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Aviation Group Client Update

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DEPARTMENT OF TRANSPORTATION ISSUES NOTICE OF PROPOSED RULEMAKING ON USE OF MOBILE WIRELESS DEVICES FOR VOICE CALLS ON AIRCRAFT

On December 14, 2016, the DOT issued a NPRM on the [Use of Mobile Wireless Devices for Voice Calls on Aircraft](#). All comments should be filed by **February 13, 2017** but late-filed comments will be considered to the extent practicable.

Summary. The DOT seeks to protect airline passengers from being unwillingly exposed to voice calls within the confines of an aircraft. Specifically, the Department proposes to require sellers of air transportation to provide adequate advance notice to passengers if the carrier operating the flight allows passengers to make voice calls using mobile wireless devices. The DOT also seeks comment on whether to prohibit airlines from allowing voice calls via passenger mobile wireless devices on domestic and/or international flights.

Purpose. This action is an attempt to regulate voice calls on passengers' mobile wireless devices on flights to, from, and within the United States. The Department explains that allowing passengers to make voice calls onboard aircraft likely creates an environment that is unfair and deceptive to those passengers. The Federal Communications Commission (FCC) currently prohibits the use of certain commercial mobile bands onboard aircrafts. However, that ban does not cover Wi-Fi and other means by which it is possible to make voice calls. In 2013, the FCC proposed lifting its existing ban, so long as certain conditions are met. The Department is concerned that advancement in technologies will be accompanied by lower costs of making voice calls and increased voice call service quality, which may lead to a higher prevalence of voice calls and greater risk of passenger harm.

Under this proposed rule, carriers would be free to set their own voice call policies, to the extent permitted by law, so long as carriers provide adequate advance notice when voice calls will be allowed. This requirement would not apply to small airlines (i.e., U.S. and foreign air carriers that provide air transportation only with aircraft having a designed seating capacity of less than 60 seats) or ticket agents that qualify as a small business. No advance notice is required if the carrier prohibits voice calls.

The Department analyzed the financial impacts of this proposed rule. The Department's Preliminary Regulatory Impact Analysis examined the costs that ticket agents and airlines would incur to implement any disclosure requirements that would arise from allowing voice calls. For the period of 2017–2026, the PRIA estimated the cost to carriers to be \$41 million and the cost to ticket agent costs to be \$46 million. The Department concluded that their analysis found qualitative benefits to passengers in the form of improved information for those who wish to avoid (or make) voice calls.

The proposed rule would regulate voice calls onboard aircraft as a matter of consumer protection, rather than as a matter of ensuring aviation safety or preventing cellular interference with ground networks. It would also apply to voice calls on passenger-supplied cellular telephones and other passenger-supplied mobile wireless devices, regardless of whether the call is made on a commercial mobile frequency, Wi-Fi, or other means. Under this proposal, the Department would not prohibit voice calls but airlines would remain subject to any technical, safety, or security rules that do prohibit or restrict voice calls. Airlines would be required to disclose their voice call policies to the extent that they permit voice calls, which in turn, will be based both on the airline's own choices and on any existing rules affecting such calls.

If you have any questions or would like further information, please contact Shelley Ewalt.

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McBreen & Kopko's Aviation Group represents air carriers, fixed base operators (FBOs), airport managers, aviation service providers, and business aircraft owners and operators on a wide range of aviation issues including regulatory matters, commercial transactions, aircraft finance matters, and bankruptcy and creditors' rights.

