



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

Office of Airport Planning
and Programming

800 Independence Ave., SW.
Washington, DC 20591

FEB 12 2002

Mr. Kenneth Gwyn
Director of Aviation
LB 6 Love Field
Dallas, TX 75235

Dear Mr. Gwyn:

Thank you for your December 4, 2001, letter regarding the City of Dallas' Competition Plan for Dallas Love Field (DAL), in response to our November 1, 2001, letter requesting additional information and clarification. The information you provided was responsive to our request.

In light of your response and the information gathered from the January 9 telephone conference, 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 Program Guidance Letter 00-3.

Gate Availability and Related Facilities/Leasing and Subleasing

Your submission of copies of the air carrier terminal leases and our discussion concerning the availability of gates and facilities at DAL was very helpful. We acknowledge that the City understands its legal obligations to provide reasonable air carrier access at Love Field and is prepared to arrange for use of long-term exclusive-use gates at unused periods by a requesting carrier. The Federal Aviation Administration (FAA) strongly suggests the City recovers any gates that are on an exclusive-use long-term lease for common-use gates by new entrant air carriers. We note that shortly after executing a long-term exclusive-use lease, American Airlines terminated all service at DAL. These circumstances have left three unused gates at the main terminal available only through sub-lease. As an alternative, we encourage the City to immediately negotiate the addition of "use or lose" provisions similar to those contained in the original Southwest Airlines lease at paragraphs 3.C. 1 and 3.C.2.

The FAA is concerned that the current subleasing arrangement may place any new entrant at a competitive disadvantage by requiring it to pay the carrier an unreasonable premium or administrative fee with the long-term exclusive-use lease. Because the City utilizes Airport Improvement Program (AIP) funding, it has an obligation to provide access on reasonable terms without unjust discrimination. As stated in the *Airport Practices* report, the airport manager has certain rights and obligations to arrange for gate sharing even in the absence of 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.

Until there are common-use gates available, the FAA recommends the City take a proactive role in aiding new entrant air carriers in obtaining gate space. Under the City's scarce resource terminal lease provision, the City does not enter into negotiations until the requesting airline has demonstrated that it has exhausted all reasonable efforts to secure accommodations. Once the City begins providing requesting airlines with current gate activity reports, it could curtail its current burdensome negotiation process and reduce the amount of time it takes a new entrant air carrier to obtain gate space.

In addition, the "scarce resource provision" permits the carrier holding the long-term exclusive-use lease to assess reasonable fees including a reasonable allowance for profit and administration. In the next update to the competition plan, please describe any policies that the City may have for distinguishing between reasonable and unreasonable allowances. In addition, please describe any procedures available to new entrants, which would allow the City to challenge proposed allowance as unreasonable. Many airport operators impose a ceiling on such allowances, which typically range from 15 to 25 percent of the tenant airline's base rent. We encourage the City to modify its leases at the earliest opportunity to include a similar ceiling.

Also, the City's commitment to monitor actual gate use in the main terminal and the Lemon Avenue terminal is encouraging. However, we recommend the City establish a notification system that would inform all existing carriers who may wish to expand service at DAL as well as any new entrants who have expressed an interest in serving the airport by utilizing DAL's available gates. The *Airport Practices* report indicates that airport officials who ensure that entrants have timely information and reasonable access terms to necessary gates, facilities and services, promotes competitive access at the airport. We note the City's position that section 9.5 of the DFW Bond Ordinance prohibits the City from marketing DAL. The FAA has carefully reviewed the bond ordinance and is not convinced that the dissemination of gate availability information to existing and potential carriers would be viewed as a violation of the bond ordinance.

As previously stated in FAA correspondence dated November 1, 2001, the Secretary is required to periodically review the implementation of competition plans to ensure successful completion. 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 DAL in connection with its competition plan.

The FAA looks forward to reviewing DAL's gate monitoring progress and modifications to the current leasing/subleasing policy in the in the next update to the 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