

December 20, 2019

Mr. Robert J. Craven
Director
Office of Airport Planning and Programming
Federal Aviation Administration
800 Independence Avenue SW
Washington DC 20591

Dear Mr. Craven,

Thank you for your review of the Maryland Department of Transportation Maryland Aviation Administration (MDOT MAA) Competition Plan Update. MDOT MAA is sending this letter to formally acknowledge that the Federal Aviation Administration's (FAA's) interpretation of the Majority-in-Interest (MII) language in Article XVI of the Agreement is correct and that your approval is correct as written. Our airline contract does not impair our authority to impose or use PFC revenue.

Under Article XVI, any project fully funded with PFC expenditures is completely excluded from any requirement for airline review or concurrence under this Agreement. Any project partially funded from PFC revenues is excluded from airline review and/or concurrence under the Agreement if the non-PFC funded portion is less than:

- \$1.4 million for moveable equipment
- \$14.0 million for other capital projects

With these MII provisions, very few projects with any PFC funding are subject to airline review or concurrence. In MDOT MAA's most recent PFC application, approved in March 2019, only one of the twelve PFC funded projects required airline review and concurrence under the Agreement. The Concourse A Improvements – Phase II project included \$38.0 million in PFC backed bond capital and approximately \$40.7 million in funding that would be included in the airline rate base. MDOT MAA received airline concurrence with the Concourse A Improvements – Phase II project.

MDOT MAA did attempt to address the issues raised in your March 26, 2015 letter in the current Agreement. In the current Agreement, language was added to Article XVI C (2) stating that "Airline acknowledges that all Capital Expenditure, Amortization Requirement, Debt Service, and/or O&M Expenses referred to in this Article XVI are new of PFC and grant funded

Mr. Robert J. Craven
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amounts." Our Competition Plan Update should have highlighted that change to the Agreement. With that change in the current Agreement, MDOT MAA has no further plans to modify the existing MII provision.

Thank you again for your review and approval of the MDOT MAA Competition Plan Update.

Sincerely,



Ricky D. Smith, Sr.
Executive Director

cc: Ms. Jaimini M. Erskine, Director, Office of Commercial Management, MDOT MAA
Mr. James G. Walsh, A.A.E., Chief Financial Officer, MDOT MAA

MOT MARYLAND DEPARTMENT OF TRANSPORTATION
MARYLAND AVIATION ADMINISTRATION

Ricky D. Smith Sr.
Executive Director

12/18/19

Jim,

PLEASE REVIEW THE
ATTACHED FAA LETTER
AND PREPARE THE
NECESSARY RESPONSE FOR
MY SIGNATURE.

RS



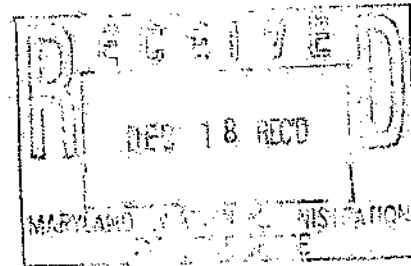


U.S. Department
of Transportation
**Federal Aviation
Administration**

Office of Airport Planning
and Programming

800 Independence Ave., SW.
Washington, DC 20591

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Mr. Ricky D. Smith, Sr.
Executive Director
Maryland Aviation Administration
BWI/Thurgood Marshall Airport
Third Floor, Terminal Building
7050 Friendship Road
Baltimore, MD 21240

**Subject: Baltimore/Washington International Thurgood Marshall Airport (BWI)
FAA Review of 2019 Competition Plan Update**

**Request: Additional information regarding Majority-in-Interest in the new Airline
Use and Lease Agreement (Agreement) at BWI**

Dear Mr. Smith:

Thank you for submitting the above referenced Competition Plan Update (Plan Update) for BWI. This Plan Update was required because BWI is a Covered Airport¹ and recently executed a new use and lease agreement.² The Federal Aviation Administration (FAA) approved BWI's initial Competition Plan in 2001 and four subsequent Plan Updates.³ This is BWI's fifth Plan Update.

Since our last approval, the Maryland Aviation Administration (MAA) has executed a new Agreement at BWI. The FAA has reviewed BWI's Plan Update and the new Agreement and found that MAA has included the following pro-competitive policies and practices:

- Negotiating a relatively short-term 7-year Agreement with air carriers this year;
- Accommodating nine new carriers and providing for the expansion of service for two existing air carriers;
- Providing airlines with access to 55 preferential use gates and 19 common use gates with no exclusive use gates;

¹ As defined in FAA Order 5100.38D, Change 1, ("Airport Improvement Program Handbook," Appendix W), Covered Airports are medium or large hub air ports where one or two air carriers control more than 50 percent of the passenger boardings. Based on calendar year 2018 data, two air carriers accounted for more than 50 percent of enplanements at BWI.

² Airport Improvement Program Handbook, Appendix W, provides that once the FAA has approved an initial plan and two updates, covered airports must submit an update within 60 days of executing a new lease and use agreement.

³ The FAA approved Plan Updates in 2002, 2004, 2010, and 2015.

- Constructing a connector between Concourses D and E that netted 3 additional gates and included swing gates for international arrivals; and
- Extending Concourse E to add six new gates, two of which are dedicated to international arrivals only.

At this time, we find MAA's Plan Update to be in accordance with the applicable statutory requirements, and the FAA has approved your Plan Update.⁴ However, we have based our approval on our understanding of the Majority-in-Interest (MII) language in the Agreement as described below. If this understanding is incorrect, MAA must notify us in writing within 30 calendar days of the date of this letter.

The Signatory Airline Concurrence Process described in Article XVI of the Agreement contains language permitting signatory airlines to vote to withhold concurrence on capital improvement projects when the capital expenditure would cause an increase in the airline rate base. The Agreement does not explicitly exclude projects funded in whole or in part with passenger facility charges (PFCs) from the concurrence process; however, it defines capital expenditures as "net of federal funds and PFCs." We interpret this language to mean that projects funded entirely with PFCs are excluded from the concurrence process because there is no net capital cost, and for projects partially funded with PFCs any MII provision would apply only to the portion of funding that comes from the airline rate base. If our understanding is not accurate, we request that you clarify the meaning of the language and describe the policies and practices that MAA has in place to ensure that MAA has the ability to impose a PFC or use PFC revenue and is not impaired by the MII concurrence process.

Additionally, in our last BWI Plan Update approval letter dated March 26, 2015, we recommended that you consider revising your MII language when you negotiate a new Agreement to specify that MII is not applicable when PFCs are imposed or used to finance projects. In letter dated April 20, 2015, MAA responded stating that MAA would "negotiate with the signatory airlines to stipulate in the next use agreement that PFCs imposed or used to finance projects are inapplicable to the signatory airline concurrence process" and stated, "We will include the status of this clarification in the next Plan Update." In your 2019 Plan Update, however, you state that there are no current plans to modify the existing MII provision. Please explain the circumstances behind this decision. We continue to emphasize that, by statute, an airline contract cannot impair the airport's authority to impose a PFC or to use PFC revenue,⁵ and recommend that MAA revise the MII language in its Agreement at the next opportunity.

Second, in addition to posting your BWI Competition Plan Update on MAA's website, we recommend that you also post our FAA BWI Plan Update approval letter. We ask that these be readily available on your website and easy for the public to locate.

Lastly, you referenced Program Guidance Letter (PGL) 04-08 in your Plan Update. Please note, PGL 04-08 was rescinded and incorporated into FAA Order 5100.38D, Airport Improvement Program Handbook, Change 1.

⁴ Section 155 of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR 21), Pub. L. No. 106-181, (April 15, 2000), 49 U.S.C. §§ 40117(k) and 47106(f).

⁵ See 49 U.S.C. § 40117(f)(1) & (3); 14 CFR § 158.7(b).


As mentioned above, MAA has now filed (and the FAA has approved) an initial Competition Plan and five Plan Updates. Accordingly no further Plan Updates will be required unless certain circumstances arise.⁶ The most common of these circumstances would be if an airport executes a new or significantly amended lease and use agreement, including an amendment due to the use of PFC financing for gates.

Please be aware this letter does not constitute the FAA's approval of MAA's Agreement or any specific provisions thereof, which remain subject to all applicable Federal law and regulations.

As you may know, the Secretary of Transportation is required by law⁷ to review implementation of Competition Plans from time to time, to verify each Covered Airport implements its Plan successfully. In connection with our review, we may determine that it would be useful to visit your airport or hold a teleconference with airport officials. We will contact you if we decide to visit BWI in connection with its Competition Plan.

If you have questions regarding this letter or the FAA's review of your Plan, please contact Ms. Vanessa Balgobin, Management and Program Analyst, Financial Analysis and Passenger Facility Charge Branch at (202) 267-3867.

Sincerely,



Robert J. Craven
Director, Office of Airport Planning
and Programming

cc: Phillip Braden, Acting Manager, Airports Division, Eastern Region
Patricia Henn, Manager, Planning and Programming Branch, Airports Division, Eastern
Region
Matthew Thys, Manager, Washington Airports District Office

⁶ See FAA Order 5100.38D, Change 1, Airport Improvement Program Handbook, Appendix W.

⁷ 49 U.S.C. § 40117(k)