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# Newark International Airport Airline Competition Plan

Plan and Implementation Update

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**Submitted to:**  
**The Federal Aviation Administration**  
**March 2002**

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## **I. Competition Plan Summary**

The Port Authority of New York and New Jersey is pleased to submit this update to its Competition Plan for Newark International Airport (EWR). The EWR Competition Plan was initially submitted on December 11, 2000, was supplemented with further material at the request of the FAA on July 6, 2001 and was determined to be in compliance with the requirements of Air 21 on August 28, 2001. The Port Authority has diligently and successfully implemented the Plan as submitted and supplemented.

The Airline Competition Strategy outlined in the Plan is to capitalize on negotiating opportunities to change barriers to entry, to be more proactive in administering the utilization of Airport capacity, to examine alternate business arrangements for new facility development and to continue to pursue the New York / New Jersey regional airport system concept. The specific initiatives associated with this strategy include:

- ❑ Establishing the position of New Entry Manager to provide a focus for airlines seeking to provide new services;
- ❑ Establishing a new Task Force to aggressively examine and plan for a significant expansion of Terminal A utilizing alternative financing and business arrangements;
- ❑ Pursuing the goal of changing EWR Master Airline leases to short-term or common use;
- ❑ Reflecting new entrant airline rights in published procedures, airline leases, and revised and re-issued sublease consents;
- ❑ Requiring major airlines to report sublease fees in comparison to the cost of facilities and services provided;
- ❑ Monitoring gate use requirements and making gate utilization information available;
- ❑ Capitalizing on opportunities for facility take back and forced accommodation; and
- ❑ Changing certain lease provisions concerning requesting airline accommodations.

The Port Authority has made significant progress in implementing the EWR Competition Plan consistent with the strategy and specific initiatives identified. The team involved in developing the initial 1999 Aircraft Gate and Ticket Counter Utilization Study, the Gate Study Update, the Competition Plan and Submittal of Further Material now leads the effort to implement the Plan and serve as New Entry Manager providing the desired focus. This continuity has also strengthened the Port Authority's commitment to the mandates of Air 21, which is exemplified in the key accomplishment addressed in this Competition Plan Update, the establishment of the first domestic common use facilities at the Airport and their assignment to expanding, non master incumbent airlines American Trans Air and America West effective January 1, 2002.

The establishment of domestic common use facilities at EWR is the result of a sustained effort to implement the Plan since it was initially developed. This includes initiating the Plan with a detailed review of all Master Airline Lease and supplemental agreement provisions concerning facility utilization and accommodation of requesting airlines, conducting a gate utilization assessment for the year 2001, providing appropriate airline notifications concerning utilization levels, facility take back, requesting airline accommodations and facility availability, following up on airline responses and positions with regard to plan initiation, and drafting and negotiating the required supplemental agreements, space permits, common use agreements and procedures. These initiatives are fully documented in this Competition Plan Update.

In addition to establishing the common use facilities, the Port Authority has taken aggressive steps toward monitoring utilization and actively facilitating new entrant and expanding incumbent airline requests for accommodations. While these initiatives were stalled due to declining demand after the September 11 terrorist attacks and the ensuing airline financial crisis, a new paradigm for Port Authority / airline business relationships is being established at the Airport and is taking hold.

The Port Authority also established the Terminal A Expansion Task Force. The purpose of the Task Force is to keep key Port Authority leadership up to date on issues related to future expansion of Terminal A, the last area available for significant development and expansion on the airport. The Task Force includes the Airport General Manager, Manager of Financial Services, Manager of Properties and Commercial Development, the Redevelopment Program Manager and key design and engineering professionals from the Aviation Department. The Task Force met bi-weekly throughout the spring and summer of 2001 addressing issues related to airfield and airspace capacity, passenger demand and terminal facility requirements, development options, finance and business alternatives. As a result of this process, the Competition Plan objectives and strategies have been successfully instilled in the future expansion of Terminal A. The project remains on the Port Authority's five-year capital plan and the Task Force has resumed its efforts. However, it should be noted that, as a result of the September 11<sup>th</sup> terrorist attacks, traffic at the Airport remains down and some projections indicate that it may not rebound to its 2000 level until 2006. This, coupled with the strained financial condition of the airlines and the re-allocation of PFC funds to security - related projects, has slowed the pace of planning for the project.

All of the forgoing initiatives are addressed in this Competition Plan Update. The specific information requested to be included in the Update by FAA is addressed as well. This includes information on the availability of gates and related facilities, leasing and subleasing arrangements and gate assignment policy.

## **II. Plan Initiation**

Implementation of the EWR Competition Plan began with a review of the Master Airline Leases in effect at the Airport. An assessment of airline compliance with facility utilization requirements identified in the Master Airline Leases was also conducted, which was followed by a series on airline notifications concerning facility underutilization, take back and availability.

### **a) Master Airline Lease Review**

All domestic terminal facilities at EWR are leased exclusively pursuant to nine Master Airline leases between the Port Authority and Air Canada, American, two with Continental, Delta, Northwest, TWA (now American's lease), United and US Airways. With the exception of Air Canada, the Master Leases were entered into in the late 1960s and early 1970s and have been assigned, supplemented and amended fifteen to thirty - times each since then. Since the mandate of Air 21 is to provide access to terminal facilities for all airlines that desire access, it was essential to commence implementation of the Competition Plan with specific documentation of the Port Authority's rights under the Master Leases, supplements and amendments to monitor and assess facility use, require the accommodation of requesting airlines, or terminate underutilized leaseholds.

As a result of the Master Airline Lease review, it was found that relevant provisions concerning efficient use of the Airport and requesting airlines were included in all of the Master Leases. Each of the Master leases also included either a facility termination or forced accommodation provision that is triggered by utilization requirements. These provisions have previously been referenced in the EWR Competition Plan and Submittal of Further Material. They are summarized below, together with the specific airline utilization requirements, as background reference for the discussion of Plan Initiation and the Gate Use Assessment for 2001:

Efficient Use Provision (Rules & Regulations) – This provision is included in all the Master Airline Leases and provides that the use of the Public Aircraft Facilities, and other portions of the Airport other than exclusive use space, is subject to existing and future rules promulgated by the Port Authority in the public interest, good order and in the interest of the economic and efficient operation of the Airport. These rules may include, but are not limited to, the number and type of aircraft, and the times that such aircraft may use the Public Aircraft Facilities. In promulgating future rules and regulations, the Port Authority may take into account the adequacy, capacity and suitability of aircraft using the Airport, passenger handling facilities at the Airport, the Public Aircraft Facilities, roads and parking facilities. The provision specifically provides that the Port Authority may devise and implement reasonable procedures governing the affected use of the Public Aircraft Facilities including allocations among aircraft operators at the Airport. It should also be noted that the Master Airline agreements include a provision that requires the airlines (in order to assure proper safeguards for the protection of persons and property) to comply with and execute all laws, ordinances and governmental rules, regulations and orders which, as a matter of law, are applicable to or which affect the

operations of the lessee at the Airport. The Port Authority considers certain directives from the FAA with regard to the Master Airline lease provisions (i.e. written denial of subleases and necessity of flights criteria) as orders subject to this provision.

Requesting Airline Provision – This provision is also included in all the Master Airline Leases and provides that in furtherance of the public interest of having each airline’s exclusive premises fully and most effectively utilized, the Master Airline lessee’s are required to use their best efforts to fulfill requests from non Master Airline lessee’s to be accommodated at the Master Airline lessee’s premises. If the Master Airline lessee fails to accommodate the requesting airline, the Port Authority makes the determination as to whether the requesting airline should be accommodated taking into consideration the existing utilization of the premises, a bona fide utilization plan to be implemented within 12 months, the necessity for the proposed service, compatibility of the operating practices and equipment of the requesting airline and need for labor harmony. The provision reserves unto the Port Authority the right to determine whether a Master Airline should accommodate a requesting airline and whether there will be any limitations on the nature, extent, cost, duration and extension of such accommodation.

While the Requesting Airline provision clearly reserves unto the Port Authority the right to determine whether the Master Airline should accommodate other airline requests, it does not specify the methodology to use in order to assess the utilization of the premises or determine if future utilization plans are “bona-fide.”

Facility Termination Provision - This provision applies to American, Delta and Northwest airlines and provides that the Port Authority may terminate these leases with respect to underutilized space on six months prior written notice. To administer this provision, a Commencement Basic Schedule requirement is established in the form of average daily revenue seats. If a Master Airline Lessee’s average daily revenue seats fail to achieve 60% of the schedule requirement, the termination may occur. Thirty days notice of intent to terminate must first be given, during which the Master Airline lessee may submit plans to utilize the space. The utilization plans must be implemented within 90 days of submission of the plan. The average daily revenue seats are to be determined based on schedules published in the Official Airline Guide. The revenue seat requirement for each airline is shown below:

<u>Master Airline</u>	<u>Facility Termination Schedule Requirements (Average Daily Revenue Seats Per Gate)</u>
American	1,567
Delta	600
Northwest	444

Forced Accommodation Provision - This provision applies to Air Canada, the two Continental leases, TWA/American, United and US Airways and provides that the Port Authority may require the airlines to make accommodations available to Scheduled

Aircraft Operators on six months prior written notice. To administer this provision, a Commencement Basic Schedule requirement is established in the form of average daily revenue seats. If a Master Airline Lessee's average daily revenue seats fail to achieve 60% of the schedule requirement, or it operates less than three aircraft operations per gate position per day, the forced accommodation may occur. The period of accommodation begins on the effective date of the notice and ends when the Master Airline Lessee's schedule returns to at least 60% of the schedule requirement. Thirty days notice of intent to force accommodation is required, during which period plans to utilize the space may be submitted and implemented to avoid the accommodation. The average daily revenue seats are to be determined based on schedules published in the Official Airline Guide. The schedule requirement for each airline is shown below:

<u>Master Airline</u>	<u>Forced Accommodation Schedule Requirements (Daily Revenue Seats Per Gate)</u>
Air Canada	880
Continental (Term. A)	840
Continental (Term. C)	720
TWA / American	812
United	648
US Airways	750

Miscellaneous Provisions - In addition to the rules and regulations, requesting airline, facility termination and forced accommodation provisions discussed above, two Master Airline – specific provisions are relevant to the mandates of Air 21 and the goals and objectives of the Airport Competition Plan. The Air Canada lease provides that the Port Authority may terminate this airline's occupancy of Gate 22 and associated facilities on 60 days notice. In addition, the United Airlines lease provides that the Port Authority may take back portions of the premises needed to form at least a three-gate expansion of Satellite A-1. This expansion would have to be completed by July 30, 2004.

**b) Gate Utilization Assessment for 2001**

Pursuant to Master Airline Lease provisions related to facility termination and forced accommodation, the gate utilization assessment for 2001 was based on data published in the Official Airline Guide for the two weeks including February 15, 2000 and August 15, 2000. For each of these weeks, the total daily departing revenue seats were determined for each Master Airline including all sub-tenant and handled-carrier activity. These departing seats were then compared to the relevant airline utilization requirement.

In addition to the assessment of each airline's average daily departing revenue seats as compared to its lease requirement, the Gate Utilization Assessment for 2001 included an assessment of the average daily departures of each airline based on the OAG data set. The revenue seats and departures of each airline were converted to per gate ratios so that they could be compared between airlines. This resulted in a utilization assessment

methodology that could also be used for the purpose of administering the Requesting Airline provision discussed above. The average daily departures and departing revenue seats, lease requirements and per gate ratios of each Master Airline are shown in Tables 1 and 2 on the following pages.

The conclusions resulting from the Gate Utilization Assessment for 2001 were that US Airways, United Airlines and Air Canada made the least efficient use of the domestic gates at EWR in terms of average daily *departing revenue seats* per gate. TWA and Delta made the most efficient use of the gates in the time period assessed. American and Continental (including the Continental Express operations) experienced utilization levels approximating the average domestic utilization experienced at the Airport. However, American was not meeting the utilization requirement established in its lease. All other airlines, however, did meet their respective requirements. Northwest Airlines utilization was slightly above average<sup>1</sup>.

The additional analysis of average daily *aircraft departures* per gate permitted the consideration of service frequency and equipment type variances in actions taken by the Port Authority to implement the Competition Plan. The conclusions reached in terms of average daily departures were that United, American and Air Canada made the least efficient use of gates. US Airways, due to its express operations at EWR, made the most efficient use, followed by Delta, TWA and Northwest.

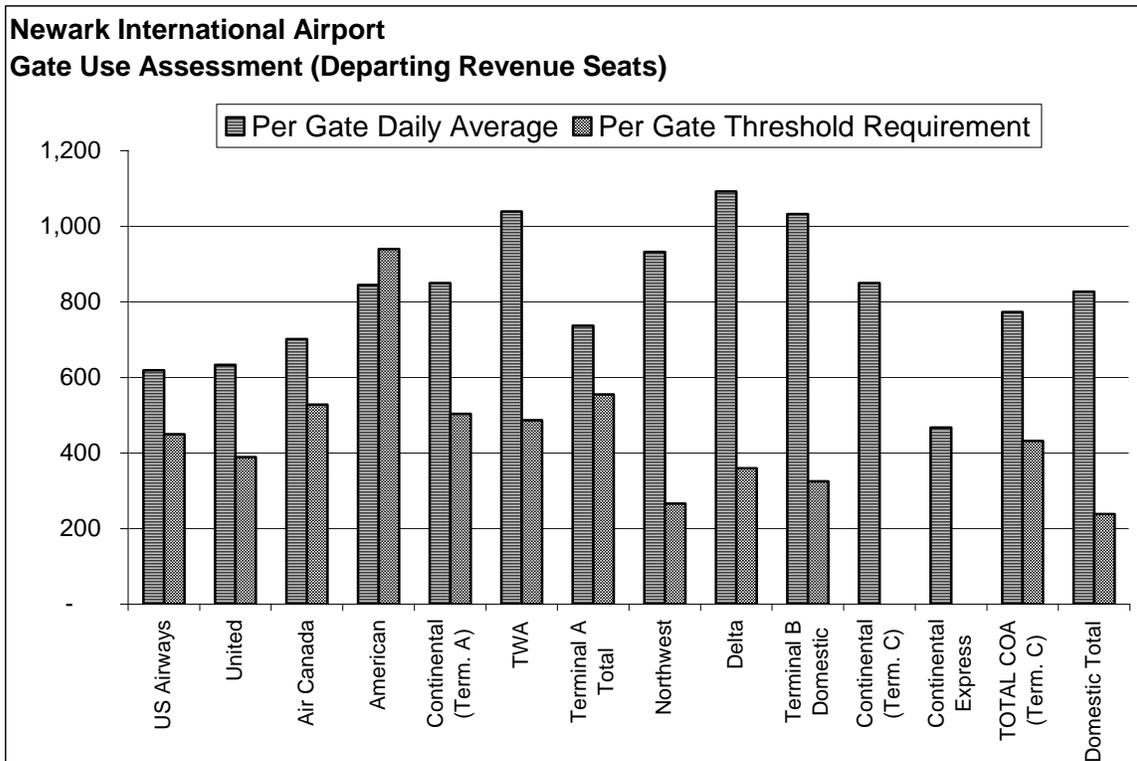
In considering the results of the departing revenue seats, departures and per gate analyses included in the Gate Utilization Assessment for 2001 it became clear that TWA and Delta Airlines facilities were not candidates for enhanced use in pursuit of the Competition Plan objectives. However, Air Canada and United facilities were comparatively underutilized, yet meeting the use requirements established in the lease. While American experienced departing revenue seats that approximated the Airport average, it was not meeting its utilization requirement and its operations were comparatively low in terms of daily departures per gate. US Airways experienced low utilization in terms of seats, and very high utilization in terms of departures.

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<sup>1</sup> Airline notifications concerning gate utilization and the Competition Plan are included in Appendix A and discussed in later sections of this Competition Plan Update.

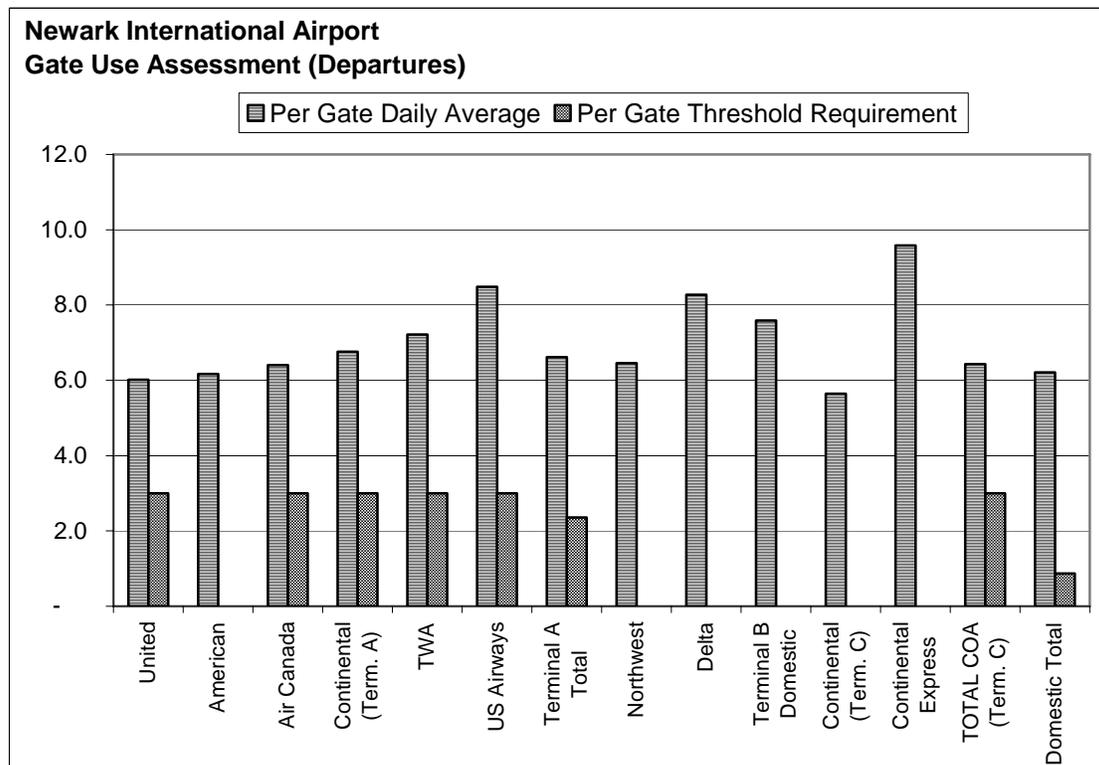
**Table 1**  
**Newark International Airport**  
**2001 Assessment of Gate Use (Revenue Seats)**

Term.	Master Lessee	Departing Revenue Seats			60% Schedule Threshold Requirement	Gates	Per Gate Ratios	
		Based on OAG Data		Daily Average			Daily Average	Threshold
		Feb-00	Aug-00					
a3	US Airways	15,808	18,875	2,477	1,800	4	619	450
a1	United	41,903	37,862	5,698	3,499	9	633	389
a2	Air Canada	13,715	15,757	2,105	1,584	3	702	528
a3	American	35,229	35,719	5,068	5,640	6	845	940
a2	Continental (Term. A)	30,528	28,931	4,247	2,520	5	849	504
a2	TWA	7,776	6,768	1,039	487	1	1,039	487
	Terminal A Total	144,959	143,912	20,634	15,530	28	737	555
b1	Northwest	18,614	20,549	2,797	799	3	932	266
b1	Delta	38,219	38,265	5,463	1,800	5	1,093	360
	Terminal B Domestic	56,833	58,814	8,260	2,599	8	1,033	325
c	Continental (Term. C)	231,998	243,601	33,971	-	40	849	-
c	Continental Express	32,066	33,386	4,675	-	10	468	-
c	TOTAL COA (Term. C)	264,064	276,987	38,647	21,600	50	773	432
Dom.	Domestic Total	433,790	446,327	62,865	18,129	76	827	239



**Table 2**  
**Newark International Airport**  
**2001 Assessment of Gate Use (Departures)**

Term.	Master Lessee	Aircraft Departures			Operations Requirement	Gates	Per Gate Ratios	
		Based on OAG Data		Daily Average			Daily Average	Threshold
		Feb-00	Aug-00					
a1	United	407	351	54	27	9	6.0	3.0
a3	American	258	260	37	-	6	6.2	-
a2	Air Canada	124	145	19	9	3	6.4	3.0
a2	Continental (Term. A)	239	234	34	15	5	6.8	3.0
a2	TWA	54	47	7	3	1	7.2	3.0
a3	US Airways	217	258	34	12	4	8.5	3.0
	Terminal A Total	1,299	1,295	185	66	28	6.6	2.4
b1	Northwest	128	143	19	-	3	6.5	-
b1	Delta	285	294	41	-	5	8.3	-
	Terminal B Domestic	413	437	61	-	8	7.6	-
c	Continental (Term. C)	1,540	1,621	226	-	40	5.6	-
c	Continental Express	657	685	96	-	10	9.6	-
c	TOTAL COA (Term. C)	2,197	2,306	322	150	50	6.4	3.0
Dom.	Domestic Total	3,252	3,353	472	66	76	6.2	0.9



**c) Notice of Comparative Underutilization**

As a result of the Gate Utilization Assessment for 2001, United Airlines and US Airways were notified that their facilities at EWR were the least effectively utilized in comparison to the average daily departing revenue seats per gate of all Master Airlines. These notices were provided by the Port Authority on July 23, 2001 and are included in Appendix A to this Competition Plan Update. In the case of United, it was also notified that any expansion of Terminal A as contemplated in its Master Airline Lease would be occupied on a short term common or preferential use basis.

Each notice stated the Port Authority's anticipation of cooperation from the Master Airline in accommodating requesting airlines pursuant to the Requesting Airline lease provision discussed above. The background and mandates of Air 21 were stated in the notice as was the methodology used in conducting the Gate Utilization Assessment for 2001. The notice stated the Port Authority's position that it is in the public interest to have its facilities fully and most effectively utilized, and its intent to be more proactive in assisting requesting airlines at EWR.

**d) Notice of Facility Take Back**

As a result of the Gate Utilization Assessment for 2001, American Airlines and Air Canada were notified that the Port Authority intended to terminate their leases with respect to underutilized space. These notices were also provided by the Port Authority on July 23, 2001 and are included in Appendix A to this Competition Plan Update. Each notice stated the background and mandates of Air 21, the methodology used in conducting the Gate Utilization Assessment for 2001, the Port Authority's position that full and effective use of airport facilities is in the public interest, and its intent to be more proactive in assisting requesting airlines at EWR.

In the case of American Airlines, notice was provided that the utilization requirements included in the Facility Termination provision were not being met, and consequently the Port Authority was providing thirty days notice of its intent to terminate the lease (on 6 months further notice) with respect to one gate and associated ticket counter, baggage, office and support space. The Port Authority stated its intention that as of the effective date of the termination, the terminated gate and associated space would be operated on a preferential or common use basis.

In the case of Air Canada, notice was given that the Port Authority was exercising its option to terminate the lease with respect to Gate 22 and associated space effective October 1, 2001. The Port Authority stated its intention that as of the effective date of the termination, the terminated gate and associated space would be operated on a preferential or common use basis.

**e) Additional Master Airline Notices**

Continental and Northwest airlines were notified that Port Authority had conducted the assessment pursuant to applicable lease terms and determined that their facilities were underutilized in comparison to some of the other Master Airlines at the Airport. Accordingly, these Master Airlines were encouraged to accommodate additional airlines to improve utilization. These notices were provided on August 9, 2001 and are included in Appendix A to this Competition Plan Update.

In the case of Northwest Airlines, the accommodation of international departures was specifically suggested due to its location in Terminal B. The Port Authority also offered assistance in discussions with Continental in co-locating Northwest in Terminal C so that its Terminal B facilities could be converted to common use.

In the case of Continental, the Port Authority acknowledged that Continental's Global Gateway program may have impacted facility availability and utilization during the period assessed. However, the opening of its new Concourse C-3 would eliminate those impacts and the additional gate capacity may actually lower utilization depending on the addition or relocation of flights by Continental. Accordingly, the Port Authority notified Continental that, in the event its utilization remained low after the opening of Concourse C-3, it would expect Continental's cooperation in accommodating requesting airlines at the Airport, or to return one or more Continental gates in Terminal A.

**f) Notice of Facility Availability**

As a result of the Gate Utilization Assessment for 2001, America West, Air Tran Airways, Midway Airlines and Spirit Airlines were notified that the Port Authority had conducted the assessment and was making terminal facilities available pursuant to applicable lease terms. These airlines had previously expressed an interest in expanding capacity at the Airport. The notices were provided on August 13, 2001 and are included in Appendix A to this Competition Plan Update.

The Port Authority notified each airline that it had prepared its Competition Plan under Air 21 and had commenced implementation of the plan and strategy with an assessment of all Master Airline lease provisions concerning gate use requirements, requesting airlines, facility take back and forced accommodation in effect at the Airport. Each airline was also notified that an assessment of actual gate utilization among the Master Airlines had been completed and that based on the findings of this assessment, the requirements of Air 21 and pursuant to the Port Authority's strategy, it had notified certain Master Airlines that the accommodation of requesting airlines would be required and that facilities would be taken back. The Port Authority advised each airline of its anticipation that this would result in the availability of domestic gates, ticket counters and related support space at the Airport. The Port Authority requested that each airline provide its current and anticipated flight schedule, together with any plans or proposals for additional flights at the Airport, so that it may assess the most efficient occupancy and use of the facilities being made available.

### **III. Airline Response and Follow Up Activity**

The airline response to the 2001 Gate Utilization Assessment and notifications can be characterized as one of resistance on the part of the accommodating Master Airlines, and encouragement on the part of the accommodated sub-tenant and handled carriers desiring capacity for expansion.

#### **a) Notice of Comparative Underutilization**

US Airways responded to the Port Authority on August 10, 2001. The response is included in Appendix A to this Competition Plan Update. US Airways position was that they were meeting the revenue seat requirement included in their forced accommodation provision, and that enforcement of the requesting airline provision was not feasible due to the number of flights they operate. US Airways operations at EWR include a high percentage of express operations with very low seating capacity resulting in very low utilization in terms of average daily departing revenue seats, but high utilization in terms of departures. US Airways committed to use its best efforts to accommodate requesting airlines when possible within its flight schedule and to keep the Port Authority informed of any future schedule changes.

United Airlines responded with inquiries concerning the methodology used in the assessment versus the requirements of its Master Lease. It also requested a copy of the assessment for all Master Airlines and clarification of the history, requirements and process associated with the expansion. The Port Authority provided the information and clarification requested. The record of correspondence is included in Appendix A. United has verbally agreed to accommodate additional airlines on its premises. The Port Authority was in the process of referring Sun Country to United for accommodation at the time of the terrorist attacks and Sun Country's subsequent financial difficulties.

#### **b) Notice of Facility Take Back**

Notices of facility take back were provided to American Airlines because it was not meeting its utilization requirement and to Air Canada because it was experiencing comparatively low utilization and its lease included a partial termination provision that could be implemented without cause.

American Airlines initial response was that the utilization requirement included in its lease must have been misstated. The Port Authority provided American with the historic correspondence documenting the basis for American's use requirement, and its participation in setting it. The use requirement was established based on a proposed flight schedule included as part of a well-documented expansion of American Airlines leasehold from 3 to 6 gates effective January 1, 1990. American Airlines then sought to convince the Port Authority that the use requirement was too high based on its current fleet mix, that it could not be met and American should not be held to it. The Port Authority responded that the use requirement could be met with a reasonable number of turns on each gate and that American would be held to the requirement. American

submitted a plan to increase its use of the premises within the time period required in the applicable lease provision. American's plan was to relocate flights from the TWA leasehold, which would result in the use requirements of each lease being met. The plan was not implemented due to the terrorist attack and the bankruptcy of Midway Airlines (handled by American at EWR). American Airlines continues to operate below its utilization requirement, which is presently being addressed in negotiations with the airline. Midway subsequently returned to EWR and is again being accommodated by American Airlines.

The Port Authority is negotiating with American for the release of the TWA gate and associated space at EWR so that it can be converted to common use. The negotiations have not been successfully completed as of the date of this Update. A record of the correspondence between American and the Port Authority is included in Appendix A.

Air Canada responded with a plea not to proceed with the termination at all, or if that was not possible, to terminate the lease with respect to Gate 20, rather than Gate 22. Gate 22 is superior to Gate 20 in that it is a wide body gate with recently constructed hold room and jetway facilities including a new Air Canada flight information display and podium between Gates 21 and 22. The Port Authority agreed to proceed with the take back of Gate 20 rather than Gate 22 under two conditions that included controlling the operations on Gate 21 so that they do not limit the utility of Gate 20, and more flexible accommodation provisions for access to Gate 22 by other requesting airlines. Air Canada was agreeable to these terms and the take back agreement was negotiated appropriately. The Port Authority was pleased with the positive discussions with Air Canada and their recognition of the need to further the competition plan goals. A record of the correspondence between Air Canada and the Port Authority is included in Appendix A and the negotiated take back agreement is available upon request.

**c) Additional Maser Airline Notices**

Northwest Airlines responded that the Port Authority's efforts to implement the competition plan were "so far off base, it is offensive." Northwest notified the Port Authority that it was invoking the "Quiet Enjoyment" provision of its lease, and was expecting to "peacefully and quietly have and enjoy the premises free of any act or acts of the Port Authority except as expressly agreed upon." The Port Authority responded to Northwest by restating its policy to take a more active role in administering the capacity of the Airport in order to comply with the mandates of Air 21. The Port Authority further expressed its disappointment over Northwest Airlines less than cooperative stance in working with it, and reminded Northwest that it had previously been cited as being particularly hostile to new entrants in the DOT's Report on Airport Business Practices and Their Impact on Airline Competition. Northwest was advised that any airline actions that are in conflict with our Federal grant assurances and competition strategies will require the Port Authority to take corrective steps. A record of the correspondence between Northwest and the Port Authority is included in Appendix A.

Continental Airlines initially did not respond to its notice encouraging the accommodation of additional carriers. A conference call was set for September 12<sup>th</sup> with key Aviation Department leadership and Continental management to address the issue. However, due to September 11 terrorist attack the conference call did not occur and has not been rescheduled. A record of the correspondence between Continental and the Port Authority and a briefing paper prepared for the conference call is included in Appendix A.

**d) Notice of Facility Availability**

The Port Authority received very positive responses to the notices of facility availability provided to America West, Air Tran Airways, Midway Airlines and Spirit Airlines. The responses are included in Appendix A. Each airline confirmed and/or restated its requirement for additional capacity and its desire for direct arrangements with the Port Authority. Existing and in some cases proposed flight schedules were also provided. The responses were received between August 23<sup>rd</sup> and September 10<sup>th</sup> 2001 and were followed up with telephone discussions concerning the availability of common use facilities.

## **IV. Creation of Domestic Common Use Facilities**

The take back agreement with Air Canada included Gate 20 and associated hold room, jetbridge, furniture and fixtures, a baggage service office, four airline ticket counter positions, two offices at the ticket counters, an office on the passageway to flight station A-2 and two offices on the ramp level of flight station A-2. It also provided for the joint use of a baggage carousel, the baggage make up room and an employee lounge being constructed on the ramp level of the flight station. These facilities were made available to ATA (American Trans Air) and America West Airlines, two incumbent sub-tenant airlines seeking capacity to expand service.

One of the consequences of the declining traffic in the aftermath of the terrorist attacks was the decision by Spirit Airlines to discontinue service at EWR. Spirit had sub-leased Gate 20 from Air Canada and was assured that it would be granted a common use agreement by the Port Authority providing for its continued use of the gate. As a result of the loss of service by Spirit Airlines at EWR, Air Canada was left without a tenant for the gate, it faced significant declines in traffic and revenue and had been notified that the Port Authority would be terminating its lease for Gate 20 concurrent with the execution of common use agreements for future use of the gate with other airlines. In an effort not to undermine Air Canada's ability to sub-let Gate 20 and recover its rent while the take back agreement, common use agreement and procedures were being drafted and negotiated, the Port Authority committed to Air Canada that it would designate its sub-tenant as the primary common user. This position was communicated to the carriers previously given notice of facility availability that were still serving the Airport. Air Canada received a commitment from ATA to sublease the gate, and a letter agreement from America West to use the gate for five daily turns. The Port Authority designated ATA as the primary common user and also granted America West a common use agreement. The Port Authority actively worked with the carriers in resolving schedule issues. As part of this process, America West was also offered access to Gate 22 for one of its flights that conflicted with ATA. Creation of the common use gate effectively increased the capacity of each carrier at EWR by at least 50%.

The Domestic Common Use Agreement, and the Common Use Procedures, are included in Appendix B to this Competition Plan Update. The agreement grants the common airlines access to all of the non-exclusive areas of Terminal A and the Airport that are available to the Master Airlines and the right to use the common use facilities described above for a term of one year. The use provisions in the common use agreement are the same as in the Master Airline Agreement. A common use gate charge has been established for each aircraft turn around operation conducted at the common use gate. The charge is based on recovering the rental previously paid by Air Canada for the gate, plus allocated costs for utilities, maintenance and airport services, less Terminal A concession revenues cross-credited to the airlines on a per gate basis. The rate assumes seven average daily turns are conducted on the gate, and is subject to adjustment based on actual allocated costs and aircraft turns.

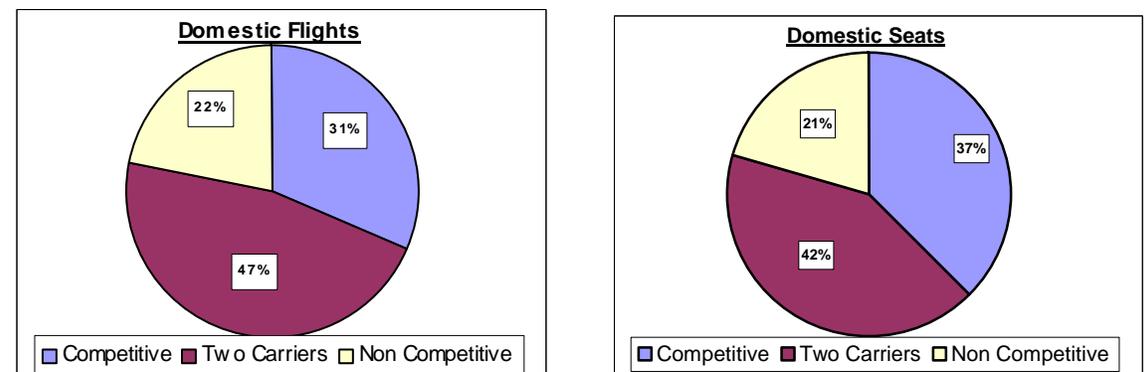
The Common Use Facilities outlined above are available primarily for domestic use. The Common Use Facility Procedures establish and address the priority of use, compliance and administration requirements, aircraft loading, unloading and servicing requirements, arrival and departure times, gate occupancy times, aircraft gate assignments, ticket counter occupancy times and assignment, and access to joint use terminal facilities and equipment. The procedures acknowledge that the demand for common use facilities at the Airport exceeds the facilities available. Accordingly, the common use airlines have agreed that the Port Authority will prioritize the use of available facilities pursuant to the mandates of Air 21 while endeavoring to convert additional exclusive use facilities to common use consistent with the Airline Competition Plan.

## V. Terminal A Expansion Task Force

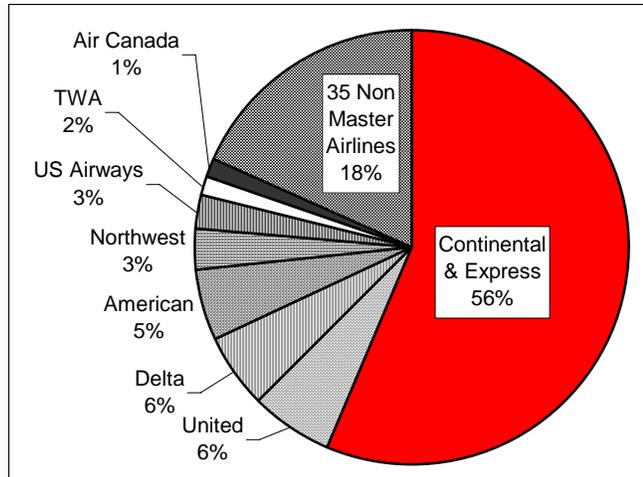
The Terminal A Expansion Task Force was established in the Spring of 2001 for the purpose of analyzing and keeping key Aviation Department leadership up to date on issues related to the future expansion of Terminal A, the last area available for significant development and expansion at the Airport. The Task Force recognized that any future expansion of the terminal must consider the airside capacity of the Airport, business issues related to the terms and conditions of the Master Airline Leases and the requirements of the Competition Plan. The Task Force established a Capacity Sub-Committee consisting of representatives from the Aviation Planning and the EWR Properties and Commercial Development departments, including those responsible for the Competition Plan, to address these issues.

The efforts of the Capacity Sub-Committee culminated in an August, 2001 draft report entitled Newark International Airport Terminal Gate Capacity and Demand Study. The Study addressed key issues related to the existing terminal facilities and operations, historical growth patterns and the long range forecast, previous runway capacity and delay studies, a terminal gate capacity analysis and planning / design parameters for alternative expansion schemes. In addition, the Study included an air route competition and market share analysis, an airline market share analysis and background documentation on the Competition Plan and the status of its implementation. The purpose of these analyses were to demonstrate to the Task Force that competition at the Airport could be enhanced with additional gates at Terminal A if the gates were operated on a short term, common use basis, and that Competition Plan implementation pending any future expansion would have to be achieved by accepting a relatively low standard of service, reflecting a high number of flights per gate per day.

The air route competition and market share analysis addressed domestic and international flights and seats offered on competitive routes (routes served by three or more carriers), non-competitive routes (those served by only one carrier) or under-served routes, a third category for routes served by two carriers. The analysis determined that thirty-one percent of the Airport's domestic flights, and thirty-seven percent of the domestic seats, are offered on the competitive routes. Eight percent of the international flights, and twelve percent of the international seats, are on the competitive routes. Accordingly, the Study concluded that competition could be significantly improved with the addition of capacity at Terminal A.



The Airline Market Share analysis addressed the air service provided by Master Airlines possessing exclusive control over gates versus the air service provided by non Master Airlines through sub-leases, handling agreements or common use agreements. This analysis determined the percentage of total revenue seats represented by the various master airlines and the non-master airlines.



Based on the high percentage of Airport service and terminal capacity represented by Master Airline exclusively controlled gates, and the high percentage of non – competitive or under-served routes at the Airport, the Study also recommended that the additional capacity at Terminal A be operated on a short-term, common use basis so as to provide the flexibility required to improve competition.

The Study also included background information on Air 21 and the EWR Competition Plan. The Study summarized the status of plan implementation at the time the Study was issued including the results of the Master Airline lease review, assessment of gate utilization, and notices of facility termination and comparative underutilization as discussed above. The Study anticipated that implementing the Competition Plan would result in the availability of domestic gate, ticket counter and support space at the Airport and better enable the Port Authority to fulfill the mandates of Air 21. Since a major expansion of Terminal A would take several years to plan and construct, the Study concluded that the mandates of Air 21 could initially be satisfied by attaining high utilization of existing facilities. However, very high utilization also represents a low standard of service in terms of the potential for increased congestion and delay. The Study estimated that thirteen average daily flights per gate were accommodated at the Airport’s domestic facilities in August 2001. Fourteen average daily flights per gate were accommodated at Terminal A. This is fairly high utilization even before new entrant and incumbent expansion is accommodated on an interim basis within existing facilities. Accordingly, the Study recommended that the Terminal A expansion program provide, as a minimum, the number of gates needed to accommodate current Terminal A operations with fairly low utilization of ten flights per gate per day. It was determined that nine additional gates would be required to achieve that objective.

A maximum gate requirement was also established based on balancing the Airport’s total gate capacity with the Airport’s runway capacity as measured in the FAA’s Airport Capacity Benchmark Report 2001. This analysis assumed future effective utilization of thirteen flights per gate per day up to the capacity for EWR of 117 flights per hour. It was determined that an additional eighteen gates would be required to balance terminal and runway capacity. In addition to the minimum and maximum gate requirements based

on these analyses, the Study included a detail analysis of gate requirements using the ADPM Daily Utilization Method and the Peak Hour Utilization Method demonstrating the need for additional gates that is under review as a result of the drop in traffic. Additional hard-stand requirements were also identified.

The Terminal Gate Capacity and Demand Study successfully crafted the arguments for expansion of Terminal A in a manner that will enhance competition at the Airport. The Study concluded with two conceptual sketches providing a planning framework for ultimately expanding the terminal. The Study is included in Appendix C to this Competition Plan Update. While the Task Force temporarily suspended its meetings after the terrorist attacks, the expansion of Terminal A remains on the Port Authority's five year capital plan and the Task Force will be resuming its activities over the next several months.

## VI. FAA Requested Update Information

In its August 28, 2001 determination that the EWR Competition Plan, as supplemented with further information, was in conformance with the requirements of Air 21, the FAA requested that certain initiatives be addressed in future updates to the plan. Specific information was requested concerning the availability of gate and related facilities, leasing and subleasing arrangements, and gate assignment policy. These initiatives are addressed below:

### a) Availability of Gate and Related Facilities

***FAA Request:*** *Report on the status of the gate utilization and monitoring program at Terminals A, B and C and the updated utilization study. Suggest at a minimum the Port Authority capture monthly gate usage statistics based on actual operational data.*

The Gate Utilization Study was updated in 2001 and provided much of the operational and statistical information used in implementing the Competition Plan. The Study updated the facility inventory and allocation among domestic and international carriers and provided use assessments based on the Official Airline Guide, and actual operational data collected through the Port Authority's CATER System. The Study specifically produced the master airline lease review and utilization assessments needed to oversee compliance with lease requirements for requesting airlines, facility termination and forced accommodation as addressed previously in this Competition Plan Update. The Gate Study included specific OAG utilization assessments for the weeks of February 15 and August 15, 2000 to comply with these requirements, and actual operating data for the entire months of October 1999, March and August 2000. In addition, the Terminal Gate Capacity and Demand Study included updated use assessments and gating charts for August 2001.

The Port Authority has also notified the Master Airlines that it will be implementing a monthly process of utilization reporting and has taken the steps necessary to facilitate that process. This notification is included in Appendix A. Proposed revisions to the Airport Rules and Regulations will require any person conducting commercial activity at Port Authority air terminals to report such activity to the Port Authority pursuant to form, content, frequency and additional criteria established by the Manager. Authorization for this revision to the Rules and Regulations has yet to be approved by the Port Authority Board of Commissioners.

### b) Leasing and Subleasing Arrangements

***FAA Request:*** *First, confirm that airlines are aware that the Port Authority has adopted a new policy that no longer requires written denial so sublease access before the Port Authority will assist a requesting airline. Second, also confirm that the airlines are aware that the "necessity of the flights" is not used as a criterion in forcing accommodation of a requesting airline. Also confirm that the Port Authority will*

***consider as an important factor the benefits of increased competition by a new entrant airline for forcing accommodation of a requesting airline.***

The Port Authority has notified all Master Airlines that, pursuant to its proactive approach to capacity administration, it will no longer require written denial of a sublease before it assists requesting airlines at the Airport. It has also notified the airlines that the FAA considers the “Necessity of the Flights” criteria to be inconsistent with applicable Federal legal requirements and the criteria will not be a factor in Port Authority determinations concerning requesting airlines or forced accommodation. This notice is included in Appendix A. In addition, the Port Authority has updated its New Entrant Procedures Guide to include the New Entrant Airline Rights included in Appendix D. The rights document the procedures to follow for new entrants to gain access to Master Airline facilities or the new domestic common use facilities.

Additional FAA requests for leasing and subleasing arrangement information is addressed below:

- Incumbent Non-Master Airline Requests – As previously indicated, the Port Authority undertook a very proactive process of evaluating use requirements, notifying Master Airlines of our requirements for requesting airline accommodations and facility take back, and notifying the incumbent non-master airlines that facilities were available. The process resulted in the creation of domestic common use facilities and the assignment of additional capacity for ATA and America West. America West was proceeding to reach an agreement with United Parcel Service on the use of their ramp, but the heightened security as a result of 9/11 prevented that effort from progressing.
- New Entry Manager – The title of Manager of Leasing and New Entry Development was created to stress the importance of progressing the Competition Plan initiatives. The Manager, Donald Free, organized the effort and brought together Agency resources to ensure compliance with FAA Guidelines. However, the enormous effort and progress made these last few months was made possible by having a great number of people involved including the William DeCota, Director of Aviation, Frank DiMola, Assistant Director of Properties, Susan Baer, General Manager of EWR, Edmond Harrison, Manager of Properties for New Jersey Airports, Arthur Berg, Law Department, and Arthur Bannon, Finance Department. On a day-to-day basis a full-time consultant, Mark Daley, working in the EWR Properties Division took the lead in reviewing leases, determining where negotiating opportunities existed, preparing notices that were sent to Master Airlines, working with New Entrants, and coordinating the process of converting an exclusive use gate to common use.
- Streamlining Forced Accommodation – The Port Authority remains committed to streamlining the process reflected in the forced accommodation provision. However, recognizing that this will require negotiated revision to the master lease, the Port Authority has concluded that our efforts to fulfill the mandates of

Air 21 will be facilitated best by asserting our rights under the requesting airline provisions.

- Task Force Efforts and Alternative Financing Arrangements – As previously indicated, the Terminal A Expansion Task Force determined that any future expansion of Terminal A should be occupied on a short term preferential or common use basis in order to increase competition at the Airport. The Task Force will be resuming its efforts over the next several months and will address financing issues in the context of the Competition Plan objectives.
- Airline Service Standards – The Airline Service Standard provision states that the Master Airlines are expected to provide services consistent with generally accepted airline industry standards for airport terminals and to cooperate with the Port Authority and other airlines serving at the airport in maintaining these standards through organized airport service improvement groups. While these standards are not defined in the lease, the Port Authority views the provision as potentially offering some utility in the event that various competition plan practices that evolve at other airports are resisted at EWR.
- Credit Analysis for Security Deposit Requirements – The Port Authority requires a maximum security deposit of six months estimated rent and fees. The Credit Collections and Accounts Receivable department may reduce this requirement dependent on the airline’s financial position and payment history with the Port Authority.
- Revised Sublease Consent Process – The revised sub-lease consent process is reflected in the New Entrant Rights included in Appendix D. While the Port Authority has not consented to a Master Airline sub-lease since approval of the Competition Plan, the process includes approval of sub-lease termination and reporting and monitoring of sub-lease fees.

**c) Gate Assignment Policy**

The Port Authority successfully recaptured a gate from Air Canada, converted it to common use and assigned capacity to ATA and America West through a newly created common use agreement for EWR. The common use agreement is included in Appendix B. The agreement includes (in its Appendix A) specific provisions concerning the recapture of gates and priority of use consistent with the mandates of Air 21. The Port Authority’s policy is to accommodate all airlines, but in the event of an absolute conflict where an airline could not be accommodated we would use the criteria of competitive airline services as a last resort. The provision is recited below:

“The Port Authority and Airline acknowledge that the demand for common use facilities at the Airport exceeds the facilities available. Accordingly, the Airline agrees that the Port Authority shall prioritize the use of available facilities while endeavoring to convert additional exclusive use facilities to common use consistent with the Airline Competition Plan.

The Common Use Facility Procedures established herein are intended to maximize opportunities for expansion by incumbent carriers and new entrant access to the Airport consistent with the mandates of Air 21. Access to the Common Use Facilities described in Section II will be granted under the terms and conditions of the Common Use Airline Agreement established by the Port Authority. Common Use Airline Agreements shall be made available to domestic incumbent and new entrant airlines according to the following priorities:

- ❑ First, to incumbent sub-tenant airlines occupying the Common Use Facilities at the time of conversion from exclusive to common use provided such airline is not otherwise a Master Airline at the Airport.
- ❑ Second, to new entrant airlines establishing competitive airline services at the Airport within the spirit of the objectives of Air 21. Competitive airline services shall include, but are not limited to, establishing new service on routes historically dominated by a single carrier at the Airport with the potential effect of lowering airfares on those routes. Secondly, competitive airline services shall include, but are not limited to, establishing new services on routes historically underserved by a limited number of carriers at the Airport, or on routes not presently served at the Airport.
- ❑ Third, to incumbent subtenant airlines desiring to enter into direct arrangements with the Port Authority as a means to expand service at the Airport and as an alternative to being handled by one of the Master Airlines at the Airport.
- ❑ Fourth, to Master Airlines desiring to expand service at the Airport in the order of least to greatest total daily departing revenue seats provided that the facilities exclusively leased to the Master Airline are most fully and effectively utilized by the operations of the Master Airline in the sole opinion of the Port Authority.

In administering the foregoing Priorities of Use, the Port Authority reserves the right to offer Common Use Agreements on a first come first serve basis in the absence of higher priorities. Likewise, the Port Authority reserves the right to relocate common use airlines in the interest of Competition Plan implementation according to the established priorities. Airlines granted a Common Use Agreement by the Port Authority shall be assigned access to the Common Use Facilities pursuant to the procedures established herein.”