




U.S. Department  
of Transportation  
Federal Aviation  
Administration

Office of Airport Planning  
and Programming

300 Independence Ave., SW.  
Washington, DC 20581

MAR 15 2001

Mr. Jeffrey P. Fegan  
Chief Executive Officer  
Dallas/Fort Worth International Airport Board  
3200 East Airfield Drive  
P.O. Drawer 619428  
DFW Airport, Texas 75261-9428

Dear Mr. Fegan: 

Thank you for your February 23 submission in response to our February 14 review of the Dallas/Fort Worth International Airport Board's Competition Plan for Dallas/Fort Worth International Airport (DFW). The information you provided was responsive to our request. In light of this response, we have determined that your competition plan currently satisfies 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, we offer some suggestions for your consideration as you implement and update your plan for the next fiscal year. These suggestions are in addition to those we provided in our initial response to your competition plan. For your convenience, we have categorized our suggestions according to the applicable features specified in PGL 00-3.

#### **Availability of gate and related facilities**

We note that nine of the 11 gates funded with passenger facility charge (PFC) revenue at DFW are leased on a less-than-five year (i.e., 4 year and 364 day), exclusive-use basis, to the dominant hub carrier at DFW. Moreover, you identify language in the lease for these gates that states that the carrier shall have no rights to receive an extension or renewal of the lease after it expires. Technically, these terms appear to comply with Assurances 5 and 6 of the PFC regulation. However, the FAA is concerned that the gates have been assigned on an exclusive-use basis to the dominant carrier and will closely monitor the reassignment of these gates once the current lease expires. The grant of another exclusive-use lease to the current lessee could cause the FAA to initiate a compliance review with regard to Assurances 5 and 6 of the PFC regulation.

Similarly, the use of short-term exclusive-use lease terms for Terminal D (should it be PFC funded) would be of concern to the FAA if the facility is occupied, or predominantly occupied, by a single carrier. In such an instance, even if the lease included language that its renewal is not guaranteed, the FAA could view renewal or carryover as effectively automatic for the single carrier controlling that facility. If common-use terms cannot be implemented for the PFC-funded facilities, the FAA strongly recommends implementation of preferential-use lease terms, with use it or lose it provisions. Please advise us on developments regarding the Terminal D lease negotiations in your next update to the competition plan.

With regard to PFC Assurance 7, we acknowledge that DFW is in the process of creating a more formal gate monitoring process to document, in detail, gate utilization levels by all carriers. We look forward to a progress report on this process in your first update to the competition plan. We note that the current lease for the PFC gates includes language that it will "satisfy all applicable provisions of federal law and regulation relating to the use of PFC revenues." However, we strongly suggest that a formal acknowledgment of the Assurance 7 language, as is planned for the Terminal D leases, is preferable.

Thank you for the copy of the Terminal B Lease Agreement.

We understand that the DFW airport personnel are charged with resolving gate use conflicts at DFW-operated gates when they occur, based on a review of current and proposed flight schedules. It appears from your description that this process is defined by a formal policy. Our *Airport Practices* report found that new entrants are more likely to be treated fairly if airports adopt formal procedures to resolve disputes between carriers. If you do not already, you may want to provide a written description of this policy to all existing airlines at DFW, as well as potential new entrants.

Your clarification of the "preferential" component of the DFW-operated gates is helpful. In particular, we understand that DFW has the unilateral right to reassign flights at DFW-operated gates to accommodate all airlines, and that gate use is scheduled on a per-flight basis, subject to defined procedures.

We acknowledge that the Airport makes gate availability information available to all interested parties that contact the Airport Real Estate Department or the Terminal B management personnel, and that such information may be shared in regularly scheduled meetings with local airline personnel. However, as we noted in our earlier letter, you may want to consider developing procedures to ensure that all carriers operating, or wishing to operate, at the Airport are made aware of available gates, or gate-sharing opportunities, and the process and requirements necessary to commence operations at DFW.

The information on average gate utilization rates is helpful. However, in future updates of the competition plan, we request that you provide gate-specific and tenant/subtenant-specific utilization rates, particularly where certain carriers (especially American Airlines and Delta Air Lines) control large blocks of gates. The FAA would be interested to know that each gate in such blocks is utilized at reasonable levels. This information is particularly important with regard to compliance with PFC Assurance 7, where the presence of even one underutilized exclusive-use gate could be significant to a potential new entrant. We understand that your ability to routinely provide such information will be facilitated once you implement your formal gate monitoring procedures.

The FAA acknowledges your assertion that DFW has accommodated all new entrant airlines even though most of its gates are under long-term exclusive-use leases. We also note your report that three recent new entrants have been or will be accommodated on American Airlines and Delta Air Lines exclusive-use leases. As you are aware, the inability of an airport to provide reasonable access cannot be justified on the basis of gates being unavailable due to exclusive-use leases. As we found in the *Airport Practices* report, the airport manager has certain rights and obligations to arrange for gate sharing even without a negotiated agreement. In particular, an airport operator may not claim lack of gate availability when in fact gates are not fully used; defer completely to incumbent tenants' determinations on whether or not, and how, to accommodate requesting airlines; or deny access based solely on existing lease arrangements.

#### **Leasing and subleasing**

You note that the Use Agreement is subject to Texas law and that, consequently, the only instance under which DFW would withhold consent to a sub-lease would be if it materially modified the terms of the Use Agreement. As such, it is your position that this contractual provision does not, of itself, give you rights to block sub-lease terms that are unreasonable. We caution, however, that it is our position that the Airport's Federal obligation to provide reasonable access does give you the authority to intervene if an air carrier were to complain about unreasonable lease terms.

You state that DFW has never had to exercise its right to construct new gates under paragraph 9.3(h)(i) of the Use Agreement because DFW has accommodated all new entrants to date, thus no new entrant has requested that facilities be constructed under this clause. Your letter indicates that DFW would likely interpret a "reasonable administrative fee" under paragraph 9.3(h)(i) to be one customary for the industry, such as 15 percent. Dissemination of this information in an official document to incumbent carriers and new entrants at DFW would help ensure that the utility of paragraph 9.3(h)(i) is fully appreciated and realized by all airlines at DFW.

Similarly, we are encouraged that DFW will review all existing sublease/gate use contracts currently in place at the Airport to evaluate if any terms appear to be unreasonable. We recommend that information as to terms that DFW finds to be reasonable and unreasonable be made available to all airlines at the Airport or wishing to serve the Airport.

You note that operational disputes between airlines are often resolved at scheduled "station manager" meetings, or at monthly meetings between airline corporate and Airport staff, or on a day-to-day basis. This process appears to be largely informal. We understand that you consider this flexible informal process to be an effective tool to resolve disputes. However, as we indicated above, our *Airport Practices* report found that new entrants are more likely to be treated fairly if airports adopt such procedures to resolve disputes between carriers. Consequently, we recommend that you consider developing a formal dispute resolution procedure.

Although you view the ability of Terminal Management personnel to resolve complaints between signatory and sub-tenant airlines as "somewhat limited by legal rights between the parties," we remind you that your Federal obligations to provide reasonable access to all qualified air carriers provides you with the authority to intervene to assure reasonable terms. The FAA is very interested in knowing of all instances where you believe that legal or contractual rights blocked your ability to intervene in specific disputes between signatory and sub-tenant airlines, and requests that you document all such instances occurring during the year in each annual update of this competition plan.

#### **Majority-in-interest (MI) clauses on capital projects**

We note that you do not believe that there will be a possibility of early re-negotiation of the current Use Agreement at DFW. Please be aware that a number of airports nationwide have been able to modify use terms in advance of the expiration of existing agreements. Such opportunities may come about as the airport negotiates over access to PFC-funded terminal space.

You provide no examples of instances when your current MI arrangements have delayed or otherwise impeded the development of necessary infrastructure, and state that DFW has had a successful track record in avoiding such situations. Accordingly, we expect that your continuing efforts to fund terminals or other facilities to accommodate competition at DFW, either with PFC or other airport revenues, will not be impeded by your current MI arrangements. However, as part of your annual update to the competition plan, the FAA requests that you describe any instances where an airline at DFW attempts to use MI rights to delay, restrict, or prevent construction of capacity to accommodate competition at DFW—including by the withholding of MI approval for portions of terminals that are ineligible for PFC funding.

### **Patterns of service – Carrier Support Program**

Thank you for the information on the Carrier Support Program. We note that you mention two domestic carriers that are "eligible" for the program. Please clarify in your next update to the competition plan if these carriers actually participated in the program, and if not, why. In your next update of the plan, please describe any new participants in the program, particularly domestic low fare or new entrant carriers.

We appreciate that you have used your February 23 response to us to address issues that we recommended for your next update to the competition plan. Our comments are presented below. We look forward to learning more about developments in these areas in your next plan update.

### **Availability of gate and related facilities**

We appreciate that all future tenants at Terminal D who also retain exclusive use facilities at other DFW terminals will have language specifically addressing PFC Assurance 7 in their leases, and that formal gate monitoring processes will be in place to insure compliance with Assurance 7. Please include a copy of the relevant leases in the first update to the competition plan filed after those leases are executed.

### **Gate assignment policy**

Your description of the information you provide to new entrants is helpful. From this description, it appears that this information is provided as part of an established process, with associated brochures and printed materials. It would be helpful if such materials included information on reasonable sub-lease terms and administrative fees, along with descriptions of facility access and dispute resolution procedures.

We look forward to hearing of the results of the study you have initiated to update the existing policy for common-use gates at DFW. In addition, development of an expanded gate utilization policy for all gates at DFW will be important to the future competitiveness of air service at DFW.

You state that you intend to adopt terminal leasing strategies that will reflect the diverse needs of the airlines at DFW, and that analysis will focus on the best combination of short-term exclusive-, preferential-, and common-use gates. We note that reliance on exclusive-use terms, even on a short-term basis, reduces the flexibility of airport management to accommodate access needs at the airport. Moreover, we caution that any use of exclusive-use arrangements for PFC-funded facilities will significantly raise the level of the FAA's oversight of gate leases and lease renewals at DFW.

As just noted, the Secretary is required to review the implementation of the competition plans from time-to-time to make sure each covered airport successfully implements its plan. In connection with our review, we may determine that site visits to one or more locations would be useful. We will notify you should we decide to visit DFW in connection with its competition plan.

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 and supplemental submission, including the FAA's responses, 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.

Sincerely,



Catherine M. Lang  
Director, Airport Planning and  
Programming