Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Amendment of Part 22 of the Commission's Rules To Benefit the Consumers of Air-Ground Telecommunications Services	)	WT Docket No. 03-103
	)	
Biennial Regulatory Review—Amendment of Parts 1, 22, and 90 of the Commission's Rules	)	

COMMENTS OF SITA

SITA (Societe Internationale de Telecommunications Aeronautiques) hereby comments on the Federal Communications Commission's ("Commission" or "FCC") Notice of Proposed Rulemaking ("the Notice") seeking to update its Part 22 Rules with regard to the air-to-ground service.[1] The Notice requests comments on possible changes to the commercial air-ground regulations to account for technology and market changes that have occurred since the spectrum was allocated for this service over a decade ago.[2] SITA welcomes this opportunity to comment on the Notice. As discussed below, the issues canvassed in the Notice are timely in light of recent, ongoing and expected developments. By initiating this rulemaking now, the Commission's Rules can stay "ahead of the curve" rather than being outdated and a potential barrier to new services and increased competition.

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1 *Amendment of Part 22 of the Commission's Rules To Benefit the Consumers of Air-Ground Telecommunications Services*, FCC 03-95, released April 28, 2003 (*Federal Register* Vol. 68 at 44003, July 25, 2003).

2 *See Amendment of the Commission's Rules Relative to Allocation of the 849-851/894-896 MHz Bands*, 5 FCC Rcd 3861 (1990).

Background

SITA is the air transport industry owned and controlled organization that provides network connectivity and applications to all members of the air transport industry ("the ATI"). SITA has been operating since 1949, and currently has more than 750 members who hail from almost every country. A number of its members and customers are in the United States. SITA currently operates in virtually every country around the world providing U.S. and international airlines with a variety of communications services, including voice and data, using both terrestrial and satellite facilities. SITA introduced passenger air-to-ground communications services in response to a requirement from its members to do so in the early 1990's. It was introduced in the United States in the late 1990's. SITA is thus highly interested in this proceeding.

In the years since SITA began offering passenger air-to-ground services, there have been a number of technological developments that have meant that there is now a clear need for a review of the Commission's Rules for these services. One critical development has been the extent to which mobile telephones have become all pervasive. There is almost an exact overlap between airline passengers and mobile telephone users. Moreover, there is also a growing expectation that mobile telephone users can obtain network coverage at all times.

There has also been considerable development within the aviation world towards ensuring that there are no outstanding safety issues in using mobile telephones during flights. Governments and the air transport industry are legitimately concerned about the risk of harmful interference to the airplanes' navigation and communications systems from mobile telephones, in light of the potentially severe consequences of such interference. However, technological advances may be able to

eliminate those concerns. Regulatory and industry bodies around the world are currently addressing this matter. This includes work being done by the Federal Aviation Administration ("FAA")[3] and RTCA, Inc. ("RTCA"),[4] as well as EUROCAE in Europe,[5] and other bodies. The result emerging from this extensive work appears to be that within the foreseeable future, it will be possible, from a safety perspective, to allow the use of mobile telephones in certain aircraft.

While the airplane safety issues are ultimately a matter for the FAA, ensuring that there is an appropriate telecommunications regulatory framework in place is properly the role of the Commission.[6] In light of the various regulatory issues in the context of the passenger air-to-ground service potentially arising from use of cell

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[3] *See, e.g.*, *Notice* at ¶ 11.

[4] RTCA, Inc. is a private, not-for-profit corporation that develops consensus-based recommendations regarding communications, navigation, surveillance, and air traffic management (CNS/ATM) system issues. RTCA functions as a Federal Advisory Committee. Its recommendations are used by the FAA as the basis for policy, program, and regulatory decisions and by the private sector as the basis for development, investment and other business decisions. SC-202 of RTCA is currently addressing the issue of potential interference from portable electronic devices, including cell phones and wireless PDAs. *See* http://www.rtca.org/comm/sc202.asp.

[5] The European Organisation for Civil Aviation Equipment (EUROCAE) was formed in 1963 to provide a regular forum in Europe where administrations, airlines and industry could meet to discuss technical problems. Today, EUROCAE documents are considered by Joint Aviation Authorities as means of compliance to Joint Technical Standard Orders and other regulatory documents. The main European administrations, aircraft manufacturers, equipment manufacturers and service providers are members of EUROCAE, and they actively participate in the Working Groups which prepare these documents. WG-58 is studying EMC issues related to the use of new technology passenger electronic devices (PEDs) on aircraft. *See*, http://www.eurocae.org/cgi-bin/home.pl?Target=php/workgroup.php%3Fver%3Dva&Num=2. SITA is a member of both EUROCAE and RTCA.

[6] The regulatory issues within the FCC's jurisdiction and expertise include spectrum allocations, competition and market structure, along with interference to other licensees. *Cf. Notice* at fn. 47 (addressing AirCell waiver issues, which included interference concerns from affected cellular licensees).

phones on board aircraft, SITA, on behalf of the ATI, commends the Commission for instituting this review now.

Competition issues

As the Commission observes in the Notice, for various reasons, there is currently no competition in the air-to-ground telephony market. Although the Commission sought to facilitate competition by awarding multiple licenses, there is only a single operator currently because the other licensees either never constructed facilities or ceased operations. This is a disappointing outcome, and is not conducive to ensuring that the consumers of such services can be assured of the best possible pricing and services. This absence of competition stands in sharp contrast to the considerable competition (both as to service and to price) in the general mobile telephone market.[7]

Consequently, SITA contends that the public interest would be well served if the manifold benefits of competition could be transferred to the air-to-ground market as a matter of course. SITA believes it is possible for that to happen very efficiently, and with no disruption, if, subject to the FAA safety-related issues review discussed above, air carriers were authorised to allow the use of mobile telephones during flight. Such an outcome would be pro-consumer, pro-competition and could be introduced with no change to the existing arrangements in place for the selection of telephone service carriers, and little or no changes to the service providers' interaction (including coordination to eliminate the risk of inter-licensee interference). Assuming the service will be provided on a non-interference basis using cellular or PCS spectrum, such a development would also mean that some or all of the spectrum

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[7] *See, e.g., Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services*, Eighth Annual Report, FCC 03-150, released July 14, 2003.

currently designated for the separate air-to-ground service could be reallocated for other, more efficient use.

Spectrum Allocation Issues

It is inevitable that the technology surrounding mobile telephony will continue to develop and evolve. This has considerable consequences for those trying to maintain an appropriate regulatory framework for oversight of mobile services. For example, an area of continuous change is the appropriate industry standard(s) (*e.g.*, AMPS, GSM, 3G, etc.). As described above, SITA believes that mobile telephones will soon be available for use on board aircraft consistent with safety and interference concerns. Rather than attempt to put in place a separate regulatory regime and distinct spectrum allocations for air-to-ground use of mobile telephones, and thus need to address again issues such as what is an appropriate technology, SITA submits that it would be better simply to take advantage of continuing technology developments and facilitate the use of terrestrial mobile telephones on board aircraft.

Such usage could be regulated by the Commission as part of its oversight of mobile telephony in general, ensuring that the FCC properly views air-to-ground service as one segment of a larger CMRS marketplace, rather than as a separate and distinct service. This approach would result in the most efficient use of regulatory and spectrum resources, as well as ensuring that the current levels of healthy competition in the mobile telephone market carry over to the air-to-ground niche.

SITA further suggests that this regulatory model allowing use of individuals' mobile handsets on board the airplane when in flight should apply for all aircraft registered in the United States, irrespective of the location of the aircraft inside or outside U.S. airspace. This interpretation is consistent with the United States'

jurisdiction over U.S.-licensed aircraft under the relevant international treaty provision (Article 30 of the Chicago Convention of 1944), and will produce an outcome that will advance the interests of American international air carriers. This approach will allow the American air carriers to use the mobile telephony spectrum so that their passengers (and crew) can transmit and receive calls wherever they are.

Additional Issues Raised by the Notice

These technological developments in support of on-board use of individuals' mobile phones mean that there is a risk that some of the Commission's current rules – including the ban on such usage in Section 22.925 -- are now (or are soon to be) obsolete. As mentioned above, the FAA (through the RTCA Advisory Committee) is studying such on-board usage to evaluate the potential impact on safety. That review will include theoretical analyses, along with laboratory and field testing of equipment. Likewise, SITA believes that FCC and licensee concerns with regard to potential interference issues should also be fully addressed on the basis of both laboratory and field testing. Thus, SITA supports Commission issuance of experimental and/or developmental authorizations that allow for further study and development of the use of mobile telephones inside aircraft.

Furthermore, SITA submits that once such trials are successfully completed and demonstrate that on-board use of mobile phones poses no safety threat and no risk of harmful interference, the Commission should amend its rules to permit such offerings. Allowing current terrestrial operators the right to offer access to airline passengers in flight will be a pro-consumer, pro-competitive, cost saving method of

allowing access to subscribers without the need for any additional separate air-to-ground regulations.

Respectfully submitted,

By _____/s/_____

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