Newark International Airport
Airline Competition Plan

Submittal of Further Material

Submitted to:
The Federal Aviation Administration
July 6, 2001

THE PORT AUTHORITY OF NY & NJ

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July 6, 2001

Ms. Catherine M. Lang
Director, Office of Airport Planning and Programming
Federal Aviation Administration
800 Independence Avenue, S.W.
Washington, D.C. 20591

Re: Airline Competition Plan for Newark International Airport

Dear Ms. Lang:

Thank you for your review and comments on the Newark International Airport (EWR) Airline Competition Plan (Plan) as outlined in your letter of May 24, 2001. We have included the additional information you requested and addressed the issues raised. Your review assisted us in finding areas where we can further strengthen our policies as well as areas where we may not have been clear about the policies and goals contained in the initial submittal of the Plan. While the Plan noted that we have always encouraged competition at the airport, this response elaborates on our strategy to be more pro-active in dealing with new entrants.

The Port Authority is committed to making certain that competitive opportunities are provided at EWR and that all airlines have the opportunity to provide service in the New York-New Jersey metropolitan region. Our goal is to provide high quality service to our passengers that includes as much direct service at reasonable fares as we can accommodate. Some of the additional strategies for encouraging competition include initiatives such as:

- Establishing a position of New Entry Manager to provide a focus for airlines seeking to provide new services;
- Establishing a new Task Force to aggressively do due diligence, analyze and progress planning for a significant investment to expand Terminal A utilizing alternative financing arrangements;
- Moving toward the goal of changing EWR leasing agreements to short-term or common use arrangements for gates;
- Reflect new entrant airline rights in published procedures, airline leases, and revised and re-issued sublease consents;
- Require major airlines to report sublease fees in comparison to the cost of facilities and services provided;
- Monitor gate use requirements and make gate utilization information available;
- Aggressively capitalize on opportunities for facility take back and forced accommodation; and
- Change certain lease provisions to entry such as the 30-day notice of the six-month notice of when 60 percent utilization requirements are triggered.

It is the Port Authority's intention to enhance airline competition at EWR consistent with the mandates of AIR-21, thus providing improved service and lower airfares for our customers. We believe the strategies outlined above and discussed in greater detail in the attachment will further our efforts to improve the competitive environment at EWR. The Plan states its commitment to the goal of making all of its airport facilities available on a reasonable basis to all carriers wishing to use them, and we have provided some very pragmatic long-term and short-term steps to achieve that objective. The short-term strategies include capitalizing on negotiating opportunities to modify lease provisions to make it easier for new entrants to obtain gates and services and being more proactive in administering EWR's capacity. The long-term strategies include expanding terminal capacity through financing mechanisms that will enhance competition such as PFC or other non-airline funding for further terminal expansion.

The Port Authority will take an aggressive, but thoughtful approach to changing policies and implementing major changes as the EWR runways, taxiways, terminals and airspace are some of the most heavily used in the nation, if not the world. We believe there are areas where the unique issues facing us in this densely populated region needs to be recognized and that congestion here not only impacts passengers destined for this region, but can potentially impact air travelers throughout the nation. We brought up the issue of capacity and delays at all of our airports not to divert attention from our focus on EWR competition, but to highlight some of the problems we face in providing additional service.

Any new entrant offering low fare service needs to efficiently utilize aircraft and an airport's degree of congestion will directly impact on that success. The relatively uncongested nature of John F. Kennedy International Airport (JFK) is one of the prime reasons JetBlue selected it as a hub for the initiation of that new entrant's low fare service. JFK represents a significant opportunity as the least congested of the Port Authority commercial aviation facilities and the airport with the most capacity at its terminals. Further, the introduction of AirTrain service at EWR this year and JFK about one-year later will allow rail/monorail service connections from anywhere in the New York/New Jersey metropolitan region to the terminals at both airports. The introduction of rail access will allow passengers searching for the lowest fare to access any of the Port Authority facilities quicker and easier than at any time in the past.

Please be assured that our focus is to improve the competitive environment at EWR in a way that truly benefits our passengers. We would be pleased to discuss our efforts further or address any additional questions you might have. We look forward to working together to improve service for the traveling public in our region.

Sincerely,

William R. DeCota
Director
Aviation Department

cc: A. Berg, S. Baer, F. DiMola, S. Friedman, E. Butcher (letter only)

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ATTACHMENT A – EWR MASTER AIRLINE LEASE

The Master Lease Agreements for both American Airlines, Inc. and Air Canada, Inc. are enclosed. Air Canada's lease includes the subuse agreement with Spirit Airlines. Both Air Canada and Spirit agreements are among the more recent leases in Terminal A.

Introduction

The Port Authority of New York and New Jersey is pleased to submit further material related to its Competition Plan for Newark International Airport (EWR) prepared pursuant to The Wendell H. Ford Aviation Investment and Reform Act for the 21st Century, Pub. L. 106-181, Section 155. The further material submitted is in response to the various requests for additional information and clarification of our efforts to enhance competition as requested in the Federal Aviation Administration (FAA) correspondence to the Port Authority dated May 24, 2001.

The Port Authority's Competition Plan is intended to demonstrate how it will enhance its efforts to provide new-entrant access and expansion by incumbent carriers at EWR. Our goal is to provide as much service as possible for all carriers on reasonable terms without unjust discrimination. We acknowledge the statutory finding that major airports must be available on a reasonable basis to all carriers wishing to serve those airports. This goal is consistent with our fundamental mission to provide the best service possible to the traveling public. As expressed by the FAA in its May 24, 2001 letter, this includes the Port Authority's obligation to arrange for accommodation of new entrants or expanding carriers irrespective of the lease terms in effect at EWR.

Recognizing that the successful business practices employed in the past in the development of EWR need to be modified to encourage more competition, our Airline Competition Strategy is designed to overcome and change those business practices in the future. The strategy, outlined in the plan and discussed more fully in this Submittal of Further Material, includes capitalizing on negotiating opportunities to revise lease provisions, being more proactive in administering capacity utilization, employing different business practices for new facility development and continuing to pursue the airport system concept which is designed to enhance service in the region.

The system concept is not intended to hinder new entry or expanded service at EWR. It simply recognizes the Port Authority's role and mission in the region, our view of the region as a single market served by multiple airports with evolving roles, and is intended to consider the availability of airport capacity in the placement of new service. Its goal is to provide the best service possible to the traveling public. In actuality, the concept fostered the historic growth experienced at EWR, and may also produce negotiating opportunities to implement our pro competitive goals at EWR.

In the following pages, the Port Authority has responded to the various issues raised by the FAA in its May 24, 2001 letter. Additional information is provided in the order requested beginning on page three of the FAA's letter except that the master airline lease is included as Attachment A. We also intend to address in future updates of the Competition Plan the other longer term issues and concerns outlined beginning on page six of the letter.

Many of the points raised in the FAA letter relate to the Port Authority's procedures and policies on administering the capacity at EWR including gate use monitoring and airline

communications, lease provisions addressing utilization requirements, sublease monitoring and dispute resolution. Since the Port Authority submitted its Competition Plan, it has acted on its strategy to be more proactive in capacity administration by undertaking a more comprehensive update to the Aircraft Gate and Ticket Counter Utilization Study that provided much of the background information included in the Competition Plan. The gate study update is an important milestone, identifying specific actions that can be undertaken to improve competition at EWR. The Port Authority intends to monitor utilization more aggressively than in the past so that the potential for additional air service is known sooner.

Based on the findings of the initial gate study, the update included a detailed examination of all master airline leases, supplements and amendments to identify all provisions and requirements for facility utilization, airline accommodation and lease termination. It also included an assessment of current utilization based on applicable lease terms and conditions, and of the available, accessible capacity for new entrants. The updated assessment has been completed based on year 2000 operational statistics reflected in the Official Airline Guide and in the Port Authority's CATER system.

The Port Authority is now progressing this part of its strategy to the implementation phase, which includes disseminating notifications and information to the appropriate incumbent and potential new entrant airlines with a view toward facility take back and/or forced accommodation as the case may be. Continuing the implementation of this strategy will also involve the development of new and revised policies and procedures as discussed below in response to each request for further information.

1.0 AVAILABILITY OF GATE AND RELATED FACILITIES

1.1 "Please describe the circumstances and results of all requests for new or expanded gate access at EWR within the last 12 months"

Section 5.1.10 of our Competition Plan (beginning on page 22) included such information for Canadian Air International, Canadian Regional Airlines, Piedmont Airlines, National Airlines, Air Tran, Canada 3000 and Egypt Air, all of which were accommodated in accordance with the schedule requested by the airlines. Since the EWR Competition Plan was submitted in December 2000 requests have been received from American Airlines, Spirit, AirTran, America West, American Eagle, Alitalia and, most recently, Midwest Express and Midway.

- American Eagle requested new service and was accommodated on American Airline's gates.
- Spirit currently subleases a gate from Air Canada for its five operations per day. Spirit has requested its own gate. Should the gate it presently leases from Air Canada be taken over by the Port Authority it would be held by the Port Authority as a common use gate for Spirit and others. Spirit currently has five flights per day.
- America West had met with the Port Authority and requested to implement an expanded operation by among other things using a hardstand location at the United Parcel Service ramp. America West proposed the use of buses to transport passengers from the terminal to the remote hardstand. The Port Authority requested additional information on how America West would address level of service and safety issues. The Port Authority has not yet received a response from America West.
- On April 20, 2001, AirTran, which leases a gate from United, requested its own gate.
- Alitalia requested service from the International Facility. Space was not available at the time requested and therefore, the Port Authority worked with Continental Airlines that had an operation at a similar time. Continental changed their schedule to allow Alitalia to operate.
- Midwest Express currently subleases ticket counter space from Delta and may be asked to relocate their tickets counters by Delta who will be accommodating ATA and Sunjet beginning this summer. The Port Authority is working with Midwest Express on alternate locations for their ticket counters. The Port Authority has also told Delta that under no circumstance could Midwest Express be forced to relocate their ticket counters until alternative arrangements have been made.
- Midway Airlines is currently operating out of American Airlines space in Terminal A. Midway has requested its own gate and associated facilities. The request is being reviewed.

1.2 "Please explain what steps the Port Authority would take to accommodate a carriers request for facilities in a situation where unused exclusive-use space was present, but the forced accommodation provisions of the EWR leases were not applicable and construction of a gate by the requesting carrier was not a practicable alternative."

Each of the master airline leases at Newark includes a requesting airline provision granting the Port Authority the right to make final determinations concerning the accommodation of new entrants. These provisions exist in addition to the termination /forced accommodation provisions triggered by the 60 percent drop in seats or three operations. In the event that unused exclusive use space were present, but the forced accommodation or facility termination provisions were not triggered, the Port Authority would enforce its requesting airline provision in order to provide for the accommodation.

The Port Authority's requesting airline provision provides that in furtherance of the public interest of having the premises fully and most effectively utilized, the Master Airline lessees are required to use their best efforts to fulfill requests from non Master Airline lessees to be accommodated at Master Airline lessee's premises. If the Master Airline lessee fails to accommodate the requesting airline, the Port Authority makes the determination to override that decision to force the accommodation of the requesting airline. In making its determination, the provisions provide that the Port Authority will consider the existing utilization of the premises, a bona fide utilization plan to be implemented within 12 months, the benefits of or necessity for the proposed service, compatibility of the operating practices and equipment of the requesting airline, and need for labor harmony. Additionally, based on the AIR-21 legislation the Port Authority would consider whether the proposed service would provide new competition.

1.3 "Please explain any plans of the Port Authority for Construction of gates that may be available for new entrants and for making gates available for new entrants."

The FAA has stated that it is concerned, "with the Port Authority's reliance on private investment for gates." The Port Authority recognizes the FAA's concerns and has assembled a Task Force that is actively progressing planning for a significant investment to expand Terminal A and add up to ten new gates. The Task Force is charged with developing financing alternatives and a leasing strategy for the expansion of the Terminal so that the additional gates are designated as common use or short-term gates primarily for new entrants as well as for existing airlines looking to expand operations. The first preference for distribution of the additional facilities, including associated space such as office, would be given to new entrants.

While the expansion plans are actively progressing the Port Authority recognizes that capital investment of this type can take a significant period of time to realize. Therefore, the Port Authority is also completing an update of the gate utilization study to ensure that EWR facilities are being used efficiently. The early results of the utilization study show

that an airline has dropped to less than 60 percent of the base year that triggers the termination provision in their lease. The lease provisions require the Port Authority to provide 30-days notice that it will be issuing a six-month notice of termination. The airline would then have a 90-day period in which to submit a plan and commence corrective action. Should this not happen the Port Authority can terminate the airline's lease for one or more gates. The Port Authority will actively seek to push the airlines to respond and voluntarily provide gates in a shorter period of time using if necessary the requesting airline provision in the lease.

1.4 "Please explain the circumstances for the Port Authority's recapture of these [United's] underused gates and the prospects for a similar event to occur for gates to be available for domestic use by a new entrant. Was any consideration given to making the recaptured gates available on a preferential – or common – use basis, in lieu of exclusive-use with forced accommodation?"

The recapturing of United's gates was an example of the Port Authority actively working to ensure that its facilities are efficiently used. The 1999 Newark International Airport Aircraft Gate and Ticket Counter Utilization Study identified the United gates as the least efficiently utilized at the Airport and supported a series of planned reallocations associated with the Terminal A rehabilitation, and Terminal C expansion projects. Prior to the recapture, United Airlines leased 15 gates in Terminal A under a long-term lease expiring in 2018. Six of United's gates were sublet to Continental who also handled Air Canada, Spirit and Sunjet. United was also entitled to continue to use those Continental sublet gates. One additional United gate was sublet to US Airways. The reallocation agreed to by the Port Authority involved United terminating its lease of seven gates.

As part of those negotiations Continental, who directly leased three gates in Terminal A from the Port Authority in addition to the six it subleased from United, was provided five gates. Therefore, Continental transitioned to leasing five gates in Terminal A from the nine gates it had previously controlled.

US Airways was directly leasing two additional gates from the Port Authority where it had previously sublet one gate from United. The gates for both Continental and US Airways were leased pursuant to each airlines' master airline lease.

Additional factors underlying the reallocation and relocation of Terminal A airlines included the need for additional Port Authority–controlled gates. Three gates were leased to Air Canada on a month to month periodical tenancy not to extend beyond December 31, 2003. Either party may terminate the lease with respect to one gate, hold room and associated support space on 60 days notice without cause. The space terminated must be sufficient, in the Port Authority's opinion, to provide for a complete operation by another scheduled airline. In addition to recapturing three gates under long-term lease through 2018, and converting them to a periodical tenancy with beneficial termination provisions, the Port Authority required Air Canada to accommodate Spirit Airlines on one of its gates. The Port Authority is reviewing the need to take back the Air Canada gate that is

presently subleased to Spirit to operate this as a common-use domestic gate. Spirit would continue its use for the four to five flights per day should this occur.

Another beneficial aspect of the Terminal A reallocation was the requirement that United Airlines surrender portions of its premises needed in the future by the Port Authority to construct a minimum three gate expansion of Terminal A including related terminal and baggage handling facilities. The agreement with United anticipates that the expansion would be completed by July 30, 2004.

1.5 "What steps has the Port Authority taken to reduce the amount of time needed to gain access, monitor gate utilization, and improve communication with carriers wanting gate space?"

This question relates to EWR Competition Plan section 5.1.10, on page 23 that states, "The length of time between the request and when the carrier was accommodated ranged from a few months to up to a year depending on the airline requirements." The Competition Plan also stated that, "Each of these seven airlines [that had requested access to Newark International Airport] had commenced flight activity at the Airport on the date requested." Therefore, the range in time was due not to Port Authority delay, but rather was based on when the airlines asked to be accommodated.

The Port Authority recognizes the need to make certain its facilities are efficiently used and had an EWR Gate Utilization Study prepared in 1999 and is in the process of completing an update of this study. It is the Port Authority's intention to update the Utilization Study on a regular basis by either requiring the airlines through the EWR Airport Rules and Regulations to submit gate utilization statistics monthly and/or have annual updates prepared by a consultant. The Studies identify when forced accommodation provisions are triggered as well as assisting in targeting gates that can be required to handle flights of other airlines.

The Port Authority acknowledges new entrant carrier frustration over the process of acquiring access to terminal facilities through the master airline lessees. The process is intended to accommodate new entry, airline competition and expansion, not to impede it. But the Port Authority is consensitive to those concerns and is progressing a series of initiatives to alleviate them. These initiatives include in addition to those previously mentioned:

- Appointing a New Entry Manager to act as an ombudsman for new entrants and be responsible for coordinating and effectuating requests for access to our facilities. This Port Authority staff person would be the first point of contact with new entrants requesting new or expanded service and be responsible for making certain the new entrants are accommodated by locating space either at the master airlines' gates or the Port Authority common use gates. The Manager would also be responsible for ensuring that sublease fees are non-discriminatory and reasonable; and

- Use the monthly Station Manager's meetings, that all EWR airlines are invited to attend, as open meetings for the exchange of information between Airport management and the airlines. The agenda will include an announcement of any gates that are becoming available as well as any requests from new entrants seeking to start or expand service.

1.6 "Do your records indicate if a [an America West] request exists and if so, what action was taken on America West's request?"

This question relates to the Port Authority's accommodation of entrant America West via a sub-lease of gates. America West has operated at Newark International Airport for 10 years. They were initially handled by Northwest Airlines in Terminal B effective 6/1/1990. Effective October 1, 1994, they were handled by their code-share/alliance partner Continental Airlines in Terminal C, and later relocated to Terminal A continuing as a sub-tenant to Continental. America West has discussed, and recently written, the Port Authority on its frustrations as a sub-tenant and its desire to expand service.

America West suggested making use of the United Parcel Service (UPS) ramp. This would be a remote hard-stand location whereby passengers would be transported to the ramp with bus service from Terminal A. The Port Authority had a number of meetings with America West and raised concerns related to passenger service and safety and requested that America West address these issues. Also in order to accommodate America West and other airlines looking for expanded facilities the Port Authority may need to reclaim a portion of that same UPS ramp as well as other space in that area for a Terminal A expansion.

The initiatives being progressed in response to this specific situation, which also may be employed Airport-wide, include the following:

- Completion of the Gate Study Update and identification of target areas for new entry and service expansion;

- Construction of additional common use gates at the Airport for domestic airline use;

- Revised Port Authority sub-lease consent process to include such concepts as:
  - Requiring that termination of sub-leases be approved by the Port Authority;
  - More closely monitoring the sub-lease fee and approval process; and
  - Formulation of a dispute resolution process.

It should be noted that all master airline leases have been supplemented to provide a clause concerning airline service standards. This clause requires the airlines to provide services in a manner consistent with generally accepted airline industry standards for airport terminals and to cooperate with the Port Authority and other airlines serving the

Airport in maintaining standards through organized airport service improvement groups. The Port Authority would take a broad view of this clause in establishing and enforcing service standards including those provided between airlines.

1.7 "Please explain the justification for the 60 percent minimum use or lose / share requirement, as well as the three daily minimum operation requirement."

The three daily minimum operation requirement was introduced in 1998 together with the forced accommodation provision. It was based on staff discussions and airline negotiations. The history associated with the 60 percent use it or lose it requirement is summarized below.

The original master leases were negotiated from 1968 to 1970 in connection with the construction of Terminals A and B. At that time, passenger demand at Newark was very low. However, it was recognized that subsequent to the making of those agreements, new entry requests might be received. Accordingly, the Port Authority reserved the right to allocate, from original master airline's with at least three gates, by sublease, one gate and associated space to the requesting airlines. If no space was available, then the Port Authority could require a master airline with three or more gate positions to sublease to the requesting airline in the order of the lowest gate utilization (a defined formula in the lease). No master airline lessee was required to sublet more than one gate until all other master airlines with three or more gates had sublet one. The ratio historically established was $2/3^{rd}$ space retained for $1/3^{rd}$ sublet. The provision provided for the eventuality that all gates were under lease and possible sublease without further requirement for airline accommodation based on gate utilization.

The minimum 60 percent use it or lose concept along with the requesting airline provision was initially introduced in 1984 with the American and Northwest Airlines leases. The two provisions replaced the above stated rights to force subleasing arrangements. However, the more stringent use it or lose it provision was not to be exercised by the Port Authority until all other master airlines had agreed to it. While numerous new entrants were accommodated pursuant to the requesting airline provisions and negotiations, all airlines did not agree to the use it or lose it provision until 1995 with negotiated supplemental agreements that also provided for construction of the airport monorail system and extension of the leases to 2018.

In view of the strong demand presently for facilities at EWR it is recognized that the 60 percent use it or lose it provision, rooted in negotiations based on Airport demand experienced between 1970 and 1984, is outdated. Consequently, the Port Authority considers revisions to such provisions as an important objective in capitalizing on negotiating opportunities with the airlines in the future.

1.8 "Please also explain whether the Port Authority will accommodate a new entrant on a gate that is being used for the minimum daily operations and what the Port Authority's procedures are for such accommodation."

The Port Authority would accommodate a new entrant on a gate that is being used for the minimum daily operations by utilizing the Requesting Airline Provision included in all master airline leases. The requesting airline provision in the leases allows the Port Authority to require an incumbent carrier accommodate another airline.

The procedures being formulated for such accommodation in response to new entrant issues include appointment of a New Entry Manager, an expanded role for the Station Manager's meeting including a discussion of utilization rates, and requiring airlines to report on a monthly basis revenue seats and aircraft operations.

2.0 LEASING AND SUBLEASING ARRANGEMENTS

2.1 "How does the Port Authority monitor sublease arrangements to ensure that fees are reasonable, non discriminatory, and based on a pro-rata recovery of the lessee's costs? What policies, if any, does the Port Authority have regarding the inclusion of overhead or administrative charges in sublease rates or handling fees?"

Each of the master airline leases at Newark includes a requesting airline provision granting the Port Authority the right to make final determinations concerning the accommodation of new entrants. Each of the leases also includes either a forced accommodation or facility termination provision triggered by utilization requirements. Sublease fees may result from application of the requesting airline or forced accommodation provision[1].

The Port Authority's requesting airline provision provides that any resulting accommodation agreement will be subject to Port Authority consent to be granted in a Consent Agreement developed by the Port Authority and signed by the Port Authority, master lessee and requesting airline. The forced accommodation provision also provides that any resulting accommodation agreement is subject to a Port Authority Consent Agreement. In addition to stating the accommodated airline's right to perform required services, including in-flight meals, fuel and ramp services, themselves or through authorized organizations, the forced accommodation provision provides that all sublease and handling fees be reasonable, non-discriminatory and based on pro-rata recovery of the cost of operating and maintaining the premises, providing services and capital amortization. The master airlines are required to maintain accurate accounting records of all transactions connected with accommodated airlines. The records are to be maintained

[1] The forced accommodation provision is in effect with TWA, Continental, United, US Airways and Air Canada. The facility termination provision is in effect with American, Northwest and Delta.

in the Port of New York District and may be examined, inspected and audited by the Port Authority. The master airline is also required to furnish to the Port Authority details and information pertaining to the accommodation agreements as the Port Authority may request.

The form of Consent Agreement used by the Port Authority in its approval of subleases and handling agreements (to be signed by the accommodated airline, master lessee and Port Authority) also states the accommodated airline's right to provide required services for itself or through authorized organizations. It further states that the terms and conditions of the master lease are controlling, effective and determinative in any conflicting terms with the accommodation agreements and that the accommodation agreements may not be changed without further consent of the Port Authority.

To improve subleasing practices and the monitoring of subleases the Port Authority is instituting the following initiatives:

- Forced accommodation provisions regarding sublease and handling fees, record keeping and reporting requirements will be fully reflected in the form of Port Authority Consent Agreement. This will ensure applicability of consistent terms for airlines accommodated through operation of requesting airline or forced accommodation provisions. Putting these provisions in the consent agreement will also make the new entrant more aware of their sublease rights since in most instances provisions related to restrictions on handling agreements and sublease fees are located in the Master Airline's original agreement;

- The Port Authority will provide all accommodated airlines and master lessee's with a revised Consent Agreement reflecting the above terms;

- A requirement will be included in future consent agreements limiting airline overhead or administrative charges to ten percent;

- The Port Authority will require that all master lessee's report sublease and handling fees in comparison to the cost of facilities and services provided; and

- The agenda of the Station Manager's meetings will include discussion of accommodated airline issues.

2.2 Is there a recognized forum for hearing complaints? What role, if any, do carriers serving the airport have in this forum? Is there an appeal process? How are new entrants made aware of the procedure?

The monthly EWR Station Manager's meetings are forums for hearing airline complaints and for the General Manager and her staff to provide updates on issues that range from crime statistics to redevelopment activities to runway incursions. All airlines operating at EWR are notified of the meetings and encouraged to attend. Should there be complaints

of a confidential nature they are brought to either the General Manager individually or to the Manager of Properties, New Jersey Airports, or the Assistant Director of Properties for New York and New Jersey airports. A second forum is the Airport Affairs meetings that are also used for airlines to discuss complaints. Additionally, Port Authority managers have regular and on-going formal and informal dialogue and meetings with all airlines, both incumbents and new entrants.

Finally, the Port Authority is developing a more formalized procedure for hearing complaints. This will most likely be a process where the airline would speak to the New Entrant Manager, if the issue is not resolved there it would be elevated to the Property Manager, New Jersey Airports, and if still not resolved the EWR General Manager and Assistant Director of Properties for all Port Authority airports. All airlines will formally be made aware of the process once it is finalized.

2.3 **"...the Port Authority will analyze specific requests for flight accommodation, including the 'necessity for the flights.' Please explain this criterion, particularly in light of the suggested best business practice in our Airport Practices report of encouraging access by new entrants as a means of promoting competition."**

Port Authority lease provisions concerning requesting airlines includes the consideration of the "necessity for the flights" in analyzing such requests. This criterion is one of several that are listed in the leases to be considered by the Port Authority in making its determination of whether a requesting airline should be accommodated. Although not listed in the lease the benefits of increased competition by new entrant service would also be an important factor in analyzing requests. In fact, the Port Authority's forced accommodation provision specifically provides that:

> "It is understood and agreed that the following ***shall not be a reason*** for the Lessee to refuse a sublease or handling agreement or to impose any conditions or limitations on operations in connection therewith under this Section 71: (aa) possible or potential labor disharmony with a Handled Airline or sublessee, (bb) compatibility of schedules and operations between the Lessee or another user or occupant of the premises and a Handled Airline or sublessee, or (cc) ***competitive nature of the routes, schedules or type of air transportation service to be provided*** by a Handled Airline or sublessee..."

Incorporating these forced accommodation provisions into Port Authority Consent Agreements, as previously discussed, will ensure consistency of terms applicable to airlines accommodated by operation of the requesting airline provision.

2.4 **"Please explain whether the Port Authority is considering amending this requirement [...to obtain written denials from incumbent carriers before the Port Authority will assist an airline in obtaining access]."**

The Port Authority intends to amend this requirement of the lease, but more importantly it intends immediately to take a more active role in assisting new entrants gain access to EWR facilities. The provision was included at a time when the demand for EWR facilities was not as great. The airport has changed, a shortage of facilities exists, and the Port Authority recognizes that as the operator of the Airport it has a duty to take a greater role in assisting new entrants. Additionally, it should be emphasized that in recent years, despite the lease provisions, requiring a written denial has not been a practice that has been followed. In the last few years the Port Authority has steadily increased its involvement with and assistance to new entrants.

2.5 Recognizing that EWR is part of one regional multi-airport system the letter states, "please inform us whether EWR has a policy similar to LaGuardia's regarding the prepayment of fees by new entrants and, if so, the basis for the policy."

There is no requirement at any of the Port Authority airports including EWR that requires prepayment of PFC's.

The Port Authority does require a minimum security deposit based on a credit analysis and an estimate of the airline's financial obligations to the Port Authority. Additionally, fees are due bi-weekly in advance by wire transfer. The security deposit requirement may vary dependent on the airline's credit rating. The Port Authority may agree to modify security or letter of credit terms after a successful business relationship is established. The Port Authority's policy on security and prepayment of fees is reasonable and non-discriminatory.

3.0 GATE ASSIGNMENT POLICY

3.1 "Please indicate how gate and facility availability information is acquired by tenants, non-tenants, and prospective new entrants that have expressed interest in operating at the airport."

The Port Authority works with the airlines on a continuous basis to accommodate their needs as best as possible. When an airline is seeking permission to start service at EWR the airline is requested to inform the General Manager of the airport in writing. International airlines need to be accommodated, for arriving flights, at the international arrival facility and the accommodation is dependent on flight schedules and prior airline scheduling related to IATA. Domestic carriers have all been accommodated in space at EWR with one of the master airline lessees. Since all of the EWR space is and has been occupied on a continuous basis announcements are typically not made but rather the Port Authority works with airlines seeking to start service to find accommodations. As

previously mentioned it is recognized that a forum is needed for dissemination of utilization information and gate availability and that will be included as part of the Station Manager's meetings.

Additionally, the Port Authority is in the process of updating its "Procedures Required for New Airlines Applying for Operational Status at Newark International Airport" as the primary method of disseminating information required by potential new entrants. The document includes all information a new entrant requires to initiate service at the Airport. The "New Airlines Check-List" identifies each step to undertake in order to initiate service (domestic and international). Port Authority fees, authorized suppliers of in-flight catering, fuel and aircraft maintenance services are also included. A listing of all station managers and quick reference phone numbers for key Port Authority personnel are included as well.

The procedures were last published in April 1998 and are presently being updated consistent with the final version of the Airline Competition Strategy. In addition to the type of information indicated above, the updated procedures will:

- Identify the New Entrant Manager and Port Authority commitment to provide reasonable access;
- Document master airline exclusive and common gate utilization rates;
- Document master airline lease requirements concerning requesting airlines, facility termination and forced accommodation provisions; and
- Include new entrant airline rights that will be included in sub-leases and consent agreements