

**DISSENTING STATEMENT OF
COMMISSIONER AJIT PAI**

Re: *Expanding Access to Mobile Wireless Services Onboard Aircraft, Notice of Proposed Rulemaking, WT Docket No. 13-301.*

Like most Americans, I fly coach. Each year, the seats feel a little smaller, and my legs get a little more cramped. The airlines charge fees to check luggage, which fuels a mad rush to find space for carry-on bags on packed flights. Going through airport security . . . that's a whole other set of hassles and indignities. In short, airplane travel these days is often stressful and unpleasant.

As a result, I wasn't surprised to be bombarded with e-mails as soon as it was announced that the FCC would vote on a proposal that could allow passengers to make in-flight phone calls. Many of these messages were quite colorful. One person wrote: "It's bad enough being herded like cattle on these planes without having to listen to boorish idiots have needless conversations on their cell phones." Another said: "[Being] stuck next to a gabber on a 6 hour flight to San Francisco . . . I fear what I'd do with my cutlery!!!" A third wrote simply: "NOOOO." And those were just from my family!

Although I'm pretty sure that I could resist the urge to stab a fellow passenger, I understand these sentiments and share these concerns. Like most Americans, I don't want people making phone calls on planes. But given the proposal before us, our task is to determine whether such use of the nation's spectrum is consistent with the public-interest standard outlined in the Communications Act.

In my judgment, today's proposal is not in the public interest, and I must respectfully dissent. My principal objections are twofold; they relate to the proposed licensing framework and concerns about public safety.

First, the licensing framework proposed in this item sets a dangerous precedent when it comes to spectrum policy. Wireless carriers have spent tens of billions of dollars, both at auction and in the secondary market, to purchase spectrum licenses. These licenses provide carriers with exclusive use of specified frequencies in specified geographic areas.

Today's proposal, however, would infringe upon carriers' exclusive use licenses. Through administrative fiat, airlines would suddenly be licensed (for free) to use the same frequencies that are currently licensed to carriers. However, the NPRM cites no precedent for taking such action. Nor does it answer important questions, such as: Can anyone use a carrier's licensed spectrum so long as they're pretty sure they won't cause interference? With a series of spectrum auctions on the horizon, now is the not the time to cast doubt on the scope of such licenses.

Additionally, I suspect that neither we nor the airlines will find the proposed licensing framework workable or appealing. Under the approach set forth in the NPRM, I do not see how it would be possible for an airline to allow passengers to make telephone calls unless it chose to become a commercial mobile radio station (CMRS) carrier, presumptively subject to the full panoply of obligations and regulations that apply to such carriers. We therefore may have to comb through our rules and decide which ones should apply to airlines that are CMRS carriers, and which ones should not, and come up with a persuasive explanation for each decision. These burdens on the agency and airlines alike are unnecessary.

Rather than inflexibly proposing one particular framework, I believe we should have proposed multiple approaches or just sought comment on a variety of ideas without favoring any one in particular. For example, we could have also proposed spectrum leasing, a tried-and-true method that respects carriers' exclusive use of licenses. Or we could have proposed altering our base station rules so that

carriers could contract with airlines to place cell service on board. Or perhaps there's another approach that could work, from auctioning "sky licenses" to unlicensed use. In any event, I believe that it is premature for us to endorse one specific proposal today, especially the flawed one that is contained in this item.

Second, the NPRM does not adequately address public safety and national security concerns. Being annoyed at a chatty passenger during a flight is one thing. But flight safety is quite another. And while today's item maintains that "issues of onboard security and safety of flight are matters primarily reserved for the FAA," to me the other issues at play in this proceeding are trivial by comparison.

Back in 2005, when the Commission was considering a proposal similar to this one, the Department of Justice, Federal Bureau of Investigation, and Department of Homeland Security told us that there were "public safety and national security-related concerns that stem from the Commission's proposal." However, their specific concerns are mentioned nowhere in today's NPRM. For example, these federal law enforcement agencies told us that our proposal could make it easier for terrorists to coordinate hijackings or detonate remote-controlled improvised explosive devices aboard aircraft. Echoing recent comments from flight attendants, the agencies also voiced their opinion that the Commission's proposal could lead to more air-rage incidents, which would pose difficulties for air marshals who are supposed to remain anonymous, if possible, during flights.

Before coming to the Commission for my first stint, I worked at the Department of Justice, where I concentrated on counter-terrorism policy. One lesson I learned there was the necessity of close inter-agency coordination when it comes to protecting the American people. I was therefore surprised and disappointed to learn that the Commission didn't consult and engage in a direct dialogue with federal law enforcement officials prior to circulating this proposal. I am also disappointed that the item does not propose or specifically mention the recommendations made by federal law enforcement officials back in 2005 to mitigate public safety and national security concerns. If we do not specifically ask about these proposals here, I am concerned that we will not have a sufficient record to address those concerns and we will not have sufficient legal notice to include necessary measures in our final rules. That won't serve anyone well in the end.

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I've often said that it is important for the Commission to update its rules to reflect current technological and marketplace realities. So while I believe that there are many other rules on our books that cause more harm and deserve our attention, I am sympathetic to the argument that we should allow the Federal Aviation Administration or individual airlines to decide whether to permit phone calls aboard aircraft. Open to moving forward with a rulemaking, I carefully reviewed the item and offered a number of suggestions for improving it. Unfortunately, most of my suggestions were not accepted, and I cannot support the proposal that remains.

For these reasons, I respectfully dissent.