



# PUBLIC NOTICE

FEDERAL COMMUNICATIONS COMMISSION  
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DISTRICT OFFICE

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## OET SEEKS COMMENT ON PETITION FROM CONTINENTAL AIRLINES FOR DECLARATORY RULING REGARDING WHETHER CERTAIN RESTRICTIONS ON ANTENNA INSTALLATION ARE PERMISSIBLE UNDER THE COMMISSION'S OVER-THE-AIR RECEPTION DEVICES (OTARD) RULES

ET Docket No. 05-247

Comment Date: August 29, 2005

Reply Comment Date: September 13, 2005

The Commission has received a Petition for a Declaratory Ruling from Continental Airlines of Houston, Texas (Continental) under Section 1.4000 of the Commission's Over-the-Air Reception Devices (OTARD) rules (47 C.F.R. §§ 1.2 and 1.4000(e)).<sup>1</sup> The OTARD rules prohibit certain restrictions that impair the installation, maintenance or use of antennas used to receive video programming, or customer-end antennas that receive and transmit wireless signals.<sup>2</sup> By this Public Notice, the Office of Engineering and Technology is seeking comment on Continental's Petition.

Continental has installed an antenna to create a wireless Wi-Fi hotspot for Internet access and telecommunications within the premises of its "President's Club" (Club) frequent flyer lounge at Boston-Logan International Airport (Logan). Continental is asking the Commission to determine whether certain lease restrictions, and recent demands by Massachusetts Port Authority (Massport) for the removal of its antenna, are permissible or prohibited under the OTARD rules.<sup>3</sup> According to correspondence from Massport filed by Continental, Massport contends that Continental is in violation of several specific lease provisions, and that the OTARD rules are inapplicable here

<sup>1</sup> See "Petition of Continental Airlines, Inc. for a Declaratory Ruling" filed July 7, 2005; supplemented July 19, 2005.

<sup>2</sup> See 47 C.F.R. § 1.4000. See also *Commission Staff Clarifies FCC's Role Regarding Radio Interference Matters and Its Rules Governing Customer Antennas and Other Unlicensed Equipment*, Public Notice, DA 04-1844, 19 FCC Rcd 11300 (2004).

<sup>3</sup> According to Continental, Massport operates Boston-Logan International Airport and administers leasehold contracts for space used by tenants, such as Continental, within the airport facility.

because its actions fall within the central antenna and safety exceptions to the OTARD rules.<sup>4</sup> Continental contends that any applicable lease provision that restricts its wireless antenna is preempted by the OTARD rules.

In support of its requested relief, Continental alleges that the President's Club lounge is located within an area of exclusive use and control under its lease at Logan Airport. Continental also states that the wireless access in its Club lounge is used, free-of-charge, by airline passengers who are Club members and is also routinely used by Continental employees. Continental estimates that wireless access use by employees and customers may be approximately equal.

Pursuant to the OTARD rules, the availability of a central antenna under certain circumstances may allow a landlord or property owner to restrict the installation by individuals of antennas otherwise protected by the rules. According to Continental, Massport previously informed it that fixed wireless access could be maintained in the Club lounge if Continental made arrangements to route its wireless signals, for a fee, over the airport's existing Wi-Fi backbone that uses a central antenna system operated by a third party vendor for Massport. Continental also contends that the fees required to use that system would exceed the costs of its own wireless antenna.

Continental also argues that Massport has not met the threshold requirement of stating a clearly defined, legitimate safety objective in order to avail itself of any exception to the OTARD rules. Continental alleges that, while discussions between Continental and Massport on this issue have been ongoing for some time, Massport only raised an alleged safety risk of Continental's antenna for the first time in a recent letter that responded to Continental's reliance on the OTARD rules.

Pursuant to Sections 1.415 and 1.419 of the Commission's rules, 47 C.F.R. §§ 1.415, 1.419, interested parties may file comments on or before August 29, 2005 and reply comments on or before September 13, 2005. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121, May 1, 1998.

Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and reference **ET Docket No. 05-247**. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to [ecfs@fcc.gov](mailto:ecfs@fcc.gov), and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing.

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<sup>4</sup> See Petition, Exhibit C.

All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission, 445 12<sup>th</sup> Street, S.W. Washington, D.C. 20554  
Attn: Office of Engineering and Technology, Policy and Rules Division

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor Natek, Inc. will receive hand-delivered or messenger-delivered paper filing for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail and Priority Mail should be addressed to 445 12<sup>th</sup> Street, SW, Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

The Petition will be available for review and copying during regular business hours at the FCC Reference Center, Portals II, 445 12th Street, S.W., Room CY-A257, Washington, D.C. 20554, telephone (202) 418-0270. A copy of the Petition also may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554, telephone (202) 488-5300, facsimile (202) 488-5563, or via e-mail at [FCC@BCPIWEB.COM](mailto:FCC@BCPIWEB.COM).

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