U.S. Department
of Transportation
**Federal Aviation
Administration**

AUG 22 2002

William R. DeCota, Director
Aviation Department
The Port Authority of NY & NJ
Port Authority Technical Center
241 Erie Street
Jersey City, NJ 07310

Dear Mr. DeCota:

Thank you for your submission of The Port Authority of New York & New Jersey Aviation Department's FY 2002 Competition Plan update for Newark International Airport (EWR) and supplemental information submitted to Federal Aviation Administration (FAA) staff by facsimile transmittal on July 3, 2002. We have reviewed the Competition Plan update and determined that it is in accordance with the requirements of section 155 of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR-21), Pub. L. 106-181, April 5, 2000. We recognize that the past year has imposed an unusual hardship and burden upon you and your staff and we appreciate your efforts in attempting to implement the requirements of AIR-21, in light of these challenges. There are some areas that we request you address in your next update to assist us in monitoring the airport's continued ability to accommodate new entry and competition.

As we indicated in our letter of January 19, 2001, annual Competition updates are required for a covered airport applying for a new passenger facility charge (PFC) or a grant to be issued under the Airport Improvement Program (AIP) in FY 2002. In Program Guidance Letter (PGL) 00-3 (May 8, 2001), the FAA addressed the information needed to be provided in Competition Plan updates on each of the applicable areas specified in section 155. On August 16, 2001 we issued guidance reminding covered airports of the requirement to have a Competition Plan update accepted by the FAA before new AIP grants or PFC approvals could be issued in FY 2002. We also reminded covered airports of the need to address the issues raised in our review letters for their FY 2001 submittals.

The September 11 terrorist attacks necessitated an immediate response to security requirements. Therefore, on October 1, 2001, we modified the August 16, 2001, guidance to indicate that we would make AIP and PFC funding decisions before May 1, 2002, regardless of the status of the Competition Plan update. Additionally, we requested that Competition Plans be filed by March 1, 2002, in order to meet the statutory requirement and to provide sufficient time for our review. The Aviation and Transportation Security Act, Pub. L. 107-71 (November 16, 2001) exempted a covered

airport from filing a Competition Plan or update for a PFC approved or grant made in FY 2002 if the fee or grant is to be used to improve security at a covered airport. We interpret this provision to apply only in cases where a PFC approval or AIP grant issued in FY 2002 will be used exclusively for improved security. Since EWR has not indicated that PFC and AIP requests in FY 2002 will be limited exclusively to security projects, it is necessary to review your update for compliance with section 155 of AIR-21.

We note that the Port Authority has accomplished several initiatives identified in your July 6, 2001, supplemental response plan to encourage competition. These accomplishments include the following:

- Creating a domestic common use gate controlled by the Port Authority as a result of the 2001 gate utilization assessment study;
- Establishing the position of New Entry Manager to assist airlines seeking to provide new services;
- Conducting a Master airline lease review as a part of the gate utilization assessment study to identify available lease provisions for the purpose of recapturing gates from exclusive-use control;
- Developing gate utilization ratios for all carriers to identify comparative gate utilization and notifying the least efficient carriers of the Port Authority's intent to recapture gates as permitted by various lease provisions;
- Submitting revised rules and regulations to require airlines to report monthly gate usage data to the Board of Commissioners;
- Informing Master lease airlines that it would no longer require a written denial of a sublease from a Master lease airline before it would assist a requesting airline in seeking gate space;
- Informing all Master lease airlines that it would no longer consider "necessity of flights" criterion in forcing accommodation of a requesting airline and that the benefits of increased competition by new entrants would be considered in forcing accommodation of requesting airlines;
- Developing Domestic Common Use Agreement and Procedures and publishing a pamphlet entitled, New Entrant Guidelines for Domestic and International Airlines (New Entrant Guidelines) for dissemination to all carriers; and
- Developing a gate assignment policy that establishes a priority order for making gates available.

We look forward to reviewing your next Plan update since it should reflect your opportunity to renegotiate the terms of the current airport use and lease agreement allowing for greater control of the airport's assets. In connection with those negotiations and the process of completing your next Plan update, there are a number of issues that we request you consider and report on in your next update. For your convenience, we have categorized our concerns and issues according to the applicable features specified in PGL 00-3.

Gate availability

Your Competition Plan update indicates that as a result of the gate utilization assessment and master lease review, the Port Authority had informed a number of master airlines of its intent to recapture under utilized gate facilities and was in the process of negotiating with master airlines at the time of the September 11 attacks.

In your next update, please report on the status of these negotiations. We are specifically interested in your efforts to recapture gates in Terminal B by relocating Northwest Airlines to Continental's Terminal C, and your review of Continental's gate utilization of Terminal A gates after the opening of Satellite C-3.

Please report on your progress in implementing the monthly reporting of gate usage and facility utilization. We understand that action is pending by the Board of Commissioners on revisions to the airport's rules and regulations that would require all airlines to report monthly activity to the Port Authority.

Leasing and subleasing arrangements

We understand that the Port Authority has created the position of New Entry Manager to assist new entrants in obtaining gates and associated space. The Plan indicates that this position has the support of and access to key decision-makers in the Port Authority to ensure compliance with the requirements of AIR-21. However, we are still unclear as to the position's role and responsibilities. Please provide a job description of the position and its direct reporting structure within the context of the Aviation Department's management structure.

The Plan update indicates that new entrants must provide a maximum security deposit of six months estimated rent and fees. These fees may be reduced depending upon the completion of the Port Authority's credit analysis. However, the New Entrant Guidelines indicates that the six-month security deposit is a minimum amount, and there is no mention of the possibility of a reduction upon determination of a good credit rating by the Port Authority. The existing policy appears to be inconsistent with the information provided in the plan. While we recognize the importance of the Port Authority being able to collect airport fees for facilities used, we are concerned that the open-ended security deposit requirement may pose a barrier to new entrants. We recommend that the Port Authority revise its credit policy and New Entrant Guidelines to be consistent with the information provided in the Plan update. We also recommend that the Port Authority consider developing and publishing standards identifying the conditions that would result in reductions in the amount of the security deposit requirement both prior to service commencement and during the airline's tenancy at the airport, if a good credit rating is established.

The Competition Plan updates indicate that the airline service standards provision (which we assume are contained in section 81 of the Master Leases) focus on a number of factors related to a passenger's overall airport experience, several of which are directly related to the carrier's operation such as courteous staff, cleanliness and gate

experience. The Plan update indicates that the standards may be useful in the future for handling resistant carriers. Please explain how the Port Authority would use these standards to handle carriers resistant to implementation of the Competition plan update.

We understand that the Port Authority elected to use the requesting airline provision of the master lease to expedite the recapture of gates in light of the fact that efforts to streamline other forced accommodation provisions would require negotiated revision to the master lease. You indicated that the Port Authority remains committed to streamlining the process. In your next plan update, please report on your continued plans to streamline the forced accommodation provisions.

The New Entrant Guidelines pamphlet indicates that Master airlines subleasing space must submit reports to the Port Authority on subleasing fees and associated costs. It appears that sections 71 and 74 of the Master Lease require such reporting in the case of Port-directed accommodation. Please describe the Port's oversight of subleasing fees and associated costs with respect to voluntary subleasing arrangements.

Gate Assignment policy

The Plan indicates that the Port Authority has taken a number of steps to communicate the need to accommodate new entrants to Master airlines by means of direct correspondence, publication of new entrant guidelines, common use agreement and procedures. Airline correspondence also indicates some resistance on the part of carriers to support new entrant access. We recommend that station manager meetings also be used as a medium for conveying the need for airline cooperation and support for the Port Authority's Competition Plan objectives.

Finally, please indicate whether the Port Authority plans to develop real time gate utilization information.

Construction of Common Use Facilities

The Plan update indicates that the Terminal A Task Force draft entitled, Newark International Airport Terminal Gate Capacity and Demand Study recommended that additional capacity at Terminal A could be provided on a short-term, common use basis to improve competition by providing a minimum of nine additional gates to accommodate at least ten flights per gate per day and would be meeting within the next several months to discuss the financial issues in the context of the Competition Plan objectives. Please provide an update in your next plan update on the Task Force's efforts to explore the use of PFC or non-airline funding for further Terminal A expansion.

Our May 24, 2001 review letter encouraged the Port Authority to post its Competition Plan submittals and the FAA's responses on the EWR web-site. In reviewing your web-site, we were unable to locate your FY 2001 plan. Please indicate whether the plan is accessible on your web-site, if so, identify its precise web address. If not, we

encourage you to promptly post your FY 2001 plan and FY 2002 update, as well as the FAA's responses, on the airport's web-site.

Further, pursuant to our authority under 49 U.S.C. sections 47107(a)(15) and 47122, we have determined that your Competition Plan is a report within the meaning of section 47107(a)(15) and AIP grant assurance No. 26. Consequently, under the terms of the assurance, the Competition Plan must be made available to the public. The posting of your plan and update in accordance with our suggestion is one method of satisfying this requirement. If you have determined not to post the Competition Plan and related documents on your web-site, please inform us within 30 days of the method you are using to make these documents publicly available to facilitate accountability to the public and air carriers and advise us for the reasons for this decision.

We look forward to reviewing the future updates to your Competition Plan. We have revised the schedule for submittal of future Competition Plan updates, effective for FY 2003. Under this new schedule, your next update shall be due 18 months after the date of approval of your FY 2002 update, i.e., the date of this letter.

As you may know, the Secretary is required to review the implementation of the Competition Plans from time-to-time to make sure each covered airport successfully implements its plan. In connection with our review, we may determine that additional contacts with, or site visits to one or more locations would be useful. We will notify you should we decide to visit EWR in connection with its Competition Plan.

Further, as part of the Secretary's review responsibility, we may be contacting you from time-to-time to review the status of the negotiations with carriers discussed in this letter. We are also available at any time for consultation should you have questions about whether a particular proposal would contribute toward achieving the objectives of the Competition Plan statute.

If you have any questions regarding this letter or the FAA's review of your plan, please contact Mr. Barry Molar, Manager, Airports Financial Assistance Division at (202) 267-3831.

Sincerely,

Original Signed by:
Catherine M. Lang

Catherine M. Lang
Director, Office of Airport
Planning and Programming

cc: ARP-1/APP-500/530/520/comp plan file/AAS-400/AGC-600/C-10/
X-60/AP0-1/200/AEA-600