

March 26, 2014

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Docket Management Facility
U.S. Department of Transportation
1200 New Jersey Avenue, SE
Room W12-140
West Building Ground Floor
Washington, DC 20590-0001

Re: Docket No. DOT-OST-2014-0002, Use of Mobile Wireless Devices for Voice Calls on Aircraft

The National Business Aviation Association is pleased to submit the following comments in response to the Department's Advance Notice of Proposed Rulemaking (ANPRM) relating to the use of mobile wireless devices for voice calls on aircraft. 79 Fed. Reg. 10049 (Feb. 24, 2014).

NBAA represents the aviation interests of over 10,000 Member companies that use aviation to support their respective companies' travel needs.

Our Members' aviation uses are very diverse and include the following.

- Whole aircraft ownership/leasing and private flight operations under 14 C.F.R. Part 91.
- Fractional aircraft ownership/leasing and private flight operations under 14 C.F.R. Part 91, Subpart K.
- Non-common carriage on owned/leased aircraft under 14 C.F.R. Part 125.
- Single entity charter travel as passengers on aircraft operated under 14 C.F.R. Parts 121, 129, and 135.
- Scheduled airline travel as passengers on aircraft operated under 14 C.F.R. Parts 121, 129, and 135 (commuters).

In each case, our Members place a premium on the value of their time and on the ability to remain connected whenever they deem it necessary. These expectations are at their greatest when our Member companies are using their own aircraft or otherwise traveling in non-common carriage under 14 C.F.R. Parts 91, 91K, and 125, as well as when they are traveling on single-entity charters operated under 14 C.F.R. Parts 121, 129, and 135.

General Comments

NBAA appreciates the Department's early outreach to the public for comments on the issues raised in the ANPRM. It is especially helpful for the aviation industry to hear the Department's concerns and have an opportunity to provide input on the direction that the Department might take on matters such as these, before the Department makes a considerable investment of its staff's time and effort to produce any specific draft rules.

NBAA's comments in this letter are provided in two parts. The first part is composed of the general comments given in this section. In the next section, NBAA provides its answers to the specific questions that the Department listed in its ANPRM.¹

1. DOT Is Properly Excluding Private Aircraft Operators Under 14 CFR Part 91, and Should Likewise Exclude Private Operations Under 14 CFR Part 91, Subpart K, and Part 125.

The Department notes in the ANPRM that it has responsibility and authority to prevent unfair practices to consumers under 49 U.S.C. 41712, and to address inadequate air transportation under 49 U.S.C. 41702. Importantly, both of these statutes apply only to "air carriers," defined by 49 U.S.C. 40102(a)(2), (5), and (25), in relevant part, as meaning a person who transports passengers as a "common carrier for compensation."² These statutory provisions do not apply to the private or non-common carriage operations of aircraft.

Recognizing the scope of its authority, the Department has appropriately left private flight operations under 14 C.F.R. Part 91 outside the scope of this ANPRM. The Department should apply the same treatment to non-common carriage flight operations under 14 C.F.R. Part 91, Subpart K, and under Part 125. Flight operations under those regulations do not involve common carriage, and should be excluded from the scope of any new rules that might be promulgated as a result of this rulemaking proceeding, under the authority of either 49 U.S.C. 41702 or 41712.

2. DOT's Statutory Authority to Regulate "Unfair Practices" and "Adequate Service" Should Not Be Interpreted to Prohibit Voice Calls on Aircraft Used for Single Entity Charters.

Many of NBAA's Members regularly use single entity charters (defined in 14 C.F.R. 212.2) and other business aviation charters. When they do, it is left to each customer's discretion whether onboard phones will be used for conversation or will be left unused. First, the service experience and potential amenities like in-flight voice services are the subject of negotiation between the aircraft operator and the single entity charter customer. Second, once the charter flight is underway, it is entirely up to the customer whether its passenger guests on board will be permitted to use any phone services that are available.

¹ Please note that NBAA's comments here are directed only to potential regulation of voice calls on flights that are (a) non-common carriage flights operated under 14 C.F.R. Part 91, Part 91, Subpart K, or Part 125; and (b) common carriage flight but involving a single entity as the charterer or involving business aviation movements. NBAA's comments are not intended as offering an opinion on the potential regulation of voice calls on scheduled airline flights.

The character of non-common carriage flights and single entity/business aviation charters is fundamentally different from that seen on scheduled airline flights. Our business aviation community's flights tend to involve smaller numbers of people who are all traveling together for related purposes and who will not feel intruded upon if a fellow passenger takes a voice call in flight. Classic examples would include builders flying over territory to take surveys for new business development, salespersons traveling together to meet a customer, repair personnel traveling to make a time-sensitive fix for a customer's equipment, or a charitable organization's free movement of a guest passenger for medical treatment at a specialized clinic. The passengers in each case are not going to mind at all if their fellow passenger makes a phone call. Business aviation scenarios such as these stand in stark contrast to large collections of strangers on the typical scheduled airline flight.

² Section 41712 also applies to ticket agents. However, ticket agents are not relevant in this proceeding.

In every respect, the charter customer is neither treated unfairly nor served inadequately if the customer has negotiated for and allowed the use of phone services on the aircraft. There is no need for the Department to restrict the freedom of choice for these customers or the ability of the charter air carriers to serve them.

3. The Department Already Has Studied Some of the Concerns Raised in this ANPRM and Found that Air Rage and Interference with Cabin Crews Are Not Associated with the Use of Voice Call Services That Have Been Made Available in Flight.

In Section 410 of the FAA Modernization and Reform Act of 2012, Public Law 112-95, Congress directed the Administrator of the Federal Aviation Administration to study the potential impact that the use of cell phones in flight for voice communications could have on scheduled passenger air transportation. The Administrator published the study in July 2012. See "Study on the Use of Cell Phones on Passenger Aircraft," DOT/FAA/AR-12/30.

The Report's findings included the following:

- "None of the civil aviation authorities [who were surveyed] reported any cases of air rage or flight attendant interference related to passengers using cell phones on aircraft equipped with on-board cellular telephone base stations." Id. at 1.
- "Most of the non-US civil aviation authorities reported no negative passenger comments or complaints related to on-board cell phone use." Id. at 8.

These findings strongly suggest that there is no urgent need for the Department to prohibit or even regulate the use of voice communications on any flights that are subject to its jurisdiction.

NBAA's Answers to the Specific Questions in the ANPRM

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.

No. It is beyond the Department's statutory responsibility and authority to impose any such rules on non-common carriage operations (14 C.F.R. Part 91, Subpart K, or Part 125). It also is not necessary, and indeed would be harmful to the industry and its passengers, if the Department were to impose such rules on single entity charters under 14 C.F.R. Part 121, 129, or 135.

NBAA also is concerned by the precedent that would be established if the Department were to restrict foreign air carriers from offering innovative services like in-flight voice calling. It is very likely to lead foreign aviation authorities to reciprocate by interfering in the ability of U.S. air carriers to offer innovative services and compete better in the international marketplace.

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.

There are considerable benefits to allowing customers the freedom to make an in-flight voice call if they deem it necessary and are willing to pay any applicable service fees. This is particularly the case for charter passengers who might be expected to have business or individual needs for staying in contact. Having the option of making the in-flight call can relieve a passenger who is in need or otherwise worried by business or personal circumstances back on the ground. It is difficult to quantify the economic value of these benefits. However, it is noteworthy that a variety of in-flight phone services have been made available already in the industry, and that passengers needing to use those phones were able to take care of their needs without causing any noticeable disruption to the cabins of the aircraft in which they were traveling. The Department's own study confirms this.

Also, it is important to note that many aviation service companies dedicated to business aviation have made considerable investments in in-flight communications services for the benefit of their customers. It would be very detrimental to U.S. industry if the Department were to render those millions of dollars of investment worthless.

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?

NBAA submits that there is no legal or public policy reason to discriminate among alternative technologies delivering the same essential service capability.

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?

Yes, for the reasons stated above, business aviation charters and single entity charters should be excluded from any ban.

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.

If the Department ultimately issues a new set of rules in this proceeding, NBAA understands that some defined terms will be necessary, including a definition of the devices or services to be covered. It is not possible to comment further on the potential merits of one definition or another at this ANPRM stage.

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.

NBAA is aware of no reason for the Department to prohibit the use of text-to-speech technologies by passengers traveling on civil aircraft in the United States. Technically such a prohibition might not even allow a passenger to enjoy listening to an audio rendering of a book that they have purchased for enjoyment on their travels. Such things already occur today, and most passengers prudently enjoy listening to the audio material using headsets or ear buds that provide no interference to their fellow passengers.

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.*

NBAA submits that there is no reason for the Department to prohibit passengers from making calls when the aircraft is on the ground, the aircraft doors are open, and safety would not be affected.

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?

NBAA submits that restrictive rules are not necessary in the first place. However, if they are promulgated, it is not desirable for the Department to ban emergency calls or for the Department to limit the discretion of operators and their passengers to determine which calls qualify as emergencies.

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.

The Department should not restrict government officials from making in-flight calls relating to the safety and security of civil aviation transportation. The interests of aviation safety and security far outweigh any inconvenience that passengers might experience from the sound of the call taking place.

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?*

As indicated above, the Department's own study indicates that there are likely to be no adverse impacts from allowing air carriers to provide innovative in-flight communication services to their passengers.

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?*

NBAA requests that the Department leave these issues to the discretion and innovation of the air carriers. It is possible that air carriers can provide phone booths, white noise generators, or other means of reducing any cabin noise and passenger annoyance from the use of voice

calling during flight. The Department should not attempt to prejudge the range of possible solutions available now or in the future for serving the traveling public.

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?*

See comments above.

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?*

NBAA submits that the use of voice calling in flight is no more disruptive than passengers engaging in conversations with each other.

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.*

NBAA submits that there are no real benefits to prohibiting in-flight voice calls. The Department's study is important in this regard.

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.*

The costs to U.S. industry, particularly in the business aviation community, will range in the hundreds of millions of dollars or more if the Department bans in-flight voice calling and renders existing technology investments worthless.³ It will harm the business aircraft operators and those who sell technologies and services to them.

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.*

See generally the other comments above.

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*

³ The voice calling services contemplated in the ANPRM are costly to provide. Each aircraft has to be outfitted with new equipment that is capable of sending and receiving voice communications between the passenger's mobile device and designated ground stations or satellites. All of that technology has to be designed, produced, installed, and operated in a manner that complies with applicable rules of the Federal Communications Commission and Federal Aviation Administration. Additionally, there are service fees and maintenance costs associated with keeping these services operational. Many of NBAA's members already have invested in these technologies and services.

The business aviation industry has invested heavily in this capability and while an exact industry number will take more time to produce, reports from one installation company suggest that over 500 units costing over \$150,000 each have been put into service. Any regulatory restriction that reduces the value of the installed equipment could stifle a significant growth segment of business aviation.

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?

See generally the other comments above.

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.

NBAA has no further comments in response to this item.

Conclusion

NBAA asks the Department not to attempt to regulate the voice calling services offered on any non-common carriage flights under 14 C.F.R. Part 91, under Part 91, Subpart K, or under Part 125. Likewise, NBAA asks the Department not to regulate the voice calling services offered on any single entity charter (14 C.F.R. 212.2) or other business aviation charter.

Thank you for the opportunity to submit these comments on behalf of NBAA's Members. Please contact me if NBAA can provide any additional information.

Sincerely,

A handwritten signature in black ink that reads "Douglas Carr". The signature is written in a cursive style with a large, looping initial 'D'.

Douglas Carr
Vice President
Safety, Security, Operations & Regulation