

Chairman Tom Wheeler
FCC Headquarters
445 12th St. SW.
Washington, DC 20554

Dear Chairman Wheeler:

I applaud the Federal Communication Commission's (FCC) desire to align the regulations regarding use of mobile communication devices aboard aircraft with those regulations that are prevailing in other regions of the world, such as the European Union. However, a review of the Notice of Proposed Rulemaking (NPRM) entitled "Expanding Access to Mobile Wireless Services Onboard Aircraft", identified as WT Docket No. 13-301 or FCC 13-157, indicates that the reasoning for this proposed change may be little more than, "Everyone else is doing it, so we should, too." Strict adherence to the FCC's role as a technical-topic agency and failure to coordinate with the government agencies that specifically regulate air travel can lead to confusion, unnecessary expense, and possible harm.

In fairness, I recognize that the FCC is not mandating that airlines do anything, per paragraph 72 of the NPRM. The proposed rule clearly would leave the decision to allow or ban use of mobile communication devices aboard commercial aircraft operating over the United States to the commercial entity operating the aircraft. Leaving the decision to commercial carriers means such a proposed rule, by nature, will not necessarily impose a cost on airlines or below-federal government agencies in violation of federalism or creation of an unfunded mandate.

My concerns rest on two issues: risk assessment and federal coordination.

First, the NPRM does not contain a risk assessment explicitly; rather, the NPRM vaguely references independent studies that suggest there is little to no risk in utilizing mobile communication devices at altitudes greater than 10,000-ft above ground level (AGL). The reasoning, such as that forwarded in paragraphs 35, 53, 54, and 69, mention that allowing mobile communication above 10,000-ft AGL would put the United States in line with the regulations of foreign entities. Such "if they are doing it, we can too" reasoning does not adequately address technical and cultural differences across the globe. It is accepted that the United States' mobile wireless technology is generally different than that of the rest of the world.¹ We are predominantly a CDMA-network country, while the rest of the world relies predominantly on GSM technology, as the NPRM so recognizes occasionally. What the NPRM does not consider is whether such different network technologies also come with different performance characteristics in an airborne environment. Paragraph 54 indicates that what applies to GSM applies to CDMA; however, the pool of evidence for GSM is significantly larger given its predominance outside the United States. The FCC should conduct its own studies from the point of view of the United States rather than rely on foreign studies that may not be directly on-point for the United States' technical and commercial environment.

¹ Segan, Sascha. "CDMA vs. GSM: What's the difference?" PC. 3 Dec. 2013.
<http://www.pcmag.com/article2/0,2817,2407896,00.asp>. Retrieved 28 Jan. 2014.

Second, Secretary of Transportation Anthony Foxx has publicly stated that the Department of Transportation (DOT) will consider banning mobile communications aboard commercial aircraft over the United States.² I agree with Secretary Foxx that the FCC is and should necessarily consider simply the technical feasibility of communications aboard aircraft.³ However, the message that is sent an action by the FCC might be quickly nullified by the DOT. It is arguably beyond the scope of a typical NPRM to include such an analysis, but the FCC does not seem to consider the administrative burden placed on the government as well as on private industry in having the federal government point two different directions with respect to an issue within a short period of time. In this time of budget crunches, it seems to be more proper for the FCC and DOT to coordinate their rulings to limit the expenditure of resources by the government in administrating the possible use of mobile communication devices aboard commercial aircraft.

Secretary Foxx has stated that the purpose of a DOT review would be the softer, consumer experience side of this issue. I believe that that is putting the issue lightly. The United States is, culturally, significantly different from many regions that currently allow mobile communication aboard commercial aircraft. Several American groups, such as the Association of Flight Attendants, have strongly expressed disagreement with the FCC's proposed action on both consumer experience and safety grounds.⁴ If an airline were to allow communications aboard its aircraft over the US, it would be the responsibility of the airline to maintain order aboard the aircraft with respect to communications. However, the FCC plays a role in this, as well, if it allows for such problems to occur at all by having removed the barrier to such use.

It is very possible that the DOT, in carrying out its responsibility of representing the American public in issues of transportation, would ban mobile communications aboard commercial aircraft after the FCC has ruled that to allow such communication is technically feasible. This could cause the government to incur cost in changing administrative stances at a time when such expense is unnecessary. Additionally, commercial entities that might, based on a hypothetical FCC ruling, would incur costs in possibly preparing their aircraft to support mobile communications before suddenly finding the investment useless following a hypothetical DOT-issued ban on such communications.

Finally, Congressional leaders in both houses have indicated that they oppose any change in the status quo.⁵ Public sentiment may not affect technical feasibility, but it should at least enter the mind of the FCC as it travels down this path. Indeed, Commissioner Rosenworcel of the FCC in voting for the NPRM indicated that she wished to do so for the purpose of gaining public comment on this issue.⁶ I agree with the Commissioner that the FCC has a duty to look beyond simply the technical issues and consider societal sentiment, as the FCC is ultimately a representative of the people. The rule may be outdated in your mind, but if to change the rule would be met with public outcry and would be quickly rendered superfluous by countervailing

² Kang, Cecilia and Ashley Halsey III, "U.S. considers cellphones on flights but no calls." The Washington Post. 12 Dec. 2013. http://www.washingtonpost.com/business/technology/us-considers-cell-phones-on-flights-but-no-calls/2013/12/12/17b171ec-635e-11e3-aa81-e1dab1360323_story.html. Retrieved 28 Jan. 2014.

³ Id.

⁴ Ahlers, Mike M. and Katia Hetter, "FCC votes to consider lifting in-flight cell phone ban." CNN. 12 Dec. 2013. <http://www.cnn.com/2013/12/12/travel/fcc-cell-phones-on-airplanes/>. Retrieved 28 Jan. 2014.

⁵ Id.

⁶ Kang.

action by the DOT or Congress, would the FCC have not wasted time and resources in this endeavor?

While you, Chairman, and Secretary Foxx may be correct that the FCC's only responsibility in this matter is to assess technical feasibility, I urge the FCC to consider a wider governmental and societal view of this issue and coordinate its rulemaking with its sister organizations in the United States government to avoid unnecessary expense and confusion.

In conclusion, I request the FCC conduct its own studies in the United States regarding potential technical problems raised by allowing mobile communication services aboard aircraft operating inside United States airspace. Relying on foreign studies conducted with foreign networks and practices in mind does not necessarily show that it is technically unproblematic to allow such activity in the United States. Additionally, as noted, I request that prior to any rule promulgation that the FCC coordinate the Department of Transportation, which has a more direct stake in the possible allowance of mobile communication aboard commercial aircraft in the United States. Having the FCC and DOT at odds on this issue does not provide confidence that changing the status quo is an appropriate move at this time.

Thank you for your time and attention.

Sincerely,

Christopher J. Grassi