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

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

To: The Office of Engineering and Technology

COMMENTS OF
THE AIRPORTS COUNCIL INTERNATIONAL-NORTH AMERICA

Of Counsel:
Patricia A. Hahn
General Counsel
Airports Council International - North America
Suite 500
1775 K Street, N.W.
Washington, DC 20006

Matthew C. Ames
Miller & Van Eaton, P.L.L.C.
Suite 1000
1155 Connecticut Avenue, N.W.
Washington, D.C. 20036

(202) 785-0600

Attorneys for the Airports Council International - North America

September 28, 2005

SUMMARY

The Airports Council International – North America ("ACI-NA") respectfully urges the Office of Engineering and Technology ("OET") to deny the Petition for Declaratory Ruling (the "Petition") filed by Continental Airlines, Inc. ("Continental") regarding the operation of a "Wi-Fi" antenna in Continental's frequent flyer club lounge at Logan Airport. Continental alleges that the efforts of the Massachusetts Port Authority ("Massport") to ensure the effective operation of a central wireless communications system at Logan Airport violate the Federal Communications Commission's Over-the-Air Reception Devices ("OTARD") Rule, 47 C.F.R. § 1.4000. In essence, Continental has asked OET to put the interests of a handful of Continental's customers (an average of 32 per day) ahead of the interests of the thousands of other travellers who pass through Logan every day. Neither the OTARD Rule nor any other Commission regulation or policy requires this result.

Many airports across the country have installed Wi-Fi systems on their premises to serve the needs of the travelling public, as well as the many other constituencies that must co-exist in the close quarters of an airport. Others are in the process of doing so, or are considering the prospect. Airports are implementing various business models, with the goal of meeting passenger demand for ubiquitous service. In many cases, airports are also extending service to airlines and other tenants for a range of applications. Some have found ways to provide free service while allowing airport tenants to operate their own Wi-Fi antennas; others, such as Massport, have found that their physical layouts and other local factors demand a different approach. Regardless of the specific model, however, all of these efforts could be threatened by an adverse decision in this matter, to the detriment of millions of passengers. ACI-NA urges OET to recognize the unique nature of airports and the need of airports to exercise control over their premises, as they see fit, based on local circumstances.

The following factors make airports unique environments:

- ***Airports are heavily regulated governmental entities***. Airports are subject to strict oversight under federal, state and local law, and are charged with operating in a manner that serves the interests of the traveling public.
- ***Airports are highly complex entities***. A local airport authority oversees an entire microeconomy consisting of airlines, ground services operations, retail concessions, car rental firms, communications providers, and individual travelers, among others. The complexity of the interactions among all these different entities operating in such a confined space raises unique management challenges.
- ***Airports require the flexibility to adapt to changing conditions***. There are many stakeholders operating on an airport, each with its own interests and priorities, but only the airport has the mission of making sure the entire operation works for the benefit of all.
- ***Airports face unique challenges in providing for the safety and security of the public.*** Not only do most airports employ their own police and fire services, but they must meet the needs of the airlines, the Federal Aviation Administration, the Transportation Security Administration, and other law enforcement agencies.
- ***The communications infrastructure on an airport must meet the needs of all the airport's users.*** Everybody on an airport needs access to communications services, and for the airport to succeed as an economic entity, airport management must ensure that those services are available to all.
- ***Only airport management can fulfill the key central coordinating role.*** Without strong central control, airports would become examples of the "tragedy of the

commons," in which each user would seek to extract what it could from the common infrastructure without regard to the long-term good.

ACI-NA believes that upon careful consideration of these unique circumstances, OET can and should conclude that the OTARD Rule does not apply in this case. Private parties operating in close quarters should be left free to work out disputes over the use of unlicensed frequencies, and contractual mechanisms are perfectly appropriate mechanisms for such arrangements. *See Sprint Spectrum v. Mills*, 283 F.3d 404 (2d Cir. 2002). Furthermore, any attempt to establish a uniform rule permitting airport tenants to install Wi-Fi facilities would raise issues under the takings clause of the Fifth Amendment. At the very least, the OTARD Rule does not apply to wireline links running through airport common areas. *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419 (1982). In addition, the OTARD Rule does not protect use by Continental's passengers, and Continental has not proven that its own use is any more than incidental or merely a pretext for invoking the Rule.

Even if the Rule does apply, Massport's actions fall within the Commission's "central antenna exception." Given the unusual safety concerns of airports, and the fact that Continental is not a residential tenant but a sophisticated corporate entity, the safety exception also should apply. Finally, if OET concludes that the OTARD Rule applies but neither of these exceptions does, then ACI-NA believes that Massport is eligible for a waiver under Section 1.4000(d), because Massport has "local concerns of a highly specialized or unusual nature." Regardless of the rationale, allowing Massport to proceed would not undercut the OTARD rule, hinder the Commission's policy goals, or harm the public interest.

For all these reasons, we urge OET to deny the Petition.

TABLE OF CONTENTS

SUMMARY i

TABLE OF CONTENTS iv

INTRODUCTION 1

I. ACI-NA URGES OET TO CONSIDER THE UNIQUE NATURE OF THE AIRPORT ENVIRONMENT AND THE NEED FOR AIRPORT MANAGERS TO RETAIN FULL AUTHORITY OVER THEIR PHYSICAL INFRASTRUCTURE. 3

II. OET SHOULD NOT INTERFERE IN THE EFFORTS OF MASSPORT AND OTHER AIRPORTS TO ENSURE THE PROVISION OF UBIQUITOUS WIRELESS ACCESS ON THEIR PREMISES. 9

III. OET CANNOT ADOPT A UNIFORM REQUIREMENT PERMITTING THE USE OF WI-FI FACILITIES BY AIRPORT TENANTS WITHOUT VIOLATING THE FIFTH AMENDMENT. 15

IV. THE OTARD RULE DOES NOT APPLY BECAUSE CONTINENTAL'S ANTENNA IS ACTUALLY USED TO PROVIDE SERVICE TO PAYING CUSTOMERS, AND ANY USE BY CONTINENTAL EMPLOYEES IS MINIMAL AND INCIDENTAL. 17

V. THE OTARD RULE DOES NOT PROTECT ANTENNA USERS LOCATED OUTSIDE EXCLUSIVE USE SPACE. 20

VI. MASSPORT'S ACTIONS ARE PERMITTED UNDER THE CENTRAL ANTENNA EXCEPTION TO THE OTARD RULE. 21

VII. MASSPORT'S ACTIONS SHOULD BE PERMITTED UNDER THE SAFETY EXCEPTION TO THE OTARD RULE. 24

VIII. EVEN IF THE CENTRAL ANTENNA EXCEPTION AND SAFETY EXCEPTION DO NOT APPLY, THE FCC SHOULD WAIVE THE RULE UNDER SECTION 1.4000(d) BECAUSE MASSPORT'S CONCERNS ARE "HIGHLY SPECIALIZED AND UNUSUAL." 25

CONCLUSION 27

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

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

COMMENTS OF
THE AIRPORTS COUNCIL INTERNATIONAL-NORTH AMERICA

INTRODUCTION

The Airports Council International – North America ("ACI-NA") respectfully submits these Comments in response to Public Notice, DA 05-2213 (July 29, 2005). The Office of Engineering and Technology ("OET") has requested comments regarding a Petition for Declaratory Ruling (the "Petition")[1] 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. ACI-NA represents the local, regional, and state governing bodies that own and operate the principal airports served by scheduled air carriers in the United States. The U.S. airport members of ACI-NA enplane more than 95 percent of the total domestic, and virtually all international, scheduled airline passenger and cargo traffic in the United States. The delivery of

[1] The Petition consists of an initial petition dated July 7, 2005 (the "Initial Petition") and a supplement dated July 19, 2005 (the "Petition Supplement.")

WiFi services on airport premises is of great importance to ACI-NA's members and to the millions of passengers who pass through individual airports every year.

Continental claims that the Commission's Over-the-Air Reception Devices ("OTARD") Rule, 47 C.F.R. § 1.4000, governs this dispute. ACI-NA believes that upon careful consideration of the unique circumstances that pertain in the airport environment, OET can and should conclude that the OTARD Rule does not apply in this case. Even if the Rule does apply, Massport's actions fall within the Commission's "central antenna exception" and the safety exception. Furthermore, if OET concludes that the OTARD Rule applies but the exceptions do not, then ACI-NA believes that Massport is eligible for a waiver under Section 1.4000(d), because Massport has "local concerns of a highly specialized or unusual nature." Regardless of the rationale, allowing Massport to proceed would not undercut the OTARD rule, hinder the Commission's policy goals, or harm the public interest. Indeed, as we will show, it is in the public interest to allow airports to actively manage communications infrastructure on their premises. In any order in this case, OET can readily limit its decision to the specific and unusual circumstances that exist at Logan and other airports, without creating any implications for the application of the OTARD Rule in other contexts.

Many airports across the country have installed Wi-Fi systems on their premises to serve the needs of the traveling public, as well as the many other constituencies that must co-exist in the close quarters of an airport. Others are in the process of doing so, or are considering the prospect. Airports are implementing various business models, with the goal of meeting passenger demand for ubiquitous service. Some have found ways to provide free service while allowing airport tenants to operate their own Wi-Fi antennas; others, such as Massport, have found that their physical layouts and other local factors demand a different approach. Regardless

of the specific model, however, all of these efforts could be delayed or blocked by an adverse decision in this matter, to the detriment of the millions of passengers that pass through these airports every year. ACI-NA urges OET to recognize the unique nature of airports and the need of airports to exercise control over their premises, as they see fit, based on local circumstances.

I. ACI-NA URGES OET TO CONSIDER THE UNIQUE NATURE OF THE AIRPORT ENVIRONMENT AND THE NEED FOR AIRPORT MANAGERS TO RETAIN FULL AUTHORITY OVER THEIR PHYSICAL INFRASTRUCTURE.

Airports are not apartment buildings or residential subdivisions, and Continental and other airport tenants are not individual apartment renters or home owners. Airports are highly complex institutions, in which a large number of disparate private and governmental entities are brought together in a confined area to provide a service vital to the national economy: the safe and efficient transportation of passengers and freight. OET must consider the special circumstances of the airport environment fully in deciding this case. The following discussion describes the traditional responsibilities of airport managers and identifies the factors that distinguish airports from other locations in which Wi-Fi antennas may be installed.

- ***Airports are heavily regulated governmental entities.*** Airports are subject to strict oversight under state and local law. Most airports are local government entities; all are charged with operating in a manner that serves the interests of the traveling public. At the same time, they are required to be self-sufficient. These obligations demand prudent fiscal management as well as constant effort and creativity. Airports also must comply with many Federal Aviation Administration ("FAA") regulations, the terms of federal improvement grants, and other federal requirements. Although they perform proprietary functions and earn revenue from various sources, they are stewards of public property and are required by law to direct their earnings towards improving their infrastructure and their capacity to serve the public. For

example, 49 U.S.C. §47101(a)(13)(A) requires an airport owner or operator that receives federal funding under the Airport Improvement Program (which provides funds to all major commercial service airports in the U.S.) to maintain a schedule of charges for the use of facilities and services at the airport "that will make the airport as self-sustaining as possible under the circumstances existing at the airport, including volume of traffic and economy of collection . . . ."

- ***Airports are highly complex entities.*** A local airport authority does not simply provide a place for the public to board aircraft: it oversees an entire microeconomy consisting of airlines, ground services operations, retail concessions, car rental firms, communications providers, and individual travelers, among others. The airport authority must construct, maintain, and periodically expand or reconfigure the physical infrastructure of the airport, while responding to the economic development needs of the local government and the local business community.[2] The sheer number of entities operating in a relatively confined space raises unique management challenges.[3] All of this activity takes place within the limits of real property that is owned and to a great extent paid for by local taxpayers. The airport must balance and mediate among all of these interests; indeed, individual participants in this microeconomy typically turn

---

[2] For a brief discussion of just one aspect of airport management, see Carter Burgess, Technically Speaking, "Managing Airport Expansion," available at http://www.c-b.com/industryInfo/techSpeakSpecial/Airport%20Construction_managing%20airport%20expansion_72%2odpi.pdf. "Whenever a new airport construction project is undertaken, there is a domino effect throughout the terminal that impacts airlines, service providers, vendors and airport operations. Add to that the effect on public roadways, runways and aprons, not to mention various government agencies that provide airport services and oversight, and local ground transportation providers, and one gets the idea of just how many parties must be in the communication loop." *Id.* at 2.

[3] *See, e.g.*, R.L. de Neufuille and A. Odoni, AIRPORT SYSTEMS: PLANNING, DESIGN AND MANAGEMENT (2003) ("Airport Systems") at 226 ("Operators of modern commercial airports of any reasonable size must contend, to a greater or lesser extent, with a full spectrum of legal, financial, planning, public communication, administration, human resource, environmental, engineering/technical, commercial, and operational issues.").

to the airport manager to resolve disputes. For the airport to thrive, all of the participants must see that they are being treated fairly.

One example of how airports routinely seek to find ways to consider the interests of various stakeholders is the WLAN Working Group recently established by ACI-NA, with the goal of developing a mutually-acceptable framework for managing Wi-Fi installations. The working group consists of representatives of airports and the major airlines; Continental is a charter member and originally was a strong advocate for developing recommended practice guidelines. We believe that, if this effort succeeds, the likelihood of disputes related to the installation of Wi-Fi facilities will be reduced. It may not be possible to avoid all such disputes, but encouraging cooperation will minimize conflict. We also believe, for all the reasons discussed in these Comments, that the airport is the entity best-situated for resolving any disputes.

In addition, the sheer size and complexity of airport operations make airport management a very challenging proposition. For example, Baltimore-Washington International Thurgood Marshall Airport operates 1,529,370 square feet of passenger terminal space; has 8 cargo terminal buildings with 456,137 square feet of space, 34 cargo tenants, 20 passenger airlines, and served 20,818,133 passengers in calendar year 2003. Washington Dulles International Airport serves more than 63,000 passengers a day and nearly 23 million passengers a year, and occupies approximately 11,000 acres. As of June 2004, Dulles International Airport was served by 41 airlines; had 65 concessions (*e.g.*, retail food establishments); and 10 other tenants in the terminal area, plus 7 rental car companies and numerous other miscellaneous tenants.

Airports deal on a daily basis with an extraordinary range of tenant disputes, ranging from controversies over rental and other payments; holdover tenants; tenants occupying space

not leased to them, including encroachments into terminal corridors and other common areas; and more. This does not even include disputes between tenants, which the airport may be asked to mediate or resolve, or disputes or conflicts between the needs of different government agencies, which also may find the airport in the middle.

- ***Airports require the flexibility to adapt to changing conditions***. There are many stakeholders operating on an airport, each with its own interests and priorities, but only one has the mission of making sure the entire operation works for the benefit of all. Over decades of experience, airport managers have learned that for an airport to succeed and remain a healthy economic entity, airport management must actively manage all of the airport's assets to respond to public demand and changing conditions. Nothing is ever static on a large airport: Conditions change constantly and frequently. Retailers go out of business, or succeed and require more space. The airlines are constantly changing their needs, to match changes in the larger economy, travel patterns, and their own financial health.[4] Airports that do not accommodate these changes will fail in their responsibilities to their communities.

Other government agencies have adopted rules and policies that recognize this need for flexibility. For instance, the Department of Transportation and the FAA strongly encourage airports to enter into agreements with airlines for boarding gate space using what are known as "preferential leases."[5] Such leases, as acknowledged by Continental,[6] do not give an airline an

---

[4] AIRPORT SYSTEMS at 9 ("The increased commercialization and worldwide privatization of airports calls for an appreciation of the economic and financial aspects of airport operations. New technology, and other changes due to competition between airports, require airport professionals to develop dynamic, strategic plans that incorporate flexible designs and enable airport operators to manage their risk.").

[5] Airports over a certain size are required by statute to submit a competition plan in connection with the approval of certain charges and grants. 49 U.S.C. §§ 40117, 47106. The FAA has issued a guidance letter implementing this requirement. FAA Program Guidance Letter 04-08 (Sept. 30, 2004). Under Program Guidance Letter 04-08, competition plans must specify, among

exclusive right to use specific space over the term of the agreement. Instead, gates can be reassigned by the airport to meet current needs at the facility. The FAA adopted the requirement to ensure the efficient use of scarce gate space. Without it, the growth of new carriers might be slowed by the inability to obtain new gates or by being forced to use widely separated gates, and existing carriers might not only under-use existing gates, but might have incentives to do so deliberately.

- ***Airports face unique challenges in providing for the safety and security of the public.*** Not only do most airports employ their own police and fire services, but they must meet the needs of the airlines, the FAA, the Transportation Security Administration, and other law enforcement agencies. One hardly need point out that security in all parts of an airport at all times is of the highest importance, especially after the terrorist attacks of September 11, 2001. Given the size of many airports and the need for ready access by large numbers of travellers and other people, this is an extremely difficult task. OET and the Commission should adopt policies that make this task easier.

- ***The communications infrastructure on an airport must meet the needs of all the airport's users.*** Everybody on an airport needs access to communications services, and for the airport to succeed as an economic entity, airport management must ensure that those services are available. Airports typically operate internal communications networks to support their own operations. Some airports provide services to tenants through shared tenant services arrangements or by other means. Often, tenants pay for service directly from the incumbent local exchange carrier or another provider. Thus, airports have adopted a number of different

---

other things, the airport's practices regarding the use of exclusive, preferred, and common-use leases. Competition plans that do not comply with FAA policies may be rejected.

[6] Petition Supplement at 8.

business models for providing for telecommunications services on their premises, and in many cases there are multiple sets of infrastructure on the premises. This alone imposes a significant facilities management burden on the airport. In order to manage infrastructure effectively, airports rarely grant telecommunications providers rights that could be construed to give a permanent right of occupancy to the carrier; agreements with providers generally make it clear that the airport retains the right to move facilities at its discretion. Furthermore, disputes among wireline providers related to the location of facilities are often referred to airport management.

- ***Only airport management can fulfill the key central coordinating role.*** The lesson of free market capitalism is that national economies generally do best when government plays only a limited regulatory role. In recent years the Commission has worked hard to apply this lesson, as reflected in the Commission's efforts to promote the growth of technology applications that rely on the use of unlicensed spectrum. An airport, however, is not a national economy. It occupies a defined and confined space, in which most occupants are mere transients, and longer-term occupants are no more than tenants of the underlying real property.[7] Only the airport has the incentive and the ability to manage the entire property with an eye towards the long term. Without some form of central control, the result would be the classic "tragedy of the commons," in which the lack of individual property interests causes each actor to extract what it can from the common infrastructure without regard to the long-term good.[8] Airport managers understand the danger of allowing individual actors to take advantage of common infrastructure, and they accordingly retain the right to exercise strict control over all the

[7] For convenience, we use the term "tenant" throughout these Comments. As noted above, however, many airport leases give only preferential rights, and most airport leases retain broad authority in the airport to relocate a lessee. Airlines and retailers typically do not have possessory rights analogous to those granted by a residential leashold.

[8] G. Hardin, *The Tragedy of the Commons*, 162 Science 1243-48 (1968).

activities of the retailers, rental car agencies, fuel handlers, food service concessionaires, airlines, and contractors of all sorts who conduct business at airports.

* * *

The foregoing discussion demonstrates the unique nature of airports. They are not residential communities, or shopping malls, or downtown office districts. They are highly specialized, intensely focused, self-contained hives of economic activity that cannot function properly without strong infrastructure management. Wi-Fi services are becoming an integral part of this environment, as travellers, businesses and public entities discover new uses for it. ACI-NA and its members urge OET to understand and respect the need to allow airport managers the latitude to manage the public property entrusted to them for the benefit of all.

II. OET SHOULD NOT INTERFERE IN THE EFFORTS OF MASSPORT AND OTHER AIRPORTS TO ENSURE THE PROVISION OF UBIQUITOUS WIRELESS ACCESS ON THEIR PREMISES.

Many airports across the United States are offering Wi-Fi service in their passenger terminals. Consequently, this proceeding is a matter of great interest and concern to ACI-NA's members. Some airports have granted commercial operators the right to install WiFi facilities on their property, and are allowing those providers to make their service available to the public for a fee.[9] Others provide wireless Internet access at no charge to passengers, either over their own networks or under contracts with providers.[10] Others, such as Massport, have installed neutral

[9] One example is Raleigh-Durham International Airport. W.D. Gardner, *Las Vegas Rolls Free Wi-Fi; Raleigh Durham Coughs up Charge*, TechWeb.com (Jan. 4, 2005) available at http://www.techweb.com/wire/56900365.

[10] Examples include McCarran International Airport Las Vegas, *Id.*; and Akron-Canton Airport. *Akron-Canton Airport Office Free Wi-Fi Service in Terminal* (Sept. 20, 2005), available at http://www.rednova.com/news/technology/245710/akroncanton airport offers free wi-fi service in terminal/index.html?source=r technology.

host systems and have granted access to multiple providers over those systems.[11] In all cases the prime motivation is the desire to meet the demands of passengers for the service, in the most practical way given the particular circumstances at that airport. Neutral host systems like Massport's offer the benefit of extending service throughout the airport, so that passengers and other users can obtain ubiquitous service. OET and the Commission should support this policy because it will promote the effective and efficient use of Wi-Fi. For a good summary of current Wi-Fi availability at airports around the country, see *Connect on the Fly: Airport Wi-Fi Guide*, USA Today, at http://usatoday.jiwire.com/airport-wifi-airport-wifi3.3html (updated June 7, 2005).

As discussed above, airport managers are keenly aware of the problems associated with individual use of common facilities, as illustrated by the "tragedy of the commons." ACI-NA recognizes that the Commission's policy regarding the use of the unlicensed frequencies used by Wi-Fi devices has been to allow the market to dictate such use. We also recognize that some theoreticians have argued in recent years that the government should play a reduced role in frequency management. These policy views undoubtedly have their place, and may bear fruit in the general marketplace. But in the close quarters of an airport, a different approach is needed. Furthermore, airport tenants are used to turning to airport management to resolve internal disputes, and only airport managers have the interests of the entire facility at heart.

The basic reason that OET should allow Massport to proceed is that allowing individual airport tenants to operate Wi-Fi systems independent of airport management will Balkanize the airport. There are several reasons for this. Some tenants will find that, because of their peculiar

---

[11] For a discussion of five wireless business models, see J. Prill, *Untangling Wireless*, Airport Business (Jan. 2003) available at http://www.airportbusiness.com/publication/article.jsp?pubId=1&id=10%.

physical locations within the airport, they may not be able to operate Wi-Fi systems effectively in the face of interference from other users. Others will find, perhaps because of a combination of location and ruthlessness, that they are able to dominate significant portions of the terminal by using higher power settings and orienting their antennas in the right way. These tenants will thus have advantages over others. Allowing tenants to control the process in this way also could result in large unserved areas within an airport: financial or technical considerations may make it impractical to extend new services in other areas of the airport if prime real estate is taken by first movers.

Not only does this create the threat of disputes among tenants, which would undoubtedly come to management's attention, but it would raise other issues as well. For instance, if service is available only in certain portions of the airport but not in others, then Wi-Fi-using passengers will tend to congregate in those areas.[12] This can create internal traffic flow issues for the airport, which is an obvious safety concern, quite apart from any concerns about frequency interference.

A variety of other problems can also be foreseen. The airlines may seek the right to deploy technologies that require access to common or restricted use areas for the installation of access points. While the OTARD Rule clearly permits that airport to manage the installation of these systems, interference from antennas installed in exclusive use areas may make them unworkable, depending on the actual layout of an airport. For example, an airline's baggage handling area may be located immediately below a retail establishment that has installed an antenna in exclusive use space. Thus, lack of central management authority may hinder the deployment of valuable new technological capabilities.

---

[12] This phenomenon already exists at Massport and other airports.

Another example is that the limited number of channels available for 802.11b applications poses severe limitations in the crowded airport environment: multiple users competing for scarce channel capacity may render the technology effectively useless. A central system, on the other hand, can be designed to ensure that all users get uninterrupted access.

In the end, this Balkanization is not in the interest of anybody, except perhaps those tenants who choose to assert their presumed rights aggressively.

It must be said that such a result may not be inevitable. For the most part, airports have sought to implement their WiFi plans without disturbing existing arrangements. Airport managers have no incentive to create unnecessary disputes with or between their tenants, but whether this is possible depend very much on specific circumstances on each airport. In Massport's case, it seems that it was not possible to avoid a dispute, and over time issues may arise at existing systems at other airports that demand resolution, but these matters can and should be handled at the local level, on a case-by-case basis.

Allowing an airport to take steps to ensure effective and ubiquitous wireless service on airport property, while balancing the airport's other obligations, is entirely in the public interest. Merely because Continental uses unlicensed frequencies does not mean it is inappropriate for them to be managed within the confines of the real property owned and managed by the airport. ACI-NA believes that solutions may include the terms of voluntary agreements granting the right to use public property subject to certain conditions, or perhaps the institution of something like a frequency coordination regime for unlicensed services in airports and other complex environments.

We do not believe current law prohibits such voluntary agreements, and OET should encourage them as matter of policy. For example, in *Sprint Spectrum v. Mills*, 283 F.3d 404 (2d

Cir. 2002), the court held that a school district may enforce radio frequency radiation ("RFR") exposure standards specified in a lease agreement, notwithstanding the FCC's exclusive authority to issue guidelines for such exposure. The subject there was RFR, not interference, but the underlying principles are closely analogous.[13] The court drew a distinction between the regulatory actions of a governmental body and its proprietary behavior as a landlord. In this case, Massport is clearly acting as a landlord.

There can be no violation of law or public policy when an airport tenant user of wireless services contracts with the airport not to cause interference to other primary licensees. The tenant is promising no more than his condition of license, if he has one, and no more than his general condition of use if he is unlicensed and secondary in status. Furthermore, the unique safety and security concerns of airports, combined with the high concentration of wireless signals typical of the airport environment, would seem to be ample justification for such a contractual term.

---

[13] In that case, the Ossining, New York, school district agreed to lease high school rooftop space to Sprint, but on condition that RFR be suppressed to lesser levels than required by federal standards. The lower court had read Section 332(c)(7)(B)(iv) to mean that the district could not insist on stricter standards than found in FCC rules for "maximum permissible exposure" to RFR. The Second Circuit stated that:

> a private party who has the right to refuse outright to lease his property also has the right to decline to lease the property except on agreed conditions (assuming those conditions would not violate law or public policy). Since, so far as we are aware, nothing in the law requires a communications company to operate at the FCC Guidelines maximum permissible radiation exposure levels, the private owner could elect not to grant a communications company a lease for the construction and operation of a cellular tower unless the company agreed to limit its RF emissions to a lower level.

283 F.3d 404 at 421. Similarly, an airport has the right to elect not to grant an airline a lease unless the company agrees not to cause interference to other unlicensed systems on the airport.

In addition, a Commission policy forbidding such arrangements in the confined quarters of an airport would be counterproductive, because it would cede the airwaves to the most intransigent user. Individual hotspot operators would be free to increase their power output to override the signals of other users. Without the ability to intervene contractually, if need be, airport managers would be powerless. The result would be that a few tenants, favored perhaps by their particular locations in the airport would be able to operate effectively. Others would find that they would not be able to offer reliable service to enough users to make the service worthwhile. The only practical alternative is to allow airport management to find ways to address the issue.

In fact, the Commission has acknowledged that private parties may be in the best position to resolve similar problems in other contexts. For example, in the recent spectrum leasing order, the Commission approved the concept of a "private commons," under which licensees and spectrum lessees would be permitted to set terms and conditions for third parties to use spectrum under their control.[14] While perhaps not directly analogous, this order indicates that the concept of private management is neither unheard of nor unreasonable.

Regardless of which approach a particular airport may take, airports are all faced with similar management and coordination problems, and need to be free to find practical solutions. And airports that have not yet installed Wi-Fi systems may wish to do so in the future. Consequently, all airports are concerned with the outcome of this proceeding. Any order in this proceeding that limits Massport's ability to manage activities within its boundaries may affect the ability and willingness of other airports to make Wi-Fi service available on their premises. In

---

[14] *Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets*, Second Report and Order, WT Docket No. 00-230, 19 FCC Rcd 17503 17549-17553 (2004) at ¶¶ 91-99.

the end, enforcing such a policy creates the risk that at many airports Wi-Fi will only be implemented by a handful of commercial tenants, for their own benefit, without regard to the availability of the service to the traveling public in general. This would not be in the public interest, and we respectfully urge OET to adopt an approach that preserves the authority and flexibility of local airport management.

III. OET CANNOT ADOPT A UNIFORM REQUIREMENT PERMITTING THE USE OF WI-FI FACILITIES BY AIRPORT TENANTS WITHOUT VIOLATING THE FIFTH AMENDMENT.

Applying the OTARD rule against airports would infringe on the proprietary rights of airport managers. In no other area that we can think of are airport managers required to accept a physical intrusion on their property by a tenant without their consent, yet applying the OTARD Rule would do just that. We recognize that in *Building Owners and Managers Ass'n Int'l v. FCC*, 254 F.3d 89 (D.C. Cir. 2001) the court rejected a facial challenge to the OTARD Rule on Fifth Amendment takings grounds. But the court also noted that property owners would still be free to raise as-applied takings claims based on specific factual circumstances.[15] An application of the OTARD rule that gives tenants broad rights to install antennas in a fashion that makes it uneconomical for an airport manager to operate an airport-wide system might constitute such a case.

Furthermore – and this is perhaps the critical point in the whole case -- nothing in the OTARD Rule requires an airport manager to allow a tenant to install or maintain a physical connection between a Wi-Fi antenna and the outside world. Wi-Fi access points are not like direct broadcast satellite receiving antennas. To provide Internet access, every Wi-Fi antenna must have some form of access to the Internet; unless the user can establish a wireless link

[15] *Id.* at 100.

between the access point and off-airport facilities, the user must have a wireline connection. But in *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419 (1982), the Supreme Court ruled that a New York statute authorizing a cable television company to place its equipment on private property without the owner's consent violated the Fifth Amendment. In adopting the OTARD Rule, the Commission acknowledged the force and effect of *Loretto*, which is why the rule expressly precludes access to common areas.[16] The OTARD Rule cannot be used to compel an airport manager to allow a tenant to install a wireline connection that runs through common areas. This would be legally indistinguishable from directing the airport to allow the installation of the antenna itself in a common area.

Furthermore, there is no federal mandatory access rule that would require an airport to permit installation of a wireline connection to a covered antenna. In fact, as noted above, airports commonly retain the right to direct telecommunications providers on their premises to move their lines, at the discretion of the airport. Thus, at least under federal law, neither tenants nor providers have the right to demand installation of any specific facilities on airport property.

It is true that the law in one or more states may grant tenants the right to obtain a connection or grant providers the right to obtain access to premises located on an airport. On the other hand, although we have not examined this issue in any detail, we are confident that the law is not uniform across the states. For example, a Massachusetts regulation granting telecommunications carriers the right to install their wires in ducts and conduits inside private

[16] *Implementation of Section 207 of the Telecommunications Act of 1996*, Second Report and Order, CS Docket No. 96-83, 13 FCC Rcd 23874, 23894-23895 (1998), at ¶ 40 ("*Second OTARD Order*").

buildings was struck down by that state's Supreme Judicial Court.[17] In fact, we strongly suspect that a large majority of the states do not provide such rights.

Finally, a lease might grant a tenant the right to receive communications services, but any such rights could also be conditioned in ways that preclude use of a line for certain purposes. The OTARD Rule's prohibition of certain lease terms would not extend to such conditions, since the conditions would pertain to facilities located outside the exclusive use area.

Thus, no matter what else the OET may conclude about the applicability of the OTARD Rule in this case, ACI-NA believes that the Rule would not be sufficient to require airports in every state to allow the installation and operation of Wi-Fi antennas over their objections.

IV. THE OTARD RULE DOES NOT APPLY BECAUSE CONTINENTAL'S ANTENNA IS ACTUALLY USED TO PROVIDE SERVICE TO PAYING CUSTOMERS, AND ANY USE BY CONTINENTAL EMPLOYEES IS MINIMAL AND INCIDENTAL.

The OTARD Rule only protects antennas that are used to serve the customer that installed the antenna.[18] The Rule does not state that any person other than the tenant occupying exclusive use space has any right to receive service from a covered device. Continental has implicitly acknowledged this limitation: while Continental's original Petition, filed on July 7, 2005, emphasizes use of the Wi-Fi service by members of the President's Club, Continental's Supplement to the Petition, filed on July 27, 2005, stresses use of the service by Continental employees. The filing of the Supplement to the Petition suggests that Continental has recognized the weakness of relying only on use of the service by passengers.

---

[17] *Greater Boston Real Estate Board v. Department of Telecomm'ns & Energy*, 438 Mass. 197, 779 N.E.2d 127 (2002).

[18] *Promotion of Competitive Networks in Local Telecommunications Markets*, WT Docket No. 99-217, Order on Reconsideration, 19 FCC Rcd 5637, 5644 (2004) ("*Reconsideration Order*").

Furthermore, the Rule does not protect commercial use of a covered device. The genesis of the Rule was the desire of Congress to allow "viewers" to receive signals in their own homes. While the Commission has interpreted Section 207 to include commercial premises, the Rule still presumes personal use by the occupant of the premises. Section 207 was never intended as a means of allowing commercial entities to use their premises as a base of operations for selling wireless service to third parties.[19]

Continental's club members are third parties, and their use is not use by Continental. Furthermore, club members pay for their memberships, which means that they are paying for the so-called "free" use. Indeed, the Petition itself refers to "revenue customers," which appears to be a reference to club members.[20] It would appear that Continental is in reality acting as a reseller of a commercial service.[21] Consequently, all of Continental's arguments related to the reception of Wi-Fi signals by President's Club members are irrelevant.

Continental claims that its employees also use the wireless system, and that such use is "not incidental." The trouble with this argument is that Continental comes nowhere close to proving it, and common sense suggests otherwise. Continental has provided no evidence of the alleged "non-incidental" use, other than a naked assertion. The Petition contains no figures showing the level of employee use or comparing employee and non-employee use. Instead, the Petition merely states that "[r]evenue and non-revenue customers are not separately tracked such

---

[19] *Id.* ("we do not intend that carriers may simply locate their hub-sites on the premises of a customer in order to avoid compliance with a legitimate zoning regulation").

[20] Petition Supplement at p. 3.

[21] Continental's claims regarding the terms of service provided to both passengers and employees merit further investigation and careful examination. In particular, OET should consider the terms of Continental's arrangement with the third party provider whose service Continental is offering, especially payment terms; and the terms under which employees receive service.

that Continental would be able to differentiate between its users of the wireless system, but it is estimated that employees' use is not incidental, but could equal the use by Continental's customers . . . ."[22] This is simply not enough to establish any significant level of use by employees, and strongly suggests that Continental actually cannot establish any significant use by employees. Any OET order based on such a weak record would surely be subject to challenge as an abuse of discretion.[23]

This is an important point, because Continental cannot be allowed to justify installation of the antenna on a pretext. It is clear that the primary purpose of the antenna is to serve passengers in the club lounge, not Continental employees conducting company business. This is just common sense, even without considering the implicit admissions in the Initial Petition and the Petition Supplement. Furthermore, as noted earlier, the OTARD Rule does not extend to antennas installed on a pretext or to avoid other lawful requirements.[24] It is clear that the purpose of the antennas is to serve paying customers, and any use by employees is a purely incidental benefit.

Continental is not using the Wi-Fi hot spot for internal business communications, but to provide a benefit to third-party passengers, who are not entitled to the protection of the OTARD Rule. Consequently, the Rule does not apply.

---

[22] Petition Supplement at 3.

[23] *See, e.g., Home Box Office, Inc. v. FCC*, 567 F.299, 35-36 (D.C. Cir. 1977); *Portland Cement Ass'n v. Ruckelshaus*, 486 F.2d 375, 393 (D.C. Cir. 1973); *Wedgewood Comm'ns Co. Certification to Operate an Open Video System*, 12 FCC Rcd 19563, 19572 (1997) (denying application on basis that "something more than assertions are necessary").

[24] *Reconsideration Order* at 5644.

V. THE OTARD RULE DOES NOT PROTECT ANTENNA USERS LOCATED OUTSIDE EXCLUSIVE USE SPACE.

At the root of this case is Continental's inability to operate its Wi-Fi antenna without extending service to passengers in the common area outside the President's Club lounge. Those passengers are not "users" under the OTARD Rule, and they have no rights under the Rule. In addition, regardless of the Rule, Continental has no right to operate its antenna in a way that interferes with the operations of other Wi-Fi users in the airport. The FCC has provided no mechanism for resolving such disputes: users must either tolerate interference, or seek to resolve interference problems among themselves. As discussed in Point II, *supra*, nothing in the Commission's rules precludes private parties from entering into contractual arrangements for resolving such matters.

Consequently, while Continental may have the right to maintain and use a Wi-Fi antenna inside the club lounge, it has an obligation to respect the rights of the airport and other airport users. In that sense, the case is analogous to a dispute over noise or some other nuisance. The appropriate remedy, if the nuisance cannot be contained, is to order the causer of the nuisance to cease the offending activity. This is exactly what Massport did.

In addition, if the OTARD Rule is interpreted as creating rights that infringe on the airport's activities in common areas, OET will run the risk of creating a takings claim, as discussed above. While perhaps not tangible, the intrusion of electromagnetic signals is still an invasion with direct physical effects. This issue was not addressed in the appeal upholding the Rule, because that case involved only the use of video receiving antennas.

VI. MASSPORT'S ACTIONS ARE PERMITTED UNDER THE CENTRAL ANTENNA EXCEPTION TO THE OTARD RULE.

The OTARD Rule forbids only restrictions that "impair" the installation, maintenance or use of a covered antenna, and a restriction only "impairs" if it "unreasonably" prevents installation, maintenance, or use; (ii) "unreasonably" increases costs; or (iii) precludes reception or transmission of an "acceptable" quality signal. The Commission has ruled that a property owner may prohibit installation of individual antennas if it provides a central antenna that complies with the three tests for impairment.[25] As discussed below, ACI-NA believes that Massport falls within the central antenna exception.

Before conducting that analysis, however, we would urge OET to consider one question: If not now, when? The OTARD Rule, on its face, appears to admit of cases in which some form of restriction on the placement of an antenna within an exclusive use area would be permitted. The Commission's cases interpreting the Rule have read the Rule as preempting essentially any restriction as an impairment.[26] Those cases were all decided in the residential video context, however, which raises different policy issues and different practical concerns. There must be a class of cases in which the Rule, by its terms, allows a restriction; otherwise, the Commission would simply have prohibited all restrictions. Accordingly, in considering the application of the Rule in this case, OET must, in all fairness, consider the question of under what circumstances a restriction is not prohibited by the Rule.

---

[25] *Implementation of Section 207 of the Telecommunications Act of 1996*, CS Docket No. 96-83, Order on Reconsideration, 13 FCC Rcd 18962, 18999 (1998).

[26] *See, e.g.*, *In the Matter of James Sadler*, 13 FCC Rcd 12559 (1998) (refusing to uphold requirements for prior approval of installation, indemnification of homeowners' association, payment of cost of post-installation inspection, and use of licensed contractors); *In the Matter of Michael J. MacDonald*, 13 FCC Rcd 4844 (1997) (refusing to uphold $5.00 permit fee).

Based on our limited understanding of the facts, the central antenna exception should apply in Massport's case. In the *OTARD Reconsideration Order*, the Commission stated:

> Thus, restrictions based on the availability of a central antenna will generally be permissible provided that: 1) the viewer receives the particular video programming service the viewer desires and could receive with an individual antenna (e.g., the viewer would be entitled to receive service from a specific DBS provider, not simply a DBS service selected by the association); 2) the video reception in the viewer's home using the community antenna is of an acceptable quality as good as, or better, than the quality the viewer could receive with an individual antenna; 3) the costs associated with the use of the central antenna are not greater than the cost of installation, maintenance and use of an individual antenna; and (4) the requirement to use the community antenna in lieu of an individual antenna does not unreasonably delay the viewer's ability to receive video programming.[27]

We presume that the test was not intended to apply only to the delivery of video programming, and therefore that references to video programming can be read as including Internet access.

The first condition is that the user be able to receive the particular service the user desires. It is our understanding that Massport's central system permits access to a variety of service providers, all of whom provide access to the Internet. Thus, the requirement is met. Unlike the video context, where a DBS service package offers only a defined set of channels, so that a common antenna system may offer a programming package that does not include one or more specific channels desired by a particular user, Internet access providers all offer the same thing: access to the Internet. Furthermore, it would be unduly restrictive to insist that in every case the user be able to obtain access from a particular Internet service provider. This would make the central antenna option a dead letter, since any given tenant could choose at any time to rely on service from a provider not carried by the central system. Finally, we must also note that

[27] *OTARD Reconsideration Order*, 13 FCC Rcd at 18999.

this condition appears to be a gloss on the OTARD Rule itself; the Rule lists only three conditions for impairment, and does not require reception of service by a particular provider.

The second condition is that the quality of signal reception over the central system must be at least as good as it is over the individual user's antenna. We have no specific technical information on this point, but it seems unlikely to be a problem. Even if signal quality inside the Continental club room from Massport's system were not as good, this could undoubtedly be remedied in short order by the installation of an antenna in the club room connected to the central system.

The third condition is that there can be no increase in cost; we note here that the Rule itself refers to an "unreasonable" increase in the cost of installation, maintenance or use. ACI-NA is not in a position to compare costs, but we suspect that an arrangement could be made between Continental and Massport to deal with any discrepancy in cost that might exist. This does not strike us as an insuperable obstacle if the parties are willing to address the issue in good faith, and we think that is the sort of practical solution OET should encourage. In addition, we believe that the key question is what is reasonable under the circumstances. As we suggested earlier, there must be a set of facts in which installing a central antenna -- or prohibiting the installation of individual antennas – is reasonable and permitted under the Rule. As discussed above, airports are unique environments, with unique needs and obligations. One of those needs is the ability to manage the physical environment for the benefit of the entire airport community. Therefore, even if Continental would have to pay more for connecting to the common system, that increased cost could be justified.

The final condition is that there be no unreasonable delay. There is no reason to believe that any transition from the individual antenna to the Massport system would result in any

significant delay. As noted above, even if coverage inside the Continental lounge needed to be improved, it could be done with the installation of a single antenna.

For all these reasons, ACI-NA believes that the central antenna exception applies to Massport's case.

VII. MASSPORT'S ACTIONS SHOULD BE PERMITTED UNDER THE SAFETY EXCEPTION TO THE OTARD RULE.

We are not familiar with all of the facts surrounding Massport's claim that its actions were protected by the safety exception to the OTARD Rule. The Commission's prior interpretations of the Rule in the residential video context have interpreted the exception strictly.[28] It is important to remember, however, that the airport environment is far different from an apartment building or a townhouse development. Furthermore, airport managers are not interested in banning individual antennas for purely aesthetic reasons, which has been an important concern for the Commission in the residential context.[29] Airport management must have the power to act quickly in response to changes in local conditions. Requiring Massport to identify every safety concern in a written policy in advance is not only impractical, but potentially dangerous.

ACI-NA acknowledges that OET may believe that unlicensed frequencies should not be used for mission-critical and safety or security-related communications. But the fact is that they

---

[28] *See, e.g., In the Matter of Victor Frankfurt*, 13 FCC Rcd 18431, 18434 (2003) (refusing to enforce requirement that antenna installation comply with National Electric Code); *In the Matter of Philip Wojcikewicz*, 18 FCC Rcd 19523, 19529 (2003) (refusing to enforce homeowners' association rule requiring antenna installation to comply with "all applicable city and state laws and regulations and manufacturer's instructions").

[29] *See, e.g., Implementation of Section 207 of the Telecommunications Act of 1996*, CS Docket No. 96-83, Report and Order, 11 FCC Rcd 19276, 19304 at ¶ 46 (1996); *In the Matter of Philip Wojcikewicz*, 18 FCC Rcd 19523, 19528 (2003) ("aesthetic factors alone may not justify a prior approval process").

are. The technology is so useful for so many purposes, that the technology is driving events – in fact, this is exactly what the Commission has hoped would happen. The problem is that it has been too useful and too successful.[30] Rather than compounding the potential risks through a strict application of the Rule, OET should acknowledge the facts as they exist and permit airports not only to use unlicensed frequencies for safety-related purposes, but to coordinate activities on their premises to avoid potential conflicts.

VIII. EVEN IF THE CENTRAL ANTENNA EXCEPTION AND SAFETY EXCEPTION DO NOT APPLY, THE FCC SHOULD WAIVE THE RULE UNDER SECTION 1.4000(d) BECAUSE MASSPORT'S CONCERNS ARE "HIGHLY SPECIALIZED AND UNUSUAL."

The OTARD Rule allows a local government to obtain a waiver of the Rule by showing that the applicant has "concerns of a highly specialized or unusual nature." 47 C.F.R. § 1.4000(d). We presume that this provision extends to Massport and other airports. Although Massport has not specifically requested a waiver, ACI-NA believes that a waiver is in order in this case. If OET concludes that the OTARD Rule indeed applies, notwithstanding the arguments set forth above, then OET should still grant a waiver on its own motion.

From the discussion at Point I, *supra*, it is clear that airports form a unique class of institutions, for whom managing public property for the good of the entire airport community and extending ubiquitous Wi-Fi service to passengers and other persons on the airport are "highly specialized and unusual" concerns. Massport has the same concerns as ACI-NA members generally.

A waiver is particularly appropriate because Massport offers an alternative to Continental's service. Any harm to Continental (and it is by no means clear that there would be

[30] For example, unlicensed Wi-Fi networks are being considered for use as emergency communications networks. C. Thompson, Talking in the Dark, nytimes.com (Sept. 18. 2005), available at http://www.nytimes.com/2005/09/18/magazine/18idea.html.

any harm) is more than justified by the need for effective management of the airport's assets. It is unreasonable to put the overall efficiency and effectiveness of the airport's neutral host system in jeopardy in order to serve a few dozen passengers in the President's Club lounge.

OET can justify granting a waiver to Massport without prejudice to the Commission's larger concerns regarding the OTARD Rule or interference management issues, simply by acknowledging the unique nature of the airport environment, and the fact that a comparable, alternative service would be available to the same people Continental wishes to serve. The Commission has granted waivers of other Commission rules, pursuant to 47 C.FR. § 1.3 and 47 C.F.R. § 1.925, upon showings that (i) the underlying purpose of the rule would not be served and grant of a waiver would be in the public interest, or (ii) application of the rule would be unduly burdensome or contrary to the public interest.[31] These standards are met here as well. Applying the OTARD Rule strictly in Massport's case will not serve the public interest. It will make it more difficult to establish central communications systems on airports, make it more difficult for multiple tenants on airports to actually use the technology, hinder the ability of all passengers in a terminal to obtain access to wireless services, and favor users in exclusive use areas, such as the President's Club lounge. In the end, neither the underlying purpose of the rule, nor the public interest would be served.

---

[31] *See, e.g., T-Mobile USA, Inc. Petition for Waiver of Section 20.19(c)(3) of the Commission's Rules*, WT Docket 05-169, 2005 WL 2276381 (Sep. 16, 2005); *In Re Nextel Comm'ns, Inc.*, 14 FCC Rcd 11678 (1999).

CONCLUSION

For the reasons set forth above, the Petition should be denied.

Respectfully submitted,

Matthew C. Ames
Miller & Van Eaton, P.L.L.C.
Suite 1000
1155 Connecticut Avenue, N.W.
Washington, D.C. 20036

(202) 785-0600

Attorneys for the Airports Council International - North America

Of Counsel:
Patricia A. Hahn
General Counsel
Airports Council International-North America
Suite 500
1775 K Street, N.W.
Washington, DC 20006

September 28, 2005

CERTIFICATION

I, Patricia A. Hahn, say under penalty of perjury, that the following is true and correct:

1. I am the General Counsel for the Airports Council International-North America.

2. I have read the foregoing Comments of ACI-NA.

3. Except for those matters of which the FCC may take official notice, all of the information contained therein is true and correct to the best of my knowledge, information and belief.

Patricia A. Hahn

September 28, 2005

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 Airports Council International-North America, by first-class mail, postage prepaid, to the following persons:

Holden E. Shannon
Senior Vice President
Global Real Estate & Security
Continental Airlines, Inc.
1600 Smith Street – HQSVP
Houston, TX 77002

Robert Edwards
Staff Vice President
System Operations
Continental Airlines, Inc.
1600 Smith Street – HQSTK
Houston, TX 77002

Donna J. Katos
Managing Attorney – Litigation
Thomas Newton Bolling
Senior Attorney – Regulatory
Continental Airlines, Inc.
1600 Smith Street – HQSLG
Houston, TX 77002

Henry M. Rivera
Vinson & Elkins, LLP
The Willard Office Building
1455 Pennsylvania Avenue, NW
Washington, DC 20004-1008
Counsel for Continental Airlines, Inc.

Christine M. Gill
McDermott Will & Emery
Suite 1200
600 13th Street, NW
Washington DC 20005-8087
Counsel for Massachusetts Port Authority

Office of the Secretary*
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20054
Attn: Office of Engineering and
Technology, Policy and Rules Division

***Service by ECFS**

Matthew C. Ames

Washington, D.C.

2030\01\00112131.DOC