



Office of the Chicago City  
Clerk



F2011-344

Office of the City Clerk

City Council Document Tracking Sheet

**Meeting Date:** 10/5/2011

**Sponsor(s):** Mendoza, Susana A (Clerk)

**Type:** Communication

**Title:** Approval of Federal Aviation Administration Passenger  
Facility Charge Program at Chicago O'Hare International  
Airport

**Committee(s) Assignment:**



CHICAGO DEPARTMENT OF AVIATION  
CITY OF CHICAGO

2011 SEP - 8 PM 3:12  
OFFICE OF THE  
CITY CLERK

September 7, 2011

The Honorable Susana Mendoza  
City Clerk  
City of Chicago  
City Hall Room 107  
121 N. LaSalle Street  
Chicago, IL 60602

Dear Ms Mendoza:

Pursuant to the ordinance passed on January 12, 1993, attached hereto please find the approval by the Federal Aviation Administration (FAA) dated September 1, 2011 regarding an application by the City of Chicago for the Passenger Facility Charge (PFC) program at Chicago O'Hare International Airport.

If you have any questions regarding these matters, please contact me at (773) 686-3579.

Sincerely,

Michael Cosentino  
Department of Aviation

Attachment





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

Federal Aviation Administration  
Great Lakes Region

2300 E. Devon Avenue  
Des Plaines, Illinois 60018

September 1, 2011

Ms. Rosemarie Andolino  
Commissioner, Department of Aviation  
City of Chicago, O'Hare International Airport  
P.O. Box 66142  
Chicago, Illinois 60666

Attn: Mr. Michael Zonsius

Dear Ms. Andolino:

In accordance with section 158.29 of the Federal Aviation Regulations (Title 14, Code of Federal Regulations, Part 158), the Federal Aviation Administration has approved your application to impose a passenger facility charge (PFC) at Chicago O'Hare International Airport (ORD) and to use PFC revenue at ORD. The authority to impose a PFC is contingent on your continued compliance with the terms of the regulation and any conditions included in this letter.

Enclosed is a Final Agency Decision which provides specific information about this approval including the approved PFC level, total amount approved, net PFC revenue to be collected, earliest charge effective date, and duration of authority to impose the PFC. This Decision also includes information on the partially approved project, as well as the FAA's reason for the decision. The FAA's findings and determinations required by statute and Part 158 as well as the FAA's disposition of comments received in response to your air carrier consultation and public notice are also included in the Decision.

The FAA has approved authority to impose a PFC and use PFC revenue at ORD for three projects. The total approved net PFC revenue to be collected for the projects is \$90,787,103, which is the entire amount requested by the City of Chicago Department of Aviation.

The FAA has also approved your request to exempt that class of carriers defined as *Air Taxi* from the requirement to collect the PFC. We request that you notify the carriers in the excluded class, which were listed in your application, of this exemption.

Reporting, recordkeeping, and auditing requirements are described in Part 158, Subpart D. Please issue your required quarterly reports in accordance with the previously issued

guidance on reports. We request that you advise our Chicago Airports District Office when you notify the air carriers and foreign air carriers to begin collecting PFCs.

In accordance with §158.33(a)(1), you are required to implement your projects approved for concurrent impose and use authority at ORD no later than 2 years after receiving approval to use PFC revenue on the project.

We have enclosed the list of advisory circulars with which you must comply in accordance with your certification of assurance number 9, standards and specifications.

Sincerely,

A handwritten signature in black ink, appearing to read 'James G. Keefer', written over a horizontal line.

James G. Keefer  
Manager, Chicago Airports District office

## FINAL AGENCY DECISION

### CITY OF CHICAGO, DEPARTMENT OF AVIATION CHICAGO, ILLINOIS

Application number 11-25-C-00-ORD is to impose a passenger facility charge (PFC) at Chicago O'Hare International Airport (ORD) for use at ORD.

In accordance with §158.29 of Title 14, Code of Federal Regulations ("CFR") of the Federal Aviation Regulations<sup>1</sup>, this Final Agency Decision (FAD) includes the appropriate determinations to approve or disapprove, in whole or in part, imposition of a PFC at ORD and use of PFC revenue on three projects at ORD<sup>2</sup>.

#### **Procedural History (Dates)**

Air carrier consultation meeting: December 13, 2010.

Public notice: November 19, 2010.

FAA receipt of application: May 5, 2011.

FAA finding that application is substantially complete: June 3, 2011.

#### **PFC Level, Amount, and Charge Effective Date**

Level of PFC:	\$4.50
Total approved net PFC revenue in this decision:	\$ 90,787,103
Earliest charge effective date:	February 1, 2038

February 1, 2038, is the "earliest" date on which air carriers are obliged to begin collecting PFCs from passengers ("charge effective date") and is based upon the estimated "charge expiration date" for the previously approved collections in application 10-24-C-00-ORD<sup>3</sup>. If the City of Chicago Department of Aviation (City) changes the charge expiration date for the previous application, the charge effective date for this application will also change, so that the City can continue to collect the authorized amount of PFC revenue without a cessation in collections. Title 14 CFR §158.43 contains information regarding notification to air carriers and foreign air carriers of the charge effective date and changes to the charge

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<sup>1</sup> Elsewhere in this document 14 CFR Part 158 may be referred to in abbreviated form as "Section 158.xx" or "§ 158.xx".

<sup>2</sup> The projects included in this decision are as follows: Development of non-exclusive use gates and related terminal facilities; renovation of concourse L terminal facilities; and reimbursement to the City for prior development of a common use gate and related terminal facilities in concourse E.

<sup>3</sup> Pursuant to Title 14 CFR §158.3 "charge effective date" means the date on which air carriers are obliged to begin collection of a PFC; "charge expiration date" means the date on which air carriers are to cease collecting a PFC.

expiration date. In establishing its charge effective date, the public agency must comply with §158.43(b)(3), which states, in part, that the charge effective date will be the first day of a month which is at least 30 days from the date the public agency notifies the carriers of approval to impose the PFC.

### **Duration of Authority**

The City is authorized to impose a PFC at ORD until the date on which the total net PFC revenue collected plus interest thereon equals the allowable cost of the approved projects or the charge expiration date is reached, whichever comes first. Based on information submitted by the City, the FAA estimates the charge expiration date for this decision is December 1, 2038. Should the amount of PFC revenue collected for this application ever exceed the allowable costs for all approved projects in this application, the public agency's authority to impose a PFC for this application ceases.<sup>4</sup> If the public agency's authority to impose a PFC ceases, the public agency must, without delay, submit a plan acceptable to the FAA to insure that it complies with applicable law, subject to loss of Airport Improvement Program (AIP) grant funds. Section 158.39(d).

### **CUMULATIVE PFC AUTHORITY DECISION SUMMARY TABLE (including current decision)**

<b>Application Number</b>	<b>Approved for Collection</b>	<b>Approved for Use</b>
93-01-C-00-ORD	\$ 500,418,285	\$ 203,169,288
93-01-C-01-ORD	\$ 3,043,976	\$ 0
93-01-C-02-ORD	\$ 4,070,943	\$ 4,070,943
93-01-C-03-ORD	\$ 2,310,816	\$ 0
93-01-C-04-ORD	(\$ 49,381,374)	(\$ 49,381,374)
93-01-C-05-ORD	\$ 2,228,896	\$ 0
93-01-C-06-ORD	\$ 33,289,404	\$ 52,607,489
93-01-C-07-ORD	\$ 7,211,803	\$ 0
93-01-C-08-ORD	\$ 12,397,557	\$ 0
93-01-C-09-ORD	\$ 6,455,531	\$ 5,228,339
93-01-C-10-ORD	(\$ 4,774,097)	(\$ 4,774,097)
93-01-C-11-ORD	\$ 612,594,021	\$ 0
93-01-C-12-ORD	(\$ 115,037,047)	\$ 23,053,275
93-01-C-13-ORD	\$ 214,109,256	\$ 109,210,915

<sup>4</sup> See Title 14 CFR § 158.63(a) (The public agency must provide quarterly reports to air carriers collecting PFCs for the public agency with a copy to the appropriate FAA Airports Office.), § 158.67(c) (The public agency shall annually provide for an audit of its PFC account.), and § 158.39(a) (If excess PFC revenue has been collected, the public agency must use the excess funds for approved PFC projects or to retire outstanding PFC – financed bonds ).

93-01-C-14-ORD	(\$ 80,400,000)	\$ 0
93-01-C-15-ORD	\$ 9,947,249	\$ 8,367,249
94-02-U-00-ORD	\$ 0	\$ 59,572,172
94-02-U-01-ORD	\$ 0	\$ 2,228,896
94-02-U-02-ORD	\$ 0	\$ 7,072,870
94-02-U-03-ORD	\$ 0	(\$ 2,572,624)
95-03-C-00-ORD	\$ 21,343,524	\$ 48,078,691
95-03-C-01-ORD	\$ 0	\$ 7,211,803
95-03-C-02-ORD	\$ 0	\$ 218,210,000
95-03-C-03-ORD	\$ 0	(\$ 153,928,673)
95-03-C-04-ORD	(\$ 21,343,524)	(\$ 21,343,524)
95-03-C-05-ORD	\$ 0	\$ 23,020,309
95-03-C-06-ORD	\$ 0	\$ 11,700,000
96-04-C-00-ORD	\$ 1,450,000	\$ 1,450,000
96-04-C-01-ORD	(\$ 346,500)	(\$ 346,500)
96-04-C-02-ORD	(\$ 1,103,500)	(\$ 1,103,500)
96-05-C-00-ORD	\$ 386,444,323	\$ 588,747,375
96-05-C-01-ORD	\$ 26,474,108	\$ 27,701,300
96-05-C-02-ORD	\$ 10,774,097	\$ 10,774,097
96-05-C-03-ORD	\$ 33,191,669	\$ 427,575,690
96-05-C-04-ORD	\$ 0	\$ 18,410,975
96-05-C-05-ORD	(\$ 5,288,448)	(\$ 5,288,448)
96-05-C-06-ORD	\$ 16,118,381	\$ 97,996,413
96-05-C-07-ORD	\$ 0	(\$ 80,400,000)
96-05-C-08-ORD	\$ 0	(\$ 10,120,000)
96-05-C-09-ORD	\$ 20,426,238	\$ 20,426,238
97-06-C-00-ORD	\$ 1,470,500	\$ 1,470,500
97-06-C-01-ORD	(\$ 1,470,500)	(\$ 1,470,500)
98-07-C-00-ORD	\$ 61,717,809	\$ 61,717,809
98-07-C-01-ORD	(\$ 8,814,528)	(\$ 8,814,528)
98-07-C-02-ORD	\$ 1,922,127	\$ 1,922,127
98-08-C-00-ORD	\$ 546,526,300	\$ 209,956,300
98-08-C-01-ORD	(\$ 546,526,300)	(\$ 209,956,300)
98-09-C-00-ORD	\$ 1,540,000	\$ 1,540,000
98-09-C-01-ORD	(\$ 1,540,000)	(\$ 1,540,000)
98-10-U-00-ORD	\$ 0	\$ 88,370,000
98-10-U-01-ORD	\$ 0	(\$ 88,370,000)

99-11-C-00-ORD	\$ 1,500,000	\$ 1,500,000
99-11-C-01-ORD	(\$ 1,500,000)	(\$ 1,500,000)
01-12-C-00-ORD	\$1,486,284,358	\$ 787,084,358
01-12-C-01-ORD	\$ 108,543,432	\$ 108,543,432
01-12-C-02-ORD	(\$ 279,500,000)	\$ 0
01-12-C-03-ORD	\$ 25,000,000	\$ 25,000,000
01-12-C-04-ORD	\$ 100,251,514	\$ 100,251,514
01-12-C-05-ORD	\$ 8,432,793	\$ 17,432,793
01-12-C-06-ORD	(\$ 366,700,000)	\$ 0
01-12-C-07-ORD	\$ 222,300,000	\$ 222,300,000
02-13-U-00-ORD	\$ 0	\$ 53,000,000
02-13-U-01-ORD	\$ 0	(\$ 9,000,000)
02-14-C-00-ORD	\$ 2,565,000	\$ 2,565,000
02-14-C-01-ORD	(\$ 2,565,000)	(\$ 2,565,000)
03-15-C-00-ORD	\$ 11,625,000	\$ 11,625,000
04-16-C-00-ORD	\$ 37,000,000	\$ 37,000,000
06-17-C-00-ORD	\$ 73,198,000	\$ 73,198,000
06-18-C-00-ORD	\$ 8,200,000	\$ 8,200,000
06-18-C-01-ORD	(\$ 8,200,000)	(\$ 8,200,000)
06-19-C-00-ORD	\$1,290,509,174	\$1,290,509,174
06-19-C-00-ORD	\$ 132,971,654	\$ 132,971,654
07-20-C-00-ORD	\$ 53,983,000	\$ 53,983,000
07-20-C-01-ORD*	(\$ 53,983,000)	(\$ 53,983,000)
08-21-C-00-ORD	\$ 235,690,213	\$ 235,690,213
09-22-C-00-ORD	\$ 247,195,313	\$ 247,195,313
10-23-C-00-ORD	\$ 1,400,818,394	\$ 1,400,818,394
10-24-C-00-ORD	\$ 4,635,392	\$ 4,635,392
11-25-C-00-ORD	\$ 90,787,103	\$ 90,787,103
<b>Totals</b>	<b>\$ 6,613,581,989</b>	<b>\$ 6,613,581,989</b>

## **Project Approval Determinations**

For each project approved in this FAD and for the application as a whole, the FAA, based on its expertise with the PFC program and airport development, exercises its judgment, and based upon its expertise finds that the application and record thereof, contain substantial documentation to support its determinations. Based on its review and pursuant to 49 U.S.C. §40117, the FAA finds that:

- The amount and duration of the PFC will not result in revenue that exceeds the amount necessary to finance the specific project.
- Each project approved at a \$3 or lower level meets at least one of the objectives set forth in 14 CFR §158.15(a) (as set forth in the individual project determinations), is eligible in accordance with §158.15(b) (as set forth in the individual project determinations); and is adequately justified in accordance with §158.15(c) and paragraph 4-8 of FAA Order 5500.1, Passenger Facility Charge (August 9, 2001) (as set forth in the individual project determinations).
- Each project approved at a PFC level above \$3.00 will make a significant contribution in accordance with 14 CFR §158.17(b)<sup>5</sup> (as set forth in the individual project determinations); meets at least one of the objectives set forth in §158.15(a) (as set forth in the individual project determinations); is eligible in accordance with §158.15(b) (as set forth in the individual project determinations); and is adequately justified in accordance with §158.15(c) and paragraph 4-8 of FAA Order 5500.1, Passenger Facility Charge (August 9, 2001) (as set forth in the individual project determinations).
- Each project approved for collection at a PFC level above \$3, meets the requirements of 14 CFR §158.17(a) (2). The FAA has reviewed the City's funding proposals for each project. For each project, the FAA has determined that the Airport Improvement Program (AIP) funds are not expected to be available to fund the project in whole or in part.
- The collection process, including a request by the public agency not to require a class or classes of carrier to collect PFC, is reasonable, not arbitrary, nondiscriminatory, and otherwise in compliance with the law.

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<sup>5</sup> A project for a medium or large airport is only eligible for PFC funding at levels of \$4 or \$4.50 if the project will make a significant contribution to improving air safety and security, increasing competition among air carriers, reducing current or anticipated congestion, or reducing the impact of aviation noise on people living near the airport [See 14 CFR § 158.17(b) ]

- The public agency has not been found to be in violation of §9304(e) or §9307 of the Airport Noise and Capacity Act (ANCA) of 1990 (since codified at 49 U.S.C. 47524 and 47526).
- The project-related requirements, concerning approval of the airport layout plan (ALP) and completion of airspace studies have been met
- Environmental requirements (14 CFR §158.29(b) (1) (iv)) have been completed and are discussed under a separate heading below.

**Project Approved for Authority to Impose and Use the PFC at ORD at a \$4.50 Level**

<b><u>Description:</u></b>	<b><u>Approved Amount</u></b>
<b>Development of Non-Exclusive Use Gates and Related Terminal Facilities</b>	
Pay-as-you-go <sup>6</sup>	\$ 0
Bond Capital <sup>7</sup>	\$ 33,800,000
Bond Financing & Interest <sup>8</sup>	<u>\$ 33,800,000</u>
Total	\$ 67,600,000

This project involves the City's purchase of the unexpired portion of Delta Air Line's (Delta) leasehold interest in the Concourse L gates and related terminal facilities. The lease includes all gates on Concourse L, currently designated Gates L1 through L10A; 28 ticketing counter positions (270 linear feet) and 7 Delta kiosk counters; hold rooms; jet bridges, operations space. The leased space totals approximately 150,389 square feet located primarily on the lower and upper levels of Concourse L and Terminal 3. The remaining leased space involved in this purchase is located in the Terminal 3 and Concourse L basement, Terminal 3 Mezzanine, and Concourse L penthouse level.

**Determinations:**

Approved for collection and use.

**Significant contribution:** The project includes changing exclusive use gates to common use and preferential use gates.

The preferential use gate modification portion of the project partially obtains significant contribution for competition because it will change exclusive use gates to preferential use gates. American Airlines currently subleases five

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<sup>6</sup> "Pay-as-you-go" refers to a method of financing a project where a public agency pays any outstanding project invoices as soon as PFC collections revenue permits.

<sup>7</sup> "Bond capital" refers to the proceeds of a bond or other debt instrument used to pay the capital costs of a project.

<sup>8</sup> "Financing and Interest" means the cost of financing a bond or other debt instrument, including debt service.

exclusive use gates from Delta and with the project will lease a total of six preferential use gates from the City.

The common use gates provide a significant contribution to competition because they enable access by new carriers at O'Hare and expansion of their service, which requires access to domestic gates that have not been available, other than gate E8, until recently.

Because five of the 11 gates (more than 33%) will serve as common use gates, the overall project meets the significant contribution for competition. Thus, the FAA determines that this project makes a significant contribution to increasing competition at Chicago O'Hare International Airport.

**PFC Objective:** Competition by new domestic carriers at O'Hare, and expansion of their service, requires access to gates, which have not been readily available, other than gate E8, until recently. Nearly half of the project changes exclusive use gates to common use gates which will foster competition by allowing new entrants to serve O'Hare and will allow for the expansion of service of other new entrants that arrived at O'Hare in recent years.

The City also states in the application that it will monitor American Airlines' use of all of its existing gates, not just the six preferential use in Concourse L to make sure that they are being fully utilized. If the City determines that they are not being fully utilized, the City could allow other carriers to use one or more of American's six gates in Concourse L. The gate utilization monitoring and any potential modifications would preserve and could potentially enhance capacity.

Thus, the FAA concludes that this project meets the PFC objectives of furnishing opportunities for enhanced competition between or among air carriers at ORD and enhancing capacity at ORD

**Basis for eligibility:** Terminal development as described in 49 U.S.C. 40117(a)(3)(C) and shell of a gate as described in 49 U.S.C 40117(a)(3)(F) (Air carrier Jet Blue, percentage of annual boardings 0.64%; and air carrier Spirit, percentage of annual boardings 0.74%. Percentages for air carriers Air Choice One and Virgin America are not available. Air Choice One provides essential air service to O'Hare and Virgin America just began service out of O'Hare in May.) Operations space shown on the exhibits is not eligible, however, as indicated in a clarification letter from the City of Chicago dated June 1, 2011, the City seeks PFC authority only for the PFC eligible space indicated on the exhibits.

**Adequate justification:** This project involves the City's purchase of the unexpired portion of Delta's leasehold interest in the Concourse L gates and related terminal facilities. The project will change all of the exclusive use gates in Concourse L to preferential use and common use gates.

The FAA has examined the proposed costs associated with this project and determined that the appraised value is consistent with the per-gate costs for the recent sale of Gate E8 at ORD, six gates at Chicago Midway International Airport (MDW), ten gates at Los Angeles International Airport (LAX), and five gates at Denver International Airport (DEN). Location adjustments were made to the comparisons for MDW, LAX and DEN. The amount requested in Bond Capital (\$33,800,000) is less than the appraised \$39,000,000 amount. The amount is reasonable for the number of current exclusive use gates that will become common use and preferential use gates. Therefore, the FAA has concluded that the project is adequately justified and the costs are reasonable.

**Estimated total project cost:** \$67,600,000.

**Proposed sources of financing:** PFC revenue \$67,600,000 - the amount requested by the City.

<b>Description:</b>	<b>Approved Amount</b>
<b>Renovation of Concourse L Terminal Facilities</b>	
Pay-as-you-go	\$ 0
Bond Capital	\$ 10,000,000
Bond Financing & Interest	\$ 10,000,000
Total	\$ 20,000,000

This project involves the physical modification of the existing single user exclusive use Concourse L to function as a common use and preferential use multi-user facility. The project includes the relocation of ticket counters (3,100 square feet), the replacement of ticket counters (15 counters), hold room interior finishes (2,700 square feet of wall panels and 14,055 square feet of carpet), corridor ceiling (15,454 square feet) and signage, and baggage system (1,250 linear feet), the installation of new hold room seating (500 units), new gate podiums (5 podiums), and the rehabilitation of passenger boarding bridges (5 bridges). The costs for these items also include general contractor markups and City construction management soft costs.

Common use gates can only serve competitive service if they are specifically designed for use by more than one carrier, and Concourse L is not currently designed or functional for use by multiple carriers. The renovation will assist in attracting new entrants and expand the operations of the recent entrants. Adding even one new carrier at O'Hare enhances competition. Each of the components listed above (ticket counters, finishes, baggage system, etc.) assists in modifying the gates from exclusive use to preferential and common use in order to increase competition at O'Hare.

**Determinations:**

Approved for collection and use.

**Significant contribution:** The project includes changing 11 exclusive use gates to common and preferential use gates.

Competition by new domestic carriers at O'Hare, and expansion of their service, requires access to domestic gates, which have not been available, other than gate E8, until recently. The common use domestic gates fully meet significant contribution for competition because they foster competition by allowing new entrants to serve O'Hare and will allow for the expansion of service of other new entrants that arrived at O'Hare in recent years

The preferential use gate modification portion of the project partially obtains significant contribution for competition because it will change exclusive use gates to preferential use gates. American Airlines currently subleases five exclusive use gates from Delta and with the project will lease a total of six preferential use gates from the City.

Because five of the 11 gates (more than 33%) will serve as common use gates, the overall project meets the significant contribution for competition.

Thus, the FAA determines that this project makes a significant contribution to increasing competition at Chicago O'Hare International Airport.

**PFC Objective:** Competition by new domestic carriers at O'Hare, and expansion of their service, requires access to domestic gates, which have not been available, other than gate E8, until recently. Nearly half of the project changes exclusive use gates to common use gates which will foster competition by allowing new entrants to serve O'Hare and will allow for the expansion of service of other new entrants that arrived at O'Hare in recent years.

The City also states in the application that it will monitor American's use of all of its existing gates, not just the six in Concourse L to make sure that they are being fully utilized. If the City determines that they are not being fully utilized, the City could allow other carriers to use one or more of American's six gates in Concourse L. The gate utilization monitoring and any potential modifications would preserve and could potentially enhance capacity.

Thus, the FAA concludes that this project meets the PFC objectives of furnishing opportunities for enhanced competition between or among air carriers at ORD and enhancing capacity at ORD

**Basis for eligibility** Shell of a gate as described in 49 U.S.C 40117(a)(3)(F) (Air carrier Jet Blue, percentage of annual boardings 0.64%; and air carrier Spirit, percentage of annual boardings 0.74%. Percentages for air carriers Air Choice One and Virgin America are not available. Air Choice One provides essential air service to O'Hare and Virgin America just began service out of

O'Hare in May.) Operations space shown on the exhibits is not eligible, however, as indicated in a clarification letter from the City of Chicago dated June 1, 2011, the City seeks PFC authority only for the PFC eligible space indicated on the exhibits.

**Adequate justification:** The preferential use gate modification portion of the project partially meets the objective for competition because it will change exclusive use gates to preferential use gates. American Airlines currently subleases five exclusive use gates from Delta and with the project will lease a total of six preferential use gates from the City.

The common use gates fully meet the objective for competition because they foster competition by allowing new entrants to serve O'Hare and will allow for the expansion of service of other new entrants that arrive at O'Hare in recent years. Competition by new domestic carriers at O'Hare, and expansion of their service, requires access to domestic gates, which have not been readily available, other than gate E8, until recently.

Because five of the 11 gates (more than 33%) will serve as common use gates, the overall project meets the objective for competition.

The FAA has examined the proposed costs associated with this project and determined that the \$10,000,000 in Bond Capital is based on current estimates to renovate the PFC eligible spaces based on the condition report included in Appendix F. The costs are comparable to projects that have been completed at O'Hare recently. The City will amend the PFC application based on actual costs incurred. Therefore, the FAA has concluded that the project is adequately justified and the costs are reasonable.

**Estimated total project cost:** \$21,321,092.

**Proposed sources of financing.** PFC revenue \$20,000,000 – the amount requested by the City and \$1,321,092 in City of Chicago Airport Development Funds.

<u>Description:</u>	<u>Approved Amount</u>
<b>Reimbursement to the City for Prior Development of a Common Use Gate and Related Terminal Facilities in Concourse E</b>	
Pay-as-you-go	\$ 3,187,103
Bond Capital	\$ 0
Bond Financing & Interest	\$ 0
Total	\$ 3,187,103

The project includes the reimbursement of the City for \$3,187,103, a portion of the amount used by the City to purchase the unexpired portion of a lease for O'Hare Gate E8 and its facilities in July 2002, and convert the exclusive use gate to a common use gate.

**Determinations:**

Approved for collection and use.

**Significant contribution:** Gate E8, after the City's purchase in 2002, has allowed competition by carriers that did not serve the airport prior to the availability of that gate. Thus, the FAA determines that this project makes a significant contribution to increasing competition at Chicago O'Hare International Airport.

**PFC Objective.** Gate E8, after the City's purchase in 2002, has allowed competition by carriers that did not serve the airport prior to the availability of that gate

Thus, the FAA concludes that this project meets the PFC objectives of furnishing opportunities for enhanced competition between or among air carriers at ORD.

**Basis for eligibility:** Shell of a gate as described in 49 U.S.C. 40117(a)(3)(F) (Air carrier Jet Blue, percentage of annual boardings 0.64%; and air carrier Spirit, percentage of annual boardings 0.74%. Percentages for air carriers Air Choice One and Virgin America are not available. Air Choice One provides essential air service to O'Hare and Virgin America just began service out of O'Hare in May.)

**Adequate justification.** The project includes the reimbursement of the City for \$3,187,103, a portion of the amount used by the City to purchase the unexpired portion of a lease for O'Hare Gate E8 and its facilities in July 2002, and convert the exclusive use gate to a common use gate. (The remainder of the lease purchase was financed using rents from the lease of gate E8 prior to the City's submission of this PFC application.) This project already fosters competition by allowing a new entrant (JetBlue) to serve O'Hare.

The FAA has examined the proposed costs associated with this project and determined that the costs are based on actual previously incurred costs for the purchase of the unexpired portion of the lease from Trans World Airlines. Therefore, the FAA has concluded that the project is adequately justified.

**Estimated total project cost:** \$3,187,103

**Proposed sources of financing** PFC revenue \$3,187,103 – the amount requested by the City.

## **Environmental Requirements**

The development of non-exclusive use gates and renovation of the gates to make them common use was analyzed and approved in a Categorical Exclusion issued on June 5, 2011, thus allowing the City to seek concurrent authority to impose and use the PFCs. The Categorical Exclusion was prepared pursuant to the National Environmental Policy Act (NEPA), Council on Environmental Quality guidelines implementing NEPA and FAA Orders 1050 1.E and 5050.4B.

All applicable requirements pertaining to ALP approval, airspace and NEPA have been met.

## **Request Not to Require a Class or Classes of Carriers to Collect PFCs.**

The City requests that the following class of air carriers be excluded from the requirement to collect PFCs: *Air taxi*.

**Determination:** Approved pursuant to 14 CFR §158.11 Based on information contained in the City's application, the FAA has determined that the proposed class accounts for less than 1 percent of ORD's total annual enplanements. The City should confirm, on an annual basis using prior year enplanement data, that the approved class does not exceed 1 percent of the total enplanements at ORD. Upon completion of the annual review, should the approved class (Air taxi) no longer meet the requirement for exclusion; the City must initiate collection of PFCs from this class of carriers.

## **Compliance with the Airport Noise and Capacity Act of 1990 (ANCA)**

The FAA is not aware of any proposal at ORD which would be found to be in violation of the ANCA. The FAA herein provides notice to the City that a restriction on the operation of aircraft at ORD must comply with all applicable provisions of the ANCA and that failure to comply with the ANCA and Part 161 makes the City subject to provisions of Subpart F of that Part. Subpart F, "Failure to Comply With This Part," describes the procedures to terminate eligibility for AIP funds and authority to collect PFC revenues.

## **Compliance with Subsection 47107(b) Governing Use of Airport Revenue**

As of the date of this approval the City of Chicago, Department of Aviation has not been found to be in violation of 49 U.S.C. §47107(b) or in violation of grant assurances made under 49 U.S.C. §47107(b).

## **Compliance with Requirement to Submit a Competition Plan**

As of the date of this approval, the City of Chicago Department of Aviation has complied with the requirement to submit a competition plan in accordance with

§158.29(a)(1)(viii). Furthermore, by letter dated June 2, 2004, the FAA has determined that the plan is in accordance with 49 U.S.C. §47106(f)

### **Air Carrier Consultation and City's Public Notice**

Delta Air Lines, United Airlines, American Airlines, and Alaska Airlines certified agreement with the proposed projects during the air carrier consultation process following the December 13, 2010 air carrier consultation meeting.

No comments from the public were received from the City's public notice issued on November 19, 2010.

### **Legal Authority**

This decision is made under the authority of 49 U.S.C. §40117, as amended. This decision constitutes a final order to approve, in whole or in part, the City of Chicago Department of Aviation's application to impose a PFC and use PFC revenue on three projects at ORD. A person disclosing a substantial interest may apply for review of this decision to the courts of appeals for the United States or the United States Court of Appeals for the District of Columbia upon petition, pursuant to 49 U.S.C. §46110, filed within 60 days after issuance of this decision.

Concur

  
Great Lakes Region  
Airports Division Manager

8.31.11  
Date

Nonconcur

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Great Lakes Region  
Airports Division Manager

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Date