



Edward H. McNamara
County Executive

April 1, 2002

Ms. Catherine M. Lang
Director, Office of Airport Planning and Programming
Federal Aviation Administration
800 Independence Ave., SW
Washington, DC 20591

Re: Response to Comments on the Airport's Competition Plan Update

Dear Ms. Lang:

Pursuant to your letter dated March 4, 2002, the Charter County of Wayne, Michigan (the "County") hereby provides the following supplemental information in response to the FAA's request for additional information and further elaboration in respect of the County's annual competition plan update for Detroit Metropolitan Wayne County Airport (the "Airport") submitted to the FAA by letter dated October 2, 2001.

Before responding, I want to take this opportunity to thank the FAA for your continuing assistance throughout the implementation of the Airport's Capital Improvement Program. The FAA's financial support through its Airport Improvement Program grants, Letter of Intent and PFC approvals has been critical to the creating of the Airport's successful program. As you know, during the recent months the Airport has commissioned a new runway (our sixth runway, as well as the fourth parallel runway at the Airport), opened the new Edward H. McNamara Terminal with 97 aircraft gates and approximately 2 million square feet of space, and opened the new South Access Road, which not only gives the Airport access from two directions but also opens an entirely different part of the Airport for future development. We are truly excited by these developments and thank you for your support.

In your March 4 letter, you requested a copy of Northwest Airlines' new lease for the McNamara Terminal. A copy is included. The negotiation of the new Airport Use Agreement and Terminal Lease (the "Use Agreement") between the County and Northwest was completed several months ago. Northwest has executed that agreement. The Airport and Northwest have been awaiting formal County Commission approval of the Use Agreement for a number of weeks.

DETROIT METROPOLITAN WAYNE COUNTY AIRPORT

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As you know, the State of Michigan Legislature recently adopted a Public Airport Authority Act (the "Act"), which was signed by Governor Engler on March 26, 2002. As of that date, the Act created an authority to manage and operate the Airport. Pursuant to the Act, the authority will acquire, succeed to and assume the exclusive right, responsibility and authority to operate and control the Airport, on the effective date of the issuance by the FAA to the authority of a certificate under part 139 of chapter 14 of the Code of Federal Regulations with respect to the Airport, and the concurrence by the FAA of the designation of the authority as a sponsor of the Airport, including the FAA's approval of the assignment of existing grant agreements to the Authority. The Airport currently is working with the FAA through the Detroit Airport District Office and the Great Lakes Regional Office to obtain the necessary approvals. While all of the Capital Improvement Program projects are important, this new governance of our Airport offers us the "mechanism" to take full advantage of these improvements to the Airport.

In light of the creation of the authority and the impending transfer of operational jurisdiction of the Airport to the authority, the Airport is in the process of reformulating the Use Agreement as an agreement between the authority and Northwest. It is intended that the authority board will approve the Use Agreement immediately upon the transfer of the Airport to the Authority. Upon receiving such approval, the agreement would be executed by the authority and Northwest and a copy of that fully executed agreement will be sent to the FAA. It will be substantively identical to the enclosed document.

The following addresses the additional questions and concerns to the first annual update to our Competition Plan raised in your March 14 letter.

Gate Availability

FAA Comment #1: *Your update did not provide specific milestones for the [North Terminal] project completion and likely timing of lease negotiations.... Please provide this information in your supplemental response.*

DTW Response: In July 2001, the County obtained Weighted Majority (i.e., similar to majority-in-interest) airline approval of the North Terminal project. All of the signatory airlines cast a positive vote for the project. Included in the request for Weighted Majority approval was a detailed description of the new rates and charges methodology for the Airport. By casting their positive vote each signatory airline agreed to the lease changes described in the request and agreed to relocate to the redeveloped North Terminal Facilities upon completion.

The new Northwest Use Agreement contains the agreed to lease provisions described in the Weighted Majority request. New Use Agreements are in the process of being prepared for all of the other signatory airlines. These agreements will replace the current agreements. The provisions will be identical to the new Northwest Use Agreement. It is

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anticipated that once the transfer of operating jurisdiction of the Airport to the new authority is completed, these new agreements will be transmitted to the other signatory airlines for execution.

On February 24, 2002, Northwest, Mesaba and their code share partners vacated all of the gates on Concourses C, D, E, F, and G. Demolition of the vacated concourses began in March 2002, and will be completed within 90 days.

It is anticipated that in May 2002 General Airport Revenue Bonds will be issued to finance the reconstruction of the North Terminal.

Design and construction of the North Terminal project will occur between 2002 and 2005.

North Terminal occupancy is anticipated to occur in late 2005.

FAA Comment #2: *Please explain the reasons for the County's decision to retain a long-term lease for [the North Terminal] 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.*

DTW Response: In 1996, in connection with the negotiation of a new lease agreement with Northwest for the new Midfield Terminal facilities, the airline and the Airport agreed that a stable long term agreement would provide the best contractual and operational environment at the Airport. It was determined at that time that with a long-term agreement in hand Northwest and the other carriers would be willing to invest in the Airport in a way that would maximize the development of the Airport and provide pro-competitive Airport facilities. The enclosed new Use Agreement with Northwest contains the same lease arrangements and term length as the agreement executed by the County and Northwest in 1996. The enclosed agreement, which replaces the 1996 agreement, only modifies the rates and charges methodology for the Midfield Terminal and the North Terminal, but retains the other lease terms that had been agreed to in 1996.

Your comment in your letter regarding our election to use a long term lease "given the fact that more than 75 percent of cost of the project is financed through PFCs" is easily explained by our decision to leverage PFCs in financing the Midfield Terminal project. By doing so, we needed the additional long term pledge of airline revenues to support the airport bonds until maturity, in order to get the maximum leverage.

As you know, all of the facilities at the Midfield Terminal are leased to Northwest on a preferential basis. The redeveloped facilities in the North Terminal also will be leased on a preferential basis. Article III.B.2 of the enclosed agreement provides the Airport with the right to require shared use of the preferential facilities. The FAA reviewed these provisions in the agreement in great detail in 1997 in connection with the Airport's PFC application for

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use of PFCs to fund the Midfield Terminal and the reconstruction of the North Terminal facilities. As you may recall, the FAA conditioned the PFC approval on the deletion from the agreement of a provision that the FAA had determined made the lease de facto exclusive and not preferential. The Airport and Northwest deleted the provision.

FAA Comment #3: *Also, please provide update information on the scheduled opening of the McNamara Terminal...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.*

DTW Response: The McNamara Terminal opened for public use on February 24, 2002. The Airport believes that this facility will enhance competition for regional, national and international air passengers. The addition of 97 aircraft gates has an immediate regional impact through the creation of significant new gate capacity for use by new entrants and existing expanding carriers. The McNamara Terminal, together with the new fourth parallel runway that opened at the Airport in December 2001, also provides the airport service region with a world-class passenger connecting facility that will compete with other hubs in the United States, particularly those in the central part of the country that currently are capacity constrained.

A draft of the Airport's gate-use monitoring policy previously was sent to the FAA for review. A copy of that policy is included with this letter. It is anticipated that the new authority will adopt this policy. The policy applies to all gates at the Airport, both in the McNamara Terminal and the North Terminal.

FAA Comment #4: *[P]lease 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.*

DTW Response: Under the preferential use provisions of the new Use Agreement referred to above, if there is no unleased airline premises at the airport, a new entrant or expanding carrier can be accommodated either by a signatory airline on a voluntary basis, or by the Airport unilaterally granting the right to the new entrant or expanding carrier to temporary or shared use of a signatory airline's preferential use premises. The Airport also has the right to set the final terms of a written agreement for the use of such space between the new entrant and the accommodating carrier. The Airport does not, however, have the right to "recapture unused gates." In other words, the Use Agreement does not contain use-it-or-lose-it provisions where a carrier preferentially leasing space has to return gates to the Airport if a certain degree of utilization is not met. While the Airport understands the usefulness of such provisions, nevertheless it is very difficult to negotiate such provisions when an Airport is attempting to secure a long-term financial commitment from an airline. Also, the Airport has been in the position of trying to convince airlines who

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have exclusive use gates leased to them under current agreements extending for another 7 years, to give up those leases in favor of preferential leases. It is understandable that under those circumstances the signatory airlines were unwilling to also agree to gate recapture provisions.

Under PFC Assurance #7, the Airport has agreed that any lease or agreement with an air carrier for a facility financed in part with PFC revenue will contain a provision permitting the Airport to terminate the lease or use agreement if the air carrier has an exclusive lease for existing facilities at the Airport and any portion of such air carrier's existing exclusive use facilities is not fully utilized and is not made available for use by potentially competing carriers. There is no language in the new Northwest Use Agreement referencing PFC Assurance #7, because as a result of its move to the McNamara Terminal, Northwest no longer has any exclusive lease for existing facilities at the Airport. Furthermore, no such language will appear in the new Use Agreements with the other signatory airlines because when these airlines lease and occupy the reconstructed North Terminal facilities, there will no longer be any exclusive use facilities in any of the terminals at the Airport.

FAA Comment #5: *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.*

DTW Response: In 1996 it was agreed that upon completion of the Midfield Terminal certain of the concourses previously occupied by Northwest (including Concourse C) would be demolished. Prior to completion of the Midfield Terminal, seeing an increased demand for terminal facilities at the Airport, the County determined that it needed additional gate facilities prior to the scheduled completion of the North Terminal project. During the negotiations in 2001 it was agreed that the demolition project would be modified so that gates C-1 through C-14 (12 gates) would not be demolished and would be available to carriers requesting use of such facilities. It was also agreed that Concourses D and F would be included in the demolition so that the area would be clear for the construction of the North Terminal.

FAA Comment #6: *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....Please update the information on amounts available under the ACE account and the Airport Development Fund and any constraints on those funds.*

DTW Response: Prior to Fiscal Year 1999 the ACE account was funded under the rate-setting methodology contained in the then-existing airline agreements, whereby the airlines made debt service coverage payments each year, and a portion of those coverage payments were deposited in the ACE account. Under the airline agreements, ACE account moneys could be used for airport capital expenditures subject to an MII vote. Deposits to the ACE account ceased in Fiscal Year 1999 when the debt service coverage requirement

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in the Airport's bond ordinance was amended, and the amended airline agreements no longer required the airlines to make annual paid-in coverage payments. There are no funds available in the ACE account for capital improvements. In place of the ACE account, the amended airline agreements created the Airport Development Fund ("ADF"), which is funded by airline payments of \$5 million per year, escalating with the producer price index beginning in 2002. The Airport is permitted to use the ADF for any lawful airport-system related purpose. Thus, the Airport retains full discretion, not subject to any airline approvals, regarding the use of this fund, and could, if it so desired, use the ADF to construct additional gates.

FAA Comment #7: *Please update the status of the requests by Air Tran Airways and America West for access, as indicated in your FY 2001 competition plan.*

DTW Response: As noted above, now that the McNamara Terminal has opened and Northwest has vacated its old facilities, the Airport has direct control over 12 additional gates remaining on Concourse C. The Airport has relocated Spirit Airlines (an expanding carrier) to four gates on Concourse C. The two gates previously occupied by Spirit on Concourse A are now available for use by other carriers, as are 4 gates on Concourse B that had been occupied by Continental Airlines, which has moved to the McNamara Terminal. America West needs two gates and will be using two of Continentals gates on Concourse B. Air Tran Airways is still considering whether or not to start service at the Airport out of one gate. No other new entrant air carriers have expressed interest in gates at the Airport at this time.

Leasing and Subleasing

FAA Comment #1: *Our November 9, 2000 letter suggested that the County prepare...written guidelines explaining what terms...must be specified in a sublease agreement and what would constitute an "unfair" rate or condition under a sublease....Please provide information on the County's consideration of these issues and the status of any efforts to implement this suggestion.*

DTW Response: The new Use Agreement provides that an airline using or sharing a signatory airline's preferential use premises would pay the signatory airline a pro rata share of the sum of the terminal rentals and any other applicable payments, fees or taxes payable to the Airport by the signatory airline with respect to the space used by the other airline. In addition, the signatory airline can require payment of additional amounts sufficient to recover its direct costs and O&M expenses for the space used, including a reasonable allocation of any capital and equipment costs for property and equipment owned by the signatory airline. The Airport will apply these provisions when reviewing sublease agreements submitted to it for review and approval, as is required by the Use Agreement.

FAA Comment #2: *Please specify the operational threshold for signatory rates and describe the differences between signatory and non-signatory rates. Please explain the basis for th[e] apparent disparate treatment [of carriers leasing a gate before and after completion of the North Terminal Redevelopment Project].*

DTW Response: Under the FAA's PGL 00-3, the subject of signatory status was not listed as an item to be considered in the development and subsequent approval of an airport's competition plan.

However, the County seeks to clarify its position and provide the FAA information on this matter.

Historically, the granting of signatory status to an airline at the Airport was a function of available gates for the airline to lease and the airline's decision to sign the standard airline lease and use agreement under which the signatory airlines provide financial security on a residual basis for the Airport's operating and debt-related expenses. This approach will continue with the new availability of additional gates since the opening of the McNamara Terminal. An airline that leases or subleases a gate at the Airport with at least 1,000 square feet of ancillary space if available and has maintained or maintains a minimum daily flight schedule of four flights per day for six months will be entitled to be a signatory carrier. Signatory rates continue to be calculated under the airline agreements, and the enclosed Use Agreement sets forth the rate calculation methodology. Both the old airline agreements and the new Use Agreements contain residual calculations of airline rates and charges. As such, signatory airlines are contractually obligated to ensure that Airport expenses, net of concession revenues and other non-airline revenue, are fully covered by the payment by the signatory airlines of terminal rentals and landing fees. The Airport charges non-signatory airlines landing fees that are 1.25 times the signatory rate.

There is no disparate treatment of new entrants or expanding carriers, in that all gate leases for currently existing terminal space will terminate when the reconstructed facilities open and the old gates are abandoned, at which time all airlines that were signatory airlines will be entitled to lease gates in the new North Terminal for a term extending to 2032.

Gate Assignment Policy

FAA Comment #1: *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.*

DTW Response: The complaint resolution referred to is contained in the preferential use provisions in Article III.B.2 of the Use Agreement, as noted above. If a new entrant or expanding carrier's space needs cannot be met by use of then unleased premises, if any,

at the Airport, the Airport will direct the airline to request such space from the signatory airlines on a voluntary basis. The signatory airlines must make reasonable efforts to accommodate these requests on their leased premises. If the new entrant or expanding carrier demonstrates to the Airport that it has contacted all the signatories and has exhausted all reasonable efforts to find reasonable accommodations, and the Airport determines that such carrier needs the requested space and the Airport is unable to provide it on a timely basis, the Airport can resolve the issue by forcing shared use of preferential use facilities. In other words, the Airport has the ability to impose a subleasing solution on the signatory airlines if the new entrant or expanding carrier and the signatory airline are unable to reach an agreement themselves.

The Airport has not considered adopting similar provisions with respect to subleasing under the remaining exclusive use leases in the current Smith Terminal. The Airport does not believe that legally it unilaterally can impose this procedure on airlines with exclusive leases. In any event, all newly leased space in the Smith Terminal will be on a preferential basis and upon completion of the reconstructed North Terminal facilities, all airline premises will be preferential and the above procedure will be available with respect to all gates at the Airport.

Please note that the construction of up to 29 gates has been approved for the first phase of the North Terminal reconstruction project. As of this date, airlines have committed to the lease of 21 of these gates, and the Airport will control two common use gates that will be available on a per-turn basis to new entrants and expanding carriers. The preliminary physical design of the North Terminal project is such that additional gates can be constructed in later phases at a very reasonable marginal cost. In addition, the Airport also has retained complete control of the Berry Terminal, which has four existing gates, and associated ticketing and baggage facilities, and can be used for domestic or international flights (including wide-body aircraft).

The Airport has adopted a protocol for the use of its gates at the International Terminal and will adopt a similar use protocol for the common use gates which will be constructed in the new North Terminal.

Airport Controls over Ground-side and Airside Capacity

FAA Comment #1: *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.*

The airline agreements in place include a Weighted Majority provision. This provision has been in the operative airline agreements since 1986. In 1996, when negotiating a new agreement with Northwest, the County raised the issue of eliminating the requirement of Weighted Majority approval of Airport capital projects. While the County obtained many

favorable provision in the new agreement (including the requirement that all the gates in the Midfield Terminal would be preferential rather than exclusive and that the airlines would fund the ADF on an unconstrained use basis), the Weighted Majority requirement continues. The 2001 negotiation with Northwest addressed only the scope of the North Terminal project and the rate methodology for the Airport. It was understood that neither the Airport nor the airlines would open the other provisions of the agreement for discussion. The Airport rightfully decided that this was acceptable in order to obtain approval for a \$400 million North Terminal reconstruction project which will provide gates requested by all interested carriers and two common use gates for new entrants and existing carriers to expand. This reconstruction will allow for additional gates if required.

As stated before, the Airport believes that the business relationship with the airlines is an excellent one. Under the agreements, the air carriers are responsible for paying the debt-related and operating expenses of the Airport. The Weighted Majority voting process allows the airlines to have some level of control over the Airport's ability to incur debt that the airlines will be required to pay. The collaborative process has worked well at the Airport, as evidenced by the Airport's Capital Improvement Program, which has resulted in significant new capacity and expansion opportunities for existing and new entrant carriers.

In addition to the Weighted Majority process for obligating the airlines to pay debt service on bonds issued for capital projects, the Airport also can finance projects without airline approval. A recent example of such a project is the expansion of Concourse A. PFC revenue paid for this project, and no Weighted Majority approval or oversight was involved. This project resulted in a six-gate facility for expanded service by lower-cost airlines serving the Airport. As discussed above, the Airport Development Fund also is available to the Airport for use for airport projects.

FAA Comment #2: *Please specify whether the [competition] plan and the annual updates to the plan are accessible on your web-site and, if so, its precise website address.*

DTW Response: Once the new Airport Authority is operating the Airport, which is estimated will occur on or about May 1, 2002, the DTW website will be reformatted to be an Airport Authority website. The Authority will put the Competition Plan and the approved annual updates on the website as well as the FAA's comments to our submittals and our responses.

The Airport appreciates the FAA's serious consideration of its first competition plan update. The Airport has endeavored to fully address the concerns identified in the FAA's March 4, 2001 letter. The Airport hopes that it has provided sufficient additional information so that the FAA is able to determine that the update satisfies the requirements of Section 155 of AIR-21 and to approve new AIP grants or PFC applications for the Airport after May 1, 2002.

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If you have any questions regarding this letter or the supplemental information contained herein, please do not hesitate to contact Mr. Robert E. Murphy, Airport General Counsel, at 734-942-3556.

Sincerely,

A handwritten signature in black ink, appearing to read "Lester W. Robinson", with a long horizontal flourish extending to the right.

Lester W. Robinson
Director of Airports

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