

cc



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

Office of Airport Planning
and Programming

800 Independence Ave., SW.
Washington, DC 20591

FEB 14 2001

Mr. Steven J. Grossman
Director of Aviation
Port of Oakland
530 Water Street
Oakland, CA 94604

Dear Mr. Grossman:

Thank you for your September 7 submission of the Port of Oakland's Competition Plan for Oakland International Airport (OAK). We have reviewed the competition plan for the Airport and determined that the plan 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. However 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), which 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 of Transportation 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 nine 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.

At the outset, we compliment you on your program that identifies high fare markets that can support low fare competitive service and that seeks out low fare carriers to provide that service. This program demonstrates that the Port is committed to promoting new entry and becoming an advocate for competition, just as we suggested in our *Airport Practices* report

Further, we note that your plan describes a number of policies and practices currently in effect at the airport, as summarized below:

- Access to 19 of the 22 airport gates is on a preferential, month-to-month basis, with 3 gates assigned on a common use basis;
- All gate usage is monitored by the Airside Operations department;
- Reassignment of underutilized preferential use gates, with economic incentives to make full use of preferential use gates;
- Building of new gates (12 new permanent gates), ticket counters, and airline office space to accommodate growth of air service at OAK;
- Installation of Common Use Ticketing Equipment facilities at counters and gates to facilitate gate assignment flexibility;
- Ability to accommodate a new entrant carrier with two to three months lead time;
- Provision of an Airline Entry Package to potential new entrants; and
- Limits on air carrier assignment and subletting rights, with airport manager consent required; and
- No majority-in-interest clauses in airline agreements.

The Port is to be commended for undertaking these policies and initiatives, which were identified as best practices to foster opportunities for airport access and competition in the Department's *Airport Practices* report. However, we have identified a number of areas where additional information would contribute to our understanding of your current business practices and policies. We request that you include this information in your first update to this plan. In addition, we have identified a number of concerns and issues that we encourage the City to consider and address, in light of the best practices identified in the *Airport Practices* report.

First and foremost, we would appreciate receiving a copy of the new Airline Space and Use Permit (in hard copy or electronic format). We would also appreciate an explanation of the "significant economic disincentive" associated with the Airport's rates and charges for any airline to use a gate with preferential status for less than four daily operations, if the new Use Permit does not otherwise describe these charges. For your convenience, we have categorized

the remaining questions, concerns and issues according to the applicable features specified in PGL 00-3

Leasing and subleasing arrangements

The competition plan notes that all conflicts between new entrants and incumbent carriers with service agreements are left to be resolved between the two parties. You may want to consider developing procedures to resolve complaints of unfair treatment under service agreements. These procedures should be available to new entrants and incumbent carriers seeking to expand *their operations*. Our *Airport Practices* study found that new entrants are more likely to be treated fairly if airports adopt procedures to resolve disputes between carriers.

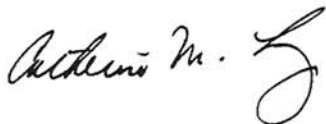
Similarly, you should consider establishing of a formal policy for notifying carriers when gates become available. This policy should include a mechanism to inform new entrants that have expressed an interest in operating of available gates or gate-sharing arrangements. Our *Airport Practices* report found that airport managers that routinely make this information available to all such carriers facilitate competition at the airport.

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.

We look forward to reviewing the new Space and Use Permit, along with the first update to your competition plan. As you may know, 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 OAK in connection with its competition plan.

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) 267-3834. ^{CM} 8827 (9/4/01)

Sincerely,



Catherine M. Lang
Director Airport Planning
and Programming