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

Office of the Chief Counsel

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

DEC 7 2009

Mr. James Ream
President and CEO
ExpressJet, Inc.
700 N. Sam Houston Pkwy West
Suite 200
Houston, TX 77067-4338

RE: Part 121 Non-scheduled Service at Non-Certificated Airports

Dear Mr. Ream:

Thank you for your November 5, 2009 letter to Randy Babbitt, Administrator of the Federal Aviation Administration (FAA). You have requested a meeting to resolve what you consider to be an incorrect interpretation of the FAA's regulations. You note that you believe Congress has mandated that the FAA permit non-scheduled part 121 carriers to operate in and out of airports that have not been certificated under 14 CFR part 139 (part 139 airports). I have been asked to respond to your correspondence.

At this time, I do not believe it is necessary for you to come in to meet with the Administrator or other senior members of his staff. You have articulated what you believe the relevant statutory and regulatory provisions provide, and the public policy justifications that you believe support that interpretation. Ultimately, this issue is one of legal interpretation.

You maintain that 49 U.S.C. 41104(b) allows part 121 charter flights conducted with aircraft designed for more than 9 passenger seats to operate in and out of part 139 airports as long as the flights are not "regularly scheduled". The basis for your position is that the statute only requires that regularly-scheduled charter operations use part 139 airports and, by implication, non-scheduled charter operators are free to use non-certificated airports. You rely on a note to 14 CFR 121.590 to support your position.

Section 121.590 must be read in a manner that does not create inconsistencies among its various provisions, including the note. Your interpretation of the note, without regard to the rest of § 121.590, would render much of the substantive provisions in § 121.590 meaningless. Rather, the note must be read in the context of the regulation as a whole.

While the FAA agrees that some non-scheduled flights may operate in and out of a non-certificated airport, your non-scheduled flights may not. This is because § 121.590 specifically requires that supplemental type operations be conducted only at part 139

airports. A supplemental type operation is defined in § 121.590(f) as "any supplemental operation (except an all-cargo operation) conducted with an airplane designed for at least 31 passenger seats." You note that your aircraft is capable of seating 50 passengers. Accordingly, your non-scheduled operations are considered supplemental type operations, and are subject to the requirements of § 121.590. Non-scheduled operations conducted with an airplane with less than 31 passenger seats would not be considered supplemental type operations and could, under limited circumstances, use a non-certificated airport.

I note that there are two exceptions to the requirement that supplemental type operations use part 139 airports. The first exception applies to air carriers (§ 121.590(c)) and the second applies to commercial operators (§ 121.590(e)). Both are limited to airports operated by the U.S. government. If the airport in question is operated by the U.S. government, you may be able to take advantage of one of these exceptions. You should consult the applicable regulatory provision to determine whether you can meet the other conditions attached to the exceptions.

I trust this letter adequately addresses your concerns. It has been coordinated with the Flight Standards Service and the Department of Transportation. Should you have any further questions please feel free to contact me at the address above or by phone at (202) 267-3073.

Sincerely,

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