



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

Office of Airport Planning
and Programming

800 Independence Ave., SW.
Washington, DC 20591

JUL 30 2013

Mr. Thomas Bosco
Interim Director, Aviation Department
The Port Authority of New York & New Jersey
225 Park Avenue South
New York, NY 10003

Dear Mr. Bosco:

Thank you for submitting the Port Authority of New York & New Jersey's (Authority) 2013 Competition Plan Update for Newark Liberty International Airport (EWR). We have reviewed your Plan Update and have 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), Public Law 106-181, April 5, 2000, codified as title 49 United States Code (U.S.C.), sections 40117(k) and 47106(f).

The EWR Competition Plan Update is required because the Authority entered into: (1) a supplemental lease extension (Agreement) with United Airlines (previously Continental Airlines) for Terminals C1 and C2 for a term of 20 years, effective April 1, 2013 and expiring March 31, 2033¹; and (2) a new lease (Agreement) with Virgin America Inc. for the letting of Terminal A, Gate A32, and associated space, for a 5-year term effective January 1, 2013 and expiring on December 31, 2018, where it currently operates 6 daily flights. The EWR 2013 Competition Plan Update states that the presence of Virgin America at EWR will add to the airport's competitive status and provide the traveling public with greater choices from your airport.

We commend the Authority for adopting the following pro-competitive policies and practices since the Authority's last Competition Plan Update, filed in 2011:

- Requiring increased utilization by United for the Terminal C1 and C2 gates;
- Entering into a short-term (five-year) preferential-use lease arrangement with Virgin America;
- Entering into discussions with Iceland Air to commence service this fall; and

¹ As always, we encourage airports to reduce or eliminate long term exclusive use leases in favor of preferential and common use leases. We encourage you to pursue this objective as soon as possible.

- Continuing discussions with incumbent carriers to add service to new destinations.

The Update also indicates the Authority plans to implement the following competitive action:

- Continue planning for a new Terminal A in order to provide an efficient and economical terminal that will provide transportation alternatives for the traveling public in a 21st century facility.

We applaud the Authority for including the ability to recover space through forced accommodation in the Virgin America Agreement (when the carrier does not meet the 60 percent gate utilization threshold) in conjunction with the six month evaluation period time frame.

We are enclosing with this letter a chart, updated by the FAA in November 2010, highlighting actions taken by airports covered by the Competition Plan requirement to reduce barriers to entry and enhance competitive access. In addition, we have distributed this product at several airport conferences in order to demonstrate the tools airport managers are using to comply with the statutory elements of the Competition Plan requirement, the competitive benefits that may be achieved through implementation of these tools, and other ancillary advantages that may be derived from these tools. This chart may be of interest to you as you fully implement EWR's Competition Plan.

We again commend you for the strides that you have made to promote competition at EWR. As you are aware, FAA Program Guidance Letter (PGL) 04-08 streamlined the Competition Plan process by eliminating the need for a written Competition Plan update from a covered airport whose original Competition Plan and two Plan Updates have been approved by the FAA, unless certain special conditions arise. PGL 04-08 identified the following two special conditions that would require the filing of a Competition Plan update.

- An airport files a competitive access report as required by Section 424 of Vision 100 (2003), codified as title 49 U.S.C., section 47107(s), stating it had denied one or more requests for access by an air carrier for gates or facilities within the last 6 months. Section 424 requires any medium or large hub airport that has denied a carrier's request or requests for access to file a report with the FAA describing the carrier's requests, providing an explanation as to why the requests could not be accommodated, and providing a time frame within which, if any, the airport will be able to accommodate the requests.
- An airport executes a new lease and use agreement, or significantly amends a lease and use agreement, including an amendment due to use of PFC financing for gates.

As you are aware the Authority has filed, and the FAA has approved, an initial Competition Plan and now four Plan Updates of the initial Competition Plan for EWR.

A further written Competition Plan Update will not be required unless one of the special conditions outlined above arises.

Further, the Secretary is required by section 40117(k) to review implementation of Competition Plans from time to time to verify that each covered airport implements its Plan successfully. In connection with our review, we may determine that site visits to, or teleconferences with, one or more locations would be useful. We will notify you should we decide to visit EWR in connection with its Competition Plan.

Please note that our findings here relate only to the competition plan requirements; the long-term disposition of the slots at EWR is governed by FAA Orders and our effort to establish a long-term Slot Management and Transparency rule for LaGuardia, John F. Kennedy International, and Newark Liberty International airports. Please see 78 Federal Register 28280 (May 14, 2013).

Please do not hesitate to contact me or my staff to assist you in this important endeavor. If you have any questions regarding this letter, please contact Mr. Joe Hebert, Manager, Financial Analysis and Passenger Facility Charge Branch, at (202) 267-8375.

Sincerely,

Original Signed by,
Ben DeLeon

Benito De Leon
Director, Office of Airport Planning
and Programming

Enclosure

G:\APP\APP500\APP510\competition plans\EWR Competition Plan Update 2013 includes OST Counsel and Policy
AGC ACO and APP510 edits.doc
APP-510: A. Toney: 77038: J. Hebert: 78375: kan: 73831: 07/29/13
APP-1/APP-500/APP-510/ARP/AEA-600/A. Toney