

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

In the Matter of)
)
Office of Engineering and Technology)
Seeks Comment on Petition from Continental)
Airlines for Declaratory Ruling regarding whether) ET Docket No. 05-247
certain Restrictions on Antenna Installation are)
Permissible under the Commission's)
Over-The-Air Reception Devices (OTARD) Rules)

To: Acting Chief
Office of Engineering and Technology

**COMMENTS
OF THE
ENTERPRISE WIRELESS ALLIANCE**

The Enterprise Wireless Alliance (“EWA” or “Alliance”), in accordance with Section 1.425 of the Federal Communications Commission (“FCC” or “Commission”) Rules and Regulations, respectfully submits its comments in the above-entitled proceeding.¹ The Continental Public Notice requests comment on a Petition for a Declaratory Ruling (“Petition”) filed by Continental Airlines (“Continental”) under Section 1.4000(e) of the FCC’s Over-the-Air Reception Devices (OTARD) rules.² As explained in the Continental Public Notice, the OTARD rules prohibit certain restrictions that impair the installation, maintenance or use of antennas used to receive certain communications, including customer-end antennas that receive and transmit wireless signals.³

¹ *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*, Public Notice, ET Docket No. 05-247 (rel. July 29, 2005) (“Continental Public Notice”).

² 47 C.F.R. §§ 1.2 and 1.4000(e).

³ *See* 47 C.F.R. §14000(e) *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) (“OTARD Public Notice”).

The Alliance strongly supports the pro-user/consumer OTARD provisions. In a world of almost ceaseless technical innovation, the Commission properly has determined that users of telecommunications services should have substantial flexibility to determine what unlicensed devices will best satisfy their communications requirements, provided those choices do not undermine a defined public safety objective or the preservation of properties or sites protected under the National Register of Historic Places.⁴ Because the OTARD rules are applicable to a variety of telecommunications services of significance to a broad range of users and consumers, it is vital that the FCC take this opportunity to reaffirm the rights granted pursuant to them.

I. INTRODUCTION

EWA represents a broad alliance of business enterprise users, service providers, radio dealers and technology manufacturers, all of which use or provide wireless telecommunications products or services. The typical Alliance member operates a number of licensed communications systems. In some cases, the facilities are used to satisfy internal communications requirements. In others, they are used to provide third party service. More recently, these same entities have begun to explore the use of unlicensed devices to meet certain of their requirements, including hotspot Internet access. The protections embodied in the OTARD rules have been a significant factor in their willingness to pursue these types of unlicensed telecommunications options. The Commission's continued exercise of its exclusive jurisdiction over the installation, maintenance and use of unlicensed, fixed, wireless antennae is essential to the viability of the services provided by such devices. Thus, the Alliance and its members have a direct interest in the outcome of this proceeding.

⁴ See 47 C.F.R. § 1.4000(b)

II. BACKGROUND

According to the Petition, Continental has installed an antenna (“Antenna”) that is used to provide a wireless Wi-Fi hotspot within the premises of its President’s Club frequent flyer lounge at Boston-Logan International Airport (“Logan”). This free wireless service is used by Continental employees and by its customers in the President’s Club, an area within Continental’s exclusive use and control. The Antenna satisfies the technical requirements of the OTARD rules.⁵

Continental has been directed by Massachusetts Port Authority (“Massport”), an independent public authority of the Commonwealth of Massachusetts that owns and operates Logan, among other facilities, to remove the Antenna. Massport asserts that installation of the Antenna violates the Lease Agreement pursuant to which Continental leases the use of a terminal at Logan and has demanded that use of the Antenna be discontinued. Massport has advised Continental that it must make arrangements to secure fixed wireless services over the existing Wi-Fi backbone system at Logan provided by AWG, a third party vendor. Obviously, unlike Continental’s no-cost access, there is a fee associated with the AWG service.

More recently, Massport has claimed that operation of the Antenna has interfered with unidentified wireless devices outside of Continental’s exclusive area. Further, it has alleged that the continued operation of Continental’s system constitutes a potential threat to critical public safety communications, again without specifying what public safety entities purportedly are affected, or in what way their operations are being adversely impacted by Continental’s operation within the confines of its President’s Club.

Continental has responded by asserting that any lease terms that purport to restrict its use of the Antenna are pre-empted by the OTARD rules and without effect. It has noted that

⁵ See 47 C.F.R. §§ 1.4000(a) and (c).

Massport's more recent allegations about interference to public safety operations are vague and unsupported by any factual information. Thus, they fail to satisfy the requirements under Section 1.4000(b) of the FCC's OTARD rules, which permit certain restrictions on unlicensed wireless devices under the following, carefully defined standard:

[If] it is necessary to accomplish a clearly defined, legitimate safety objective that is either stated in the text, preamble, or legislative history of the restriction or described as applying to that restriction in a document that is readily available to antenna users, and would be applied to the extent practicable in a non-discriminatory manner to other appurtenances, devices, or fixtures that are comparable in size and weight and pose a similar or greater safety risk as these antennas and to which local regulation would normally apply.⁶

Additionally, Continental has explained that the fees required to use the wireless service permitted, indeed endorsed, by Massport will exceed the costs of its own Antenna and will impose an unnecessary financial obligation, not only on Continental but also on its many customers that use the President's Club facility and the Wi-Fi service available in that area.

In light of this ongoing dispute, the Petition was filed in accordance with the procedures set out in the OTARD rules for situations in which the FCC is asked to determine whether a particular restriction is permissible or prohibited under those regulations.⁷

III. THE FCC SHOULD CONFIRM THE IMPERMISSIBILITY OF MASSPORT'S EFFORTS TO IMPOSE RESTRICTIONS ON CONTINENTAL'S USE OF ITS ANTENNA

The OTARD rules reflect the Commission's commitment to promoting competition and a broad array of choices in the deployment of unlicensed, non-interfering

⁶ 47 C.F.R. § 1.4000(b)(1).

⁷ See 47 C.F.R. § 1.4000(e).

wireless devices.⁸ Those rules were crafted to protect the rights of consumers and enterprise users absent a conflict with carefully defined, circumscribed public safety and historic preservation priorities. They confirm the Commission's exclusive jurisdiction over matters within its technical expertise and deny attempts by third parties to impose their own restrictions on matters involving radio frequency interference.

The OTARD rules will only have increased importance in the future given the continued proliferation of unlicensed wireless devices. The need for wireless Internet access by the many industries represented by EWA's enterprise members, as well as its commercial provider members, is increasing exponentially. These publicly and privately beneficial services should not be subjected to the types of restrictions Massport seeks to impose on Continental. Indeed, they are precisely the types of discriminatory, financially driven restrictions that the OTARD rules were intended to prohibit, limitations intended to preserve the monopoly position of Massport's selected third party vendor even in areas under the exclusive use and control of lessees such as Continental.

Massport's belated attempt to mask its economic objective under the rubric of protecting public safety fails entirely to satisfy the Commission's standard and is not supported by the facts presented. It plainly is not sufficient under the OTARD rules to impose restrictions based on claims of unspecified harm to unnamed public safety operations. Rather, the FCC has given parties seeking to impose restrictions on unlicensed devices detailed guidance as to the demonstration they must make. Massport has not even attempted to satisfy that standard; therefore, its objections cannot stand on that basis.

⁸ See OTARD Public Notice

EWA urges the Commission to take this opportunity to reaffirm its commitment to the protections embodied in the OTARD rules. If companies like Continental must seek FCC intervention to preserve rights spelled out plainly in the Commission's regulations, it is apparent that consumers and small users with fewer resources and less regulatory expertise are even more dependent on the Commission's unwavering enforcement of these rules. The FCC should take this opportunity to confirm the applicability of the OTARD rules to devices such as the Antenna used by Continental and reject Massport's efforts to undermine the regulatory objectives of those provisions.

III. CONCLUSION

For the reasons described herein, EWA urges the Commission to act favorably on the Continental Petition at its earliest opportunity.

Respectfully submitted,

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