



U.S. Department
of Transportation

**Federal Aviation
Administration**

Office of Airport Planning
and Programming

800 Independence Ave., SW.
Washington, DC 20591

MAY 6 2011

Ms. Susan M. Baer
Director, Aviation Department
The Port Authority of NY & NJ
225 Park Avenue South
New York, NY 10003

Dear Ms. Baer:

Thank you for submitting the Port Authority of New York & New Jersey's (Authority)'s 2011 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), Pub. L. 106-181, April 5, 2000, codified at Title 49 U.S. Code sections 40117(k) and 47106(f).

The EWR Competition Plan Update is required because the Authority approved a change in the master lease at EWR to permit Southwest Airlines (Southwest) to assume leasehold agreements for three gates and related terminal and baggage handling facilities in Terminal A, enabling Southwest to commence operations at EWR on March 27, 2011. You provided the partial assignment and assumption of lease between United Air Lines and Southwest for Gates A 14 and A15 and associated space and the partial assignment and assumption of gate A10 in Terminal A from Continental Airlines to Southwest.¹ The EWR 2011 Competition Plan Update states that the presence of this low cost carrier will add to the airport's competitive status and provide the traveling public with greater choice from your airport.

We commend the Authority for taking the following pro-competitive policies and practices since the Authority's last Competition Plan, filed in 2004:

¹ Section 15 of the Newark Sublease Agreement dated October 8, 2009, references 14 CFR Part 152. Part 152 applies to grants issued under the Airport and Airway Development Act of 1970 (ADAP). ADAP was repealed in 1982 by the enactment of the Airport and Airway Improvement Act of 1982. Only the grant assurances and conditions in ADAP grants used to buy land for an airport continue in effect so long as the land is used as an airport. However, this continuing obligation only affects three airports, and EWR is not one of them. Thus the references to 14 CFR Part 152 can be deleted.

- Accommodating several airlines, including Iceland Express, Jet Airways, JetBlue Airways, Open Skies, Porter Airlines, Qatar Airways, Silverjet and Westjet and Southwest;
- Regularly maintaining the New Entrant Guidelines to reflect updated airport information and making this information available to new entrant and domestic incumbent airlines;
- Recovering space through forced accommodation or facility termination for new entrant or limited incumbent airlines when master lease airlines do not meet a 60 percent gate utilization threshold; and
- Monitoring real-time activity on common use gates and tracking monthly gate utilization on Terminal A gates.

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

- Continue the current Terminal B Modernization Program, which includes expansion of the lower level arrival area, the in-line baggage systems and satellite connectors, enhanced security; and improvements to roadways and drainage systems.; and
- Advance the planning of a new Terminal A.

In addition, we commend the Authority for considering improvements to airline competition in its procedures for accommodating new entrant airlines. However, we note that the Update states that a new entrant must show a written accommodation rejection from a master lease airline before the Authority provides assistance with accommodating a new entrant. We expect this process to move swiftly even if a written rejection is not forthcoming in a timely manner.

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 49 U.S.C. 47107 (s) stating it had denied one or more requests for access by an air carrier for gates or facilities within the last six 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 three 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 (including the slots transferred by Continental Air Lines to Southwest) is governed by FAA Orders and our rulemaking effort to establish a long-term congestion management rule at EWR, John F. Kennedy International and LaGuardia airports. Please see 76 Federal Register 18,618 (Apr. 4, 2011).

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,



Benito DeLeon
Director, Office of Airport Planning
and Programming

Enclosure