



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

Office of Airport Planning
and Programming

800 Independence Ave., SW.
Washington, DC 20591

MAR 4 2002

Mr. Lester W. Robinson
Wayne County Director of Airports
Detroit Metropolitan Wayne County Airport
L. C. Smith Terminal - Mezzanine
Detroit, MI 48242

Dear Mr. Robinson: *Lester*

Thank you for your submittal of the Wayne County Department of Airport's annual update of the Competition Plan for Detroit Metropolitan Wayne County Airport (DTW) dated October 2, 2001. We have reviewed your updated competition plan for the Airport and have determined that more information is necessary before we can make a final determination as to whether your plan update 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. In particular, your update did not address many of the issues we identified in our review letters for your FY 2001 competition plan and has raised some additional issues that require further elaboration for our complete understanding of your update. We request that you provide the information, as described below, within 30 days.

As we indicated in our letters of November 9, 2000, and February 14, 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 fiscal year 2002. In Program Guidance Letter (PGL) 00-3 (May 8, 2001), the Federal Aviation Administration (FAA) addressed the information needed to be provided in competition plan updates on each of the eight 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.

On October 1, 2001, in the wake of the terrorist attacks and the need to be responsive to security requirements, 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 fiscal year 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 DTW 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.

Your plan indicates the airport is implementing the following pro-competitive actions.

Opening of the Midfield Terminal (McNamara Terminal), with preferential-use gates and a gate-use monitoring program:

- Preserving 14 additional gates from Northwest Airlines' concourse C until the North Terminal Redevelopment Program is completed;
- Adopting a complaint resolution process in Northwest Airlines' preferential lease for the McNamara Terminal facilities;
- Making signatory rates available to airlines that meet a minimum level of operations; and
- Publishing the availability of McNamara Terminal gates, by letter to all potential new entrant carriers and existing carriers.

Your plan also indicates that the Airport *plans* to implement the following pro-competitive actions in the future:

- Constructing 2 additional common-use gates for new entrants and expanding incumbent carriers in connection with the North Terminal redevelopment;
- Adopting a complaint resolution process in the lease agreements for the redeveloped North Terminal;
- Accommodating growth by providing additional opportunities for low cost incremental passenger terminal expansion of 4 gates at the North Terminal and up to 24 gates at the site of the to-be-demolished Smith Terminal for a Phase II and Phase III additional passenger terminal development; and
- Modifying the rates and charges calculation methodology (in 2009) by increasing the fixed operating cost component for terminal rental rates and lowering landing fees to provide an incentive for airlines to maximize passenger activity while occupying the minimal amount of terminal space.

We commend the County for pursuing a policy of converting exclusive-use leases to preferential ones and for formulating a gate-use monitoring program. In addition, we acknowledge that the extensive terminal development and renovation effort at DTW will enable the Airport to accommodate existing air carrier operations, future growth of incumbent air carriers, and the potential initiation of service by new air carriers--something the existing terminal configuration would not allow.

However, your update did not address many of the issues that we requested be addressed in our review letters referenced above. Consequently, we are unable to accept your plan update at this time. In addition, your update has raised some additional issues that require further elaboration for our complete understanding of your update. We request that you provide the information within 30 days. First and foremost, please provide a copy of Northwest's new lease for the McNamara Terminal. We have categorized additional questions and concerns according to the applicable features specified in PGL 00-3.

Gate availability

Your 2002 update provided additional information regarding the North Terminal Reconstruction project, including the numbers of passenger loading gates to be available upon the completion of the project in fall 2005 and the types of gates to be available. However, your update did not provide specific milestones for project completion and likely timing of lease negotiations, as requested in our February 14, 2001, letter. Please provide this information in your supplemental response. In addition, we are concerned that the County intends to pursue a long-term lease arrangement for this terminal. As we indicated in our *Airport Practices* report, an airport can exert more control over its facilities and produce more airline competition at its airport with common-use or short-term preferential-use gates. We are, accordingly, concerned that the County has elected to employ a 25-year lease term, particularly given the fact that more than 75 percent of the cost of the project is financed through PFCs. Please explain the reasons for the County's decision to retain a long-term lease for these facilities. Please also explain the features of the lease that facilitate accommodation of a new entrant or expanding carrier in a timely and reasonable manner. As we indicated in our *Airport Business Practices and Their Impact on Airline Competition* report, the PFC program permits long-term, preferential-use leases only when the terms of the leases truly are preferential and not *de facto* exclusive.

Also, please provide update information on the scheduled opening of the McNamara Terminal (scheduled for January 2002 at the time the plan update was submitted) and management adoption of the gate-use monitoring policy. Please provide a copy of your gate-use monitoring policy and explain its application to all the gates at DTW.

In addition to the copy of the lease with Northwest Airlines for this facility, please describe your understanding of the scope of the preferential lease obligation and provisions regarding recapture of unused gates or requiring sharing of unused gates for purposes of accommodating a requesting carrier. We are also interested in an explanation of any lease language referencing PFC Assurance #7. This type of information was requested in our November 9, 2001, letter and has not been included in your FY 2002 update.

Your update indicated that the County negotiated with Northwest Airlines to preserve 14 Concourse C gates pending the redevelopment of the North Terminal. Please explain the terms of this negotiation.

Please explain the potential use of the Airport Development Fund for additional gates and the difference between this fund and the Airport Capital Expenditure (ACE) Account, described in your FY 2001 competition plan. Your FY 2001 competition plan indicated that expenditures from the ACE account have been governed by a majority-in-interest vote. Please update the information on amounts available under the ACE account and the Airport Development Fund and any constraints on those funds.

In addition, we continue to encourage you to approach the signatory carriers from the perspective that the County has certain rights and obligations to arrange for gate sharing on an exclusive-use lease, even prior to a new negotiated agreement, as was discussed in our *Airport Practices* report.

Please update the status of the requests by Air Tran Airways and America West for access, as indicated in your FY 2001 competition plan.

Leasing and subleasing

Our *Airport Practices* report found that entry is facilitated when airport management oversees efforts by new entrants to enter into sublease arrangements. The report also found that new entrants are more likely to be treated fairly by an air carrier tenant when the airport imposes a reasonable cap on sublease fees. An airport is obligated to make sure that the terms and conditions imposed on all the air carriers operating at the airport are reasonable.

Our November 9, 2000, letter suggested that the County prepare and make available written guidelines explaining what terms (e.g., lease rates) must be specified in a sublease agreement and what would constitute an "unfair" rate or condition under a sublease. Your update did not address this issue. Please provide information on the County's consideration of these issues and the status of any efforts to implement this suggestion.

Your update indicates that carriers meeting a threshold level of operations will qualify to pay signatory rates. Please specify the operational threshold for signatory rates and describe the differences between signatory and non-signatory rates. Your update appears to indicate the adoption of two distinct standards for signatory status. Specifically, a carrier may achieve signatory status based on a 4-year lease commitment for a carrier that leases a gate before completion of the North Terminal Redevelopment Project. However, signatory status will be granted after completion of that project only to a carrier committing to a 25-year lease. We are concerned that this diverse treatment of carriers may place a new entrant or expanding carrier at a disadvantage. Please explain the basis for this apparent disparate treatment, with particular reference to the County's obligation to provide access on reasonable terms without unjust discrimination and the requirement to make signatory status reasonably available to any air carrier that assumes obligations substantially similar to those already imposed on signatory carriers.

Gate assignment policies

Our February 14, 2001, letter suggested that the County develop plans to resolve complaints of denial of reasonable access. Your plan update indicates that complaint resolution procedures included in Northwest Airline's preferential-use lease for the McNamara Terminal will be included in all leases for the redeveloped North Terminal. Please provide a detailed description of the complaint resolution process included in the preferential-use provisions of the Northwest lease. Also, please discuss any consideration of adopting similar procedures with respect to subleasing under existing exclusive use leases.

Additionally, while your FY 2002 update indicated that you will notify all interested carriers about gate availability, you did not indicate planned adoption of gate assignment policy and protocols. We urge the County to consider adopting a fair and transparent protocol, particularly in light of the two common-use gates available and the available Concourse C gates.

Airport controls over ground-side and airside capacity

Our *Airport Practices* report found that competitive access was facilitated when airports ensured that new Majority in Interest (MII) agreements do not prevent or delay projects that could be beneficial to new entrants or smaller airlines serving their airports. Our November 9, 2000, letter encouraged the County to reconsider the language in the County's MII provisions when the airline leases are renegotiated. The plan update indicates no change in the status of the MII provisions. Please advise us of any consideration given to this issue by the County since our letter and any negotiations on the subject with carriers to date.

Finally, our November 9, 2000, and February 14, 2001, letters encouraged the County to post its competition plan submittals and the FAA's responses on the

DTW web-site. In reviewing your web-site, we were unable to access your FY 2001 plan. Please specify whether the plan is accessible on your web-site and, if so, its precise web address. To facilitate accountability to the public and air carriers we expect your FY 2001 plan and FY 2002 plan update, as well as the FAA's responses to be promptly posted on the DTW web-site.

We look forward to receiving your responses to this review letter. In this regard, please note that the FAA's ability to continue to approve new AIP grants or PFC applications for DTW after May 1, 2002, depends on our determination that annual updates to the Competition Plan also satisfy the requirements of section 155. The failure to fully respond to the concerns identified in this letter could lead to a delay in our determination that your update satisfies section 155, which could in turn delay approval of new AIP grants or new PFCs.

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,



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