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

Office of the Chief Counsel

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

AUG 3 2009

E. Tazewell Ellett, Esq.
Hogan and Hartson, L.L.P.
555 Thirteenth St., NW
Washington, DC 20004

Re: Delta/Northwest Single Operating Certificate

Dear Mr. Ellett:

You have asked whether the Federal Aviation Administration (FAA) has any objections to listing both Delta and Northwest on a single operating certificate (SOC) while the two carriers complete their scheduled merger. You have asked whether there is a legal impediment to the FAA issuing an SOC in the name of "Delta Air Lines, Inc. and/or Northwest Airlines, Inc." You note that listing both names on the SOC would be a temporary measure that recognizes the fact that at the time the SOC is issued, the two carriers will be fully merged for the purpose of FAA oversight, but will have additional steps to complete before the merger is implemented for all purposes. Once the merger is fully implemented, the SOC would be amended to list "Delta Air Lines, Inc." as the sole name on the certificate.

Delta and Northwest entered into a merger agreement in April 2008. In October 2008, the United States Department of Justice indicated that it would not oppose the merger on anti-trust grounds, closing its investigation of the merger. In that same month, Northwest became a wholly-owned subsidiary of Delta. Delta and Northwest have already begun to merge their respective operations, and it appears that the merger will be complete within the next 12-18 months.

The approach you seek advice on is similar to the one already taken by the Department of Transportation under Order 2009-1-8, when it granted a transfer of Northwest's certificates and other economic authorities. In speaking with staff at the Department, the FAA understands that the Department amended Delta's existing certificates after providing an opportunity for public comment. The FAA understands that no objections were raised during the comment period.

As you are aware, the requirements governing the issuance of an Air Carrier Certificate or Operating Certificate are governed by the regulations contained within 14 C.F.R. Part 119, subpart C. 14 C.F.R. § 119.39 specifies that an applicant may be issued an Air Carrier Certificate or Operating Certificate if the Administrator finds that the applicant:

1) meets the applicable requirements of part 119;

2) holds the proper Department of Transportation economic authorities; and
3) is properly and adequately equipped and able to conduct a safe operation under the appropriate provisions of 14 C.F.R. part 121 or 135 and operation specifications issued under part 119.

Delta and Northwest have been working closely with the FAA's assigned Joint Transition Team and the FAA's Certificate Management Offices (CMOs) for both Delta and Northwest to develop and implement an agreed-upon plan for achieving an SOC. It appears that Delta's and Northwest's operations will have been sufficiently merged to permit an SOC by the end of this year, at which point both Northwest's and Delta's existing certificates would be surrendered to the FAA. It also appears that there will be no serious impediments to meeting the requirements of the first and third requirements of § 119.39 at the time it applies for an SOC. Obviously both Delta and Northwest need to continue to work with the Joint Transition Team and their respective CMOs to assure that this happens. As to the second requirement, the Department of Transportation has already transferred Northwest's certificates and amended the remaining certificates to list the holder as "Delta Air Lines, Inc. and/or Northwest Airlines, Inc."

Ordinarily, the FAA would not permit two names on an operating certificate because the agency would assume that two different entities were attempting to operate under a single certificate, and could not meet the requirements of part 119. The primary concern on the part of the FAA is that there be a single set of management personnel required for operations under part 121 as specified in § 119.65. For any SOC, regardless of the name on the certificate, only a single director of safety, director of operations, chief pilot, director of maintenance, and chief inspector would be allowed.

In this instance, it appears that Northwest and Delta have already taken steps to assure that any concerns on the part of the FAA will be fully resolved by the time the largely merged entity applies for an SOC. As a wholly-owned subsidiary of Delta, Northwest has already begun to mingle corporate control with its parent company. In addition, as evidenced by the close work and coordination between the two carriers and the FAA, both carriers appear to understand the need for a single management team that exercises full operational control over the SOC. Accordingly, the FAA does not foresee any legal or practical impediments to issuing an SOC in the name of "Delta Air Lines, Inc. and/or Northwest Airlines, Inc." at the appropriate time. The FAA would want the SOC to be appropriately amended once the merger is fully implemented and Delta becomes the sole entity.

In conclusion, the FAA has determined that it will issue an SOC with more than one entity identified on the certificate under the following conditions:

1) the two entities are committed to a full corporate merger, and control of one entity has already been assumed by the other entity, typically through a parent-subsidiary relationship;
2) the combined entity has sufficiently coordinated and executed its merger plan such that the FAA is satisfied that the combined entity can meet all requirements of 14 C.F.R. Part 119, as well as 14 C.F.R. Parts 121 or 135, as applicable;

3) the combined entity can demonstrate that operational control is fully vested and non-severable among the two entities, as demonstrated by a single set of management personnel as required by 14 C.F.R. § 119.65; and
4) the combined entity is reflected on the proper documents issued by the Department of Transportation regarding economic authority.

This letter is limited to satisfaction of these conditions and should not be interpreted to approve any other type of business arrangement. I hope you find this information helpful and ask that you feel free to contact me further should you have any additional questions.

Sincerely,

J. David Grizzle
Chief Counsel