Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Petition of American Hotel & Lodging Association, Marriott International, Inc., and Ryman Hospitality Properties for a Declaratory Ruling to Interpret 47 U.S.C. § 333, or, in the Alternative, for Rulemaking	)))))	RM-11737

COMMENTS OF THE UNITED STATES TELECOM ASSOCIATION

The United States Telecom Association ("USTelecom") respectfully submits its comments in response to the above-captioned Petition for Declaratory Ruling or, in the Alternative, for Rulemaking ("Petition") filed by the American Hotel & Lodging Association, Marriott International, Inc., and Ryman Hospitality Properties (collectively, "Petitioners").

The issues raised in the Petition are well suited for a declaratory ruling, the purpose of which is to "terminat[e] a controversy or remov[e] uncertainty." 47 C.F.R. § 1.2(a). As Petitioners correctly observe, considerable controversy and significant uncertainty exists regarding the proper interpretation of Section 333 of the Communications Act as well as the appropriate interplay with the Commission's Part 15 rules. With Wi-Fi becoming an increasingly popular method for accessing the Internet, consumers and the industry would be well served if the Commission were to grant the Petition and set out appropriate "rules of the road" for operators to follow in managing their Wi-Fi networks.

Network management is critical to every network. For example, USTelecom's members devote substantial resources to deploying sophisticated network management techniques to protect their networks from attack. These efforts are consistent with the federal government's

cybersecurity initiatives.[1] However, if applied to Part 15 devices, Section 333 could be read to prohibit a Wi-Fi operator from "interfering" with any Part 15 device, including a device that is threatening the security of the operator's network or its customers. Such a literal reading would make no sense and would undermine the nation's cybersecurity efforts. Accordingly, even assuming the Commission interpreted Section 333 to apply to Part 15 devices, the Commission at the very least should clarify that a Wi-Fi operator does not violate the statute when mitigating network threats, even though such mitigation may result in "interference" to a Part 15 device.

Beyond security threats, an operator must be able to engage in reasonable network management practices to provide reliable service. As the Commission has recognized in a different context, network management is critical to any network operator, whether fixed or mobile.[2] And, the importance of network management extends to an operator using unlicensed as well as licensed spectrum.[3]

To be sure, different policy considerations are implicated when a network operator relies upon unlicensed spectrum in providing service.[4] Nonetheless, a Wi-Fi operator should have

---

[1] *See* Executive Order 13636, Improving Critical Infrastructure Cybersecurity, 78 Fed. Reg. 11,739 (Feb. 19, 2013).

[2] *Preserving the Open Internet; Broadband Industry Practices*, Report and Order, 25 FCC Rcd 17905, ¶ 82 (2010) ("*Open Internet Order*") (finding that "reducing or mitigating the effects of congestion on the network" is "a legitimate network management purpose"), *aff'd in part, vacated and remanded in part sub nom. Verizon v. FCC*, 740 F.3d 623 (D.C. Cir. 2014).

[3] *Open Internet Order* ¶ 86 (noting that unlicensed spectrum poses "unique network management challenges," given that such "spectrum is shared among multiple users and technologies and no single user can control or assure access to the spectrum").

[4] *See, e.g., Continental Airlines; Petition for Declaratory Ruling Regarding the Over-the-Air Reception Devices (OTARD) Rules*, Memorandum Opinion and Order, 21 FCC Rcd 13201, ¶ 53 (2006) (finding no "reasonable expectation or right to generate revenue from the use of unlicensed spectrum") ("*OTARD Order*"); *Allocations and Service Rules for the 71-76 GHz, 81-86 GHz and 92-95 GHz Bands*, Report and Order, 18 FCC Rcd 23318, ¶ 70, n.185 (2003) ("The 'commons' model allows unlimited numbers of unlicensed users to share frequencies, with usage

some ability to manage its network to address network congestion and other factors affecting the reliability of service. Otherwise, the Wi-Fi services upon which customers increasingly rely will not function, and the public would be disserved. With Wi-Fi use only continuing to proliferate, the Commission should clarify the reasonable network management practices in which Wi-Fi operators should be permitted to engage.

Furthermore, the Commission should take this opportunity to address the person's use of a Wi-Fi device on someone else's property that may be subject to reasonable network management. In the *OTARD Order*, the Commission granted a Petition for Declaratory Ruling filed by Continental Airlines finding that the restrictions placed on the installation and use of a Wi-Fi antenna within its lounge at Boston-Logan International Airport were prohibited by the Commission's Over-the-Air Reception Devices (OTARD) rules.[5] The Commission found that OTARD applies to the antennas of unlicensed devices operating under Part 15 because "there is no justification for distinguishing between antennas based on whether they are used with licensed services or unlicensed devices."[6]

However, for the OTARD rules to apply, the antenna must be installed "on property within the exclusive use or control of an antenna user where the user has a direct or indirect ownership or leasehold interest in the property" upon which the antenna is located.[7] Users who

---

footnote cont'd.
rights that are governed by technical standards or etiquettes but with no right to protection from interference").

[5] *Petition of Continental Airlines for a Declaratory Ruling*, ET Docket No. 05-247 (filed July 8, 2005); *Supplement to Petition of Continental Airlines, Inc. for a Declaratory Ruling*, ET Docket No. 05-247 (filed July 27, 2005); *see also* 47 C.F.R. § 1.4000.

[6] *OTARD Order* ¶ 8.

[7] *Id.* ¶ 3 (quoting 47 C.F.R. § 1.4000(a)(1)); *see also id.* ¶ 13 (finding that the requirement "that the antenna be located on property under the exclusive use and control of the antenna user where the antenna user has a direct or indirect leasehold in the property is satisfied" when Continental's

are guests or invitees – such as visitors to a hotel, convention center, or other commercial enterprises – have no such interest. As a result, the Commission should clarify that guests or invitees do not have a statutory right to operate a Wi-Fi device on someone else's property, and the Commission should refrain from construing either Section 333 or its Part 15 rules to effectively convey such a right.

USTelecom agrees with Petitioners that network security and reliability is important and that Wi-Fi operators should be able to manage their networks to ensure their ability to provide a safe and reliable service. Accordingly, the Commission should grant the Petition to clarify the reasonable network management practices in which Wi-Fi operators should be permitted to engage.

Respectfully submitted,

UNITED STATES TELECOM ASSOCIATION

By: _____

Jonathan Banks
Robert Mayer
607 14th Street, NW
Suite 400
Washington, D.C. 20005
(202) 326-7300

December 22, 2014

---

footnote cont'd.
Wi-Fi antenna was "located in a closet within its President's Club frequent flyer lounge at Logan Airport" in which "Continental has a direct leasehold interest" and over which it had "exclusive use and control").