



Niagara Frontier Transportation Authority
Serving the Niagara Region

4200 Genesee Street
Buffalo, New York 14225
www.nfta.com

William R. Vanecek
Director of Aviation
716-630-6030
716-630-6070 Fax

February 8, 2019

Mr. Elliott Black
Director, Office of Airport Planning
and Programming
Federal Aviation Administration
800 Independence Ave, SW
Washington, DC 20591

RE: Buffalo Niagara International Airport (BUF)
2017 Competition Plan Update #1

Dear Mr. Black:

In accordance with FAA Order 5100.38D, Table X-4 "Required Competition Plan Update Content" for our 2017 BUF Competition Plan and in response to your letter dated October 15, 2018, the Niagara Frontier Transportation Authority (Authority), owner and operator of the Buffalo Niagara International Airport (BUF), submits the following update:

- a. **Changes from Last FAA Approval** – In December of 2017, BUF welcomed new service from Frontier Airlines, Inc. (Frontier), raising the total count to 7 air carriers. Frontier signed the Use and Lease Agreement as a Signatory carrier effective July 1, 2018. Seventeen gates with loading bridges are now under signatory lease to airlines on a preferential-use basis. Six gates with loading bridges and two ground-loaded gates are available for lease and are currently used by tenant air carriers and transient air carriers on a per-use basis.

The current Use and Lease Agreement will expire on March 31, 2019. The Authority has been engaged in negotiations with the Signatory carriers for the past six months. No significant or material changes are anticipated with the new agreement. A final draft of the new agreement will be circulated among involved parties within the next couple weeks and the Authority will include distribution to FAA for review and comments.

- b. **Reasons for Not Instituting FAA Recommendations** - The Authority has not yet established a formal dispute resolution policy however Section 6 of the Use and Lease Agreement provides guidance for resolution of disputes. The Authority is working with the airlines to establish a formal policy to be included in the new Use and Lease Agreement.

- c. **Responses to FAA Questions** – The Authority responded to FAA’s recommendations in a letter dated August 30, 2017 with the following:

Area 1 – Federal Aviation Administration (FAA) recommended that the Authority designate a Competitive Access Liaison. The Authority has a full-time employee that fulfills this position and has linked the Competitive Access Liaison contact information on our website.

<http://www.buffaloairport.com/About/Business.aspx>

Area 2 – FAA recommended that the Authority develop a process to announce gate and RON availability to potential new entrants and existing carriers. The Authority communicates this information to existing carriers at monthly meetings, the annual rates and charges meeting, and through direct marketing to airlines. The Authority also provides gate availability on our website’s terminal directory.

To comply with FAA’s recommendation, the Authority has added a link to our Business Development page on the Authority’s website that specifically identifies current gate and RON availability and includes a direct contact person for reservations and information. For your convenience, a copy has been provided labeled **Exhibit 1**.

<http://www.buffaloairport.com/About/Business.aspx>

Area 3 – FAA recommended that the Authority establish a formal dispute resolution policy. Section 6 of the Airport Use and Lease Agreement (AULA) provides guidance for resolution of disputes. Section 6B provides for the Authority to adopt and publish a policy regarding the assignment of airlines to the use of aircraft parking positions, associated holdroom areas, and loading bridges. The Authority and the Signatory Airlines are currently in discussions regarding this matter as part of the ongoing Use and Lease negotiations.

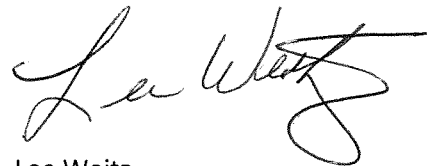
Area 4 - FAA noted the 2017 BUF Competition Plan section b.3 incorrectly references section 6B of the AULA regarding sublease fees. The Authority has updated the correct version of the AULA and verified section 6B does in fact reference sublease fees as stated. See paragraph three of section 6B attached hereto as **Exhibit 2**.

- d. **Public Availability** – The Authority’s financial information is available to the public on the Authority website at the following address:

<http://www.nfta.com/About/PublicInfo.aspx>

Please feel free to contact me if you need anything further.

Very truly yours,

A handwritten signature in black ink, appearing to read "Lee Weitz". The signature is fluid and cursive, with a long horizontal stroke at the end.

Lee Weitz
Deputy Director of Aviation

On behalf of,

William R. Vanecek
Director of Aviation

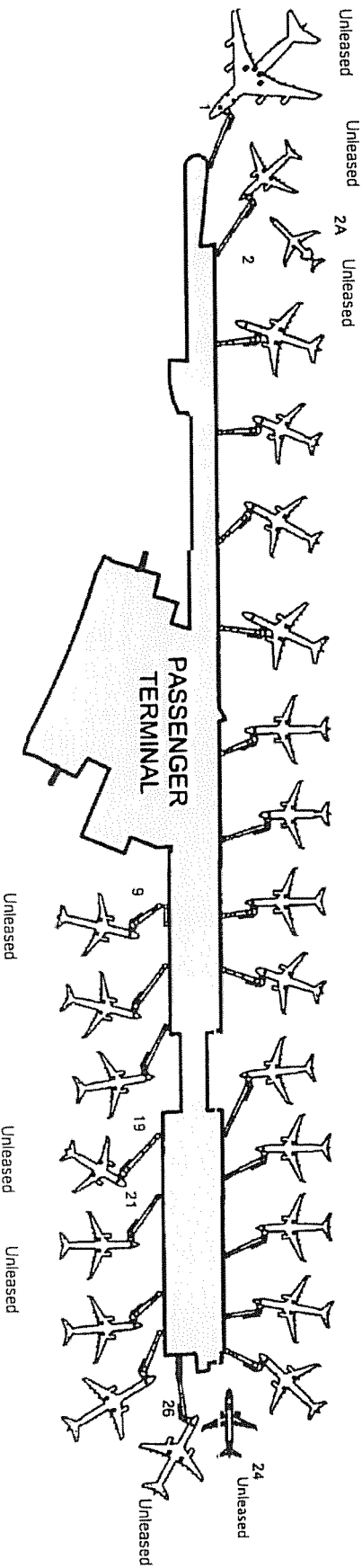
Exhibit 1

BUF Common Use Gate Availability: 1, 2, 2A, 9, 19, 21, 24, 26

International Common Use Gates Available: Gates 1 and 2

RON Positions Available:

Please contact Juan Godinez at (716) 630-6021 for reservations or information



reasonable rental charge for any such storage areas. The Airline shall apply de-icing/anti-icing fluids only in areas designated by the Airport Manager. Upon transfer of operations to the New Terminal, de-icing/anti-icing fluids may only be applied at specified containment areas located at the Terminal Ramp areas and at remote aircraft parking areas provided that containment areas have been installed and no application will be allowed at any other location on airport property except as designated by the Airport Manager. The Authority will implement a collection, storage and disposal system for these fluids upon transfer of operations to the New Terminal. The Authority reserves the right to include the costs associated with the operation and maintenance of this system in the Airline rates and charges.

The rights and privileges granted Airline pursuant to this Section 5 shall be subject to any and all reasonable Rules and Regulations established by Authority and to the provisions of Section 7. Any and all rights and privileges not specifically granted to Airline for its use of and operations at the Airport pursuant to this Agreement are hereby reserved for and to Authority.

SECTION 6. LEASED PREMISES

The Authority does hereby let and grant to the Airline and the Airline does hereby hire and take from the Authority the Airline's "Exclusive Use Space", "Preferential Use Space" and "Joint Use Space" in the Terminal Building and designated aircraft parking positions on the Terminal Ramp Area, as more particularly delineated in Exhibit B as revised from time to time. In addition, Airline shall have the non-exclusive right to use the Common Use Space delineated in Exhibit B.

Changes to Leased Premises depicting the letting of

space to a new entrant Airline, the letting of additional space to a Signatory Airline and the deletion of space due to an Airline bankruptcy shall be evidenced by the Authority's transmittal of a revised Exhibit B to Airline. Said revised Exhibit B shall be substituted herein and considered part of this Agreement without the necessity of amendment of this Agreement.

In the event changes to Exhibit B reflect changes in the premises leased to tenants other than Signatory Airlines, or reflect other space changes not inconsistent with the provisions of this Agreement, then in such event said revised Exhibit B may be substituted herein and be considered part of this Agreement without the necessity of amendment of this Agreement.

Authority may designate areas in the Terminal Building, or elsewhere on the Airport to be used by agencies of the United States government for the inspection of passengers and their baggage, and for the exercise of the responsibilities of said agencies with respect to the movement of persons and property to and from and among the United States.

A. Efficient Use Of Premises

The Airline and the Authority agree that efficient use of available Terminal Building space and facilities and minimizing disruptions to existing Airport lessees are common goals. During the term of this Agreement:

- (1) New entrant airlines initiating service at the Airport may need facilities.
- (2) Existing airlines may wish to expand their operations at the Airport.
- (3) Conditions may materialize within the Terminal Building whereby it would be prudent to relocate Airlines within existing facilities.
- (4) Due to the Capital Improvement Program it may be necessary to relocate Airlines.
- (5) Due to other construction it may be necessary to relocate Airlines at Authority's sole cost and expense into mutually acceptable alternate premises in the Terminal Building.

In the event any or a combination of the these or other conditions occur, the Authority may request, in writing, the cooperation and assistance of the Airline, in conjunction with other Signatory Airlines as appropriate, to determine satisfactory solutions for the handling of passengers, baggage and aircraft in a manner that maximizes and assures efficient use of the Terminal Building space and facilities. The Airline agrees to cooperate fully with the Authority and to use its best efforts to determine such satisfactory solutions. Any such solutions could include, but need not be limited to, an assignment, sublease, or temporary shared use of a portion of the Airline's Leased Premises; a ground handling agreement; construction of new facilities; use of temporary facilities; or any combination thereof.

In the event that the Authority and the Signatory Airlines are unable to reach a mutually agreeable satisfactory solution accommodating the needs of new entrants or incumbents wishing to expand service, the Authority may require that the Airline supply information regarding past and planned utilization of Airport facilities. Based on the information supplied by the Airline and other information available to the Authority, the Authority may determine that the Airline has capacity available to accommodate any requested shared use, and may require such sharing of Leased Premises. If the Airline refuses to provide the required information, the Authority may presume that the Airline has such capacity available. The Authority may, after considering any information submitted by Airline, require Airline to adjust its Leased Premises to permit the Authority to assure the most efficient use of the Terminal Building. Any such required modification to Airline's Leased Premises shall result in an adjustment of Airline's rent and other charges reflecting such modification, including a credit for unamortized capital improvements made by the Airline. In such circumstances Airline shall not be responsible for the costs of any physical modification required to the Leased Premises.

When the Authority undertakes Terminal Building

demolition and/or modifications to implement the Capital Improvement Program, as contemplated under subparagraph (4) above, then the Airline and the Authority shall use their best efforts to reach a satisfactory solution as to the handling of passengers, baggage and aircraft that will permit construction of the Capital Improvement Program to proceed in a timely fashion.

B. Preferential Use of Aircraft Parking Positions.

Aircraft parking positions on the Terminal Ramp Area of the Terminal Building will be assigned on a Preferential Use Space basis. The Airline will have priority in using such facilities assigned to it on a Preferential Use basis to accommodate its scheduled flights and those of any airline being ground handled by the Airline under an approved ground handling agreement; however, the Authority may assign any such facility for use by others in periods when they are not used by the Airline, so long as unassigned position(s), or any position(s) reserved by the Authority, are not available and such facility is vacated by others at least sixty (60) minutes prior to the Airline's next scheduled arrival at said parking position.

The Authority shall adopt and publish a policy regarding the assignment of airlines to the use of aircraft parking positions, associated holdroom areas and loading bridges, consistent with the provisions of this Section. Application of the policy shall be the sole responsibility of the Executive Director.

If another airline is assigned by the Authority to use the Airline's preferentially-assigned aircraft parking position(s), or Airline's associated holdroom area(s) or loading bridge(s), such airline shall enter into an agreement with the Airline covering the use of such space, and shall agree to pay the Airline a reasonable fee for each use. Said fee shall be based upon the cost of providing and maintaining such space and shall be limited to the total cost of providing and maintaining the space and facilities, plus an administrative surcharge not to exceed fifteen percent (15%), allocated among the total number of uses of the space. The Airline shall have the right to require

the other airline(s) to indemnify, defend and hold harmless the Airline against liability arising out of such use.

SECTION 7. RENT

A. The annual rent payable to the Authority for the Exclusive Use Space, Preferential Use Space, Joint Use Space and Common Use Space in Airline's Leased Premises shall be calculated according to this subsection and Exhibit D. The share of the total costs of the Terminal Building that shall be payable by Airline shall be that share of total Terminal Building costs that are attributable to Airline's Exclusive Use Space, Preferential Use Space, Joint Use Space and Common Use Space within the Terminal Building (as calculated on Exhibit B), its pro rata share of mechanical and administrative areas and any special assessments levied upon the Airport by local governmental agencies. Terminal Building costs payable by Airline shall exclude costs allocable to the concession areas and non-airline Common Use Space and areas leased to other airlines or remaining unleased.

The Authority shall absorb and recover from the Revenues generated from other than Signatory Airlines that share of all Terminal Building costs representing the percentage of the usable space in each Terminal Building not leased to Signatory Airlines. This percentage will be applied against all costs allocated to the Terminal Building including capital asset write-offs or depreciation or annual charges on investments.

Specifically, Authority shall calculate the total annual expense of each Terminal Building so long as the East and West Terminal Buildings are in use and thereafter the new Terminal Building; this total will then be divided by the amount of usable space to arrive at a cost per square foot. The cost per square foot will be applied only against square feet leased by Airline as set forth above.

B. The annual rent shall be payable in equal monthly installments, except as the rent may be adjusted as provided in Sections 11, 12 and 13, below.



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

Office of Airport Planning
and Programming

800 Independence Ave., SW.
Washington, DC 20591

OCT 15 2018

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

**Subject: Buffalo Niagara International Airport (BUF)
FAA Review of 2019 Competition Plan Update**

Dear Mr. Vanecek:

As you may recall, the Federal Aviation Administration (FAA) approved the Competition Plan for Buffalo Niagara International Airport (BUF) on August 3, 2017. At that time, BUF met the requirements for being a "covered airport".¹

The FAA recently published the fiscal year 2019 covered airport list and BUF once again meets the requirements for Competition Plans outlined in 49 U.S.C. 47106(f). Accordingly, BUF is now required to file a Competition Plan Update in fiscal year 2019.

49 U.S.C. 40117(f) specifies that a covered airport must submit a Competition Plan followed by two Plan Updates at 18 month intervals after the initial plan submission. Once a covered airport has submitted an approved Competition Plan and two approved Plan Updates, it will no longer need to submit periodic written Plan Updates unless certain special conditions arise². This will be BUF's first Competition Plan Update.

As a reminder, this Competition Plan update is required before a covered airport may receive approval for a new Passenger Facility Charge (PFC) application or a grant issued under the Airport Improvement Program (AIP) for the current fiscal year.

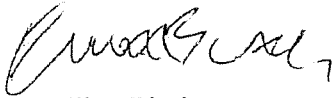
Please provide your Plan Update as soon as possible. Note that delays in submission of an acceptable Plan Update may affect the FAA's ability to issue a grant or approval to collect a PFC, and FAA reviews of Competition Plans or Plan Updates may take up to 75 days.

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), codified as Title 49 U.S.C., Sections 40117(k) and 47106(f).

² FAA Order 5100.38D, Appendix X, Table X-2.

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

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



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William R. Vanecek
Director of Aviation
716-630-6030
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August 30, 2017

Mr. Elliott Black
Director, Office of Airport Planning
and Programing
Federal Aviation Administration
800 Independence Ave, SW
Washington, DC 20591

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

Dear Mr. Black:

The Niagara Frontier Transportation Authority (Authority) acknowledges receipt of your letter dated August 3, 2017, which advised the Authority that the Federal Aviation Administration (FAA) found BUF's Competition Plan to be in accordance with the applicable statutory requirements. The letter further requested that the Authority consider FAA's recommendations in four areas. The recommendations are addressed below:

Area 1 – FAA recommended that the Authority designate a Competitive Access Liaison. The Authority is updating its website for BUF and will include a link to the Competition Plan on the website and designate a Competitive Access Liaison. Currently, BUF has a full time employee that fulfills this position. The employee is responsible for marketing BUF to new entrant airlines and seeking expansion of service from existing carriers. BUF recently announced that Frontier Airlines will commence service on December 6, 2017. The Authority attributes this announcement to the hard work of this employee to establish a relationship with Frontier Airlines that took several years to build. BUF was able to handle Frontier Airlines facility needs.

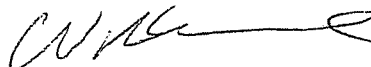
Area 2 – FAA recommended that the Authority develop a process to announce gate and RON availability to potential new entrants and existing carriers. Currently, this is accomplish through monthly meetings with the airlines and at our annual airline rates and charges meeting and through direct marketing to airlines. The Authority, as part of the updating of BUF's website, will identify gate and RON availability.

Area 3 – FAA recommended that the Authority establish a formal dispute resolution policy. Section 6 of the AULA provides guidance for resolution of disputes. Please note that the copy of the AULA provided to FAA as an attachment to the Authority's submission of the Competition Plan contained an incorrect version of Section 6. Attached to this letter is a copy of the correct version of Section 6. The

AULA at Section 6B provides for the Authority to adopt and publish a policy regarding the assignment of airlines to the use of aircraft parking positions, associated holdroom areas and loading bridges. The Authority will work with the airlines to develop a formal policy.

Area 4 – FAA correctly noted that Section 6B of the version of the AULA provided to FAA did not address the Authority's policies on sublease fees. As stated in the Authority's response under Area 3, an incorrect version of Section 6 was provided to the FAA. The correct version of the AULA does contain language regarding subleasing and sharing of space, including a 15% cap. See paragraph three of Section 6B attached hereto.

Very truly yours,



William R. Vanecek
Director of Aviation



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.

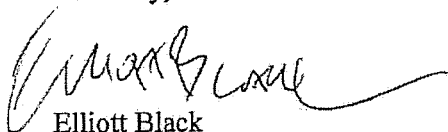
Please also note that, under Section 134 of the FAA Modernization and Reform Act of 2012, Pub. L. No. 112-95 (Feb.14, 2012), Congress eliminated the need for airports to include data on airfare levels and patterns of air service in Competition Plans. Thus, we will no longer require this information in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