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October 13, 2005

VIA ELECTRONIC FILING

Marlene H. Dortch, Esq.  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

Re: Petition of Continental Airlines, Inc. for a Declaratory Ruling Regarding Whether Certain Restrictions on Antenna Installation Are Permissible Under the Commission's Over-The-Air Reception Devices (OTARD) Rules; ET Docket No. 05-247

Dear Ms. Dortch:

PCIA – The Wireless Infrastructure Association (“PCIA”) hereby submits this letter in support of Continental Airlines, Inc.’s (“Continental”) Petition for Declaratory Ruling (“Petition”) seeking relief from the Federal Communications Commission (“FCC” or “Commission”) for continued use of its fixed wireless antenna in its President’s Club at Boston-Logan International Airport (“Logan Airport”). Specifically, the Petition requests a declaratory ruling that:<sup>1</sup>

- The FCC has exclusive jurisdiction over issues concerning the installation, maintenance and use of Continental’s fixed wireless antenna in its President’s Club at Logan Airport;
- OTARD rules are lawful and controlling on the issue;
- The Massachusetts Port Authority’s (“Massport”) demand that Continental remove its fixed wireless antenna is prohibited and preempted by OTARD rules;
- Massport may not require or impose a central antenna provided by a third-party vendor as an alternative at Massport since it will unreasonably increase the cost of Continental’s and/or its customers’ use of wireless services currently offered at no charge;
- Massport’s actions fail to promote competition and consumer choice in service provision;
- Massport take no action on the Continental antenna pending FCC review and final action; and that
- There is no legitimate safety objective for the action Massport has taken.

PCIA is a national trade association representing the interests of entities that develop, own, manage and operate over 50,000 towers, commercial rooftops and other facilities for the provision of wireless, broadcast and other telecommunications services. PCIA’s advocacy activities involve

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<sup>1</sup> See Petition of Continental Airlines, Inc. for a Declaratory Ruling Pursuant to 47 CFR § 1.2 (July 8, 2005) at p. 4-6 (“Petition”).

assisting the Commission, industry, and all levels of government in fulfilling the Congressional directive under the Telecommunications Act to provide wireless services to the nation.

PCIA agrees with Continental that OTARD rules are controlling in the instant case. OTARD rules prohibit landlords

from placing restrictions that impair a customer antenna user's ability to install, maintain, or use such customer antennas transmitting and/or receiving commercial non-broadcast communications signals when the antenna is located "on property within the exclusive use or control" of the user where the user has a "direct or indirect ownership or leasehold interest in the property."<sup>2</sup>

OTARD applicability includes unlicensed fixed systems,<sup>3</sup> such as the Continental Wi-Fi system. The Continental antenna is located on property within its exclusive control (the President's Club) and where it has obtained a leasehold interest.<sup>4</sup> Under OTARD rules, therefore, Massport would be prohibited from requiring Continental to remove from use its fixed wireless antenna transmitting commercial non-broadcast communications signals. Similarly, PCIA believes Massport has the right to install, maintain and use its own central antenna for service provision at Logan Airport in accordance with OTARD rules, as competition advances numerous consumer benefits, namely "lower prices, higher quality, greater variety, and more rapid innovation."<sup>5</sup>

The Commission has "exclusive jurisdiction" over radio frequency interference ("RFI") matters involving unlicensed devices in multi-tenant environments, including airports.<sup>6</sup> If Massport has RFI concerns about the Continental antenna, those would be preempted by the Commission as well. No legitimate safety or other concern has been raised by Massport regarding the Continental system. PCIA, therefore, urges the Commission to issue a Declaratory Ruling preempting Massport's demand that Continental's fixed wireless antenna be removed from Logan Airport.

Sincerely,



Michael Fitch  
President and CEO

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<sup>2</sup> See Public Notice, *Commission Staff Clarifies FCC's Role Regarding Radio Interference Matters and Its Rules Governing Customer Antennas and Other Unlicensed Equipment*, Public Notice, DA 04-1844 (June 24, 2004) at p. 2-3 ("Notice").

<sup>3</sup> *Id.* at p. 3.

<sup>4</sup> Petition at p. 3.

<sup>5</sup> See Tenth Report, *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993 Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services*, Tenth Report, WT Docket No. 05-71 (Sept. 30, 2005) at ¶ 16..

<sup>6</sup> Notice at p. 1.