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September 18, 2006

Via Electronic Filing

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: *Ex Parte* Presentation, ET Docket No. 05-247

Dear Ms. Dortch:

This is to provide notice that on September 15, 2006 the following individuals met separately with Commissioner Robert McDowell and his legal advisor, Angela Giancarlo; Ian Dillner, legal advisor to Commissioner Deborah Tate; Bruce Gottlieb, legal advisor to Commissioner Michael J. Copps; and Commissioner Jonathan S. Adelstein and his legal advisor, Barry Ohlson:

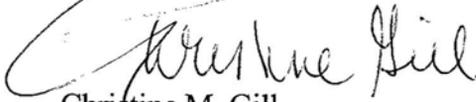
David Mackey, Massport
Deborah Kee, Massport
Bill Squadron, AWG, LLC
Christine Gill, Counsel to Massport
Patricia Hahn, General Counsel, Airports Council International-North America (ACI-NA)
Nicholas Miller, Counsel to ACI-NA

We discussed the positions of Massport and ACI-NA in the above referenced docket. These positions are reflected in the various filings that Massport and ACI-NA have made in this proceeding. The attached materials were also distributed at the meeting together with a copy of the ex parte filing made by Massport on December 16, 2005.

Pursuant to Section 1.1206 (b) of the Commission's Rules, a copy of this letter is being filed via ECSF with your office. Should you have any questions, please do not hesitate to contact the undersigned.

Marlene H. Dortch
September 18, 2006
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Respectfully Submitted,

A handwritten signature in cursive script that reads "Christine M. Gill". The signature is written in black ink and is positioned above the printed name.

Christine M. Gill
Counsel to Massport

cc: Commissioner McDowell
Commissioner Adelstein
Angela Giancarlo
Barry Ohlson
Ian Dillner
Bruce Gottlieb

Attachments

The Massachusetts Port Authority

Continental Airlines Inc.'s Petition for Declaratory Ruling ET Docket No. 05-247

Ex Parte Meeting
September 15, 2006

The Massachusetts Port Authority ("Massport"), an independent public authority of the Commonwealth of Massachusetts and the operator of Boston-Logan International Airport ("Logan"), submits these comments in support of its position that the Over-the-Air Reception Device ("OTARD") rule does not authorize Continental Airlines of Houston, Texas ("Continental") to continue using a Wi-Fi antenna in its private, members-only Presidents Club at Logan.

In a Petition for Declaratory Ruling, Continental asked the FCC for after-the-fact approval to install a 2.4 GHz Wi-Fi antenna for use by a handful of passengers who had purchased memberships to the Presidents Club. Continental subsequently amended its Petition to add that it now permits select employees to use the antenna. Although Continental and Massport had executed a Lease Agreement restricting Continental's use of the premises, which includes the Presidents Club, to specifically enumerated activities and prohibiting the placement of anything on the premises that may interfere with communications systems at Logan, Continental installed a Wi-Fi antenna in the Presidents Club, began offering wireless Internet access service, and interfered with the central Wi-Fi antenna system at Logan. Continental attempts to justify this breach of the Lease Agreement by claiming that its installation of a Wi-Fi antenna is consistent with the protections of the OTARD rule.

The FCC should reject Continental's request to continue to operate a Wi-Fi antenna to provide Internet access service for several compelling reasons: (1) Massport's installation of a

central Wi-Fi antenna system, and its concomitant restriction on the installation of individual Wi-Fi antennas does not constitute an impairment under the OTARD rule; (2) Massport has legitimate safety reasons for not allowing Continental to operate an individual Wi-Fi antenna; and (3) the OTARD rule does not apply to Continental's antenna.

As an airport operator in the post-9/11 world, Massport's primary function is to maintain a safe and secure facility for passengers and tenants in a highly complex environment. While Massport devotes a substantial amount of resources to ensure compliance with federal security regulations and to implement security programs, it also manages Logan to enable its tenants to conduct a myriad of aviation-related businesses and to provide the traveling public with world-class customer service. The difficulty of striking the appropriate balance between security and commercial/operational interests is compounded by the fact that Logan is one of the country's busiest airports and one of its most land-constrained airports. To accommodate the needs of security personnel, passengers, and tenants in a fair and reasonable manner, Massport exercises significant control over the terminal facilities at Logan through its leasing agreements and requires all tenants, including Continental, to use their leased premises only for certain enumerated purposes.

Massport has arranged for the installation of a neutral-host/common-use central Wi-Fi antenna system to ensure that all security personnel, tenants, and passengers have access to broadband communications at Logan. The central Wi-Fi antenna system offers numerous benefits for users, including optimal throughput, ubiquitous coverage throughout the terminals and on contiguous aircraft ramp areas, a high level of reliability, secure virtual private networks with encryption for confidential communications, and priority access for security personnel during emergencies. The Transportation Security Administration ("TSA"), the Massachusetts

State Police, and three airlines already use, are scheduled to start using, or are considering the use of this central Wi-Fi antenna system for security-related communications. Many other tenants and passengers also use the system for a variety of business and personal communications. The security and commercial operations on the central Wi-Fi antenna system will only increase over time.

The operation of the central Wi-Fi antenna system that everyone can use will prevent interference from congesting the unlicensed 2.4 GHz band at Logan. Continental's Wi-Fi antenna has caused interference with other users at Logan. This interference problem will only grow with the increased use of Wi-Fi devices, throughput limitations of the 2.4 GHz band, an increasingly densely populated airport environment, and existence of multiple, concurrent Wi-Fi systems in close proximity. Massport believes that the unique nature of Logan's environment requires a single, common-use infrastructure with radiofrequency management and load balancing to provide maximum spectrum utilization, optimal control over traffic priority, and the best-available method of maximizing throughput. The central Wi-Fi antenna system provides such an infrastructure.

Although Continental asks the FCC to ignore the complex balancing of these competing interests and apply the OTARD rule for the benefit of its exclusive club, the OTARD rule actually permits the restrictions in the Lease Agreement. In particular, Massport may restrict the installation and use of an individual Wi-Fi antenna in Continental's Presidents Club because it provides access to a central Wi-Fi antenna system. The FCC has stated that "the installation of a central antenna, and a concomitant restriction on the installation individual antennas, will not constitute an impairment" if the central antenna meets certain conditions. Massport meets those conditions because Logan's neutral-host/common-use Wi-Fi system (1) allows Continental to

access its desired service and service provider; (2) provides superior signal quality, coverage, and technical support; (3) is less expensive than Continental's individual antenna; and (4) imposes no delay on the transmission and reception of service. Although Continental's Presidents Club members do not qualify for protection under the OTARD rule, they would also receive many of these same benefits from the central Wi-Fi antenna system.

The central Wi-Fi antenna system at Logan also meets the safety exception to the OTARD rule because the proliferation of individual Wi-Fi antennas at Logan could cause radio interference and disrupt the existing or planned communications of the TSA, State Police, and other airlines. The Lease Agreement, as well as related documents, clearly define Massport's safety objectives and give Massport authority to prohibit the operation of Continental's Wi-Fi antenna.

Furthermore, the OTARD rule would not authorize Continental to install a Wi-Fi antenna in the Presidents Club in any event. The OTARD rule only protects antennas installed to serve the tenant as an "end user customer" and not antennas installed by the tenant to resell service to others, such as Continental's resale of Internet access service in the Presidents Club. Even if Continental were to claim that it does not resell Internet access service, it would still not qualify for the OTARD protections because the provision of "free" service does not meet the definition of "fixed wireless signal," which is a "*commercial* non-broadcast communications signal."

The OTARD rule also does not apply to Continental's Wi-Fi system because (1) the system is not needed by Continental to communicate with a service provider located outside of the Presidents Club; (2) Massport is a governmental entity that has restricted the installation and use of antennas as part of its responsibility for managing a sensitive governmental facility; (3) Massport has a unique relationship with its tenants and should qualify for an exemption similar

to that granted to college and university dormitories; and (4) Continental's passengers are not airport tenants or lessees and, thus, have no OTARD rights.

Continental also has no authority to install a Wi-Fi antenna because the FCC exceeded its statutory authority in extending the OTARD rule to fixed wireless signals. The statutory language and legislative history demonstrate that Congress limited the FCC's OTARD authority to the prohibition of restrictions on the reception of video programming. While the FCC had relied on its ancillary jurisdiction to extend the OTARD rule, it lacks the general jurisdiction under Title I of the Communications Act to regulate the installation of Wi-Fi antennas.

Finally, even as Continental seeks to renege on its Lease Agreement with Massport, it claims that the Lease Agreement authorizes it to install a Wi-Fi antenna at the Presidents Club. Although Continental references several provisions that purportedly create an independent right to install a Wi-Fi antenna, these provisions instead confirm that the Lease Agreement permits only specifically enumerated activities, which do not include the installation and use of a Wi-Fi antenna.

The Massachusetts Port Authority

Continental Airlines Inc.'s Petition for Declaratory Ruling ET Docket No. 05-247

Ex Parte Meeting
September 15, 2006

I. BACKGROUND

A. Massport Is an Independent Public Authority of the Commonwealth of Massachusetts Created to Own and Operate Logan

B. Logan Is the Most Active Airport in New England

1. Twenty-Six Million Passengers Used Logan in 2004
2. Logan Is Served by Fifty-Six Airlines and has Multiple Tenants on site
3. Logan Must Accommodate Passengers, Airlines, and Other Tenants on a Relatively Small Amount of Land

C. Massport Has Specific Responsibilities for Safeguarding Homeland Security

1. Massport Must Control Access to Security-Sensitive Locations at the Airport
2. Massport Provides Law Enforcement Support for the Airport Security Program and the TSA's Passenger Screening Checkpoint Activities

II. MASSPORT NEEDS TO CONTROL THE USE OF THE AIRPORT

A. Massport's Primary Function Is to Maintain a Safe and Secure Facility for Airport Users

1. Massport Has Federal Obligations to Protect Homeland Security
2. Massport's Primary Responsibility is to Ensure a Safe and Secure Airport Facility for All Airport Users. To Achieve this Massport Must Have the Ability to Reasonably Control Tenant's Activities.

B. Massport Must Balance the Competing Interests of Passengers, Tenants, and Public Safety Agencies

1. Massport Ensures that All Passengers, Tenants, and Public Safety Personnel Have an Acceptable Operating Environment
2. Massport Resolves Disputes between Tenants Involving the Use of Their Leased Spaces and Other Issues
3. Massport Must Satisfy Demand for Innovative Airport Services

C. Financial Gain Is Not the Primary Incentive for Massport

III. LOGAN HAS A NEUTRAL-HOST/COMMON-USE CENTRAL WI-FI ANTENNA SYSTEM EVERYONE CAN USE

A. Commenters Harbor Misconceptions about the Neutral-Host/Common-Use System at Logan

1. The System Enables a Single, Integrated Wireless Broadband System to Accommodate Access for Subscribers Using Different Wireless Providers
2. AWG Is the Underlying Network Provider and Offers Access to Hundreds of ISPs
3. Tenants and Passengers Would Not Have to Terminate Agreements with Their Existing Providers or Pay Double Subscriber Fees
 - a. Tenants and Passengers May Use Their Existing ISP at No Additional Charge from Massport or AWG
 - b. Tenants and Passengers without an Existing ISP May Pay a Nominal Fee for Internet Access Service
4. The System Is Operational and Would Not Delay Use by Tenants or Passengers
5. **Continental Has Been Offered Service On the Central Wi-Fi System At Less Cost Than Its Current Service and at a Virtually Identical or Better Quality Level (which it has refused to consider).**

B. The Central Wi-Fi Antenna System Provides Better Service than Individual Wi-Fi Antennas

1. The System Provides Contiguous Coverage, Overlap, and Handoff from the Curb of the Terminal to the Tail of the Aircraft

2. The System Has Several Redundancies and Safeguards
3. The System Supports Authentication and Encryption Standards and Protocols

IV. THE CENTRAL WI-FI ANTENNA SYSTEM HOSTS A VARIETY OF USES AND USERS WITH SAFETY AND SECURITY CONCERNS

- A. The TSA Has Tested and Is Exploring the Use of the System to Transmit Security-Related Communications**
- B. The State Police Is Scheduled to Start Using the System for Mobile Access to Images and Data**
- C. Public Safety Agencies Receive Priority Access during Emergencies**
- D. Three Airlines Rely on the System for Baggage Reconciliation**
 1. The Central Wi-Fi Antenna System Permits Airlines to Track Baggage throughout Logan
 2. Airlines Could Not Install Private Systems for this Purpose Because They Require Antennas in Common Areas
- E. Emergency Response Capability – system can be shut down during emergencies to allow for priority communications**
- F. Massport and Several Tenants Use the System for Private, Internal Communications**
- G. Tenants and Passengers Receive Wireless Internet Access**

V. THE PRESENCE OF MULTIPLE WI-FI SYSTEMS WOULD INTERFERE WITH ALL WI-FI OPERATIONS AT LOGAN

- A. Interference Consists of the Degradation and Disruption of Wi-Fi Signals**
 1. Degradation and Disruption Results from the Existence of Multiple, Concurrent Wi-Fi Systems in a Densely Populated Airport Environment
 2. The Central Wi-Fi Antenna System Already Experiences Degradation and Disruption from Other Wi-Fi Antennas
- B. Technological and Coordination Efforts Would Not Resolve the Problem**
 1. The Legal Framework of the OTARD Rule Precludes Technological and Coordination Efforts

2. AWG Could Not Adequately Resolve the Interference Problem Using Channel Mapping, Power Reduction, or Alternative Spectrum Bands
3. The Central Wi-Fi Antenna System Resolves Interference through a Single, Common-Use Infrastructure with RF Management and Load Balancing

VI. THE INSTALLATION AND USE OF WI-FI ANTENNAS ARE UNLAWFUL

A. Application of the OTARD Regime to Wireless Antennas is Unlawful

1. It Rests Solely on the basis of Ancillary Jurisdiction
2. FCC Could Not Assert Preemption Over State Agency like Massport Acting in its Proprietary Capacity

B. Continental's Wi-Fi Antenna Fails to Meet the Criteria of the OTARD Rule

1. Continental Primarily Provides Wi-Fi Service to Non-Tenants and the OTARD Rule Grants No Protections to Non-Tenants, such as Airline Club Members or Third-Party Commercial Providers
2. Airport Leases are Highly Restrictive and Do Not Convey the Type of Exclusivity Consistent With "OTARD" RULES
3. Continental's Antenna Is Not a "Customer End" Antenna

C. Even If the OTARD Rule Were to Apply, Massport Satisfies Two Exceptions

1. Logan Has a Central Wi-Fi Antenna System
2. The TSA and Massachusetts State Police Anticipate Using the Central Wi-Fi Antenna System for Security-Related Communications

D. The FCC Should Exempt Airports from the OTARD Rule as Special-Use Facilities

E. The FCC Would Engage in an Unconstitutional "Taking" of Massport's Property If It Applied the OTARD Rule to Logan