

Again, if the conditions prove to be insufficient, adversely affected parties may complain to us, and we will have the power to take enforcement action at that time.

**Airport Facilities.** Our original condition on airport facilities would have required the Alliance Carriers to surrender gates at four of their hubs as a result of co-location and, if requested by the airport operator, to surrender additional gates at their hubs and Boston Logan that were used less than six turns each day. The alternative language still requires them to give up thirteen gates at four of their hubs, and requires Delta to give up thirteen additional gates at Boston Logan in 2005. However, rather than establish a usage standard that would govern the future conduct of these carriers alone, the alternative language would require the carriers to give up gates now at two congested airports, Boston Logan and LaGuardia. We believe that the alternative language should be sufficient. The requirement that the Alliance Carriers surrender specific gates now offers immediate benefits over our original proposal, which may have made gates available in the future if they were underused and were requested by the airport sponsor. It is unlikely that any gates ultimately surrendered under the original condition would have been desirable gates. We therefore are not persuaded that the alternative language should be rejected due to alleged defects in several of the gates to be surrendered. We have reviewed the adequacy of the gates at Boston Logan and LaGuardia. We understand that the gates are useable for many purposes, if not all, and will enable airlines to gain access to these two airports, where access has historically been difficult.

Massport, the airport sponsor of Boston Logan, states that it would prefer that Northwest give up two different gates, which could be used by wide-body aircraft, unlike the gates that Northwest has chosen to surrender. However, no carrier commenter has complained about the adequacy of those particular gates. Our principal concern in our review of the alliance has been its impact on domestic airline competition. The gates to be surrendered by Northwest should be adequate for the needs of most domestic airlines, since airlines operate wide-body aircraft on relatively few domestic routes.

ACI does not specifically support or oppose the alternative language for the gate access condition or our original gate condition. ACI instead expresses its dissatisfaction with the alleged efforts of

this Department and the Federal Aviation Administration to interfere with the airports' asserted right to manage their facilities. ACI fears that we may interpret the condition as requiring an airport sponsor to relinquish its rights under leases with the Alliance Carriers. ACI's concern is unfounded. We are not requiring any airport to take action that would surrender its rights under its lease agreements. The condition requires gates to be surrendered only if requested by the airport sponsor, except for the gates that will be given up by Delta at Boston Logan upon its relocation to a new terminal. Presumably the airport sponsor will take into account its leasehold interests in determining whether to request the gates. Furthermore, giving an airport the opportunity to obtain gates that can be used by other airlines for new or expanded services should benefit the airport's customers and thus the airport sponsor.

Nonetheless, we do not accept ACI's implicit premise that airport sponsors should be able to manage their airports without regard for federal interests or their obligations under federal law. The airports used by the Alliance Carriers have received substantial grants from the FAA. As required by 49 U.S.C. 47107, the airports had to accept specific assurances in order to obtain those federal funds. Those assurances require among other things that the airport be available for public use on reasonable terms and conditions. 49 U.S.C. 47107(a)(1). Airports therefore have an obligation to make gates available for airlines that wish to begin service (or expand service) and are otherwise unable to obtain the facilities needed to operate those services. See FAA/OST Task Force Study, U.S. Department of Transportation, *Airport Business Practices and Their Impact on Airline Competition* (October 1999) at 13–26. We will continue to review airport facilities issues in connection with our review, under federal law, of airport competition plans, and will investigate complaints about “hoarding” of gates pursuant to our authority under section 41712.

ACI additionally asked us to clarify the alternative language's proviso that an Alliance Carrier need not surrender a gate “if it will be required to continue to pay rentals, charges or any other lease obligations related thereto.” ACI contends that we should explicitly state that this language does not exempt the airline's compliance with the lease obligations accruing before the surrender of the gates. ACI Comments at 5–6. However, ACI has misread the

condition, which is only intended to define when an Alliance Carrier must surrender a gate, not to define the extent of its obligations under its lease with the airport sponsor.

**Code-sharing Limitations.** In an effort to ensure that the Alliance Carriers fulfilled their promises of consumer benefits due to new on-line service in many markets, we required that at least one-fourth of each marketing carrier's code-share flights must be to or from airports that the airline and its regional affiliates either did not directly serve or served with no more than three daily roundtrips as of August 2002. We also required that an additional thirty-five percent of the code-share flights must either meet that requirement or be to or from small hub and non-hub airports. The condition limited the total number of code-share flights between Delta and Continental and between Delta and Northwest to 2,600 (but does not affect the existing code-sharing between Continental and Northwest). We committed ourselves to reviewing these restrictions after the first year. We believed these restrictions were necessary to ensure that the Alliance Carriers implemented their representations that the alliance would provide consumer benefits by creating on-line service in a number of new markets. 68 FR 3298.

The alternative language allows the Alliance Carriers to code-share on an additional 2,600 flights in the second year, subject to the requirement that thirty percent of these additional code-share flights must be flights in new markets or to small hub or non-hub airports. If the Alliance Carriers wish to add additional code-share flights after the second year, they must give us 180 days advance notice and provide any information requested by us on the additional code-share services. 68 FR 10771.

We believe that the alternative language will continue to ensure that the Alliance Carriers use their code-sharing to extend their networks, as they publicly stated was their intent. As under our original condition, they may use a large share of their code-share flights for larger markets where they compete with other airlines. The alternative language will also establish an upper limit on the number of additional code-share flights in the second year of the alliance. While the Alliance Carriers may expand code-sharing to significantly more markets in the second year, we retain our statutory authority to review the competitive impact of any such expansion. If at any time, we believe the effects of the alliance are anti-competitive, we may