



May 5, 2006

**EX PARTE NOTICE**

*Electronic Filing*

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW, Room TW-A325  
Washington, D.C. 20554

Re: ET Docket No. 05-247

Dear Ms. Dortch:

On May 4, 2006, Tom Sugrue, Joe Sims, Bill Lake, and I met with Commissioner Jonathan S. Adelstein and Barry Ohlson, Commissioner Adelstein's Senior Legal Advisor. Our discussion was consistent with the attached written ex parte presentation

Pursuant to section 1.1206(b) of the Commission's rules, an electronic copy of this letter is being filed.

Sincerely,

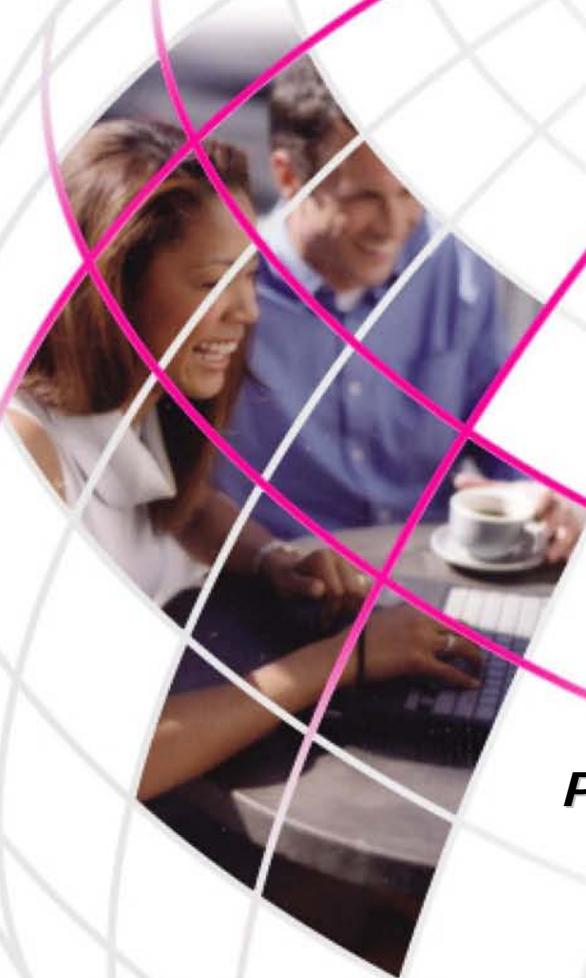
/s/Kathleen O'Brien Ham

Kathleen O'Brien Ham  
Managing Director,  
Federal Regulatory Affairs

cc: Commissioner Jonathan S. Adelstein  
Barry Ohlson

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May 4, 2006



***Petition of Continental Airlines  
ET Docket 05-247***

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## ***Continental's Petition***

- **Requests the Commission declare that Massport's demand that Continental remove its WiFi antennas in its lounges is prohibited by the Commission's Over-The-Air Reception Devices (OTARD) Rules**
- **Numerous parties, in addition to T-Mobile, have filed in support: Air Transport Association, Alliance for Public Technology, Media Access Project, New America Foundation, a group of State Regulatory Commissioners, and thousands of traveling patrons.**

## T-Mobile HotSpot

- **Wi-Fi (802.11b) high-speed broadband Internet service**
- **Over 7,500 U.S. locations**



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**Delta**

## *T-Mobile's experience at Logan Airport*

- **HotSpot service available at American Admirals Clubs from 1999 – April 2005**
- **HotSpot service scheduled to commence in Delta Crown Clubs in Spring 2005**
- **Spring 2005, Massport forced shut-down of American HotSpots and prevented installation of Delta HotSpots**

## ***Commission has authority over dispute***

- **The Communications Act of 1934 grants the FCC regulatory authority over all issues related to radio frequency emissions**
- **Sections 2, 301, 302, and 303(c)-(f) of the Act demonstrate Congress's express intent to provide the Commission with exclusive jurisdiction**
- **The Commission has twice concluded it has jurisdiction in this context**

## ***Massport's actions are contrary to federal law and policy***

- **OTARD rules forbid landlord interference with tenant use of fixed wireless antennas in tenant-controlled space**
  - **The text of the rule squarely applies**
  - **The Commission validly extended the rule to cover fixed wireless devices**
  - **The DC Circuit has confirmed that the rule does not cause a taking**
  - **The public safety exception does not apply**
  - **The central antenna exception does not apply**
- **Federal policy favors rapid deployment of advanced wireless technology**
- **Federal policy favors competition and choice among providers**

## ***Deployment of advanced wireless technology is threatened***

- **The FCC is charged with facilitating expansion of advanced wireless technology**
- **The FCC has been successful to date: wireless use is increasing dramatically**
- **But Massport has frozen advancement at Logan and could set a precedent for other multi-tenant environments**
- **Massport has created a monopoly, a de facto exclusive license in a non-exclusive, shared band**

## ***FCC can and should end Massport's monopolistic actions***

- **Management of unlicensed spectrum in multi-tenant environments is clearly within the FCC's jurisdiction**
- **Massport's actions are a patent violation of the OTARD rules**
- **Left unchecked, Massport's monopolistic behavior will encourage the same among airports and landlords nationwide**