



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

# Memorandum

Subject: **ACTION**: Program Guidance Letter 00-3

Date: MAY 8 2000

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

Reply to  
Attn. of:

To: PGL Distribution List

00-3.1 Requirement for Airline Competition Plans – Jim Borsari (202)267-3831

The Wendell H. Ford Aviation Investment and Reform Act for the 21<sup>st</sup> Century (AIR-21), Pub. L. 106-181, April 5, 2000 contains section 155 that 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 AIP beginning in Fiscal Year 2001. Section 155 amends both sections 47106 and 40117 of title 49, United States Code and as a result, there are slight differences in how competition plans will be handled depending on which program (AIP or PFC) is providing the approval.

For example, the amended section 40117 (the PFC portion of the statute) requires submission of the plan and Secretarial review of the plan for sufficiency before imposition of a PFC. Amended section 40117 also provides that the Secretary shall periodically review plan implementation to ensure that each airport successfully implements its plan. However, 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. Accordingly, some level of review is needed for both AIP and PFC approval. Therefore, to provide time for necessary reviews under the AIP or PFC program, affected public agencies would need to submit the plan prior to Fiscal Year 2001 in order to permit the timely collection of new PFCs derived from PFC authority approved after April 5, 2000, and issuance of entitlement and/or discretionary AIP grants beginning October 1, 2000.

*“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 intend to 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 FY 2001 will be based upon CY 1999 enplanements). A preliminary list to permit airports to initiate plan development is attached. This list is based upon CY 1998 information and the final list should be updated in July 2000. 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.

### **Typical Competition Plan Information.**

The following items may be considered in the development of the competition plan. 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. Public agencies are invited to offer and justify alternative approaches to developing a competition plan.

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.
  - Gate-use monitoring policy.
  - Differences, if any, between gate-use monitoring policy at PFC-financed facilities, facilities subject to PFC assurance #7, and other gates.
  - Has 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.
  - Policy regarding “recapturing” gates that are not being fully used.

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.

- How announcements are made to tenant air carriers when gates become available. Do 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.

5. 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.

6. 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.
- List any capital construction projects that have been delayed or prevented because an MII was invoked.
- Plans, if any, to modify existing MII agreements?

7. Whether the airport intends to build or acquire gates that would be used as common facilities (identify or describe).

- The number of common-use gates available at the airport today.
- The number of common-use gates the airport intends to build or acquire (specify) and timeline. Intended financing arrangements for these common-use gates.
- Are any air carriers that have been serving the airport for more than three years 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.

than one grant in a fiscal year, FAA will consider a plan or update to be current for an entire fiscal year.

In order for the Secretary to satisfy the statutory requirement to review implementation and for an airport to keep its plan current, it will be necessary for public agencies and covered airports to provide an annual update to their plan before the FAA can approve new PFC authority or process entitlement/discretionary grants.

In this section, we are identifying the information that would be considered typical for such an update. The updated plans should provide the analytic support needed for the airport to demonstrate how, over the past year, 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.

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

1. Availability of gates and related facilities -- the airport could identify or describe changes relating to:

- (a) number and identity of any air carriers that have begun providing or stopped service;
- (b) number of new gates that have been built or are now available;
- (c) the number of gates that have been converted to common use status [note: this also applies to the common use gate category];
- (d) gate utilization;
- (e) gate recapture; or
- (f) accommodation of new entrants and incumbent carriers seeking to expand at the airport and resolution of any access disputes.

2. Leasing and subleasing arrangements -- the airport could 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; or
- (d) promoting the use of third-party contractors.

3. Patterns of air service -- the airport could identify changes relating to new markets served, new markets served by low fare carriers, or the number of markets served by one carrier.

For example, in FY 2001, 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 FY 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.

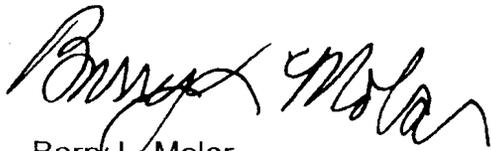
In order to minimize submittal requirements, airports submitting plans to satisfy AIP requirements will be considered to have satisfied PFC requirements and will not be required to resubmit its competition plan as part of a PFC application.

#### **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.**

ARP will distribute a copy of this PGL via letter to each large and medium hub airport, and to those small hub airports that approached the level of enplanements necessary to qualify as a medium hub, based on CY 1998 enplanement data. A further letter will be issued in July and each July thereafter when the final list is completed.



Barry L. Molar

Attachment