

January 30, 2006



Marlene H. Dortch
Secretary
Federal Communications Commission
TW-A325
445 Twelfth St., SW
Washington, DC 20554

Re: *Notice of Ex parte* presentation in ET Docket No. 05-247, WB Docket No. 03-66

Dear Ms. Dortch:

On January 19, 2006, Harold Feld of Media Access Project met with Fred Campbell of Chairman Martin's office with regard to the above captioned proceedings.

With regard to Docket No. 05-247, on behalf of CUWN, New America Foundation, and Free Press, Mr. Feld urged the Commission to find that Continental Airlines has authority to create its own wireless network without the permission of MASSPORT under the OTARD rules. Mr. Feld stressed that a decision precluding Part 15 devices from the protection of the OTARD rules would have disastrous consequences for last-mile wireless broadband. Landlords would be able to replicate the exclusive contracts that have inhibited competition with regard to wired services. As a consequence, a building might have no fixed wireless option, or the fixed wireless option might belong to an incumbent wireline provider, frustrating the effort to introduce last-mile competition.¹ Because many community wireless networks serve individuals and organizations in leased premises, and cannot hope to pay landlords for access, failure to include Part 15 devices under the protection of the OTARD rules would fall hardest on already underserved communities.

With regard to Docket No. 03-66, speaking on behalf of NAF, *et al.*, Mr. Feld urged the Commission to adopt the position of IMWED. Mr. Feld made the following points:

1) Licensees have no legitimate expectation of renewal, the idea that they will only

¹In this regard, Mr. Feld observed that when he passed through Logan Airport on January 12, 2006, and again on January 15, 2006, the signs in Terminal E advertised the "Comcast Wireless Internet." Similarly, the start up screen indicated that the wireless connectivity available for a fee was operated and managed by Comcast.

invest in equipment if they have the certainty of leases longer the license term is therefore absurd. Given that the life expectancy of the network equipment is much shorter than even a 15 year lease term, any commercial entity will receive more than adequate return from a 15 year lease.

2) The FCC recently reaffirmed the value of the EBS as an educational service and declined to make the licenses alienable. To allow leases of such duration makes this a sham, by creating a sale in everything but name.

3) To the extent the terms of leases vary from the *pro forma* secondary market filings, the Commission has a strong interest in reenforcing the current rules and not rewarding parties for what appears to be an effort to manipulate the rules. If the Commission signals that it will not vigorously enforce the *Secondary Markets* requirements of truthful and accurate reporting, it will encourage parties to flout the Commission's rules and, at best, treat them with casual disregard.

4) To the extent the parties argue that the *Secondary Markets* rules provide greater flexibility than the EBS rules and therefore permit conduct that might otherwise be prohibited, this logic cannot hold. The Commission was quite clear that the licensee remains responsible for observing all requirements in the license. Because a licensee has no greater rights than those under the rules and printed on the license, *see* 47 USC §§ 304, 309(h), the licensee cannot evade restrictions on the license by "leasing" through the *Secondary Markets* rules.

In accordance with Section 1.1206(b) of the Commission's Rules, 47 C.F.R. § 1.1206, this letter is being filed with your office. If you have any questions, please do not hesitate to contact me.

Respectfully Submitted,

Harold Feld
Senior Vice President

cc:
Fred Campbell