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Via facsimile (404-762-3767) and mail (miguel.southwell@atlanta-airport.com)

Mr. Miguel Southwell, Aviation General Manager
Hartsfield-Jackson Atlanta International Airport
Department of Aviation
P.O. Box 20509
Atlanta, GA 30320

Re: Wireless Internet policy

Dear Mr. Southwell:

It has come to the attention of The Rutherford Institute[1] that the Hartsfield-Jackson Atlanta International Airport is enforcing certain policies restricting the free speech rights of airport patrons who use the airport's public Wi-Fi connection. Specifically, Wi-Fi users are barred from transmitting "hateful or racially, ethnically or otherwise objectionable" material.[2]

As a government-owned and operated entity under the jurisdiction of the City of Atlanta through the Department of Aviation, the Hartsfield-Jackson Atlanta International Airport is under an obligation to comply with the protections of the First Amendment in its activities. Although the government is not required to provide wireless Internet access to airport patrons, once it does so, it is under an obligation to comply with the mandates of the First Amendment. This is because the Internet service, once provided by the government, becomes a public forum.

The following provisions in your Wi-Fi policy run afoul of the U.S. Constitution's assurances of free speech and due process, and should be addressed in a timely manner, lest the Airport open itself to legal challenges.

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[1] The Rutherford Institute is a nonprofit organization that provides legal representation without charge to individuals whose civil liberties are threatened or infringed and educates the public about constitutional and human rights issues.
[2] Eugene Volokh, *Atlanta airport WiFi users are barred from transmitting 'hateful or racially, ethnically or otherwise objectionable' material*, THE WASHINGTON POST (Oct. 21, 2014), http://www.washingtonpost.com/news/volokh-conspiracy/wp/2014/10/21/atlanta-airport-wifi-users-are-barred-from-transmitting-hateful-or-racially-ethnically-or-otherwise-objectionable-material/.

The prohibition on transmitting "hateful or racially, ethnically or otherwise objectionable" materials violates the First and Fifth Amendments

According to the airport's Wi-Fi policy, users may not:

> Transmit any material (by uploading, posting, email or otherwise) that is unlawful, threatening, abusive, harassing, tortuous, defamatory, obscene, libelous, invasive of another's privacy, hateful or racially, ethnically or otherwise objectionable.

A public forum is a government-owned property that, either by history or designation, is open to the public for expression.[3] A government-provided Internet connection, as a connector of people to information and ideas, is certainly such a platform. A public forum can be nonphysical,[4] as the Internet service is.

Since the Internet service is a public forum, the First Amendment forbids the government from selectively proscribing speech over it, unless the speech falls within an unprotected category such as incitement to violence or true threats.[5] "Hateful or racially, ethnically or otherwise objectionable" messages do not fall into any unprotected category. Indeed, the U.S. Supreme Court has often struck down attempts to proscribe such messages.[6] As such, the rule on its face explicitly disallows transmission of materials that communicate certain protected messages, but not others. The government may not regulate speech based on hostility or favoritism towards the underlying message,[7] and thus the rule impermissibly infringes on protected First Amendment activities.

Additionally, the ban on transmitting "otherwise objectionable" messages is vague in violation of the Fifth Amendment. It is a basic principle of due process that an enactment is void for vagueness if its prohibitions are not clearly defined.[8]

For example, prohibiting internet users from transmitting "otherwise objectionable" materials deprives users of the right to know in advance what behavior is proscribed, since "otherwise objectionable" is interpreted from the viewpoint of the government, and what is objectionable to the censor may not be objectionable to the speaker. The rule provides no clear guidelines with which individuals may determine which messages are unacceptable and which are acceptable, and the Fifth Amendment demands that individuals have fair warning that their

[3] Perry Educ. Ass'n v. Perry Local Educators' Ass'n, 460 U.S. 37 (1983).
[4] Rosenberger v. Rector & Visitors of Univ. of Virginia, 515 U.S. 819 (1995).
[5] R.A.V. v. City of St. Paul, Minn., 505 U.S. 377 (1992).
[6] Snyder v. Phelps, 131 S. Ct. 1207 (2011); Wisconsin v. Mitchell, 508 U.S. 476 (1993).
[7] R.A.V. v. City of St. Paul, Minn., 505 U.S. 377 (1992).
[8] Grayned v. City of Rockford, 408 U.S. 104 (1972).

conduct is prohibited.[9] Additionally, a vague rule has the effect of transferring interpretive power to those charged with enforcing the law, who may do so on an arbitrary or discriminatory basis.[10]

The prohibition on transmitting solicitation materials violates the First Amendment

The Wi-Fi policy also requires users to affirm that they will not:

> Transmit any material (by uploading, posting, email or otherwise) any unsolicited or unauthorized advertising, promotional materials, "junk mail," "spam," "chain letters," "pyramid schemes" or any other form of solicitation.

Although many of us have at one time or another wished to be insulated from the words of advertisers, commercial speech is protected by the First Amendment since it "furthers the societal interest in the fullest possible dissemination of information."[11] The U.S. Supreme Court has stated that regulation of advertising that is neither misleading nor related to unlawful activity must directly advance a substantial government interest by means that are no broader than necessary.[12] The ban on transmitting commercial messages over the public Internet connection does not proscribe misleading or unlawful claims by advertisers. Rather, it bans all unsolicited and unauthorized advertising communicated over the airwaves. Thus, the government must have a substantial interest to which the rule is narrowly tailored.

The airport may have enacted this regulation in order to keep the connection operating at a reasonable speed. Indeed, some solicitation communications may require a large amount of bandwidth. However, the rule at issue would not prevent the myriad of other high-volume activities that web users frequently engage in, such as watching movies or playing games, which are also protected activities.[13] By maintaining the rule, the airport is singling out for different treatment a form of speech that impacts its interests in the same way.[14] This means that, regardless of the strength of the government's interest in providing fast connectivity, the rule at issue is not appropriately tailored to that interest and thus fails Constitutional muster.

Additionally, the ban on transmitting solicitation materials is overbroad. A law is voidable for overbreadth if a substantial number of its applications are unconstitutional in relation to its plainly legitimate sweep.[15] The rule may aim to curb chain mailers and spammers, but it also would prevent a charity organizer from sending invitations to her social media network encouraging them to donate. This is clearly protected speech.[16] Political speech is also

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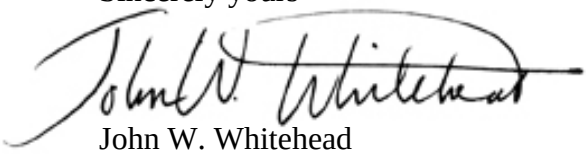
[9] Id.
[10] Id.
[11] Cent. Hudson Gas & Elec. Corp. v. Pub. Serv. Comm'n of New York, 447 U.S. 557 (1980).
[12] Id.
[13] Brown v. Entm't Merchants Ass'n, 131 S. Ct. 2729 (2011).
[14] City of Cincinnati v. Discovery Network, Inc., 507 U.S. 410 (1993).
[15] United States v. Stevens, 559 U.S. 460 (2010).
[16] Riley v. Nat'l Fed'n of the Blind of N. Carolina, Inc., 487 U.S. 781 (1988).

put at risk by the solicitation ban, since one who speaks in the heat of political contest usually does so to solicit individuals for support or opposition to candidates or issues. This is an especially troubling implication, since the U.S. Supreme Court has consistently held that political speech is at "the core of the First Amendment."[17] In this way, the rule simply sweeps within it protected activity and is therefore unconstitutionally overbroad.[18]

There is perhaps no right more sacred in our Constitution than the right of individuals to speak as they believe, even though we may not always agree with what they have to say. By failing to adhere to the basic speech protections that are ingrained in our society, the Hartsfield-Jackson Atlanta International Airport's Wi-Fi policy jeopardizes the rights of all travelers who pass through its portal and should be altered to comply with the First and Fifth Amendments.

If there is anything I or The Rutherford Institute can do to assist you in this process, please do not hesitate to call upon us.

Sincerely yours



John W. Whitehead
President

[17] Fed. Election Comm'n v. Nat'l Conservative Political Action Comm., 470 U.S. 480 (1985).
[18] United States v. Stevens, 559 U.S. 460 (2010).