



U.S. Department
of Transportation

**Federal Aviation
Administration**

Memorandum

Subject: **ACTION**: Program Guidance Letter 03-01

Date: November 19, 2002

From: Manager, Airports Financial Assistance
Division, APP-500

Reply to
Attn. of:

To: PGL Distribution List

This Program Guidance Letter cancels PGL 00-3, Requirements for Airline Competition Plans, dated May 8, 2000.

03-01.1 Requirement for Airline Competition Plans – Andrea Toney (202) 267-7038

The Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR-21), Pub. L. 106-181, Section 155, dated April 5, 2000, requires the submission of a competition plan by certain large and medium hub airports in order for a new Passenger Facility Charge (PFC) to be approved for collection or a grant to be issued under the Airport Improvement Program (AIP) beginning in fiscal year 2001. Section 155 amends both sections 47106 and 40117 of title 49, United States Code.

Specifically, the amended section 40117 (the PFC portion of the statute) requires submission of the plan and U.S. Department of Transportation Secretarial (Secretary) review of the plan for sufficiency before imposition of a PFC. Further, the amended section 40117 also provides that the Secretary shall periodically review plan implementation to ensure that each airport successfully implements its plan. The amended section 47106 (the AIP portion of title 49) prohibits the approval of a PFC or the execution of a grant under AIP unless the airport has submitted a written competition plan conforming to the requirements of section 155.

During the past two federal fiscal years, the Office of the Secretary (OST) and the Federal Aviation Administration (FAA) have closely reviewed competition plans and plan updates of 38 medium and large hub airports to ensure airport practices and initiatives described in the plans enable those airports to provide access on reasonable terms to requesting carriers. While many airports have incorporated business practices that recognize the importance of providing an environment conducive to competitive access, a significant number needed further guidance from the OST/FAA to develop practices that would better enable them to accommodate requesting carriers in a timely and complete manner.

Some airports have not adopted practices we regard as critical for assuring a competitive environment, such as: gate use monitoring, sublease oversight, gate availability notification, or procedures for gate assignment or dispute resolution. We reiterate the importance of an airport developing these procedures, communicating them to users, and describing them in the competition plans and updates filed with the Department.

As a result of our review process, we have amended the PGL to reflect certain additional information we have been requesting from airports, and we are requesting airports to address certain practices we found to be conducive to accommodating entry. Accordingly, the PGL requests that an airport submit, with its competition plan or plan update, its use and lease agreement, sample gate monitoring chart, and dispute resolution procedure. The PGL also encourages airports to consider adopting certain practices in their competition plans, such as: appointing an official as the airport's liaison for competitive access; communicating information on gate usage and on overnight parking usage to interested users; overseeing a fair and transparent process for notifying users of availability of gates or blocks of time on gates for lease, sublease, or sharing, respectively; having a fair and transparent process for assigning gates, or for arranging subleases or gate sharing; having similar policies for overnight parking positions; justifying differences in fees and terms of use for gates between new entrant non-tenants, on the one hand, and tenants, on the other hand.

We have lengthened the time for a competition plan update from each fiscal year to an 18-month period from the date of the FAA's approval letter. This additional time period will allow an airport time to integrate the suggested business practices into its procedures and to report to FAA/OST on the results. However, FAA/OST intends to monitor an airport's implementation on a continual basis throughout the 18-month period.

As background, the U.S. Department of Transportation (DOT) issued a report entitled "Airport Business Practices and Their Impact on Airline Competition". This report can be viewed online by using the link at <http://ostpxweb.dot.gov/aviation/domav/airports.pdf>. Airport sponsors and public agencies should be strongly encouraged to review this report during the development of their competition plan.

Each airport needs to tailor a competition plan to reflect the unique nature of business at its airport. The competition plan should display the level of detail and complexity necessary to reflect the competitive circumstances at an airport as well as that airport's role in the national aviation system.

This program guidance letter is intended to identify the statutory requirements for competition plans as well as a general guideline for the types of information that should be considered. This is not intended to restrict the contents of the plan to the approach contained in this letter, as it only represents one of several possible

approaches. However, review is facilitated if the competition plan or plan update is organized to reflect the nine broad subject areas identified in this PGL. We encourage airports to provide ample information and detail to allow the Department to fully analyze the plans to ensure that they satisfy the statute.

While we are not requiring that each airport address each item listed under the eight topics below airports should be aware that the lack of sufficient detail in a filing may cause the FAA to solicit additional information before accepting a competition plan or plan update. In addition, under the statute, each of the eight topic areas must be addressed for the FAA to accept a filing. Public agencies may find it useful to consider the statutory finding and legislative history set forth below, in addition to the specific statutory requirements for the competition plans.

In addition, affected airports filing airport competition plan updates are requested to specifically address FAA requests for additional information or clarification. The discussion should include a restatement of each FAA question, recommendation or request for additional information and the airport's response.

Further, in instances in which the FAA has recommended that an airport adopt a particular management or operating practice and the airport has declined the recommendation, the airport should explain the activities and/or procedures that they are performing that would achieve the same result as the FAA recommended practice. To facilitate review, the discussion of FAA comments should be associated with the subject category under which the discussion appeared in the FAA's review letter.

Statutory Finding

"Major airports must be available on a reasonable basis to all carriers wishing to serve those airports." Pub. L. 106-181, sec.155(a)(1).

Legislative History

"The 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 .

Statutory Requirements

"Beginning in fiscal year 2001, no passenger facility fee may be approved for a covered airport under section 40117 and no grant may be made under this subchapter for a covered airport unless the airport has submitted to the Secretary a written competition plan in accordance with this subsection.

“CONTENTS.—A competition plan under this subsection shall include information on the availability of airport gates and related facilities, leasing and subleasing arrangements, gate use requirements, patterns of air service, gate-assignment policy, financial constraints, airport controls over air and ground-side capacity, whether the airport intends to build or acquire gates that would be used as common facilities, and airfare levels (as compiled by the Department of Transportation) compared to other large airports.

“COVERED AIRPORT DEFINED.—In this subsection, the term ‘covered airport’ means a commercial service airport—

“(A) that has more than .25 percent of the total number of passenger boardings each year at all such airports; and

“(B) at which one or two air carriers control more than 50 percent of the passenger boardings.” Pub, L. 106-181, sec. 155(b).

Covered Airports.

In compiling a list of covered airports, we use the enplanement information consistent with the annual apportionment of passenger entitlements. The list for a fiscal year will be based upon the data collected for the most recent calendar year (e.g., the list for fiscal year 2003 is based upon calendar year 2001 enplanements). Airports meeting the statutory criteria for covered airports in fiscal year 2003 are listed as Attachment A. This list is based upon calendar year 2001 enplanement data that was updated in August 2002. For the purposes of this list, we have determined that an “air carrier” includes all affiliated or subsidiary airlines operating under a single certificate of public convenience and necessity issued by the Secretary of Transportation under 49 U.S.C. 40112. For those airports with plan updates due in fiscal year 2004, as discussed below, the FAA will determine their status as a covered airport at the end of fiscal year 2003, based on calendar year 2002 data.

First time Competition Plans

As noted the FAA is prohibited from approving a new PFC application or AIP grant from a covered airport until a competition plan determined by the FAA to comply with Section 155 has been received. Consequently, in a fiscal year in which an airport first meets the statutory criteria for a covered airport, the FAA will award no new AIP grants or PFC approvals until the competition plan is approved.

Timing

A covered airport should file its initial competition plan as close as possible to the start of the fiscal year to avoid undue delay in processing AIP and PFC applications.

Typical First Time Competition Plan Filing Information

The following items may be considered in the development of a competition plan to be filed for the first time. The items are identified in the same order and using the same headings as contained in the statutory provision. The FAA would consider a competition plan that includes these items to meet the requirements of section 155.

1. Availability of gates and related facilities (identify or describe):
 - Number of gates available at the airport by lease arrangement, i.e., exclusive, preferential, or common-use;
 - Diagram of the airport's concourses;
 - Samples of gate use monitoring charts, along with a description of how the charts are derived and how they are used by the airport;
 - Description of the process for accommodating new service and for service by a new entrant;
 - Differences, if any, between gate use monitoring policy at PFC financed facilities, facilities subject to PFC assurance #7, and other gates;
 - Description of any instances in which the PFC competitive assurance #7 operated to convert previously exclusive-use gates to preferential-use gates or has it caused such gates to become available to other users;
 - Gate utilization (departures/gate) per week and month reported for each gate;
 - Policy regarding "recapturing" gates that are not being fully used. If no such policy exists, explain how the airport will accommodate a carrier requesting a gate in the circumstances of under-utilized gates;
 - The circumstances of accommodating a new entrant or expansion during the 12 months preceding filing, including a denials of accommodations for gates, holdrooms, ticket counters, baggage facilities or overnight parking positions;
 - Resolution of any access complaints during the 12 months preceding the filing;
 - Use/lose or use/share policies for gates and other facilities. If no such policies exist, explain how the airport will

accommodate a carrier requesting a gate in the circumstances of sub-utilized gates;

- Plans to make gates and related facilities available to new entrants or to air carriers that want to expand service at the airport; methods of accommodating new gate demand by air carriers at the airport (common-use, preferential-use, or exclusive-use gates) and length of time between when an air carrier initially contacts the airport and the possible commencement of service. If no such liaison exists, explain how the airport will accommodate a carrier requesting a gate;
- Availability of an airport competitive access liaison for requesting carriers, including new entrants;
- The resolution of any complaints of denial of reasonable access by a new entrant or an air carrier seeking to expand service in the twelve months preceding the filing of the plan. Explain how the complaints were resolved, including a description of the dispute resolution procedures at the airport including the contact official, the process of mediating or addressing disputes, a timeline and a review process;
- Number and identity of carriers in the past year that have requested access or sought to expand, how they were accommodated, and the length of time between any requests and access; and
- Number of aircraft remain overnight (RON) positions available at the airport by lease arrangement, i.e. exclusive, preferential, common-use or unassigned, and distribution by carrier. Describe procedures for monitoring and assigning RON positions and for communicating availability of RON positions to users.

2. Leasing and subleasing arrangements (identify or describe):

- Whether a subleasing or handling arrangement with an incumbent carrier is necessary to obtain access;
- How the airport assists requesting airlines to obtain a sublease or handling arrangement;
- Airport oversight policies for sublease fees, and ground-handling arrangements;
- Process by which availability of facilities for sublease or sharing is communicated to other interested carriers and procedures by which sublease or sharing arrangements are processed;
- Airport oversight policies concerning schedule adjustments that may affect subtenants and mechanisms to provide continued access to subtenants in those situations;

- Airport policies regarding sublease fees (e.g., no more than 15 percent above the standard airport-determined fee);
- How complaints by subtenants about excessive sublease fees or unnecessary bundling of services are resolved;
- How independent contractors, that want to provide ground handling, maintenance, fueling, catering or other support services, have been unable to establish a presence at the airport are accommodated;
- Whether formal arrangements are in place to resolve disputes among air carriers regarding the use of airport facilities. If so, provide a description of these procedures;
- Resolution of any disputes over subleasing arrangements in the 12 months preceding filing; and
- Copies of lease and use agreements in effect at the airport.

3. Patterns of air service (identify or describe):

- Number of markets served and identities of carriers serving the airport;
- Number of markets served on a non-stop basis and the Average number of flights per day;
- Number of small communities served;
- Number of markets served by low-fare carriers;
- Number of markets served by one carrier; and
- Number of new markets added or previously served markets dropped in the past year.

4. Gate assignment policy (identify or describe):

- Gate assignment policy and method of informing existing carriers and new entrants of this policy. This would include standards and guidelines for gate usage and leasing, such as security deposits, minimum usage, if any, fees, terms, master agreements, signatory and non-signatory requirements;
- Methods for announcing to tenant carriers when gates become available. The description should discuss whether all tenant air carriers receive information on gate availability and terms and conditions by the same process at the same time;
- New policies that have been adopted or actions that have been taken to ensure that new entrant carriers have reasonable access to the airport and that incumbent carriers can expand their operations;
- Methods for announcing to non-tenant carriers, including both those operating at the airport and those that have expressed an interest in initiating service, when gates become available; and

- Policies on assigning RON positions and how RON position availability announcements are made.

5. Gate use requirements (identify or describe):

- Gate use monitoring policy, including schedules for monitoring, basis for monitoring activity (i.e., airline schedules, flight information display systems, etc.), and the process for distributing the product to interested carriers;
- RON monitoring policy;
- Requirements for signatory status and identity of signatory carriers;
- Where applicable, minimum requirements for leases (i.e., frequency of operations, number of seats, etc.);
- The priorities, if any, employed to determine carriers that will be accommodated through forced sharing or sub-leasing arrangements. Describe how these priorities are communicated to interested carriers;
- Justifications for any differences in gate use requirements among tenants;
- Usage policies for common-use gates, including, where applicable, a description of priorities for use of common-use gates. Explain how these priorities are communicated to interested carriers; and
- Methods for calculating rental rates or fees for leased and common-use space. Where applicable, provide an explanation of the basis for disparities in rental fees for common-use versus leased gates.

6. Financial constraints (identify or describe):

- The major source of revenue at the airport for terminal projects;
- Rates and charges methodology (residual, compensatory, or hybrid);
- Past use, if any, of PFC's for gates and related terminal projects; and
- Availability of discretionary income for airport capital improvement projects.

7. Airport controls over airside and groundside capacity (identify or describe):
 - Majority-in-interest (MII) or “no further rates and charges” clauses covering groundside and airside projects;
 - Any capital construction projects that have been delayed or prevented because an MII was invoked; and
 - Plans, if any, to modify existing MII agreements.

8. Airport intentions to build or acquire gates that would be used as common facilities:
 - The number of common-use gates available at the airport today;
 - The number of common-use gates that the airport intends to build or acquire and the timeline for completing the process of acquisition of construction. Indicate the intended financing arrangements for these common-use gates;
 - Whether any air carriers that have been serving the airport for more than three years are relying exclusively on common-use gates;
 - Whether common-use gates will be constructed in conjunction with gates leased through exclusive or preferential-use arrangements;
 - Whether gates being used for international service are available for domestic service; and
 - Whether air carriers that only serve domestic markets now operate from international gates. If so, describe and explain any disparity in their terminal rentals versus domestic terminal rentals.

9. Airfare levels as compared to other large airports. (Information about airfare levels compared to other large airports is available at <http://ostpxweb.dot.gov/aviation/domfares/domfares.htm>. Any questions about this database should be directed to the Office of Aviation Analysis, DOT, on (202) 366-0293.) Airport managers may submit the following data:
 - Summarized data for the airport showing each carrier’s local passengers, average fares, market share (based on passengers), and average passenger trip length. This information will be provided for the current year and, subsequently, trended as DOT makes more current information available. (Source: Table 1 of data provided by DOT);

- Summarized data for the airport showing local passengers, average passenger trip length, average passenger yield, and number of city-pair markets served disaggregated by distance (distinguishing between markets of 750 miles or less and markets over 750 miles), and depending upon whether or not a low-fare competitor is present. Compare to other airports that have similar average passenger trip lengths, for short distance markets, long distance markets, or in total. (Source: Table 2 of data provided by DOT); and
- Additional information that is pertinent to particular circumstances at individual airports, and may not be apparent in the summarized information. For instance, fare trends at an airport may be influenced by changes in market mix, rather than just changes in price. Fare differences between airports may reflect differences in density or other factors as well as differences in distance. Table 3 of data provided by DOT provides for each city-pair market that is included in the summary data (markets involving an eligible medium or large hub airport that averaged 10 or more passengers per day) the following information: number of passengers, passenger revenue, nonstop and track mileage, and information on the number and type of competitors.

Periodic Updates to the Plan

As indicated above, the statute provides for the periodic review of the competition plans for PFC purposes and the FAA needs updated plans for action on subsequent PFC applications. In addition, FAA must have a current competition plan to issue each AIP grant. In an effort to minimize resource impacts, airports can satisfy these requirements by submitting updates to previously submitted plans rather than full competition plans.

Timing

The FAA has initiated a new 18-month filing schedule for competition plan updates. This is a change from the previous annual competition plan submission cycle that was described in PGL 00-3. The FAA has found that the previous annual update cycle did not provide sufficient time between filings for airports to fully implement new initiatives described in their plans. Under the new schedule, covered airports submitting competition plans updates need to submit their plan updates within 18 months of their previous plan approval (see Attachment A for a current list of airports and their next plan update submission deadlines).

To determine whether an airport is required to submit a plan update, the FAA will consider an airport's status as a covered airport in the fiscal year in which the plan update is due. Thus, for each airport shown in attachment A with a plan update due in fiscal year 2004, the FAA will establish a new list of covered

airports at the end of fiscal year 2003. Only those airports on the list in fiscal year 2004 will be required to file updates. However, based on past experience, we expect most of the covered airports in fiscal year 2003 to remain covered airports in fiscal year 2004.

For purposes of determining whether the FAA may approve a new PFC or process new grants, FAA will consider a plan update to be current for 18 months after the approval of the first plan and subsequently 18 months after the approval of each competition plan update. In other words the FAA will continue to process new AIP grants and PFC approvals until the due date for filing plan updates.

Typical Plan Updates

The competition plan update should provide the analytic support needed for the airport to demonstrate how, over the past eighteen months, it has "...provided for new entrant access and expansion of incumbent carriers." Similar to the case of the original competition plan, the update should be tailored to the circumstances of an airport and this information represents only one approach to the updates. For any information where there has been no change or no significant change, a simple negative declaration would be sufficient.

Covered airports are strongly encouraged to address each FAA request for additional information and/or recommendation outlined in the FAA's response letters. In addition, to facilitate quick review of covered airport responses to FAA questions/recommendation etc., it is recommended that the airport: (1) restate the FAA's question and/or recommendation; (2) that the covered airport respond to each item; and (3) that this information be provided using the subject heading areas outlined by the FAA. Further, in instances in which the FAA has recommended that an airport adopt a particular operating or management practice, and the airport has declined the recommendation, the airport should explain the activities and/or procedures that they are performing that would achieve the same result as the FAA recommended practice.

The information below also is identified by the same headings as the competition plan above.

1. Availability of gates and related facilities -- the airport should provide copies of gate use monitoring procedures amended during the update period and samples of current gate monitoring charts and should identify or describe changes relating to:
 - (a) Number and identity of any air carriers that have begun providing or stopped service;
 - (b) Description of the process for accommodating new service;
 - (c) Number of new gates that have been built or are now available;

- (d) Number of gates that have been converted to common-use status [note: this also applies to the common-use gate category];
 - (e) Gate utilization;
 - (f) Gate recapture;
 - (g) Gate allocation or assignments since the last competition plan update;
 - (h) RON position allocation or assignments since the last competition plan update;
 - (i) Accommodation of new entrants and incumbent carriers seeking to expand at the airport and resolution of any access disputes; or
 - (j) Methods for developing gate use monitoring charts and airport uses of the charts
2. Leasing and subleasing arrangements -- the airport should provide copies of amended lease and use agreements executed during the update period and should identify or describe any major changes in:
- (a) Contractual arrangements at the airport, for example, disposition of any gate lease agreements that were renewed or changed;
 - (b) Assuring access at the airport;
 - (c) Monitoring sublease fees and arrangements;
 - (d) Promoting the use of third-party contractors; or
 - (e) Resolution of any disputes between carriers relating to access.
3. Patterns of air service -- the airport should identify changes relating to new markets served, new markets served by low fare carriers, or the number of markets served by one carrier.
4. Gate assignment policy – the airport should identify major changes should be identified including changes in RON position assignment policies.
5. Gate use requirements—the airport should identify major changes in requirements for signatory status; lease requirements; common-use gate priorities; gate use monitoring; and calculation of rental rates and common-use fees as well as disparities in fees.
6. Financial Constraints -- airports should identify any additional financial constraints from the previous year or the relaxation of any financial constraints.
7. Airport controls over airside and groundside capacity -- the airport should identify any major changes in its rates and charges policy and describe whether and why the MII clause has been invoked in the period covered by the update.

8. Airport intentions to build or acquire gates that would be used as common facilities -- airports should provide any updates to plans for additional gates as common facilities.

Plan Submittal

Covered airports should provide two copies of their plan or update to the FAA's Director of Airport Planning and Programming (APP-1), 800 Independence Avenue S.W., Washington, DC 20591 for review. In addition, covered airports should also submit one copy of their competition plan or update to the appropriate regional or airports district office. Airports should note that failure to provide an acceptable plan in a timely manner will affect the FAA's ability to issue a grant or approval to collect a PFC. The review of competition plans or updates may take up to 60 days.

Plan Review Process

Plans will be reviewed by a joint OST/FAA team to determine that the plan satisfies the statutory requirements. Plan acceptance and/or deficiency identification will be communicated to the airport involved by APP-1 with a copy to the servicing region. The OST/FAA team may contact the airport informally during the course of the competition plan review. This contact would generally take the form of a telephone conference call and may include a site visit. Additionally, the OST/FAA intends to monitor the implementation of an airport's plan during the period between submittals. This monitoring may include site visits to subject airports.

Public Availability of Plans and Updates

Pursuant to the FAA's authority under 49 U.S.C. sections 47107(a)(15) and 47122, we have determined that the competition plan and competition plan update are reports within the meaning of section 47107(a)(15) and AIP grant assurance No. 26. Consequently, under the terms of the assurance, the competition plan and competition plan update must be made available to the public. The FAA recommends the posting of competition plans and plan updates, as well as the FAA's review letters on the airport's web site as the method of satisfying this requirement. The competition plan or plan update should describe the airport's method of satisfying AIP grant assurance No. 26. If web posting is employed, the filing should identify the precise web address where the competition plan material may be found. If web posting is not employed, the reasons for this decision should be discussed in the submission.

Additional PFC Information

A competition plan is required for an airport that seeks new PFC authority subject to FAA approval. For the purposes of this guidance, such new PFC authority would be a new application for collection, an increase in PFC level (\$3 to \$4 or \$4.50), or new collection authority applied for through an amendment under 14 CFR Part 158.37(b).

For example, a public agency may seek to increase its previously approved PFC collection authority by more than 15 percent through an amendment under 14 CFR Part 158.37(b). Whereas the previously approved collection authority would have expired in December 2003, the amendment would extend collection authority to December 2004. FAA could not approve the new collection authority attributable to the amendment unless a competition plan had been submitted. However, the public agency could continue to collect the PFC under the original authority until it expires in December 2003, even without submitting a plan. In addition, the public agency could implement a 15 percent or less increase in fiscal year 2001 or afterwards under 14 CFR Part 158.37(a) without a competition plan, because this type of amendment is not subject to FAA approval.

In order to minimize submittal requirements, airports submitting plans to satisfy AIP requirements will be considered to have satisfied PFC requirements and will not be required to resubmit its competition plan as part of a PFC application.

Plan Development Eligibility

Competition plans and updates are eligible for AIP and/or PFC funding as master planning. Additionally, the scope of work for full master planning studies and updates for the full study must include a competition plan development or update as part of the effort (if the studies or updates include a review of terminal development). However, this requirement would not apply to master planning efforts that are either minor in scope or that are occurring at times that would create a duplication of effort with recently completed plans or updates.

Distribution of Guidance

The FAA Headquarters Airports Organization (ARP), will distribute a copy of this PGL via letter to each large and medium hub airport, identified in Attachment A and to any other airport that submitted a competition plan or plan update in fiscal

year 2002. Subsequent notification will be provided to covered airports (each fiscal year) via letter or a website reference that will contain pertinent information and instructions.

Barry L. Molar

Attachment

File: PGL03-01

WP: G:\APP-500\2003 PGL's\PGL03-01.doc

APP-500:AToney:th:267-3831:10/07/2002; rev. per BLM 10/19/02; rev. per OST 11/04/02; rev. per BLM 11/06/02

Final signature copy 11/21/02