

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

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In the Matter of	)	
	)	
Petition for Declaratory Ruling of	)	ET Docket No. 05-247
Continental Airlines, Inc.	)	
	)	

To: The Office of Engineering and Technology

**COMMENTS OF  
THE METROPOLITAN WASHINGTON AIRPORTS AUTHORITY**

**I. INTRODUCTION**

The Metropolitan Washington Airports Authority (“MWAA”) is a public body corporate and politic created by an interstate compact between the Commonwealth of Virginia and the District of Columbia. MWAA has been given the responsibility for the operation, maintenance, protection, promotion and development of Ronald Reagan Washington National Airport and Washington Dulles International Airport. In 2004, MWAA served 38.8 million passengers and shipped more than 293 metric tonnes of cargo. Over 14 airlines operate out of Reagan, and 30 out of Dulles. Each airport is home to a large number of commercial tenants including airlines; cargo handlers, such as FedEx; U.S. Government agencies, including the Federal Bureau of Investigation, Transportation Security Administration, Drug Enforcement Agency, Customs and Border Protection and the Federal Aviation Administration; fixed base operators; rental car

companies; parking and ground transportation operators; food and beverage facilities and retail stores; and numerous other entities associated with the movement of passengers and cargo in air commerce. These tenants have diverse and complex needs, some of which conflict with other tenants and pose management challenges for MWAA. For example, where there is insufficient ticket counter or gate space for a new airline at the airport, MWAA can require an existing airline to allow the new airline to use the existing airlines' ticket counter and gate space and equipment. MWAA has an overall responsibility to ensure that National and Dulles Airports are operated to meet the needs of passengers and cargo using the two airports.

The Office of Engineering and Technology ("OET") has requested comments regarding a Petition for Declaratory Ruling (the "Petition") filed by Continental Airlines, Inc. ("Continental") in which Continental complains that the Massachusetts Port Authority ("Massport") has sought to prevent Continental from operating a "Wi-Fi" antenna in Continental's frequent flyer club lounge at Logan Airport. As noted below, we support the comments filed by Massport and Airports Council International – North America ("ACI-NA").

For the reasons cited by ACI-NA, MWAA urges the FCC to rule in a way that recognizes the special circumstances arising in the airport setting. Uniquely complex environments, airports are highly dependent on local management for centralized coordination and oversight in balancing the needs of large numbers of tenants and ensuring the safety and security of the traveling public. As ACI-NA states in its comments, over decades of experience MWAA and other airport authorities have learned that retaining control over their physical infrastructure is a critical management tool. We may not choose to exercise that control in every

instance, but retaining the authority to do so is essential. This applies to communications infrastructure as much as to any other type of facility.

In addition, MWAA exists primarily to serve the traveling public. We are driven by their needs, and one of the needs we have recently identified is the ability for passengers to have access to wireless Internet service is throughout our terminal facilities. To that end, we are in the process of implementing Wi-Fi service in the terminals at National and Dulles Airports. Any action by OET that would hinder the effective provision of that service would hinder our ability to serve the public.

Finally, we note that there are significant legal and practical questions concerning the application of the Over-the-Air Reception Devices (“OTARD”) Rule in the airport context. Even if OET takes a different view of those questions, OET should either allow Massport to proceed under the “central antenna exception,” or under a waiver.

## **II. ANY ACTION BY OET SHOULD NOT RESTRICT MWAA’S ABILITY TO PROVIDE WI-FI SERVICE.**

MWAA will be offering Wi-Fi service to the public under a model that was carefully considered and developed, after considering local conditions. MWAA recently awarded a Commercial Wireless Access System (CWAS) contract to Nextel Communications (Nextel). Nextel has teamed up with T-Mobile USA, Sprint PCS and Verizon Wireless (collectively referred to as the “Carrier Team”) to develop a CWAS system that will allow the public to utilize their wireless devices within the National and Dulles Airport terminals and adjacent garages. The CWAS system to be installed will consist of a central antenna system. All firms

providing wireless services to customers will be permitted to access their customers through the CWAS system. To access wireless devices at the airport, a customer will need only to use a service provider that has joined CWAS. There will be no extra fees for the customer using his or her wireless device in the airport – he or she will simply pay whatever fees his or her service provider charges for use of its wireless system. We expect that the CWAS will allow airport customers to have quality service for their wireless devices. The Carrier Team is required to do business with all wireless service providers on a nondiscriminatory basis. The system is required to have sufficient capacity to allow all firms providing wireless services to use the system.

MWAA is not going to require private wireless system users, such as airlines that have installed wireless systems to assist with baggage handling or in their member lounges, to provide those services through the CWAS. They may continue to provide them separately. The Carrier Team, as the installer and operator of the CWAS, will be required to ensure that the CWAS will not cause objectionable interference with existing wireless equipment at the airport, such as interference with wireless systems installed by TSA for law enforcement and safety purposes or with systems installed by airlines, and must cooperate with MWAA to remove the cause of any objectionable interference. The CWAS is presently in the design stage, and we anticipate it will be operational at both airports within 12-18 months.

MWAA urges OET to bear in mind that MWAA and many other airports have introduced Wi-Fi service under many different business models, each adapted to local conditions. We have tried very hard to address the needs of all the stakeholders at the airport, to develop an approach that works for all parties. However OET decides this case should not hinder the ability of airports to make different policy choices as they attempt to perform their missions.

**III. MWAA BELIEVES THE OTARD RULE DOES NOT PROTECT CONTINENTAL IN THIS CASE.**

In its comments, ACI-NA raises a number of arguments, including (i) that application of the OTARD Rule in Massport's case might implicate the takings clause of the Fifth Amendment; (ii) that only Continental, and not Continental's paying customers, are protected by the Rule; and (iii) that the Rule does not give Continental the right to transmit a signal outside its leased space. ACI-NA also notes that Continental has not proven its claim of business use of its Wi-Fi antenna and that any such use is incidental to the use by passengers. MWAA supports all of these arguments, and urges OET not to apply the OTARD Rule in the airport context at all.

**IV. IF OET CONCLUDES THE RULE DOES APPLY, MWAA URGES OET EITHER TO APPLY THE CENTRAL ANTENNA EXCEPTION TO THE CASE OF MASSPORT, OR TO GRANT MASSPORT A WAIVER.**

If OET concludes that the Rule does apply, notwithstanding the arguments of ACI-NA to the contrary, MWAA notes that there is ample evidence to justify either the application of the central antenna exception of the Rule, or the grant of a waiver under 47 C.F.R. 1.4000(d).

Although the central antenna exception was crafted for use in the multi-family residential video context, we believe that it can and should be extended to the airport context. Airports are not condominiums or townhouse developments. They are much more complicated environments, both in terms of their economic complexity and in terms of the many types of communications activities that take place on their premises. Chaos is not a practical solution, and a central antenna option can solve many problems for both airport managers and tenants. While some tenants may prefer to have their own antennas, in some cases – depending on local

conditions -- this may be an unreasonable desire in the close quarters of an airport. As discussed in the ACI-CNA comments, allowing individual users free rein can make it impossible for others -- including the airport -- to operate effectively. In that case, the airport must be allowed to manage the facility for the benefit of all.

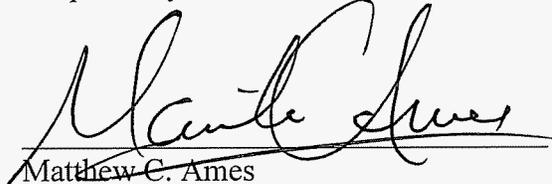
Airports have every incentive to deliver good quality service to every person in their terminals -- in fact, this was in part what motivated Massport's actions. Consequently, Massport and other airports can be expected to ensure that the quality of signal reception over a central system will be adequate for all users. Similarly, it seems unlikely that in Continental's case there would be any unreasonable increase in cost or any unreasonable delay in obtaining access to Wi-Fi service. Thus, Massport should be allowed to operate under the central antenna option.

Finally, we believe that Massport's concerns are "highly specialized and unusual," and thus warrant a waiver under 47 C.F.R. § 1.4000(d). Airports are by definition highly specialized and unusual environments, and Logan has particular concerns. If the central antenna option does not apply, we urge OET to grant Massport a waiver.

## CONCLUSION

As stated above, MWAA supports the comments of ACI-NA and Massport, and urges OET to deny the Petition.

Respectfully submitted,



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Certificate of Service

I hereby certify that I have caused to be mailed this 28th day of September, 2005, copies of the foregoing Comments of the Metropolitan Washington Airports Authority, by first-class mail, postage prepaid, to the following persons:

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