

March 6, 2006

VIA ECFS

Marlene H. Dortch

Secretary

Federal Communications Commission

445 12th Street, S.W.

Washington, D.C. 20554

Re: **EX PARTE SUBMISSION**

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

Dear Ms. Dortch:

On February 22, 2006, the Airports Council International – North America (“ACI-NA”) submitted an *ex parte* filing in the above-referenced docket supporting the Massachusetts Port Authority’s (“Massport”) attempts to control and manage unlicensed spectrum at Boston’s Logan Airport. The filing asserts that airports are “unique and highly complex entities” and, therefore, should be afforded an exception to the Commission’s OTARD rules. The undersigned parties hereby submit this brief letter in response to ACI-NA’s *ex parte* filing.

The argument regarding the alleged “unique” and “complex” nature of airports is not new and has been refuted by numerous commenters in this proceeding. Like Massport, ACI-NA simply ignores the fact that the unlicensed bands are shared bands and that users of Part 15 devices that operate in those bands do not have priority over any other user in the band. Were the FCC to agree with Massport’s and ACI-NA’s position on this issue and recognize the proposed exception to the OTARD rules,¹ it would be agreeing to a seminal realignment of the hierarchy of users in the Part 15 bands in complete derogation of the expectations that millions of Americans have about how they may use Part 15 devices in their homes and businesses, and in public.²

The Commission has also previously rejected this argument, holding that the consumer protections for the installation and use of fixed wireless antennas under the OTARD rules apply

¹ The undersigned respectfully submit that a change of this magnitude ought not be implemented by means of the grant of an exception to the OTARD rules; rather, a rulemaking with opportunity for notice and comment would be the appropriate vehicle.

² The Commission has designated certain spectrum bands (including the spectrum on which Wi-Fi and many other wireless technologies operate) for unlicensed operations, and—in lieu of granting licenses that permit the exclusive use of the spectrum by a single user—has enacted rules to prevent or minimize radio frequency interference among all users and equipment operating on such spectrum. Under these rules, the equipment used must (1) meet certain technical standards, (2) accept whatever interference is received from other devices, and (3) correct whatever interference may be caused to other devices. See *Reply Comments of the Air Transport Association of America, Inc.* n. 55.

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to unlicensed devices, *regardless of venue*.³ An exception based on the alleged “unique” and “complex” nature of airports would launch the Commission down a slippery slope by inviting every landlord in a multi-tenant environment (*e.g.*, hotels, conference and convention centers, industrial parks and shopping centers) to try to obtain an exclusive spectrum license within its premises for spectrum that the Commission has expressly designated for unlicensed use.

Finally, if such an exception were granted, the undersigned are at a loss to understand just how ACI-NA members could enforce their newly found authority to control and manage unlicensed spectrum. Passengers use thousands of unlicensed devices every time they enter an airport. Would ACI-NA members confiscate these devices or insist that the flying public not use their unlicensed communications devices while on airport property?

ACI-NA’s arguments completely ignore the Commission’s spectrum management approach for unlicensed frequencies and would transfer to airport managers the spectrum management role that Congress has delegated to the Commission. For all the legal and practical reasons previously submitted by the undersigned and other supporting commenters, Massport’s and ACI-NA’s position should be firmly rejected.

Respectfully submitted,

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³ *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, 19 FCC Rcd 11300 (OET 2004). This public notice specifically mentions airports.

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