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

Office of the Chief Counsel

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Washington, D.C. 20591

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James W. Johnson
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Dear Mr. Johnson,

This is in response to your November 19, 2007 letter requesting an interpretation as to the applicability of part 121 rest requirements to the following factual scenario. You have recently emphasized your interest in an interpretation addressing the issues raised in your November 2007 letter.

In your November 2007 letter, you stated that United Airlines (United) telephoned a pilot during the pilot's rest period in order to assign him a trip that was scheduled to depart at the conclusion of the rest period. The pilot did not take the phone call and did not respond to the message that United left on his phone. United then made a second attempt to contact the pilot during the same rest period and left a second message indicating that the pilot would be subject to discipline if he did not respond promptly. The pilot did not respond to this phone call. Finally, United made a third call during the pilot's rest period to attempt the assignment again and to notify the pilot that adverse action would be taken against him for failing to respond to United's phone calls.

In your letter, you ask four questions: (1) may United call a reserve pilot during the post-trip rest period; (2) is there a limitation on the number of times United may attempt to contact the reserve pilot; (3) is the reserve pilot under any obligation to United during the post-trip rest period, including answering the telephone call; and (4) may United require the pilot to remain telephone-available during the rest period? You also pose the same four questions with regard to phone calls made to a pilot during a compensatory rest period.

The FAA has consistently stated that "rest" under the Federal Aviation Regulations "is a continuous period of time during which the crewmember is free from all restraint by the certificate holder, including freedom from work or freedom from present responsibility for work should the occasion arise." 2004, Letter to Charles E. Marcum from Rebecca B. MacPherson, Assistant Chief Counsel for Regulations. If, during a rest period, a pilot is obligated to answer a carrier's phone call, then the entire period during which the pilot was under such an obligation is not part of the rest period. *Id.* However, if a pilot is not

obligated to answer the telephone or be available to answer the telephone, "the time up to the duty report time is considered a 'continuous' rest period." Nov. 7, 2003, Letter to James W. Johnson from Donald P. Byrne, Assistant Chief Counsel, Regulations Division. Under the "one phone call exception", the FAA does not consider a rest period to be interrupted if the air carrier makes contact with a pilot one time by telephone, pager, or other means during the rest period. *Id.* However, "[o]nce contact is made, it cannot be made again without interrupting the rest period." *Id.* In addition, repeated phone calls to the pilot in an attempt to establish contact could, depending on the specific circumstances, "raise serious concerns about potential pilot fatigue and the possibility of a careless or reckless operation of the aircraft . . . contrary to 14 CFR § 91.13(a)." *Id.*

Applying these principles to the scenario in your letter, United was permitted to call its pilot during a post-trip rest period and, subject to § 91.13(a), to keep attempting to make contact until it received a response from the pilot. However, by threatening to take adverse action if the pilot did not respond, United indicated that it expected its pilot to answer the telephone and/or respond to its phone message. As such, because the pilot in your scenario was under an obligation to respond to United's telephone call/message, the period during which the pilot was under this obligation would not be considered part of the rest period. In addition, if the pilot was generally expected to be telephone-available, the time during which the pilot was expected to be telephone-available would also not be considered a part of the rest period. This analysis would not change if the rest period in question was a compensatory rest period because all rest periods share the same freedom-from-obligation requirements.

We appreciate your patience and trust that the above responds to your concerns. If you need further assistance, please contact my staff at (202) 267-3073. This response was prepared by Alex Zektser, Attorney, Regulations Division of the Office of the Chief Counsel, and coordinated with the Air Transportation Division of Flight Standards Service.

Sincerely,

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