

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 LOUISVILLE REGIONAL AIRPORT AUTHORITY**

I. INTRODUCTION

The Louisville Regional Airport Authority (the "Airport Authority") is a public body corporate and politic established by an act of the General Assembly of Kentucky, constituting a political subdivision of the Commonwealth of Kentucky. The Airport Authority serves 3.5 million passengers and ships more than 4 billion pounds of cargo and mail on an annual basis. Over 10 airlines operate out of the Airport Authority, and the Airport Authority is home to a large number of commercial tenants.

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. We file today in support of the comments filed by Massport and Airports Council International – North America (“ACI-NA”).

For all the reasons cited by ACI-NA, we urge 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 the Airport Authority and other airport proprietors 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, the Airport Authority 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 throughout our terminal facilities. To that end, we have implemented a Wi-Fi service. 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 THE AIRPORT AUTHORITY'S ABILITY TO PROVIDE WI-FI SERVICE.

The Airport Authority is offering Wi-Fi service to the public under a model that has been carefully developed, taking into consideration local conditions. The Airport Authority initially awarded a Wireless Local Area Network (“WLAN”) Service Concession to Mobilestar Networks on December 28, 2000. The Mobilestar Agreement expired on June 30, 2004. The Airport Authority issued a request for proposal for a WLAN Service Concession in December 2003 and subsequently awarded the WLAN Service Concession to Sprint Spectrum L.P. (“Sprint”). Sprint installed the WLAN and commenced offering Wi-Fi to the public on July 1, 2004. The WLAN is operated as a neutral WLAN system solely by Sprint to provide high-speed Wi-Fi to the traveling public, the airlines, other tenants, and airport staff. The Wi-Fi service is available throughout the landside and airside terminal buildings of the airport through a series of 13 access points located in the drop ceiling of the terminal building. All costs associated with the installation and ongoing maintenance of the WLAN are borne by Sprint. Sprint is required to establish roaming agreements and/or access agreements with other Wi-Fi providers, under fair and consistent terms, to enable other Wi-Fi providers’ customers to roam onto or access the WLAN at no extra fee – he or she will simply pay whatever fees his or her service provider charges for use of its Wi-Fi service. The Wi-Fi providers that can be accessed from the Sprint WLAN are Boingo, Cingular, Deep Blue Wireless, Guest WiFi, IT Global Solutions, Orange France, Pronto Roaming Networks, Resort WiFi, SBC Freedomlink, Shortpath, Tengo Internet, and Urban Hotspots. If a potential user does not subscribe to these Wi-Fi providers, including Sprint, Sprint offers customers a rate of \$9.95 per day to access the WLAN or through a monthly subscription. Sprint is required to use commercially reasonable efforts to establish operating

agreements and associated fees with other tenants of the Airport Authority, such as airlines or others, who desire to provide public wireless internet services within their exclusively leased areas. No other tenant at the Airport Authority has the right or privilege within their current agreement, contract, license or permit to install publicly accessible Wi-Fi. The Authority is not aware of any airline at the airport that has installed Wi-Fi for their non-public operational use.

The Airport Authority urges OET to bear in mind that each airport introducing Wi-Fi service will use a different business model, each adapted to local conditions. We shall attempt to address the needs of all the stakeholders at the airport, and to develop an approach that works for all parties. OET's decision in this case should not hinder the ability of airports to make different policy choices as they attempt to perform their vital missions.

III. THE AIRPORT AUTHORITY 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. The Airport Authority supports all of these arguments, and urges OET not to apply the OTARD Rule in the airport context at all.

IV. OET MUST NOT INTERFERE WITH THE ABILITY OF AIRPORTS TO PROTECT THE SAFETY AND SECURITY OF PASSENGERS.

The Airport Authority is very concerned that OET may restrict the ability of the Airport Authority and other airports to protect the safety and security of passengers. Massport has

argued that its actions were protected under the safety exception to the OTARD Rule. Airports must have broad latitude in the safety area – it is simply impractical to expect that OET and the FCC can address airport safety issues on a case-by-case basis in a timely and effective fashion. Consequently, airports should be given wide latitude to apply the safety exception to the OTARD Rule. Continental and the other airlines, as well as other airport tenants, are extremely sophisticated and knowledgeable organizations; they do not need to be protected from their landlords in the way that the OTARD Rule suggests is appropriate for individual homeowners or apartment residents.

In addition, as ACI-NA points out, it is not enough for OET to simply say that unlicensed Wi-Fi frequencies should not be used for mission-critical applications. Not only are they being used for such purposes, but such use is likely to grow. Rather than fight a rear-guard action against this development, OET should encourage it, because in the end it is in the public interest.

V. IF OET CONCLUDES THE RULE DOES APPLY, THE AIRPORT AUTHORITY 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, the Airport Authority 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 adapted 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.

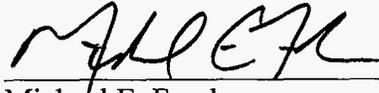
Airports have every incentive to deliver good quality service to every person in their terminals – in fact, this was in part what motivated Massport’s actions. Consequently, Massport and other airports can be expected to ensure that the quality of signal reception over a central system will be adequate 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

The Airport Authority 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 13th day of October, 2005, copies of the foregoing Comments of the Airport Authority, by first-class mail, postage prepaid, to the following persons:

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