

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

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

COMMENTS OF AIRLINES FOR AMERICA

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Airlines for America (“A4A”)¹ submits these comments in response to the Commission’s Notice of Proposed Rulemaking (“Notice”) regarding expanding access to mobile wireless services onboard aircraft.² A4A is the oldest trade association of the principal U.S. airlines, and, today, A4A members and their affiliates transport more than 90 percent of all U.S. airline passenger and cargo traffic.

A4A is pleased to have the opportunity to provide input on the Notice. We look forward to working with the Commission as it analyzes the record and develops its regulations and policies regarding airborne wireless communications services.

The Notice proposes to give airlines the option to enable mobile wireless communications services and allow passengers access to broadband services using their existing wireless providers, “just as they would on the ground.”³ The Commission makes it clear that it is not proposing to require airlines to permit or provide mobile wireless services. Instead, the proposed rule would “provide a path” for an airline to make available mobile wireless services if it chooses to do so, subject to applicable Federal Aviation Administration (“FAA”) and Department of Transportation (“DoT”) rules.

A4A is encouraged by the Commission’s continued efforts to increase consumer access to broadband, appreciates that the current proposal would “provide airlines with the technological tools to offer additional in-cabin communications services to their passengers at

¹ A4A is the principal trade and service organization of the U.S. scheduled airline industry. A4A members and affiliates transport more than 90% of U.S. airline passenger and cargo traffic. A4A’s members are: Alaska Airlines, Inc.; American Airlines; Atlas Air, Inc.; Delta Air Lines, Inc.; Federal Express Corporation.; Hawaiian Airlines; JetBlue Airways Corp.; Southwest Airlines Co.; United Continental Holdings, Inc.; and United Parcel Service Co. Air Canada is an associate member.

² See *Expanding Access to Mobile Wireless Services Onboard Aircraft*, WT Docket No. 13-301, 28 FCC Rcd 17132 (rel. Dec. 13, 2013).

³ Notice ¶ 1.

their discretion,” and agrees with the Commission’s focus on data services.⁴ The Commission’s effort to facilitate airborne access to increased bandwidth available from terrestrial mobile networks will foster innovation and should eventually increase opportunities to provide appropriate services to airline passengers. As the Commission correctly observes, the deployment of any mobile services on aircraft is “at the discretion of individual airlines, within the context of any rules or guidelines established by the FAA or DoT.”⁵ In this context, the Commission asks a jurisdictional question about whether it is “appropriate for the Commission to take concerns regarding the use of voice service into account in this proceeding,” particularly operational impacts voice service may create.⁶ Clearly these are issues of fundamental significance to A4A’s member carriers, their crewmembers, and the public they serve, and public concerns should not be ignored.⁷ Since, however, the FCC does not have jurisdiction over aviation safety or security issues that may be implicated by voice service during flight or their implications for directly impacting crewmembers⁸ who would be responsible for ensuring compliance with applicable regulations and individual airline policies, the FCC should leave consideration of issues related to voice service to the FAA, DoT and Congress.

Also, as a general principle, A4A supports rulemaking that is limited and flexible, and opposes prescriptive regulations that substitute the government’s judgment for that of the

⁴ Notice ¶ 4. A4A appreciates that the Commission does not seek to mandate mobile wireless services, including voice services.

⁵ Id.

⁶ Notice ¶ 72.

⁷ We note that public reaction to the possibility of airborne voice service has largely been negative. In response, DoT has publicly announced that it will ban onboard cellphone calls and has published an Advance Notice of Proposed Rulemaking seeking comment on banning airborne voice calls as an unfair consumer practice. Docket DOT-OST 2014-0002. The House Committee on Transportation and Infrastructure has approved a bill, H.R. 3676, “Prohibiting In-Flight Voice Communications on Mobile Wireless Devices Act of 2013.”

⁸ See “AFA Launches Campaign Against Allowing In-Flight Voice Calls,” available at: http://www.afacwa.org/flight_attendant_union_vows_to_fight_fcc_plan_that_would_allow_cell_phone_calls_in_flight; also see “JUST SAY NO to In-Flight Cell Phone Usage,” at <https://twu556.org/just-say-no-to-in-flight-cell-phone-usage/>.

marketplace. This is particularly true in the context of regulations, like this, that concern services that airlines may offer customers. As the Commission notes, the mobile communications landscape has undergone dramatic change in the last six years and demand is high for access to mobile devices.⁹ Further change is likely. Any regulation in this area should maximize flexibility and avoid being prescriptive.

In addition to the above, we offer the following comments, which focus on four discrete issues. First, the Commission must continue to acknowledge that the scope of its authority in this area is limited and does not extend to individual airlines on the question of expanding mobile wireless service offerings, whether data, voice, or both. Next, by devising a flexible, streamlined framework for the use of Airborne Access Systems (“AASs”) and Network Control Units (“NCUs”) on individual aircraft, the Commission would provide a more meaningful incentive for prospective market entrants. Third, the Commission must avoid imposing traditional common carrier requirements on airlines, as that would discourage airlines interested in expanding in-flight mobile wireless service choices from doing so. Finally, the Commission should encourage international reciprocity or recognition of authorized mobile wireless communications. In particular, given the frequency with which U.S. airlines fly through Canadian and Mexican airspace in the course of U.S. domestic operations, Canadian and Mexican acceptance of U.S. airline onboard systems is fundamental.

I. The Commission Appropriately Construes its Authority

We appreciate that the Commission implicitly recognizes it does not have the authority to mandate provision of mobile wireless services, whether data, voice, or both, onboard aircraft.¹⁰

⁹ Notice ¶ 22.

¹⁰ “The NPRM does not propose to mandate that airlines permit any new airborne mobile services.” Notice ¶ 1.

The Commission expressly notes that “individual airlines will have flexibility to deploy or not deploy mobile communications services on an aircraft-by-aircraft basis.”¹¹ In particular, the Commission also stresses that “nothing in this proposal would require or ensure the provision of voice service on airplanes.”¹² In this proceeding, the Commission seeks to bring consistency and clarity to its rules on certain technical aspects of the provision of mobile wireless services onboard aircraft.¹³ A4A supports this act of “good government” and appreciates the Commission’s statements to clarify its limited role here.¹⁴

II. Flexible, Technology-Neutral Equipment Requirements Are Essential to Facilitating Innovation and Competition

A4A agrees in principle with the Commission’s proposed requirements regarding AASs to enable and manage mobile communications during flight. Flexible, technology-neutral equipment requirements would foster market entry, innovation and competition.

As the Commission recognizes,¹⁵ currently, most AASs involve an airborne picocell and an NCU. In their present form, these technologies allow airlines the opportunity to provide mobile communications services, while also avoiding harmful interference within the aircraft and to terrestrial wireless services on the ground.

Given that neither A4A nor the Commission can accurately predict future technological developments, it is critical that the Commission’s rules regarding AASs and NTUs remain flexible. As the first step in doing so, the Commission should adopt its proposed technology-neutral approach.¹⁶ For instance, the Commission should not establish prescriptive licensing or

¹¹ Notice ¶ 40.

¹² Notice ¶ 73.

¹³ Notice ¶ 75.

¹⁴ Notice ¶¶ 1 and 40.

¹⁵ Notice ¶ 30.

¹⁶ Notice ¶ 31.

certification rules for the manufacture or installation of these devices. The Commission must avoid the possibility of unwittingly entrenching current technology, which would inhibit innovation in future AAS implementation. Flexibility is critical to providing consumer choice regarding access to mobile communications services onboard aircraft.

Given their prevalent use in connection with current in-flight mobile service offerings, it appears that NCU's are technically capable of preventing harmful interference with terrestrial communications systems. As the Commission acknowledges,¹⁷ the FAA bears full responsibility for ensuring the safe operation of airlines, including responsibility for addressing interference that may be harmful to aircraft safety. In crafting its rules, the Commission should be careful to avoid precluding certain actions that the FAA or airlines may deem integral to the safe operation of an aircraft.

A4A strongly encourages the Commission to extend its decision that NCU's do not violate Section 333 of the Act to permit individual pilots to use an NCU to quickly cease all network communications, when necessary. The Commission should clarify that this decision by a pilot, just like the normal use of an NCU, "constitutes a proper network management function"¹⁸ and, therefore, does not violate Section 333's prohibition on intentional interference. In addition, the Commission should craft this rule broadly to capture future bands that have not yet been auctioned or made available for commercial mobile broadband services. If the Commission's rules are written too rigidly, such as through a narrow application of the network management exception to Section 333, the Commission may inadvertently preclude actions the FAA or airlines conclude are necessary for the safe operation of an aircraft.

¹⁷ Notice ¶ 39.

¹⁸ Notice ¶ 62.

In addition, the Commission should not impose new burdens on airlines to establish that equipment necessary for in-flight mobile services complies with the Commission's rules. Rather, the same general rules that apply to other radiating equipment should apply here.¹⁹ That is, equipment manufacturers, rather than end-users such as airlines, should bear the responsibility of establishing that Airborne Access Systems and related equipment meet FCC technical or performance requirements. There is no reason to deviate from this well-established process in this instance. The Commission must avoid unnecessarily raising costs, for example, by deeming airlines responsible for establishing this technical compliance, which would deter these services.

Finally, the Commission must minimize any regulatory hurdles that would disrupt the anticipated business arrangements for offering additional avenues for mobile wireless services onboard aircraft. A4A agrees that the most common business arrangement will likely be freely-negotiated joint ventures between airlines and mobile service providers to offer passengers access to mobile communications services. Although the mobile service providers, as common carriers, will continue to be subject to non-discrimination requirements and other competitive safeguards related to rates and terms offered to airlines, the Commission should not impose restrictions on airlines' ability to negotiate with communications service providers. Any restrictions pertaining to these agreements would likely increase the costs to airlines and consumers of such service offerings, thereby reducing the incentive to offer additional in-flight mobile communications choices.

¹⁹ See 47 C.F.R. § 2.1 *et seq.*

III. If Necessary At All, Any Airborne Access System Licensing and Regulatory Framework Must Be Streamlined

Perhaps most important, any licensing structure and regulatory framework, if necessary, must be flexible and streamlined.

If the Commission were to apply traditional common carrier requirements to airlines, the agency would inhibit airlines' incentive to offer in-flight mobile wireless service choices. A4A took note of the Commission's suggestion that it may consider exempting airlines from compliance with both the regulations applicable to wireless providers under Part 20 of its rules and the express foreign investment restrictions of Section 310(b) of the Act.²⁰ At the same time, A4A cannot envision any airline voluntarily electing common carrier regulatory status in the first instance, as proposed in the Notice.

Accordingly, A4A agrees in principle with the Commission that "modifying existing aircraft fleet or station licenses to include proposed airborne mobile communications use *should not* impose significant administrative burdens on applicants."²¹ We encourage the Commission to ensure that no significant administrative burdens are imposed on airlines that choose to make these services available to their passengers, and the Commission's tentative conclusion that airlines' existing Part 87 licenses could be amended as a licensing mechanism for AASs appears to hold promise as a suitable option for A4A member carriers.

However, depending on the approach the Commission ultimately adopts, the issue of AAS regulation may, in fact, significantly burden airlines if it entails the imposition of common carrier obligations that include price regulation, undue restriction of the terms of commercial agreements with communications service providers, or excessive filing requirements about, for

²⁰ See Notice ¶¶ 57-59.

²¹ Notice ¶ 35 (emphasis added).

instance, airlines' fleets, service prices, and equipment. A4A opposes the adoption of a regulatory regime that imposes such burdens because it would negatively affect the overall evolution of in-flight communications services, as well as the industry's ability to offer the types of services its customers may wish to use. We urge the Commission to clarify that, consistent with the Notice, an airline can elect non-common carrier classification under Part 87, and that carriers would be relieved of common carrier obligations if that classification is elected.

In addition to an unlicensed approach, another potential solution may be found in the Commission's discussion of non-exclusive licenses.²² A4A is interested in learning more about both options -- unlicensed and non-exclusive -- as A4A member airlines need to ensure that they retain control over the services made available to their customers aboard their aircraft, while at the same time retaining the ability to opt, at their discretion, to apply the license of a third-party provider of their selection to cover any licensing requirements the Commission may decide are necessary in this context. Benefits may include the flexibility to better leverage the market's ability to best allocate these licenses. For example, if airlines are free to negotiate contracts with existing license holders, the competition created could perhaps more effectively allocate access to licensed mobile communications services than any airline-focused licensing system that the Commission would directly manage. In order to ensure that airlines and wireless carriers have a meaningful future opportunity to offer expanded services to a broad range of passengers, the Commission should proceed with a streamlined, intuitive framework, which would create the proper market incentives.

Similarly, we anticipate that, under either an unlicensed or non-exclusive framework, the Commission's burdens would likewise decrease, as this approach would be easier to sustain with

²² See Notice ¶ 49.

fewer resources. As noted above, the unlicensed and non-exclusive approaches appear to have promise, and A4A hopes the Commission will further develop and seek additional comment on these possibilities.

In any event, unless the current proposal is clarified, the Commission may inadvertently threaten the expanded choice it seeks to create. Specifically, the Commission’s proposal uses the phrase “airborne commercial mobile services,”²³ which, if the airline is considered the provider, may subject the airline to traditional common carrier regulation. If treated as an exclusive licensee subject to common carrier regulation, an airline would not have the ability to nimbly make the types of decisions necessary to make mobile communications access commercially viable.

In short, imposing common carrier status on airlines would strongly deter airlines from offering the Commission’s contemplated expanded consumer choices. For these reasons, the Commission must not impose traditional common carrier obligations on airlines that choose to offer these expanded mobile services to consumers, and must explicitly clarify this point.

IV. **International Reciprocity is Needed**

The Commission seeks comment on whether foreign aircraft with authorized mobile communications services should be allowed to continue operating such systems in U.S. airspace, noting that current international agreements do not provide such authority.²⁴ It would be extremely burdensome for U.S. airlines to have to obtain a license from authorities in each country they fly to in order to continue to operate airborne mobile communications systems, which is what is very likely to happen if the Commission requires foreign airlines to obtain a

²³ Notice ¶ 42.

²⁴ Notice, ¶¶ 63, 67.

license in the U.S.. For this reason, the Commission should not impose such a requirement on foreign airlines. Instead, the Commission should establish a regulatory framework that will allow foreign airlines to operate their systems in the U.S. without a license.

Further, the Commission should work with the Department of State to encourage arrangements with both Canada and Mexico to permit U.S. airlines to continue to provide airborne mobile communications services in Canadian and Mexican airspace. It is not unusual for U.S. airlines to operate in Canadian or Mexican airspace during domestic U.S. flights. It would be extremely burdensome and disruptive for aircraft to turn off and on such service during portions of flights that cross into Canada and Mexico and then back into U.S. airspace.

Conclusion

A4A appreciates that the Commission does not seek to mandate mobile wireless communications, but instead is merely attempting to create a regulatory platform that will enable the marketplace to drive consumer offerings. We urge the Commission to continue to refrain from seeking to mandate any particular airborne service. We further urge the Commission to ensure that airlines will not be treated as common carriers. The Commission should take the steps necessary to ensure that it does not create barriers for U.S. airlines that wish to offer mobile wireless services outside of the U.S. Any final rule should be technologically neutral, provide maximum licensing flexibility for and minimize the regulatory burden on airlines, and encourage international reciprocity.

A4A looks forward to continuing to work with the Commission as it addresses the important issues raised in this proceeding.

A handwritten signature in black ink, reading "D.A. Berg", written over a horizontal line.

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