



U.S. Department
of Transportation
Federal Aviation
Administration

Office of Airport Planning
and Programming

800 Independence Ave., SW.
Washington, DC 20591

NOV 9 2000

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 Competition Plan for Detroit Metropolitan Wayne County Airport (DTW) dated October 1, 2000. We have reviewed your competition plan for conformity 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. However, a final determination is being withheld pending submission of further materials, as outlined below. In addition, we offer some suggestions for your consideration as you implement and update your plan.

Section 155 of AIR 21 enacted 49 U.S.C. 40117(k) and 47106(f). These provisions require the filing of a competition plan for a covered airport seeking Federal Aviation Administration (FAA) approval of a passenger facility charge (PFC) or of an airport improvement program (AIP) grant application, beginning fiscal year 2001. The Secretary will review the competition plans to ensure that they meet the statutory requirements and review their implementation from time to time to make sure that they are successfully implemented. The legislative history of the requirement states that "[t]he underlying purpose of the competition plan is for the airport to demonstrate how it will provide for new-entrant access and expansion by incumbent carriers. By forcing the airport to consider this, it would be more likely to direct its AIP and PFC money to that end." H. Rpt. 106-513. The FAA's Program Guidance Letter (PGL) 00 3, May 8, 2000, addressed eight features of an airport's business practices required by section 155 of AIR-21.

As you know, section 155 was enacted after the Department of Transportation published its *Report on Airport Business Practices and Their Impact on Airline Competition (Airport Practices report)*. That report identified a number of airport business practices that could serve as impediments to new entry or expansion of incumbent carriers at an airport and a number of best practices that airport management have followed to achieve compliance with airport sponsors'

obligation to provide access to all aeronautical users on reasonable terms without unjust discrimination.

We commend the County for pursuing a policy of converting exclusive use leases to preferential ones and formulating a gate-use monitoring program to be in place by the time the Midfield Terminal opens in December 2001. 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, additional information is required before the FAA can make a final determination regarding whether the plan conforms to the requirements of section 155. In particular, some of the information contained in your plan is not consistent with information previously provided to the FAA in other contexts, as set forth below. We request that you provide the information within 30 days. For your convenience, we have grouped the questions according to the applicable features specified in PGL 00-3.

Gate availability

The Competition Plan notes that Northwest Airlines will operate under preferential use terms when it moves to the new PFC-funded Midfield Terminal and that all gates in the new North Terminal area vacated by Northwest Airlines will be leased on a preferential basis (p. 3). Elsewhere in the plan it is noted that all domestic gates will be preferentially leased by the expiration of the Airport's current Use & Lease Agreement on January 1, 2009 (p. 5). Because all terminal facilities at DTW will be built or renovated with PFC revenues by 2008, and such gates cannot be leased on a long-term exclusive use basis, we would expect that virtually all of the gates would be leased on a non-exclusive basis well in advance of 2009. As part of the supplemental information we are requesting within 30 days, please provide a specific schedule for the phase out of all exclusive use leases at DTW. In addition, please explain why the County does not plan to provide any domestic gates on a common use basis.

The Competition Plan indicates that the Airport has not needed a formal gate-monitoring program; in that all but 12 of its current 86 terminal gates are exclusively leased. However, we note that the 12 non-exclusive use gates were financed in part by PFC's and that at least 6 of these PFC-funded gates are leased to Northwest Airlines, which also leases 53 exclusive use gates. These gates are, therefore, subject to the terms of PFC Assurance 7. In the absence of a gate-monitoring program, please describe how the County currently determines whether the County's rights to terminate Northwest's lease for PFC financed gates under Assurance 7 have been triggered and whether those rights should be exercised.

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In addition, our Airport Practices report found that airport gate monitoring of all gates informs airport management of the efficiency of gate usage and facilitates the accommodation of new entrants and incumbents wishing to expand. In view of your authority to monitor usage of exclusively leased gates, please explain your plans in this area.

We also note an apparent inconsistency between information provided in the Competition Plan and information collected previously by the FAA for the *Airport Practices* report. In particular, the Competition Plan states that the County has never had to invoke Assurance 7 to convert exclusive use gates to preferential-use gates nor has it caused such gates to become available to other users. However, during interviews for the *Airport Practices* report, the County reported that, backed by the requirements of Assurance 7, the County had successfully encouraged Northwest Airlines to share two underutilized exclusive use gates with Spirit Airlines. Please clarify in your supplemental information the County's position on whether or not Assurance 7 has been applied to promote access to terminal facilities.

Leasing and subleasing

The Competition Plan is silent on the subject of acquiring signatory status at DTW. This issue has been of significant concern at DTW in recent years. We request that you provide information on this matter as part of the supplemental information to be submitted within 30 days. We also encourage you to include this information in future updates to the Competition Plan as one device to make the information available to carriers interested in obtaining access to DTW.

With regard to ground handling services, the Competition Plan is unclear as to whether non-signatory carriers can make use of the two fixed base operators or if they must use the ground handling service provided by the signatory from which they sublease. Please clarify this issue in the supplemental information. If the non-signatory carriers must make use of the signatory's ground services what guidelines and protections are in place to protect the non-signatory from paying for unneeded bundled services?

Gate-assignment policy

The Competition Plan states that assignment of gates for new or expanded service is currently accomplished by direct negotiation of sublease agreements with incumbent carriers. We note that this description is not fully consistent with information that the County provided previously to the FAA during preparation of the *Airport Practices* report. At that time, the County asserted that it would intervene on behalf of an air carrier seeking gate access if that air carrier could

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Identify underutilized gate capacity at DTW. Please provide more information about the County's role in identifying underutilized gate capacity and in facilitating access to that capacity by new entrants or incumbents seeking to expand operations. In addition, we encourage the County include this information in future updates to the Competition Plan as one device to make the information available to carriers interested in obtaining access to DTW.

Financial Constraints

We recognize that the County is maximizing the use of PFC revenue to fund terminal capacity enhancement at DTW, thus facilitating the move away from exclusive use leases.

The Competition Plan asserts that the Airport uses an airport wide residual rate-setting methodology. However, it was our understanding that in 1996 the Airport entered into a new agreement with Northwest Airlines that will alter the airport-wide residual rate method. We further understood that the County intends to implement these same airline use conditions (referred to as a modified compensatory system) with other signatory carriers at DTW, to become effective no later than 2009. Implementation may well occur sooner as existing terminal space is renovated and use and lease agreements for this space are renegotiated. Please address this discrepancy in your supplemental information. If the FAA's understanding regarding current status and future plans to implement a modified compensatory system is incorrect, please advise whether any other changes in rate method is contemplated in connection with the renovation of terminal space or expiration of current leases.

In addition to the issues and information outlined above, we encourage the County to consider and address in a future update of the Competition Plan the following concerns and issues, also categorized according to the applicable features listed in PGL 00-3.

Leasing and subleasing

Our *Airport Practices* report found that airport managers who make clear to incumbent carriers their obligation to share under-used facilities and also provide clear guidelines to new entrants as to what they must do to gain access, enhance competitive access to the airport.

While the FAA is familiar with the terms of the preferential lease offered to Northwest Airlines for the Midfield Terminal, there is no specific information concerning these terms in the Competition Plan. In addition, it is unclear if detailed information on these lease terms is available through any other source to existing and potential carriers. More discussion of the preferential terms would be appropriate in the first planned update to the Competition Plan. A

description of the lease's terms and conditions, including the terms under which a carrier may invoke any rights that the County has to force accommodation at gates subject to preferential use leases, would be helpful to new entrants and to the FAA.

The Competition Plan reports that subleasing arrangements are permitted and must be approved by the Airport. However, other than approval of subleases by the Airport, there is no formal oversight of subleases and ground handling services. Moreover, the plan states specifically that there is no policy regarding type, structure, or limits on sub-lease fees. 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. It would be very helpful to potential competitors at DTW if the County would 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. We encourage you to consider undertaking these actions in time for your first update to the Competition Plan.

Airport controls over ground-side and airside capacity

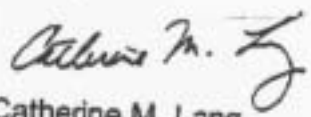
The Competition Plan indicates that the County has no plans to modify its two air carrier voting controls, defined as Weighted Majority and Majority In Interest. The Weighted Majority provision appears to effectively grant veto authority to Northwest Airlines over large projects requiring bond financing. Our *Airport Practices* report found that competitive access was facilitated when airports ensured that new MII agreements do not prevent or delay projects that could be beneficial to new entrants or smaller airlines serving their airports. You may want to reconsider the language in your MII provisions when you renegotiate the lease. However, we acknowledge the County's assertion that no projects at DTW have been delayed or prevented by these controls.

Finally, because of the interest that members of the traveling public may have in airline competitive issues at your airport, including your policy of ensuring reasonable access for new entrant airlines, we encourage you to put a copy of your competition plan, including this response, on your airport web page.

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.

We look forward to seeing the supplemental information as well as future updates of your Competition Plan.

Sincerely,



Catherine M. Lang
Airport Planning and Programming