS service. First, the rules should not require aircraft station licensees to seek modification of their licenses to enable AAS service. Instead, the Part 87 rules should simply add authority for AAS operations and potentially require aircraft station licensees to notify the Commission should they choose to operate AAS. The equipment authorization process for AAS would ensure that harmful interference is mitigated and that the systems operate within the technical parameters established by the Commission and the FAA and DoT. Ultimately, this simplified method would facilitate aircraft operator implementation of AAS.

Second, the FCC should forbear from imposing common carrier regulation to the extent an airline chooses to offer telecommunications service as part of its license. Common carrier regulation would create a significant deterrent for airlines to install licensed AAS and would counteract the Commission’s goal to “facilitate expanded access to broadband services in flight.”<sup>12</sup> Moreover, while the NPRM claims that the AAS rules “should not impose significant

---

<sup>11</sup> *See id.*, at ¶ 62.

<sup>12</sup> *Id.*, at ¶ 1.

administrative burdens on applicants or the Commission,” common carrier regulation would have the opposite effect and exponentially increase administrative burden for aircraft operators.<sup>13</sup>

## **II. THE COMMISSION SHOULD EXPLORE WHETHER IT HAS DISCRETION TO APPLY THE CHICAGO CONVENTION WITHOUT ICAO GUIDELINES FOR AAS.**

The NPRM tentatively concludes that because ICAO has not adopted AAS standards or recommended practices, the Chicago Convention would not authorize non-U.S.-registered carriers to operate AAS in U.S. airspace.<sup>14</sup> ASRI encourages the Commission to explore whether the Chicago Convention gives the agency discretion to recognize foreign-licensed AAS even absent ICAO action.

Specifically, Article 33 states that licenses issued by foreign States “shall be recognized as valid . . . providing that the requirements under which such . . . licenses were issued . . . are equal to or above the minimum standards which may be established from time to time pursuant to [the Chicago Convention].”<sup>15</sup> However, Article 33 does not prevent states from giving effect to Article 30 and recognizing licenses issued by foreign States when ICAO has not issued minimum standards, as is the case with AAS.

Should the FCC exercise discretion under the Chicago Convention, it could do so with confidence having recognized that countries authorizing AAS have done so pursuant to established technical parameters. For example, the Commission states that a decision of the Electronic Communications Committee of the EU’s European Conference of Postal and Telecommunications Administrations “covers the free circulation and harmonized usage of mobile communications service on aircraft systems and sets out the technical limits that should

---

<sup>13</sup> Cf. *id.*, at ¶ 45 (“[M]odifying existing aircraft fleet or station licenses to include proposed airborne mobile communications use should not impose significant administrative burdens on applicants or the Commission.”).

<sup>14</sup> *Id.*, at ¶¶ 67-68.

<sup>15</sup> Chicago Convention, Article 33.

be observed to ensure that such systems do not cause any harmful interference.”<sup>16</sup> The NPRM also acknowledges that “the Asia Pacific Telecommunity (APT) has adopted non-mandatory Guidelines on Technical Conditions for the Use of Mobile Phones Onboard Aircraft.”<sup>17</sup>

Moreover, the Commission should take note that the Chicago Convention would allow reciprocity for the standalone AAS service licensing structure described above in Section I. Article 30 reciprocity does not depend on the aircraft operator obtaining a license -- it requires only that a license be issued by “the appropriate authorities of the State in which the aircraft is registered.” Put another way, the Chicago Convention does not specify to whom the license must be issued for Article 30 reciprocity to apply.

The costs of not applying Chicago Convention reciprocity are clear.<sup>18</sup> First, it would contravene the purpose of the Chicago Convention, which is “to avoid friction and to promote that cooperation between nations and peoples upon which the peace of the world depends.”<sup>19</sup> Second, it would force *already-licensed* foreign aircraft operators to incur additional and needless cost in obtaining duplicative U.S. licenses. Finally, it would likely lead to foreign regulators responding in kind and subjecting U.S. entities to burdensome foreign licensing procedures.

### **III. THE FCC SHOULD DEFER TO OTHER AGENCY PROCEEDINGS.**

In the NPRM, the Commission appropriately recognizes the “expertise” and “more appropriate jurisdiction” of other agencies, stating that its rules are “subject to applicable FAA

---

<sup>16</sup> NPRM, at ¶ 12 n.39 (citing ECC Decision of 1st December 2006 on the harmonised use of airborne GSM systems in the frequency bands 1710-1785 and 1805-1880 MHz, ECC/DEC/(06)07 (amended Mar. 13, 2009), available at: <http://www.erodocdb.dk/Docs/doc98/Official/Pdf/ECCDec0607.pdf>).

<sup>17</sup> NPRM, at ¶ 11 n.31.

<sup>18</sup> *See id.*, at ¶ 69.

<sup>19</sup> Chicago Convention, Preamble.

and DoT rules.”<sup>20</sup> These agencies are actively leading efforts to examine the use of personal electronic devices aboard aircraft. For example, the DoT has submitted an ANPRM to the Office of Management and Budget which “seek[s] comment on whether to ban voice calls on aircraft” due the “Department’s aviation consumer protection authority and because of concerns raised.”<sup>21</sup>

Given the challenging institutional questions inherent in establishing AAS as a vehicle to enable use of mobile devices aboard aircraft, the FCC should consider deferring to these ongoing efforts. Specifically, the FCC should consider the record developed in response to the instant NPRM and then issue a Further Notice of Proposed Rulemaking after the DoT has issued its final rules. Additionally, any governmental consumer education initiative regarding mobile services onboard aircraft, if pursued at all, should come from agencies with more established aviation expertise, not the FCC.<sup>22</sup>

---

<sup>20</sup> *NPRM*, at ¶¶ 1, 25.

<sup>21</sup> *Use of Mobile Wireless Devices for Voice Calls on Aircraft*, ANPRM, RIN 2105-AE30 (rulemaking project initiated Jan. 7, 2014).

<sup>22</sup> *See NPRM*, at ¶ 73.

Finally, as the NPRM recognizes, any rules the FCC implements must not impede the FAA's responsibility to regulate the safety and passengers and crew aboard domestic aircraft.<sup>23</sup> As stated above, aircraft captains must retain ultimate control over the AAS service on their aircraft, subject to FAA regulations.

Respectfully submitted,

Aviation Spectrum Resources, Inc.

By: /s/ Kris Hutchison

Kris Hutchison  
President  
Aviation Spectrum Resources, Inc.  
2551 Riva Road  
Annapolis, MD 21401

February 14, 2014

---

<sup>23</sup> NPRM, at ¶ 39.