

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

**REPLY 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 Reply Comments in the above-entitled proceeding.¹ The Comments in this proceeding reflect a fundamental misunderstanding regarding the rights and obligations of entities operating unlicensed facilities under Part 15 of the Commission’s Rules by the Massachusetts Port Authority (“Massport”), the Airports Council International-North America (“ACI-NA”) and other airport authorities that filed in support of Massport’s position. They also confirm that Massport’s objections to Continental Airlines, Inc.’s (“Continental”) use of a wireless antenna to allow Internet access for its employees and customers are premised on economic factors rather than any genuine issue relating to protection of public safety operations. As detailed below, the

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”).

Alliance urges the Commission to reject the arguments of Massport, ACI-NA and others that would deny Continental and similarly situated entities the protection afforded them under the Commission's Over-the-Air Reception Devices ("OTARD") rules.

I. ENTITIES OPERATING UNLICENSED DEVICES AUTHORIZED UNDER PART 15 OF THE FCC RULES ARE BOUND BY THE PROTECTIONS EMBODIED IN THOSE RULES

The Comments filed by Massport, ACI-NA and other airport operators devote significant time to detailing the complexities and safety/security issues involved in managing large airport facilities. They describe the mix of public and private operations conducted within their confines and the importance of accommodating the communications requirements of this diverse population. Their Comments point to the increased interest in Internet access by those operating within or even passing through their facilities and note that the proliferation of discrete 2.4 GHz operations may affect maximum data throughput. They argue that these considerations warrant special treatment of airports under the OTARD rules, including a waiver of them if necessary, to permit airport operators to demand the use of a common antenna provided under the airport's auspices for all such applications.²

EWA does not dispute that there are unique challenges in managing an airport facility and the communications within it. However, it is not persuaded that the concerns expressed by these parties are reasonable in light of the rules governing 2.4 GHz operations.

First, the Alliance would note that, contrary to the impression one might take from the Comments, 2.4 GHz facilities are but a single part of a multitude of communications services and facilities used by airport residents. There are a host of

² ACI-NA Comments at p. 2.

licensed and unlicensed, private and public communications networks that are used to meet the diverse, and often highly demanding, requirements of entities that operate at airport facilities. This is not to imply that access to the Internet via unlicensed 2.4 GHz facilities is not an important component in that communications mix for many inhabitants, but it is hardly the linchpin on which public safety entities or others with real-time security obligations are likely to rely primarily.

Indeed, it would be extraordinary if those charged with the protection of public safety and property elected an unlicensed service, one deployed at every Starbucks and Quizno in town and predicted by the FCC to experience continued explosive growth in the years to come, as a core element in their communications arsenal.³ EWA does not doubt that public safety agencies and others with the equivalent of first responder responsibilities find Wi-Fi services useful for a variety of purposes. However, the Alliance also is confident that they have properly assessed the risk associated with reliance on a service where all users have equal rights, and the rules provide no basis for prioritization because of the particular communications being transmitted and have designed their communications systems accordingly.⁴

The fact is that Massport seeks to create a hierarchical regulatory approach for unlicensed Part 15 devices that is not contemplated by the Commission's rules. EWA certainly agrees that all parties operating in the 2.4 GHz band have an obligation to

³ See Massport Comments at pp. 20-21.

⁴ The public safety community has a variety of bands allocated for its operations, some of which provide for *de jure* channel exclusivity while, in others, users enjoy as much *de facto* exclusivity as may be accommodated by frequency coordinators in a given area. Recently, the Commission has allocated both 700 MHz and 4.9 MHz spectrum for exclusive public safety use. Together, these bands have the capability of supporting virtually all of the applications Massport suggests would be provided on its Wi-Fi system (Massport Comments at pp. 44-46) with the degree of protection and priority that true public safety operations demand. It simply is not credible that public safety entities would forego those options and, instead, rely on unlicensed Wi-Fi service provided by a third party to meet mission critical requirements.

cooperate in their use of the spectrum. Yet, the reality is that users in a given area may experience slower throughput as systems proliferate and, in rare instances, actual interference from one another.

There is no “tragedy of the commons” in this instance.⁵ The band is intended to be shared by all comers that satisfy the Commission’s technical requirements. Of course, this “negative” must be balanced against the lower costs and ease of entry that make the band attractive to many entities, thereby contributing to the proliferation of systems within it, including the AWG system endorsed by Massport. For these reasons, it may be an ill-advised choice for certain types of users and/or applications. The solution is not, as Massport and ACI-NA argue, to deem some users more equal than others and allow entities to establish communications fiefdoms in which they control how and from whom service may be obtained – the very antithesis of both unlicensed operation and the OTARD rules.⁶ Rather, the Commission should apply its Part 15 and OTARD regulations in an evenhanded fashion which, in this instance, means affirming that Continental has the right to operate a wireless antenna within the area under its exclusive control, provided that it satisfies all applicable FCC requirements.

II. THE UNDERLYING ISSUE IN THIS PROCEEDING IS ECONOMIC, NOT TECHNICAL OR OPERATIONAL

To the extent there was a question about the underlying issue in this proceeding, the ACI-NA Comments confirm that money is a – perhaps the – critical factor:

⁵ See ACI-NA Comments at p 10.

⁶ The Commission needs to be cautious not to replicate the situation that developed relating to medical telemetry devices that operate on a secondary basis on 450-470 MHz Part 90 spectrum. There, the FCC found itself embroiled in a multi-year proceeding trying to address the interests of entities that had no legal claim to protection under the rules, but whose use of the spectrum raised public safety concerns on the part of the Commission. See PR Docket No. 92-235; WT Docket No. 99-87; and ET Docket No. 99-255. Massport and other airport authorities should not be permitted to bootstrap themselves into some sort of superior position in an unlicensed band by claiming protection is needed for categories of users they choose to serve

Applying the OTARD rule against airports would infringe on the proprietary rights of airport managers. ...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 [for treating OTARD as an unlawful taking]⁷

Massport's filing is not as transparent, but the absence of any substantive technical or operational basis for its objection to Continental's Wi-Fi service compels a conclusion that the concern is a financial one.⁸ Massport has entered into an agreement with AWG and presumably believed it had the legal authority to prevent Logan tenants from using alternative 2.4 GHz systems. It obviously is frustrated to find that not all tenants are satisfied with that option and that the OTARD rules protect their rights.⁹

That Massport believes the AWG system will provide an acceptable alternative to entities such as Continental and, presumably, that Massport will not meet its economic objectives if all tenants at Logan are not forced to use that single, central antenna should be of no consequence to the FCC. The OTARD rules were adopted for the express purpose of promoting choice and competitive service offerings except when doing so compromised carefully defined public safety objectives or historic preservation concerns. Massport has failed to make a showing that would support an exemption from the OTARD rules, therefore, Continental's Petition should be granted.

III. CONCLUSION

The record in this proceeding fully supports a grant of Continental's Petition. To do otherwise would establish a dangerous precedent for the Commission. The FCC

⁷ ACI-NA Comments at p. 15.

⁸ As noted by Continental and others, Massport's claims about interference to its operations and those of public safety entities were not raised until it became aware that Continental intended to pursue its rights at the FCC.

⁹ EWA has been advised that certain entities that operate at Logan and other airports are not capable of using a common antenna system. They have developed specialized, proprietary techniques that rely on a single vendor and a limited set of devices. The AWG system would be of no use to them, but they would be denied the right to utilize their own wireless antenna under the approach espoused by Massport

would find itself embroiled in disputes about the hierarchy of interests operating in a band that clearly was intended to support multiple facilities in close proximity without any protections other than those set out in the technical standards of Part 15. It would constitute a fundamental alteration of the Part 15 rules, to say nothing of the OTARD rules, and would represent a sea change in the FCC's treatment of unlicensed facilities.

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

Respectfully submitted,

ENTERPRISE WIRELESS ALLIANCE

/s/ Mark E. Crosby
President/CEO
8484 Westpark Drive, Suite 630
McLean, Virginia 22102
(703) 528-5115

Counsel:

Elizabeth R. Sachs
Lukas, Nace, Gutierrez & Sachs, Chartered
1650 Tysons Boulevard, Suite 1500
McLean, Virginia 22102
(703) 584-8678

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