February 10, 1997

Lloyd B. Ericsson, Esq.
Ericsson Egan
American Bank Bldg., Suite 1150
621 S.W. Morrison St.
Portland, OR 97205-3814

RE: Nie Citation LLC (Cessna

Citation N19ER) Dear Mr. Ericsson:

This is in reply to your letter of January 21, 1997, to Mr. George Thompson in which you requested our opinion regarding the regulatory consequences involved with the rental of N19ER. Specifically, you requested us to confirm the advice you have provided to the owner and potential lessees of the aircraft. You have advised those parties that the proposed operations of N19ER could be conducted under Part 91 of the Regulations. Attached to your letter to Mr. Thompson was your opinion letter to the aircraft owner, as well as the rental agreement and a letter, which will be sent to each rental customer.

We will not attempt to duplicate the comprehensive legal analysis, which you furnished to your client in your letter of November 23, 1996. Generally, we concur with your analysis of the pertinent case law and with the conclusions you have reached regarding the issues of "operational control" as they apply to aircraft rentals. We all recognize that the determination of operational control, as it applies to any particular operation, requires the consideration of a variety of factors particular to that operation. In a sense, however, it really requires that we determine the intent of the parties when they form their agreements. If the lessee, in fact, intends to assume the operational responsibility for the flight and control over the flight operations, the flight may be conducted under Part 91. On the other hand, if the lessee is merely buying transportation from Point A to Point B, we would probably characterize the operation as being in air transportation under Part 121 or 135. It is for this reason that we are particularly interested in the pilots who operate the aircraft. We like to know how they are selected, how (and by whom) they are paid, and who exercises control over them. You seem to have considered these factors as well, in the advice which you have given in this matter.

Based on the information which you have furnished to us, we concur with your opinion that the operations, wherein N19ER is leased pursuant to the attached rental agreement and informational letter, may be conducted under Part 91 of the Regulations. As always, it should be recognized that additional or changed facts may affect this opinion. We suggest that you might consider exercising care in the following areas.

1. Your correspondence does not indicate the manner in which prospective lessees are made aware of the availability of N19ER. You might wish to caution your clients to be sensitive to how they market the aircraft rental. They should avoid any suggestion that they are offering a "package deal" for transportation rather than the lease of an aircraft.

2. We believe that, if the insurance policy is to be the mechanism used by prospective lessees to determine who may pilot the aircraft, the policy must be flexible enough to realistically and honestly allow lessees to procure their own pilots. We understand that the Cessna Citation is an expensive, sophisticated aircraft and we have no wish to dictate the terms of an insurance policy between an owner and insurer. On the other hand, we would be skeptical of a policy provision which, for instance, by its terms, allowed only the owner or his full-time employees to pilot the aircraft.

3. We note on page 8 of your letter to Mr. Nie your discussion regarding whether a person identified as "Pam" could provide the scheduling and invoicing services for both the aircraft and the pilots. We share your concern with this arrangement and believe, depending on the totality of the facts surrounding the scheduling, billing, and collection activities, that the combination of such activities could affect the way we characterize these flights.

We would be glad to consider any additional information which you wish to submit regarding the proposed rentals.

Sincerely,

John J. Callaghan

Deputy Regional Counsel