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

Office of the Chief Counsel

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

JUN 17 2011

McBreen & Kopko
Mr. Leonard Kirsch
500 North Broadway, Suite 129
Jericho, New York 11753

Dear Mr. Kirsch,

The following is in response to your request for guidance that my office received on March 1, 2011. In regard to the following set of facts, you question whether the FAA would consider the 14 CFR part 135 certificate holder to have retained operational control over the operations conducted under its certificate. Based on the facts as described below, the FAA has concluded that the part 135 certificate holder you describe appears to have impermissibly surrendered operational control of its 14 CFR part 119 operating certificate to a non-certificated entity.

You note that Company Z, located in Northern Michigan, holds a part 135 operating certificate. Company Y is listed on Company Z's operation specification as a "doing business as (DBA)." However, Company Z has no registered DBAs in the state of Michigan where it is incorporated. Company Y is a registered DBA of Company X since 2006. Company X is a separate corporation also located in Michigan. Company X does not hold a part 135 certificate, but has been holding itself out as Company Y and conducting on-demand air charters since August 2006. In addition, Company X pays an annual fee to Company Z to "operate on or under" Company Z's part 135 certificate. Although Company Z and Company X are two separate corporate entities, Company Z has listed Company X's president as Company Z's chief pilot. Company Z, when Company X is operating on or under its 135 operating certificate, is not involved in the daily operations of Company X, to include flight locating, authorizing flights, cancelling flights, scheduling crews, etc. Company X, even when doing business as Company Y, pays its employees and other obligations, under the name of Company X.

As you correctly note, 14 C.F.R. § 135.77 provides that "each certificate holder is responsible for operational control and shall list, in the manual required by 135.21, the name

and title of each person authorized by it to exercise operational control." Operational control, with respect to a flight, as defined in 14 C.F.R. §1.1, means "the exercise of authority over initiating, conducting or terminating a flight." Only entities properly certificated by the FAA may maintain operational control of any flight conducted for commercial purposes under 14 CFR part 121 and 135. A surrender of operational control by a certificate holder includes those situations in which a certificate holder has inappropriately allowed an uncertificated entity to engage in operations under the certificate holder's name. It also includes those situations in which the certificate holder has inadequately exercised supervision over the maintenance of its aircraft, lacks knowledge about the scheduling of flights, the flight and duty status of its pilots, or in general, lacks sufficient authority over its crews to ensure compliance. *See Adminstrator v. M&N Aviation, Inc. & Sky Way Enterprises, Inc.*, NTSB Order No. EA-5260 (Nov. 24, 2006); *Administrator v. Darby Aviation d/b/a AlphaJet, Inc.*, NTSB Order No. EA-5159 (May 25, 2005). In any situation, determinations of operational control are necessarily fact-specific and are made on a case-by-case basis.

In this instance, it does not appear that Company Z exercises proper operational control over the flights that Company X conducts under the auspices of Company Z's certificate. Company X schedules all flights, conducts the requisite flight locating, schedules all the crews, and pays its employees, including the crews conducting these operations, under Company X's name. Simply listing Company X's president as Company Z's chief pilot is not sufficient to demonstrate a proper exercise of operational control by Company Z, especially considering the annual fee that Company X pays to Company Z to use its part 135 certificate.

Furthermore, although certificate holders may be authorized to conduct operations under other business names (commonly referred to as "doing business as"), verification of the DBA must be made before it can be listed in the air carrier's or operator's operation specification. For air carriers, this requires demonstration that the DBA has been authorized by DOT. For operators, the operator must show that the DBA is authorized and registered by an appropriate state authority. In this instance, based on the facts you have presented, it does not appear that Company Z has demonstrated that either Company Y or X may be appropriately listed as a "DBA" for Company Z to conduct operations as such because neither is properly registered as a DBA for Company Z in Michigan, where Company Z is incorporated. *See* FAA Order 8900.10, Vol. 3, Ch. 18., sec. 3-737 (Change 139, Feb. 25, 2011). Accordingly, based on the facts that you have presented, the FAA would not find that Company Z is exercising proper operational control over the operations conducted under its certificate. Because the facts you present do not appear to be purely hypothetical, but rather based on a current operation, we have forwarded your letter to the Enforcement Division of the FAA's Office of the Chief Counsel, as well as the Air Transportation Division of Flight Standards Service, for further review and investigation.

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 Anne Bechdolt and coordinated with the Air Transportation Division of Flight Standards Service.

Sincerely,

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