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BY ELECTRONIC FILING

Ms. Marlene H. Dortch
Secretary
Federal Communication Commission
445 12th Street, S.W.
Washington, DC 20554

Re: Notice of written *ex parte* communication in ET Docket No. 05-247, Petition for
Declaratory Ruling of Continental Airlines

Dear Ms. Dortch:

In response to questions from various participants in meetings with members of the Commission, the Airports Council International – North America has prepared the attached summary of the many reasons that airports are unique environments, clearly unlike other entities, in particular shopping centers. In fact, although airports lease space to various types of entities and rely on retail outlets to meet certain needs of the traveling public, any resemblance is purely superficial. Shopping center managers rarely operate their own communications systems, and so are not in a position to provide such services to tenants. Furthermore, shopping centers have much simpler communications environments because the needs of their tenants are more limited. The complexity arising from the multiple layers of interrelationships among the far greater variety of tenants on an airport that leads to the need both for extensive communications systems and greater control of physical facilities by airport management simply does not exist in the shopping center environment. ACI-NA believes that any decision that does not acknowledge these obvious and fundamental differences would, at the very least, be subject to challenge as an abuse of discretion. *Home Box Office, Inc. v. FCC*, 567 F.299, 35-36 (D.C. Cir. 1977).

Very truly yours,

MILLER & VAN EATON, P.L.L.C.

By


Matthew C. Ames

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Attachment

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

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AIRPORTS ARE NOT SHOPPING CENTERS

As shown in the table below, shopping centers lack nearly all of the key characteristics and functions of airports. In fact, although airports rely on retail outlets to meet certain needs of the traveling public, airports are much more complex entities and any resemblance is superficial. In particular, while it is true that both airports and shopping center managers play a role in resolving disputes between tenants, shopping center managers do not have the expertise or desire to do so with respect to use of Wi-Fi equipment, because they rarely operate their own communications systems.

Shopping centers have:

Airports differ because:

No critical transportation functions.	<i>Essential purpose is operating a critical transportation facility in order to meet the needs of the traveling public.</i>
No aircraft.	<i>Not only do aircraft use licensed frequencies, but Boeing and AirBus will soon incorporate Wi-Fi into aircraft communications systems used to transmit flight data from arriving aircraft to gate.</i>
No baggage handling systems.	<i>Baggage handling systems extend throughout common areas and Wi-Fi is increasingly part of such designs.</i>
No TSA, ICE, FAA, or other federal presence.	<i>Federal entities require secure communications, and are experimenting with use of unlicensed Wi-Fi.</i>
Limited security functions.	<i>Airport is high security area, and management must coordinate activities and communications with multiple local, state and federal agencies.</i>
No air travelers. Management's focus is on meeting needs of retail tenants: if retailer insists on access to Wi-Fi, management has interest in allowing it.	<i>Management's focus is on meeting needs of traveling public. Needs of retail concessionaires are ancillary to transportation function. Needs of individual airlines are subordinate to efficient operation of entire facility.</i>
No business travelers.	<i>Business travelers are high-value customers. Most business travelers want Wi-Fi access not just in club lounges or retail establishments, but throughout a terminal.</i>
No need for internal communications system to service shopping center management.	<i>Airports rely on extensive internal communications systems to coordinate activities over large physical space.</i>

No internal cost savings from construction of common wireless access systems.	<i>Because airport management has extensive communications needs of its own, construction of common system can help reduce overall cost.</i>
No rental car operations.	<i>Rental car operators require communications capabilities, as well as physical facilities, including remote facilities. They also add an additional level of management complexity for the airport manager.</i>
No parking/rental car/inter-terminal shuttles.	<i>Shuttle systems also require communications capabilities and physical facilities, and add to management complexity.</i>
No intraterminal trams or other transportation systems.	<i>Trams and shuttles also require communications capabilities and physical facilities, and add to management complexity.</i>
No ground crews or gate personnel.	<i>These functions require communications capability.</i>
No repair, maintenance or hangar facilities.	<i>These facilities also require communications capabilities and physical facilities, and add to management complexity.</i>
No fueling operations.	<i>These operations also require communications capabilities and physical facilities, and add to management complexity.</i>
No club lounges.	<i>Club lounges are just one more item in the long list of functions that make airports much more complicated and harder to run than shopping centers.</i>