

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Docket No. DOT-OST-2014-0002

RIN No. 2105-AE30

Use of Mobile Wireless Devices for Voice Calls on Aircraft

AGENCY: Office of the Secretary (OST), Department of Transportation (DOT)

ACTION: Advance Notice of Proposed Rulemaking (ANPRM)

SUMMARY: The Department of Transportation (DOT or Department) is seeking comment on the effects and implications of adopting a rule to ban voice communications on passengers' mobile wireless devices on flights within, to and from the United States. The Federal Communications Commission (FCC) recently issued a notice of proposed rulemaking that if adopted would, among other things, revise the FCC's prohibition on the use of cellular telephones (cell phones) or other mobile wireless devices to make it possible for aircraft operators to permit passengers to make or receive calls on-board aircraft. FCC's proposal to revise its rules was prompted by the availability of new technology and would provide the benefit of expanded access to mobile wireless services on-board aircraft, including data, text and voice services. *See <http://www.fcc.gov/document/review-rules-wireless-services-onboard-aircraft-nprm>.* However, under the Department's aviation consumer protection authority, we are seeking comment on whether voice calls on aircraft constitute an unfair practice to consumers pursuant to 49 U.S.C. § 41712, and/or are inconsistent with adequate air

transportation pursuant to 49 U.S.C. § 41702, and if so whether such calls should be banned or restricted (e.g., not allow voice calls at night time).

DATES: Comments should be filed by [INSERT 30 DAYS AFTER DATE OF PUBLICATION IN FEDERAL REGISTER]. Late-filed comments will be considered to the extent practicable.

ADDRESSES: You may file comments identified by the docket number DOT-OST-2014-0002 by any of the following methods:

- Federal eRulemaking Portal: go to <http://www.regulations.gov> and follow the online instructions for submitting comments.
- Mail: Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Ave., SE, West Building Ground Floor, Room W12-140, Washington, DC 20590-0001.
- Hand Delivery or Courier: West Building Ground Floor, Room W12-140, 1200 New Jersey Ave., SE, between 9:00 a.m. and 5:00 p.m. ET, Monday through Friday, except Federal holidays.
- Fax: (202) 493-2251

Instructions: You must include the agency name and docket number DOT-OST-2014-0002 or the Regulatory Identification Number (RIN) for the rulemaking at the beginning of your comment. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided.

Privacy Act: Anyone is able to search the electronic form of all comments received in any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's

complete Privacy Act statement in the *Federal Register* published on April 11, 2000 (65 FR 19477-78), or you may visit <http://DocketsInfo.dot.gov>.

Docket: For access to the docket to read background documents and comments received, go to <http://www.regulations.gov> or to the street address listed above. Follow the online instructions for accessing the docket.

FOR FURTHER INFORMATION CONTACT: Laura E. Jennings, Senior Trial Attorney, or Blane A. Workie, Acting Assistant General Counsel, Office of the Assistant General Counsel for Aviation Enforcement and Proceedings, U.S. Department of Transportation, 1200 New Jersey Ave., SE, Washington, DC, 20590, 202-366-9342, 202-366-7152 (fax), laura.jennings@dot.gov or blane.workie@dot.gov (e-mail).

SUPPLEMENTAL INFORMATION:

Background

The Department of Transportation (DOT) and the Federal Communications Commission (FCC) have distinct areas of responsibilities with respect to the use of cell phones or other mobile devices for voice communications on aircraft. In general, as explained below, the FCC has authority over various technical issues, the Federal Aviation Administration (FAA) which is a component of DOT has authority over safety issues, and DOT's Office of the Secretary (OST) has authority over aviation consumer protection issues.

FCC has responsibility over various technical issues—*e.g.*, whether cell phones or other mobile devices used during flight would interfere with cellular networks on the ground and should continue to be banned for this reason or whether technological advances have resolved

those concerns and FCC should revise its rules to enable the airlines to seek authorization to provide a service that would allow passenger use of such devices during flight.¹

Pursuant to its aviation safety oversight authority in 49 U.S.C. 106(f) and 44701(a), DOT's Federal Aviation Administration (FAA) has authority over whether Portable Electronic Devices (PEDs) using cellular technology can be safely used on aircraft. Pursuant to FAA guidance, InFO 13010, "Expanding the Use of Passenger Portable Electronic Devices(PED)"², in order to allow passengers to use portable electronic devices aircraft operators must first make a determination that passenger PEDs used on board their aircraft will not cause interference with the navigation or communication systems. This determination includes assessing the risks of potential cellular-induced avionics problems.³ Expanding passenger PED use requires an aircraft operator to revise applicable policies, procedures, and programs, and to institute mitigation strategies for passenger disruptions to crewmember safety briefings and announcements and potential passenger conflicts .

DOT's Office of the Secretary (OST) has the authority under its aviation consumer protection authority to determine whether permitting voice calls on aircraft is an unfair practice to consumers, pursuant to 49 U.S.C. § 41712, or would be so disruptive as to be inconsistent with

¹ FCC's authority on this issue is very broad and derives from a number of disparate statutory provisions. *See, e.g.*, 47 U.S.C. §§ 151, 154(i), 161, 302a, 303(b), 303(r), 303(y), 308, 309, and 332; *see also* 47 C.F.R. Subpart C of Part 1 (setting forth FCC's rules governing agency's exercise of authority to promulgate and amend rules); § 1.903(c) (stating that authority for subscribers to operate mobile or fixed stations in the Wireless Radio Services – which includes Part 87 Aviation Services – is included in the authorization held by the licensee providing service to them); Part 87 generally (setting forth conditions under which radio stations, other than U.S. Government radio stations, may be licensed and used in the Aviation Services) and Subpart F of Part 87 (setting forth current rules governing use of "aircraft stations" – *i.e.*, mobile radio stations in the aeronautical mobile service, other than a survival craft station, located on board an aircraft).

²http://www.faa.gov/other_visit/aviation_industry/airline_operators/airline_safety/info/all_infos/media/2013/InFO13010.pdf

³ *See* 14 CFR §§ 91.21, 121.306, 125.204, 135.44.

adequate air transportation, pursuant to 49 U.S.C. § 41702. The scope of this ANPRM is to gather information that will help DOT conclude whether or not such determinations might be warranted under the provisions cited above. This ANPRM is not seeking comment on the technical or safety aspects of voice communications, which fall under the regulatory authority of the FCC and the FAA, respectively. It is important to note that, if DOT does eventually determine that permitting voice calls is a practice that is unfair or that is inconsistent with adequate air transportation, one possible outcome is that providing passenger voice call service will not be permitted on any U.S. passenger flights.

FCC and Cellular Usage Issues

Currently the FCC's rules prohibit the use of airborne cellular telephones (specifically those using the 800 MHz frequency) and the use of Specialized Mobile Radio (SMR) handsets while airborne.⁴ The cell phone ban was adopted in 1991 based on the threat of harmful interference from airborne use of cellular phones to terrestrial cellular networks. The SMR handset rule was adopted based on the same rationale—to prevent harmful interference with land-based operations.⁵

Regarding other airborne broadband access, in 1990 the FCC allocated four megahertz of spectrum for commercial Air-Ground Radiotelephone Service, leading to the deployment of seat-back phones on aircraft.⁶ And, since the 1990s, airlines have been permitted to use mobile satellite service (MSS) spectrum to provide data service.⁷ Also, starting in 2001, the FCC

⁴ Expanding Access to Mobile Wireless Services OnBoard Aircraft, *Notice of Proposed Rulemaking*, WT Docket No. 13-301, FCC 13-157 (Dec. 13, 2013) (*FCC Mobile Wireless NPRM*) at 4-5 ¶¶ 5-7; 47 CFR §§ 22.925, 90.423.

⁵ *Id.* at 5 ¶ 7.

⁶ *Id.* at 9 ¶ 16.

⁷ *Id.* at 10 ¶ 17.

authorized certain parties on an *ad hoc* basis to use Fixed Satellite Service spectrum to provide broadband connectivity to airborne aircraft.⁸ In 2005, the FCC cleared the way for airlines to begin offering Wi-Fi.⁹

Since the adoption of the FCC's ban on the use of cell phones during flight, there has been a proliferation of cell phones, smart phones, and other PEDs, leading to a significant increase in consumer demand for broadband connectivity on board aircraft and the number of passengers using PEDs during flight.¹⁰ The FAA recognized as much when it announced on October 31, 2013, that it had determined that airlines could safely expand passenger use of PEDs during all phases of flight and issued Information for Operators (InFO 13010, "Expanding Use of Passenger Portable Electronic Devices (PED)").¹¹ The FAA did not address passenger use of voice communication using cellular technology enabled devices in the expanded PED policy because of FCC's existing ban on use of cell phones during flight.

In light of the technical viability of and increasing public interest in using mobile communication services on aircraft in flight, on December 12, 2013, the FCC issued a Notice of Proposed Rulemaking (NPRM) proposing to revise outdated rules and to adopt a consistent regulatory framework that would allow airlines, subject to application of FAA and DOT

⁸ *Id.*

⁹ *Id.* at 9 ¶ 16.

¹⁰ The FCC's NPRM cites a study predicting that by the end of 2013 the number of commercial aircraft providing either Wi-Fi or cellular connectivity will reach 4,048, representing 21 percent of the global fleet. *FCC Mobile Wireless NPRM* at 2 ¶ 2. The FCC also cites a consumer survey indicating that from May 2012 to May 2013, 69 percent of airline passengers who brought a PED onto an aircraft used their devices during the flight. *Id.* at 3 ¶ 2. Further, the FCC reports that global mobile traffic increased by 70 percent from 2011 to 2012 and is projected to increase thirteen-fold by 2017. *Id.* at 11 ¶ 22.

¹¹ See Press Release, FAA, FAA to Allow Airlines to Expand Use of Personal Electronics (Oct. 31, 2013), http://www.faa.gov/news/press_releases/news_story.cfm?newsId=15254.

regulations, to choose whether to enable mobile communications services using an Airborne Access System.¹² In pertinent part, the FCC’s NPRM proposes to harmonize its regulations governing the operation of mobile devices on aircraft across all commercial mobile spectrum bands, and to allow mobile communication services on aircraft only if managed by Airborne Access Systems.¹³ The FCC’s proposal reiterates that the FAA must certify the Airborne Access Systems,¹⁴ and would permit mobile wireless device operations only on aircraft traveling more than 10,000 feet above the ground.¹⁵

The FCC’s proposal makes clear that it is not proposing a mandate for airlines to permit any new airborne mobile services; rather, the FCC is proposing to revise current prohibitions on the operation of wireless devices on aircraft to provide the airlines with a regulatory path for offering their passengers additional airborne mobile broadband services across licensed commercial spectrum bands. The FCC states that its NPRM is “technology-neutral,” in that it does not propose to limit the use of mobile communications to non-voice applications; rather it states that any modifications would be at the discretion of individual airlines, in addition to any rules or guidelines adopted by the FAA or OST.¹⁶ The FCC proposal explains that the Airborne Access Systems will provide airlines with the flexibility to deploy or not deploy all mobile

¹² *FCC Mobile Wireless NPRM* at 1 ¶1.

¹³ *Id.* at 11-12 ¶¶ 23-24.

¹⁴ *Id.* at 11-12 ¶¶ 23-24.

¹⁵ *Id.* at 15 ¶ 31.

¹⁶ *Id.* at 4 ¶ 4.

communications services. For instance, an airline could program the new equipment to block voice calls while permitting texting, email, and Web surfing.¹⁷

FAA and Cellular Usage Issues

As stated above, even if the FCC determines that cell phones or other mobile devices used during flight would not interfere with cellular networks and revises its ban, FAA safety regulations would still apply. The FAA is responsible for determining whether cellular technology can safely be used on aircraft. Any installed equipment such as Airborne Access Systems would be subject to FAA certification, just like any other piece of hardware. In addition, the aircraft operator would have to determine that the use of this system will not interfere with the navigation and communications systems of the particular type of aircraft on which it will be used before any restrictions are lifted.

We understand that today a number of foreign air carriers allow the use of passenger cellular telephones with on-board cellular telephone base stations (picocells). We solicit comment from these carriers and from passengers who have flown on these carriers regarding their flight experiences. More specifically, to what extent have passengers used their cell phones for voice communications on airplanes that are equipped for cell phone communications? Have the air carriers received passenger comments or complaints related to cell phone voice communications? If so, what comments or complaints have been received? If complaints or issues were reported, did these issues rise to the level in which they would be considered to be an unfair practice to consumers, and/or inconsistent with adequate transportation pursuant to 49

¹⁷ As an example, the FCC states that Aer Lingus currently allows texting and Internet access using mobile communications devices but does not allow voice calls in the cabin, while Virgin Atlantic permits access to the Internet, texting, and making voice calls through its mobile communications system. *Id.* at 17-18 ¶ 41; *See also* Statement of Chairman Wheeler, Re: Expanding Access to Mobile Wireless Services Onboard Aircraft, *Notice of Proposed Rulemaking*, WT Docket 13-301, FCC 13-157 at 45 (Dec. 13, 2013) (*Statement of Chairman Wheeler*).

U.S.C. § 41712 and 49 U.S.C. § 41702? If DOT were to make such a determination (that voice calls are unfair and/or inconsistent with adequate transportation), foreign air carriers may be subject to these rules. What would be the economic impact of such a requirement?

On October 31, 2013, the FAA announced, based on the report of the PED Aviation Rulemaking Committee (ARC), that it had determined that airlines could safely expand passenger use of PEDs during all phases of flight. Cell phones were excluded from the scope of the ARC's report because of the FCC's rules prohibiting airborne calls using cell phones. In its announcement the FAA stated that passengers with PEDs with cellular capabilities must continue to disable those capabilities during flight (*i.e.*, cellular service turned off).

Prior to the formation of the ARC, the FAA, on August 31, 2012, issued a Notice of Policy, requesting comment on current policy and guidance regarding passenger use of PEDs on-board aircraft.¹⁸ The Notice sought comment on several items including passenger perspectives on PEDs, and asked:

- If some PEDs are found to be compatible with aircraft systems, should there be restrictions on the use of PEDs for other reasons?
- Should voice communications using other technologies such as voice over IP (internet) be limited or restricted?¹⁹

The Association of Flight Attendants filed a comment and replied that voice over internet or cellular broadband should be banned to reduce in-flight disruptions, noting that most flight attendants and travelers find objectionable the possibility of numerous simultaneous voice

¹⁸ 77 Fed. Reg. 53159-02 (Aug. 31, 2012).

¹⁹ *Id.* at 53162, question 5.

calls.²⁰ Delta Air Lines also filed a comment stating that 64 percent of its passengers indicated that the ability to make phone calls in flight would have a negative impact on the onboard experience.²¹

Office of the Secretary and Cellular Usage Issues

In addition to the FAA's safety responsibilities, the Department (Office of the Secretary, Office of Aviation Enforcement and Proceedings) has the authority and responsibility to protect consumers from unfair or deceptive practices in air transportation under 49 U.S.C. § 41712.

Using this authority, the Department has found acts to be "unfair" if they are harmful to passengers but could not be reasonably avoided by passengers. For example, the Department relied upon section 41712 and its "unfair" practice component when promulgating the "Tarmac Delay Rule,"²² 14 CFR 259.4, in which the Department addressed problems consumers face when aircraft sit for hours on the airport tarmac.²³ In doing so, the Department considered the harm to the consumer and the fact that the practice was unavoidable by the consumer. The Department concluded that regulatory action was necessary and that a three-hour time limit is the maximum time after which passengers must be permitted to deplane from domestic flights given the cramped, close conditions in aircraft and the inability of passengers to avoid lengthy tarmac delays.

Here, as with the tarmac delay rules, the Department believes that this practice may be harmful or injurious to the passenger and there may not be a way for the passenger to reasonably

²⁰ Passengers Use of Portable Electronic Devices on Board Aircraft, Docket No. FAA 2012-0752.

²¹ *Id.*

²² See 74 FR 68983 (December 30, 2009) and 76 FR 23110 (April 25, 2011).

²³ 74 Fed. Reg. 68983 (Dec. 30, 2009).

avoid the harm. Allowing voice calls on passenger aircraft may be harmful because people tend to talk louder on cellphones than when they're having face-to-face conversations. They are also likely to talk more and further increase the noise on a flight, as passengers would not be simply talking to the persons sitting next to them but can call whomever they like. While some planes may already have seat-back phones in place, we believe that most are rarely used and the Department's concern is not about individual calls but rather the cumulative impact of allowing in-flight calls in close quarters.

In this ANPRM the Department is seeking comment on whether permitting the use of mobile wireless devices for voice calls on aircraft amounts to an unfair practice under section 41712 using the test listed above, and whether there may be countervailing benefits to consumers or competition should voice calls be allowed. Further, we seek comment on whether other types of communications and technologies (like seat-back phones), may also be considered to be an unfair practice under section 41712.

As noted above, 49 U.S.C. § 41702 gives the Department the authority and responsibility to ensure safe and adequate service in domestic air transportation. As with section 41712, the Department and its predecessor in these matters have previously used this authority to address actions that have harmful effects on air travelers. In this instance, the Department feels that the potentially harmful effect to consumers is discomfort.

In 1973, the Civil Aeronautics Board (CAB) issued a "smoking rule" under its economic regulations titled, "Part 252—Provision of Designated 'No Smoking' Areas Aboard Aircraft Operated by Certificated Air Carriers," which mandated designated "no smoking" areas on commercial flights.²⁴ The rule predated a Congressional ban on smoking on scheduled flights.

²⁴ 38 Fed. Reg. 12207 (May 10, 1973).

In the preamble to the rule, the CAB cited a joint study by the FAA and the then Department of Health, Education, and Welfare that concluded that the low levels of contaminants in tobacco smoke did not represent a health hazard to nonsmoking passengers on aircraft; however, the study found that a significant portion of the nonsmokers stated that they were bothered by tobacco smoke. As such, the principal basis for the rule was passenger discomfort.²⁵ The CAB relied upon section 404(a)(1) of the Federal Aviation Act of 1958 (subsequently re-codified as section 41702), requiring air carriers “to provide safe and adequate service, equipment and facilities,” as well as section 404(a)(2), requiring air carriers to establish, observe, and enforce “just and reasonable ... practices” as its statutory authority for this rule. While the initial 1973 determination may have been based primarily upon passenger discomfort issues, it is important to note that in more recent actions (statutory ban on smoking aboard aircraft in 49 U.S.C. 41706 and the regulatory ban in part 252 on smoking tobacco products), health risks were among the concerns upon which these actions were based. Through this ANPRM we seek to explore whether the potential for voice communications on mobile wireless devices would necessitate rulemaking pursuant to our authority to ensure adequate service.

During the past two months, the Department’s Aviation Enforcement Office has received more than 90 consumer comments from the public expressing dissatisfaction over the possibility of permitting in-flight voice calls, and no comments in support of such calls.²⁶ In

²⁵ The CAB stated, “unlike persons in public buildings, nonsmoking passengers on aircraft may be assigned to a seat next to, or otherwise in close proximity to, persons who smoke and cannot escape this environment until the end of the flight.”

²⁶ The Aviation Enforcement Office categorizes communications received from consumers as complaints, comments, or inquiries. A ‘comment’ for this purpose is an expression of opinion on an issue, as opposed to a complaint about a specific incident that the consumer was involved in. These ‘comments’ sent to the Aviation Enforcement Office are not comments in the rulemaking sense; they were not filed in response to this ANPRM and are not in the docket.

addition to the consumer comments noted above, some entities have made public statements in the media indicating various positions on the issue of voice calls. The Association of Flight Attendants released a statement opposing voice calls, stating: “As the last line of defense in our nation’s aviation system, flight attendants understand the importance of maintaining a calm cabin environment, and passengers agree.”²⁷ Similar views were expressed by several U.S. airlines. Delta Air Lines publicly stated it will not permit voice calls regardless of what the government allows, citing “overwhelming sentiment” to keep the ban in place.²⁸ JetBlue Airways and United Airlines have also indicated that they intend to keep the ban on calls in place.²⁹ In addition, legislation has been introduced in the House of Representatives and Senate to address the concern over in-flight voice calls. On December 12, 2013, Senator Diane Feinstein and Senator Lamar Alexander introduced legislation, titled *Commercial Flight Courtesy Act*,³⁰ to ban cell phone conversations on commercial airline flights, but permit the use of texting and other electronic communication, pending FCC approval. That same week, Rep. Bill Shuster introduced a bill, *Prohibiting In-Flight Voice Communications on Mobile Wireless Devices Act of 2013*,³¹ to prohibit in-flight voice communications, but permit other types of electronic communication.

²⁷ See *U.S. airlines want to stay cell phone free*, CNNMoney, <http://money.cnn.com/2013/12/24/technology/airline-cell-phones/> (Dec. 24, 2013).

²⁸ See *DOT says not so fast over FCC call to lift ban on in-flight calls*, Associated Press, <http://www.cbsnews.com/news/fcc-says-lift-ban-on-in-flight-calls-dot-replies-not-so-fast/> (last updated Dec. 12, 2013).

²⁹ See *U.S. airlines want to stay call phone free*, *supra* note 26.

³⁰ S.1811 (Dec. 12, 2013).

³¹ H.R. 3676 (Dec. 9, 2013).

The concerns raised by the public, airlines, flight attendants, and members of Congress regarding the possibility of in-flight voice calls on aircraft have prompted the Department to issue this advance notice of proposed rulemaking seeking comment on use of mobile wireless devices for voice calls on aircraft. Permitting voice calls in an enclosed cabin space has the potential, according to comments the Department received, to drastically alter the flying public's experience.

Unlike other public environments, the option to remove oneself from the disruption, inconvenience, and/or nuisance of listening to someone else's phone call does not appear to exist on an airplane. Further, the Department believes that the possibility of cumulative impact of having a large number of passengers talking on their cell phones increases the level of passenger discomfort. The Department seeks comment, described more specifically below, on whether it would be feasible to create "quiet sections" as exist on Amtrak trains and in other public places, or to issue guidelines on when airlines should disable passenger voice communication technology at certain times or under certain circumstances (i.e., at night time, on flights of a certain length, etc.) . While the Department does not oppose the use of cell phones and other mobile devices for mobile wireless data services, such as sending and receiving text messages and email, there is concern that the pervasiveness of in-flight voice calls could create an oppressive environment for passengers, especially for those on long-haul flights. We note that we are not considering the inclusion of seat-back phones or other phones installed on aircraft in a proposed ban. While passengers are able to make voice calls in-flight through such phones, the service is usually relatively expensive, sparingly used, and to our knowledge have been in use for years largely without incident. We are concerned about the cumulative impact of allowing in-

flight calls across our national aviation system, rather than individual calls which may be seen as “petty annoyances.”

As we consider whether the passenger experience would be so disrupted by in-flight calls that to permit those calls would be an “unfair” practice and/or render the service provided “inadequate,” we seek comment on the following issues. The most helpful comments reference a particular part of the proposal, explain the reason for any recommended change, and include supporting data as well as cost and benefit information.

1. Is it necessary for the Department to propose a rule to deem passenger voice communications as an unfair practice, and ban voice communications on passengers’ mobile wireless devices on flights conducted under 14 CFR Part 91 Subpart K (fractional ownership programs), Part 121 (generally, scheduled airlines and charter operators of large aircraft), Part 125 (operations with aircraft having 20 or more passenger seats where common carriage is not involved), Part 129 (foreign air carriers), and/or Part 135 (commuter, on demand and air-taxi operations) within, to and from the United States. If so, on what basis is there a need for this regulation? We note that when in the airspace of a foreign country, a U.S. aircraft operator may allow the use of PEDs only if it is consistent with that country’s rules.
2. Information on the possible benefits of allowing voice communications on passengers’ mobile wireless devices on flights conducted under 14 CFR Part 91 Subpart K (fractional ownership programs), Part 121 (generally scheduled airlines and charter operators of large aircraft), Part 125 (operations with aircraft having 20 or more passenger seats where common carriage is not involved), Part 129 (foreign air carriers), and/or Part 135 (commuter, on demand and air-taxi operations) within, to and from the United States.

Are there airlines that would opt to provide this service to passengers, should the opportunity arise? Are there passengers or passenger groups that would like to be allowed to use their mobile devices for voice communications while in flight (e.g., anytime, for important business or personal calls, emergencies)? Whether or not the Department should refrain from issuing a notice of proposed rulemaking on this topic and instead allow the airlines to develop individual policies.

3. Whether a proposed ban should include all in-flight voice communications on mobile wireless devices regardless of whether the mode is through an Airborne Access System, Wi-Fi, or satellite. If so, why?
4. Whether a proposed ban should include exceptions for charter flights, or at least certain charter flights such as single entity charters. If so, why?
5. Whether a ban if adopted should define ‘mobile wireless devices.’ The House bill, *Prohibiting In-Flight Voice Communications on Mobile Wireless Devices Act of 2013*, defines mobile wireless devices as any portable wireless telecommunications equipment utilized for the transmission or reception of voice data. We would consider this definition to include: cellular handsets, computers, tablets, electronic games, and any other device that uses radio links to establish a voice call with another party or parties.
6. Whether the Department should consider text-to-speech technologies as an unfair practice under 49 U.S.C. § 41712, and/or inconsistent with adequate transportation pursuant to 49 U.S.C. § 41702. We seek comment on the benefits or costs of including text-to-speech technologies if the Department determines that in-flight voice communications should be banned or restricted as an unfair practice. In the alternative, we seek comments on the benefits or costs of excluding these technologies from a proposed ban. We also seek

comment on whether the Department should consider an exemption from any ban on text-to speech voice applications for systems aimed at facilitating/improving accessibility for passengers with disabilities. The most helpful comments explain the reason or basis for any recommended change, and include supporting data.

7. Whether a proposed ban on voice communications on passengers' mobile wireless devices should not apply prior to the aircraft door closing for departures or after the aircraft door opens for arrivals as this is already permitted today. In other words, whether a proposed ban should begin when the aircraft door closes and is about to take off and end when the aircraft lands and the aircraft door opens. We solicit any additional comments or considerations regarding the duration of the ban on board an aircraft.
8. If the Department issues a notice of proposed rulemaking to ban in-flight voice communications, should that proposed rule account for any of the following considerations:
 - a. Whether the Department should consider permitting exceptions to the in-flight voice communications ban such as for personal, passenger-related emergencies. If so, how would those be defined?
 - b. Whether the Department should exempt from the ban any crewmember (where FAA regulations permit), any Federal law enforcement officer, Federal Air Marshal, FAA Aviation Safety Inspector (ASI), or National Transportation Safety Board (NTSB) Investigator, conducting official business. .
9. The impact on the flying public of permitting in-flight voice communications. What specifically could be harmful, disruptive, or injurious to the flying public (*e.g.*, impact of

allowing in-flight voice calls on some passengers' productivity as they work during a flight)? What could be beneficial?

10. Comments on the possible utility of a quiet zone or a talking zone, for passengers to avoid having to listen to in-flight calls. Is a physical structure (i.e., some kind of enclosure) necessary to create a quiet zone? If so, what are the possible costs and benefits of creating an enclosed area on an aircraft? Is it technically feasible? What design changes would need to be made to the aircraft? What are the possible costs and benefits of such a change to an airline? How would that affect the load capacity of the plane if such changes were implemented?
11. What other options may exist to mitigate the possible disruption of in-flight voice calls? Is there a reasonable way to mitigate the possible disruption?
12. Whether permitting in-flight voice calls is more or less disruptive than other current in-flight "disruptions," such as in-person conversations between passengers. If so, why? .
13. Whether the benefits of permitting in-flight voice calls outweighs the benefits of prohibiting in-flight voice calls. Describe the nature of those benefits and provide supporting data where possible.
14. Whether the costs of permitting in-flight voice calls outweighs the costs of banning in-flight voice calls. Describe the nature of those costs and provide supporting data where possible.
15. Whether permitting passengers to use all other mobile wireless communications services (e.g., devices for texting, emailing and surfing the Web) except in-flight voice communications would mitigate the drawbacks of a proposed ban on voice communications.

16. We understand that today a number of foreign air carriers allow the use of passenger cellular telephones with on-board cellular telephone base stations (picocells). We solicit comment from these carriers and from passengers who have flown on these carriers regarding their flight experiences. More specifically, to what extent have passengers used their cell phones for voice communications on airplanes that are equipped for cell phone communications? Have the air carriers received passenger comments or complaints related to cell phone voice communications? If so, what comments or complaints have been received? If complaints or issues were reported, did these issues rise to the level in which they would be considered to be an unfair practice to consumers, and/or inconsistent with adequate transportation pursuant to 49 U.S.C. § 41712 and 49 U.S.C. § 41702? If DOT were to make such a determination (that voice calls are unfair and/or inconsistent with adequate transportation), foreign air carriers may be subject to these rules. What would the economic impact of such a requirement?
17. Is there any other information or data that is relevant to the Department's decision? We note that the most useful comments will explain the reason the information or data is relevant as well as rationale for any recommended change, and include supporting data as well as cost and benefit information. We note that we are not addressing in this rulemaking any safety-related or security-related issues that may exist with the use of mobile wireless devices for voice calls on aircraft. The Transportation Security Administration (TSA) exercises authority over the security of the traveling public. FAA has authority over whether PEDs using cellular technology can be safely used on aircraft.

REGULATORY NOTICES

A. Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

This action has been determined to be significant under Executive Order 12866 and the Department of Transportation's Regulatory Policies and Procedures. It has been reviewed by the Office of Management and Budget under that Order.

Executive Orders 12866 ("Regulatory Planning and Review") and 13563 ("Improving Regulation and Regulatory Review") require agencies to regulate in the "most cost-effective manner," to make a "reasoned determination that the benefits of the intended regulation justify its costs," and to develop regulations that "impose the least burden on society." Additionally, Executive Orders 12866 and 13563 require agencies to provide a meaningful opportunity for public participation. Accordingly, we have asked commenters to answer a variety of questions in order to elicit practical information about any cost or benefit figures or factors, alternative approaches, and relevant scientific, technical and economic data. These comments will help the Department evaluate whether a proposed rulemaking is needed and appropriate.

B. Executive Order 13132 (Federalism)

This ANPRM has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 ("Federalism"). This notice does not propose any regulation that (1) has substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government, (2) imposes substantial direct compliance costs on State and local governments, or (3) preempts State law. States are already preempted from regulating in this area by the Airline

Deregulation Act, 49 U.S.C. § 41713. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

C. Executive Order 13084

This ANPRM has been analyzed in accordance with the principles and criteria contained in Executive Order 13084 (“Consultation and Coordination with Indian Tribal Governments”). Because none of the topics on which we are seeking comment would significantly or uniquely affect the communities of the Indian tribal governments or impose substantial direct compliance costs on them, the funding and consultation requirements of Executive Order 13084 do not apply.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. §601 *et seq.*) requires an agency to review regulations to assess their impact on small entities unless the agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities. A direct air carrier or foreign air carrier is a small business if it provides air transportation only with small aircraft (i.e., aircraft with up to 60 seats/18,000 pound payload capacity). See 14 CFR §399.73. If the Department proposes to adopt the regulatory initiative discussed in this ANPRM, it is possible that it may have some impact on some small entities but we do not believe that it would have a significant economic impact on a substantial number of small entities. We invite comment to facilitate our assessment of the potential impact of these initiatives on small entities.

E. Paperwork Reduction Act

Under the Paperwork Reduction Act (44 U.S.C. §§3501 *et seq.*), no person is required to respond to a collection of information unless it displays a valid OMB control number. This ANPRM does not propose any new information collection burdens.

F. Unfunded Mandates Reform Act

The Department has determined that the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply to this notice.

ISSUED THIS 14th DAY OF FEBRUARY, 2014, IN WASHINGTON, D.C.

[Original signed]

Anthony R. Foxx

Secretary of Transportation