



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

Office of Airport Planning
and Programming

800 Independence Ave., SW
Washington, DC 20591

August 3, 2017

Mr. William R. Vanecek
Director of Aviation
Niagara Frontier Transportation Authority
4200 Genesee Street
Buffalo, New York 14225

**Subject: Buffalo Niagara International Airport (BUF)
FAA Review of 2017 Competition Plan**

Dear Mr. Vanecek:

Thank you for submitting the above-referenced Competition Plan for BUF. The Federal Aviation Administration (FAA) has reviewed the Plan and finds it to be in accordance with the applicable statutory requirements.¹ This letter does, however, request your consideration in some specific areas outlined below.

This Plan was required because BUF is now a Covered Airport.² As you are aware, this is BUF's first Competition Plan.

Our review found that the Niagara Frontier Transportation Authority (Authority) has included the following pro-competitive policies and practices in the 2017 BUF Plan by:

- Indicating that there are nine Authority controlled (common-use) gates available on a per-use basis;
- Indicating that two of the common-use gates are designated as international gates but are available for domestic flights when not reserved for international flights;
- Providing that there are 16 preferential-use gates (and no exclusive-use gates);
- Identifying that the Airline Use and Lease Agreement (AULA) contains an efficient use clause (for signatory airlines) that the Authority can invoke to provide gate access for new entrants or expansion of service by existing air carriers;
- Providing that all remain overnight (RON) positions are common-use;
- Defining that all licensed ground service support contractors at BUF can provide ground handling, maintenance, deicing and other support services;
- Ensuring that nothing in the AULA can be misconstrued as impairing the Authority's ability to implement PFC-funded projects; and

¹ Section 155 of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR 21), Pub. L. No. 106 181, (April 5, 2000), 49 U.S.C. §§ 40117(k) and 47106(f).

² As defined in FAA Order 5100.38D ("Airport Improvement Program Handbook," Appendix X), Covered Airports are those where one or two air carriers control more than 50 percent of the passenger boardings. Based on calendar year 2014 data, two air carriers accounted for more than 50 percent of enplanements at BUF.

- Posting the BUF Competition Plan on the Authority's website;

The FAA has approved your Competition Plan. However, we ask that the Authority consider our recommendations in the four areas noted below. We recognize that these items would be longer-term initiatives, but we would appreciate hearing your reaction within 30 days of the date of this letter.

First, we understand that new entrants and existing air carriers may contact your Airport Administrative Office for assistance in gaining access to facilities. However, we recommend that you designate a Competitive Access Liaison so that new entrants and existing air carriers clearly understand whom to contact when seeking competitive access at BUF.

Second, we recommend that you develop a process to announce gate and RON availability to potential new entrants and existing tenants. Although you indicate that an airport map is available on the Authority's website that identifies airport-controlled gates and the positions (and air carrier names of gates currently under lease with the Authority), we are concerned that this map alone may not be the most efficient means to provide current gate and RON availability information to potential new entrants and existing tenants. We suggest you consider posting current gate availability in a readily accessible place and format on the Authority's website, on a regular basis, for the benefit of any new entrants or existing tenants who might wish to expand.

Third, we recommend that you establish a formal dispute resolution policy. We understand that you currently have gates available for potential new entrants and/or existing air carriers wishing to expand service and there have been no subleases during the last twelve months. Our experience, though, shows that proactive establishment of dispute resolution procedures provide a defined means for air carriers to seek redress. We recommend implementing such a policy, rather than waiting until a dispute arises.

Finally, section b.3 of your Competition Plan indicates that section 6B of the AULA concerns sublease fees, yet section 6B ("Preferential Use of Aircraft Parking Positions") does not, in fact, do so. Please revise this reference in the plan to identify the correct AULA section concerning sublease fees.

Thank you for posting the 2017 BUF Competition Plan on the Niagara Frontier Transportation Authority website. We ask that you also post our correspondence regarding your 2017 Competition Plan (and any future Plan Updates and correspondence) on the Authority website.

As you are aware, the Authority has now filed, and the FAA has approved an initial Competition Plan; thus, two Plan updates will be required if BUF remains a Covered Airport. Your next Plan update will be due 18 months from the date of this letter. We will notify you before the end of your 18-month cycle as to whether you remain a Covered Airport.

Once BUF has completed the requirements noted above, there would be no further requirement for a Plan update unless certain special conditions arise. The conditions identified in the Airport Improvement Program Handbook, Order 5100.38D, Appendix X, which would require the filing of a Competition Plan update are as follows:

- An airport files a competitive access report as required by Section 424 of Vision 100, codified as Title 49 (U.S.C.), Section 47107(s) stating it had denied access to an air carrier for gates or facilities within the last six months. Section 424 requires any medium hub or large airport that has denied a carrier's request or requests for access to file a report with the FAA describing the carrier's requests, providing an explanation as to why the requests could not be accommodated, and providing a time frame within which, if any, the airport will be able to accommodate the requests.
- An airport executed a new lease and use agreement, or significantly amended a lease and use agreement, including an amendment due to use of Passenger Facility Charge financing for gates.

Please also note that, under Section 134 of the FAA Modernization and Reform Act of 2012, Pub. L. No. 112-95 (Feb.14, 2012), Congress eliminated the need for airports to include data on airfare levels and patterns of air service in Competition Plans. Thus, we will no longer require this information in any further updates to the BUF Competition Plan.

Please be aware this letter does not constitute the FAA's approval of the AULA 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 law³ 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 BUF in connection with its Competition Plan.

If you have any questions regarding this letter or the FAA's review of your Plan, please contact Mr. Joe Hebert, Manager, Financial Analysis and Passenger Facility Charge Branch, at (202) 267-8375.

Sincerely,



Elliott Black
Director, Office of Airport Planning
and Programming

Enclosure

cc: Steve Urlass, Manager, Airports Division, Eastern Region
Patricia Henn, Manager, Planning and Programming Branch, Airports Division, Eastern Region
Evelyn Martinez, Manager, New York Airports District Office

³ 49 U.S.C. § 40117(k)

