April 29, 2004

Randall C. Kania
Director of Operations
ExpressNet Airlines
847 Willow Run Airport
Ypsilanti, MI 48198

Dear Mr. Kania:

This letter responds to your August 5, 2003 request for a legal interpretation of the definition of "flight time" that is stated in 14 CFR section 1.1, as it relates to the crediting of the flight time limitations stated in subparts Q, R & S of Part 121.

Section 1.1 defines flight time, in pertinent part, as pilot time that commences when an aircraft moves under its own power for the purpose of flight and ends when the aircraft comes to rest after landing.

You take the position that the regulation should be interpreted to mean that flight time does not always occur when the aircraft taxies under its own power. You argue that when interruptions occur that require an aircraft to return to the block, the aircraft does not become airborne and there is no landing, flight time does not accrue for the original taxi out and taxi in even though the pilot taxied with the intent to takeoff.

You refer to various regulations that you state require that a flight be "suspended or terminated" under certain circumstances. For example, you cite 14 CFR Section 121.628, which prohibits the takeoff of an aircraft with inoperable instruments or equipment, unless certain conditions are met. You also mention other reasons that cause flights to be "suspended or terminated," such as crewmember illness, loading concerns.

You also provide some examples, with suggested answers, in support of your position.

Ex. 1: The aircraft taxies to the runway and finds a mechanical problem that requires consultation with the minimum equipment list (MEL). The PIC stops the aircraft and determines that the MEL allows continuation of the flight. They do not return to the gate and engines continue to operate. After performing the required paperwork, they resume taxi and eventually takeoff (which always ends in a landing).

Your Suggested Answer: Clearly the flight was not terminated or suspended and a subsequent takeoff was made. This would count as flight time.
FAA Response: We agree with your answer.

Ex. 2: The aircraft taxies to the runway and finds a mechanical problem that requires consultation with the minimum equipment list (MEL). The PIC stops the aircraft and determines that the MEL does not allow continuation of the flight. They return to the gate to obtain maintenance.

Your Suggested Answer: A takeoff is not permitted, nor performed, and therefore a landing is not made. The aircraft returned to the gate to

effect repair. Therefore, the flight was terminated or temporarily suspended and flight time did not occur.
FAA Answer: See our discussion below.

Ex. 3: Similar to Example 2, the aircraft taxies to the runway and is recalled to the gate by the company to add additional freight or passengers. The aircraft engine is/is not shut down during this process. Doors are opened and freight/passengers are added. Additional changes are made to the required load manifest and weight and balance paperwork. Once completed, the aircraft begins taxi and a takeoff is made.

Your Suggested Answer: Although the captain originally taxied with the intention of flight, the flight was temporarily suspended by a person exercising operational control over the aircraft. For domestic and flag air carriers this would be the dispatcher in charge of the flight. For supplemental air carriers it would be the director of operations or the PIC. In this example, a takeoff is not performed, and therefore a landing is not made. Additional changes and a new weight and balance form were required. Therefore, the flight was temporarily suspended and flight time did not occur on the first gate departure.

FAA Answer: See our discussion below.

We do not agree that a temporary "suspension" of a flight always suspends the accrual of flight time. We have previously said that performance of FAA required de-icing procedures does not suspend the accrual of flight time, even though the aircraft's engines are shut down at the de-icing pad. *See* June 22, 2000, Letter to James W. Johnson, from Donald P. Byrne, Assistant Chief Counsel, Regulations Division [2001-3]. In a situation in which a flight returns to the gate, for mechanical repair or other reason, such as additional freight or passengers, a critical inquiry is whether the air carrier requires the pilot to remain on board the airplane, because the mechanical repair or the on loading of passengers or cargo can be performed with all crewmembers and passengers on board. When the pilot must remain on board, this constitutes a delay that does not interrupt the accrual of flight time, because of the continuing "purpose of flight." In this situation, flight time starts when the aircraft first taxies under its own power from the gate, continues through the period of delay when the aircraft returns to the gate and in which the pilot must remain on board, and ends at the moment the aircraft comes to rest at the point of landing at the destination airport. An unforeseen mechanical problem that causes the accumulation of this extra flight time is, under section 121.471(g), a "circumstanc beyond the control of the certificate holder."[t] Such a

[t] Section 121.471(g)states:
A flight crewmember is not considered to be scheduled for flight time in excess of flight time limitations if the flights to which he is assigned are scheduled and normally terminate within the limitations, but due to circumstances beyond the control of the certificate holder (such as adverse weather), are not at the time of departure expected to reach their destination within the scheduled time.

circumstance would mean that actually exceeding the daily flight time limits of subpart Q's section121.471(a)(4)[2] would not be considered a violation of those daily limits. However, note that all flight time accrued must be credited toward the cumulative flight time limits stated in subpart Q.

Another situation in which all flight time must be recorded is when a flight returns to the gate for mechanical reasons, the aircraft cannot be repaired, a replacement aircraft is used, and that aircraft does taxi, take off and make a landing at the destination airport. In this situation, flight time accrues and must be counted. The flight time that must be counted is the time the *first aircraft* moves under its own power from the gate to the time of the return of the *first aircraft* to the gate, plus flight time from the time the *replacement aircraft* moves under its own power from the gate to the point where the *replacement aircraft* comes to rest at landing at the destination airport. Note that section 121.471(g) (the "circumstances beyond the control of the certificate holder" exception) excuses flight time that exceeds the daily limits in section 121.471(a)(4). In other words, although all daily flight time accrued must be counted, it is not considered a violation of section 121.471(a)(4) if the actual flight time accrued exceeds the limits stated in that section. However, all of the daily flight time accrued must be credited toward the cumulative flight time limits stated in subpart Q.

Finally, by interpretation, the Agency has applied the "circumstances beyond the control of the certificate holder" exception to flight time questions concerning certificate holders operating under subparts R and S. *See e.g.,* Nov. 8, 1990, Letter to John H. DeWitt, from Donald P. Byrne, Acting Assistant Chief Counsel, Regulations and Enforcement Division [1990-33] (copy enclosed). But note that under the Subpart S regulations, when a pilot has landed and has already flown more than 8 hours in a 24-consecutive-hour period, he may not take off on any remaining flight legs until he has received the rest required by section 121.503(b). *See e.g.,* Jan. 21, 2000, Letter to Tom Kehmeier, from Donald P. Byrne, Assistant Chief Counsel, Regulations Division (concluding that once the pilot has flown over 8 hours in any 24 consecutive hours, section 121.503(b) rest is triggered and the pilot in the scenario presented who exceeded the 8 hour limit by 8 minutes at the time he landed at CVG, an intermediate leg, must be given 16 hours of rest before he may continue on with the next flight)[2001-2] (copy enclosed). In a situation where a pilot exceeds 8 hours after take off, because of a circumstance beyond the certificate holder's control that develops during that flight leg, such as adverse weather, the certificate holder, as a matter of enforcement policy, would not be deemed to be in violation of the section 121.503(b) rest requirement. Upon landing, however, the pilot must be given 16 hours of rest before he may continue with another flight.

[2] Section 121.471(a) provides in pertinent part:
No certificate holder conducting domestic operations may schedule any flight crewmember and no flight crewmember may accept an assignment for flight time in scheduled air transportation or in other commercial flying if all commercial flying will exceed
(1) 1000 hours in any calendar year;
(2) 100 hours in any calendar month;
(3) 30 hours in any 7 consecutive days;
(4) 8 hours between required rest periods.

This letter was prepared by Joseph A. Conte, Manager, Operations Law Branch, and Constance M. Subadan, Attorney, Operations Law Branch. It was coordinated with the Flight Standards Service at FAA Headquarters.

Sincerely,

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Regulations Division