Federal Aviation Administration

Memorandum

Date: MAY - 9 2011

To: Carl R. Welke, Assistant Office Manager, AGL-EMI-FSDO-23

From: for Rebecca MacPherson, Assistant Chief Counsel for Regulations, AGC-200

Prepared by: Nancy Sanchez, Attorney, Regulations Division Michael Chase

Subject: Pentastar Aviation Charter, Inc.

This memo is in response to a request for a legal interpretation submitted by Pentastar Aviation Charter, Inc. (Pentastar) through Carl R. Welke, Assistant Office Manager (AGL-EMI-FSDO-23). You asked whether a Part 135 operator such as Pentastar may offer public charter flights in a 30 passenger turbo propeller aircraft in regular service between two points no more than four times weekly. Specifically, you express uncertainty as to whether this operation is required to be conducted under Part 121 instead of Part 135.

As described in its operating proposal, Pentastar would act as a Part 135 operator and direct air carrier "supporting an indirect air carrier entity that will hold out to the public by offering 14 CFR Part 380 Public Charter flights (Public Charter operator)." Pentastar would conduct these flights for the Public Charter operator in a SAAB 340 aircraft equipped with 30 passenger seats and a maximum payload capacity of 7,500 pounds.

Based on the definition in 14 CFR § 110.2, an on-demand operation includes operations conducted as a public charter under 14 CFR § 380[1] in which the departure time, departure location, and arrival location are specifically negotiated with the customer (Public Charter operator). This includes common carriage operations in airplanes having a passenger-seat configuration of 30 seats or fewer and a payload capacity of 7,500 pounds or less. *See* 14 CFR § 110.2 (definition of "on-demand operation"). Provided that Pentastar conducts its operations in the SAAB 340 aircraft equipped with 30 passenger seats and arranges the departure time, departure location and arrival location with the customer, it may conduct this operation under a Part 119 air carrier certificate permitting Part 135 on-demand operations. Again, the FAA notes that this only applies to

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[1] Part 380 is a Department of Transportation (DOT) regulation that allows indirect air carriers to sell individual seats on chartered aircraft, provided that the indirect air carriers abide by certain consumer protection requirements.

operations conducted as a public charter under Part 380, up to a maximum of four roundtrips weekly.[2]

In addition, DOT regulations require certain direct air carriers conducting public charters to comply with specific economic regulations.[3] Thus, as long as Pentastar's proposed operations are public charters in accordance with Part 380 and Pentastar observes DOT rules applicable to the handling of consumer monies by direct air carries, it may conduct its operations as proposed.

We appreciate your patience and trust that the above responds to your concerns. This response was prepared by Nancy Sanchez, an attorney in the Regulations Division of the Office of the Chief Counsel, and was coordinated with the Air Transportation Division of Flight Standards Service. Please contact us at (202) 267-3073 if we can be of further assistance.

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[2] If a registered air taxi intends to operate more than four round trips weekly, even if those flights are public charter flights, it must first obtain a commuter air carrier authorization from DOT. Such authorizations are granted upon a showing that the carrier has an acceptable regulatory compliance disposition, the managerial competence to conduct the proposed operations, and the financial resources to commence those operations without posing an undue risk to consumers.

[3] DOT rules require direct air carriers that are registered air taxis or commuter air carriers and that operate public charter flights either to comply certain bonding or escrow requirements or to ensure that they do not receive any payments for flights until after the flights have been completed. *See* 14 CFR § 298.38.