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September 29, 2006

VIA ELECTRONIC SUBMISSION

Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, DC 20554

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

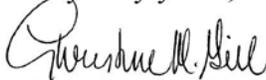
Dear Ms. Dortch

This is to notify you that today, September 29, 2006, the following individuals met with Chairman Martin and his legal assistant, Fred Campbell: Deborah Lau Kee, Massport; Christine Gill and Keith McCrickard, McDermott Will & Emery LLP, Counsel to Massport; Bill Squadron, Advanced Wireless Group, LLC; and Matthew Ames, Miller and Van Eaton, Counsel to Airports Council International – North America (ACI-NA).

We discussed the positions of Massport and ACI-NA in the above-referenced docket, which are reflected in their filings in this proceeding. We also attach an outline of Massport's position.

Pursuant to Section 1.1206 of the Commission's rules, a copy of this letter is being filed via ECFS. Should you have any questions, please contact the undersigned.

Very truly yours,



Christine M. Gill

cc: Chairman Kevin J. Martin
Fred Campbell
Commissioner Michael J. Copps
Commissioner Jonathan S. Adelstein
Commissioner Deborah Taylor Tate
Commissioner Robert M. McDowell
Bruce Gottlieb
Aaron Goldberger
Angela Giancarlo
Barry Ohlson

Enclosure

***Ex Parte* Presentation**

FCC Docket No. 05-247

The Massachusetts Port Authority

September 29, 2006

Participants

- Deborah Lau Kee, Massport**
- Christine Gill, Counsel to Massport**
- Keith McCrickard, Counsel to Massport**
- Bill Squadron, AWG, LLC**
- Matthew Ames, Counsel to ACI-NA**

Massport's Open Architecture/Neutral Host Wi-Fi System

- ❑ Open to all Users: Tenants, Airlines, Passengers, Carriers, ISPs, State Police, TSA**
- ❑ Variety of Service Arrangements**
 - Passengers can access Internet for free via their existing ISP if the ISP has an access arrangement with AWG**
 - Passengers can use Day Pass for \$7.95**
 - All carriers can roam on system**
 - All tenants can use system for their operational needs**
 - Continental can have service arrangement with AWG at less cost than they currently pay AND continue to provide free access to the Internet for their customers**

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- ❑ Massport receives revenue from the AWG system**
 - Massport is a not-for-profit state authority**
 - Massport has no taxing authority**
 - All revenue generated is used to fund airport operations**
 - It is not Commission policy that infrastructure providers cannot recoup cost of investment**

Central Antenna Exception Does Apply

- ❑ **Continental claims: “Users of the AWG system cannot receive service from their service provider of choice” (*ex parte*, 6-12-06)**
 - **This is not true. This system is open to all service providers and ISPs**
 - **Continental has refused to reveal who its “service provider of choice” is**
 - **Massport believes their current ISP is Fiberlink and Fiberlink can be accessed on the AWG system**

Central Antenna Exception Does Apply *(cont'd)*

- ❑ **“Massport admits that AWG’s signal quality in the President’s Club is not as good as Continental’s” (*ex parte*, 6-12-06)**
 - **This is not true**

- ❑ **AWG responded to all of Continental’s Questions on service over the Central Antenna: (see Massport *ex parte*, 3-31-06)**
 - **Q-1: “[W]e do not know how you conclude that the quality of service will be “equal to or greater” than the existing Wi-Fi service being offered. What is the quality of service standard you are proposing?”**

Central Antenna Exception Does Apply *(cont'd)*

A-1 “We have based our statement of AWG’s superior quality of service on the following factors:

- A) Access Point Speed – AWG operates 802.11G Access Points**
- B) Hardware Redundancy – AWG has installed redundant access points in and around the President’s Club providing greater uptime and reduced load per access point as compared to the existing Continental offering**
- C) Internet Connection – AWG operates a burstable DS-3 circuit plus T-1s as compared to the existing Continental circuit. This provides greater Internet speed to the users especially during peak periods when a DSL line or T-1 is easily bottlenecked**
- D) 24/7 call center support**

Central Antenna Exception Does Apply *(cont'd)*

- E) Service Level Agreement – AWG will provide Continental their standard SLA providing an uptime commitment and locally staffed service and support**
- F) RF Management and interference mitigation. As mentioned in some of Massport's FCC filings, a third-party consultant detected interference to the central Wi-Fi antenna system in a corner of the President's Club lounge in September 2005. We measured and rectified this interference immediately, meaning that the central Wi-Fi antenna system has provided an equivalent or stronger signal than Continental's Wi-Fi antenna throughout the President's Club lounge for approximately six months"**

Central Antenna Exception Does Apply *(cont'd)*

- ❑ **“The cost to Continental of using Massport’s commercial system is unknown and potentially higher than what it costs Continental to operate its own antenna” (Continental *ex parte*, 6-12-06)**
 - **This is not correct. AWG has provided detailed information to Continental as follows (Massport *ex parte*, 3-31-06):**
 - Q-1: **“1000 hours per month is an average of 33 hours per day coverage and on the surface, would appear to be sufficient. However, there are no indications of what happens if we were to exceed 1000 hours per month, or any adjustment by way of a credit or discount if we are under 1000 hours per month.”**

Central Antenna Exception Does Apply *(cont'd)*

- **A-1: “We have several plans with different numbers of connect-hours included, both above and below the 1000 hour plan. We proposed this plan based on the FCC filing that indicates you have approximately 32 customers per day using your Wi-Fi system. The included hours are the base floor of the agreement, and there is no credit, discount, or carry over for under-utilization. However, if you were to exceed the 1000 connect hours, the fee would be \$.50 per additional connect-hour. Should you exceed the 1000 hours consistently, we have plans that would have higher included connect hours at reasonable prices.”**

Central Antenna Exception Does Apply *(cont'd)*

- **Q-2: “[Y]ou have not indicated the cost of installing and maintaining your antenna in lieu of ours. If this is truly a cost savings to Continental on a monthly basis, we need to see how.”**
- **A-2: “There is no additional cost to Continental for installation and maintenance of the central Wi-Fi antenna system. AWG has already installed Wi-Fi access points throughout Logan; including the President’s Club lounge, and the cost of maintaining that system is part of our operating overhead. The system has been operational for nearly 2 years. There is no charge to system users for capital expenditures or maintenance since these direct costs are offset solely by usage fees. Thus, under the terms of this proposal, Continental would no longer have any financial exposure for system maintenance, Internet connection circuits, or system improvements”**

Central Antenna Exception Does Apply *(cont'd)*

- **Q-3: “[A] cap of 1000 hours per month would mean that AWG must monitor our usage, which is against our normal operating policy. There is also no indication that our marketing concerns would be addressed, which is really all about customer choice. For example, is there a requirement for an initial logon page? Would a customer view our corporate standard broadcast SSID of “copresidents_club” with no logon page or would they be required to log on via another means?”**
- **A-3: “We would create a separate wireless VLAN solely within the President’s Club which would have the broadcast SSID of “co_presidents_club” or whatever other SSID Continental specifies. Customers associating with that VLAN would be re-directed to a version of the AWG Logan portal (www.loganwifi.com) on initial browser launch. Although we do require some form of authentication to track usage for the wholesale billing of connect-hours, individual users would not be offered any pay-for-access options. Once authenticated, the user is free to surf and is unaware of the time tracking. We would be happy to demonstrate the process, should you wish to view it.”**

Central Antenna Exception Does Apply (*cont'd*)

- ❑ **Continental claims: “Massport requires that tenant seek “prior approval” before installation of a Wi-Fi Antenna” (*ex parte* 6-12-06)**
 - **This is not true in this case because the service for Continental’s Club Room is already installed**

Part 15 Is Not Implicated in This Case

- ❑ This is an antenna siting case, not a Part 15 Case**
 - The right to operate an RF part 15 device without an FCC license does not give the user a right to install its Part 15 antenna without a landowner's permission**
 - Regardless of whether an antenna transmits a licensed or unlicensed spectrum – the user must obtain the right to site the antenna in a particular place**
 - Unless OTARD applies, the FCC could not mandate that Massport allow Continental to site its antenna in the Club Room over Massport's objection**

Part 15 Is Not Implicated in This Case *(cont'd)*

- ❑ **Continental claims: “ Massport says the public interest requires it to manage and prioritize spectrum resources at Logan. Congress has delegated this function to the FCC” (Continental *ex parte*, 6-12-06)**
 - **Part 15 allows Massport to use spectrum as efficiently as possible on its own premises. Nothing in Part 15 precludes this.**
 - **Massport is not acting as a regulator to manage spectrum. Its operations are consistent with Part 15. It is acting as a premise owner. Its leases do not manage spectrum; they delineate what a tenant can do on airport property. Massport is not asking the FCC to enforce any prioritization. It is asking the FCC not to mandate the siting of antennas by its tenants.**

Part 15 Is Not Implicated in This Case *(cont'd)*

- ❑ **“FCC has provided licensed Spectrum for mission-critical public safety communications” (Continental *ex parte*, 6-12-06)**
 - **The fact that the State Police and TSA find the Massport Wi-Fi system useful for certain of their operations does not violate Part 15.**

Part 15 Is Not Implicated in This Case *(cont'd)*

- ❑ **“The Commission clarified last year that no user has priority rights in unlicensed Spectrum” (Continental *ex parte*, 6-12-06)**
 - **The term “right” refers to some enforceable right under the FCC rules or the Communications Act**
 - **Massport seeks no such enforceable rights; it seeks to prevent the FCC from overriding its rights as a landowner to restrict the activities of its tenants that are harmful to airport operations.**

Continental's Situation Does Not Fit OTARD Rules

- ❑ Antenna is used primarily by non-tenants**
- ❑ Continental's lease is highly restrictive, not similar to apartments/shopping malls**
 - Anything not expressly permitted is prohibited**

Continental's Situation Does Not Fit OTARD Rules *(cont'd)*

- **Continental's antenna is not a "customer-end" antenna as defined in Commission orders**
 - **Continental is self provisioning communications equipment, not trying to receive service from a wireless carrier**

This Case Presents a Takings Issue

- ❑ Applying OTARD rules to airports could result in a taking because use of the “common space” is involved**
 - Wi-Fi antennas also require attachment to cabling that runs through common areas of airport**
 - *BOMA* case did not involve any use of common area**

FCC's Preemption Authority Not Applicable in this Case

- Preemption of state and local laws not applicable to proprietary acts**
- Massport is acting in a proprietary, not regulatory capacity**

How This Case Can Be Resolved

- ❑ **Central Antenna exception applies**
 - **Offer to Continental is reasonable**
- ❑ **Airports should be exempt from OTARD because of unique circumstances**
 - **Airports must actively manage and control all tenant activities to ensure that safety, security and operational requirements of all airport users are met**
 - **There is no dispute that multiple Wi-Fi antennas will create interference to Airport's central antenna**

How This Case Can Be Resolved *(cont'd)*

- **Communication infrastructure must meet the needs of all airport users**
 - **Airports must be able to manage proliferating use of Wi-Fi on their premises because of the multitude of entities (including airlines and public safety) that need to work collaboratively at Airport**