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

Office of the Chief Counsel

800 Independence Ave., S.W.
Washington, D.C. 20591

JUN 2 4 2008

Mr. Rex E. Reese
Attorney at Law
1645 International Drive, Suite 9
McLean, VA 22102

Dear Mr. Reese:

This is in response to your letter dated January 17, 2008, concerning the possible interplay between an interchange agreement and a time sharing agreement as defined under § 91.501(c). You ask whether an agreement that begins as an interchange agreement (which the regulations define as a leasing arrangement involving two lessors, two lessees and two aircraft) could legally be converted to a time sharing agreement if there was a usage differential between the two lessees and thus could legally change the permissible formula to calculate financial charges between the parties. If the agency were to allow this, then the opposite would be true also, to wit: Something that started as a time sharing agreement could be converted to an interchange agreement.

If an agreement is an interchange agreement, it is a leasing arrangement whereby two companies agree to use each other's aircraft for "equal time" and no charge assessment or fee is made except that a charge may be made not to exceed the difference between the cost of owning, operating and maintaining the two airplanes. Thus, an interchange requires an "equal time" arrangement and allows only the specified cost differentials. It is possible, under an interchange agreement, that two identical aircraft are the subject of the interchange and that the cost differential --- when operated for "equal time" --- might be zero or very small. On the other hand, two very different airplanes (e.g., different in terms of fuel burn, speed, maintenance schedule, salary standards for the pilots) might be the subject of an interchange such that after "equal time" usage is achieved, the cost differential might be quite significant.

In contrast, a time sharing agreement contemplates that one airplane is leased to another and the charges are limited to those permitted under § 91.501(d), which, among other things, does not include a specified calculation concerning crew compensation for services rendered or a calculation for labor or parts charges for maintenance of the aircraft.

Allowing the parties to agree to one type of arrangement at the beginning and then convert the arrangement at the end when a different cost formula might be more beneficial to one or both parties would defeat the purposes underlying the lines that were drawn by the FAA when this regulation was written. In one arrangement, there are two aircraft operators, while in the other arrangement there is one aircraft operator, whose compensation does not include many of the costs associated with owning, operating, and maintaining the aircraft. The regulations contemplate that the parties pick the type of arrangement that they believe suits their purposes at the beginning and that the arrangement continues in force to the end. One cannot use either arrangement if certain preconditions are not met, like the precondition that such operations cannot involve common carriage. *See* § 91.501(b).

This interpretation was coordinated with the Flight Standards Service.

Sincerely,

Rebecca B. MacPherson
Assistant Chief Counsel Regulations Division, AGC-200