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

JAN 20 2012

Mr. Barry Brown
Associate General Counsel
Operations & Environment
P.O. Box 36611
HDQ/4GC
Dallas, Texas 75235-1611

Re: Southwest Airlines/AirTran Airways Single Operating Certificate

Dear Mr. Brown,

By letter dated October 26, 2011, you have asked the Federal Aviation Administration (FAA) to allow Southwest Airlines Co. to include, on a temporary basis, both "Southwest Airlines" ("Southwest") and "AirTran Airways" ("AirTran") on the Southwest Air Carrier Certificate SWAA304A at the time of single operating certificate (SOC) authorization. You state that this would be consistent with previous interpretations issued by the FAA, noting in particular the FAA Chief Counsel Interpretation issued on August 3, 2009 with regards to a Delta/Northwest Single Operating Certificate.

On September 27, 2010, Southwest and AirTran announced their intention to seek approval for a merger. In April of 2011, the Department of Justice announced that it would not challenge the transaction under antitrust laws, subsequent to which Department of Transportation approval was granted. The business transaction was closed on May 2, 2011, since which date both certificates have been owned by the corporate entity Southwest Airlines Co. The carriers began working with the FAA on the development of a Transition Plan in December of 2010, acceptance of which was received in February of 2011.

You also note in your letter that the merger of Southwest and AirTran is unique for a number of reasons, including the relative sizes of the two entities as compared to other mergers, the fact that Southwest is a domestic carrier and AirTran performs both domestic and flag operations, that while both carriers operate Boeing 737 aircraft, the variants and configurations differ and finally, the single class and open boarding process of Southwest compared with the conventional two-class, assigned seating process of AirTran.

As part of the above referenced Transition Plan, an approach was developed to address these differences, referred to as the "AirTran Partition," designed to facilitate an orderly

transition of AirTran personnel into Southwest operations in parallel with the movement of aircraft from the AirTran Partition to Southwest operations. At the point of SOC, the airline will be managed as a single entity from both organizational and management perspectives, including Maintenance and Ground Services organizations structured as overarching departments, unaffected by the partition. The Flight Operations, Inflight and Operational Control Centers within the AirTran Partition will be under the direct control of the counterpart Southwest department.

The carriers are currently working through an integration process that will result in both management and procedural integration, as provided for in the Transition Plan and Southwest Bridging Manual. The Bridging Manual details the management and control of the AirTran Partition during this time.

The requirements for 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. Section 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 to be 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.

Southwest and AirTran have been working with the FAA's assigned Joint Transition Team (JTT) and the FAA's Certificate Management Offices (CMOs) for both airlines to develop and implement an agreed-upon plan for achieving an SOC. It appears that Southwest's and AirTran's operations will have been sufficiently merged to permit an SOC on or about March 1, 2012, at which point the AirTran certificate would be surrendered to the FAA. It also appears that there will be no serious impediments to meeting the three requirements of § 119.39 noted above at the time the SOC is applied for. Both Southwest and AirTran will need to continue to work with the JTT and their respective CMOs to assure that the first and third requirements are satisfied, particularly with regards to the AirTran Partition as provided for in the Transition Plan and Southwest Bridging Manual.

With respect to the second requirement, the DOT issued Order 2011-11-17 on November 16, 2011, granting (1) a *de facto* transfer under section 41105 of Title 49 of the United States Code of the certificates and other economic authorities held by AirTran to AirTran under the common ownership of Southwest, (2) transfer and reissue of the blanket route integration certificate of public convenience and necessity currently held by AirTran to AirTran and/or Southwest, and (3) transfer and amendment of other economic authorities held by AirTran to AirTran and/or Southwest.

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 Southwest and AirTran have 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 Southwest, AirTran has already begun to mingle corporate control with its parent company. In addition, both carriers appear to understand the need for a single management team that exercises full operational control over the SOC. Accordingly, FAA does not foresee any legal or practical impediments to issuing an SOC in the name of "Southwest Airlines Co. and/or AirTran Airways, Inc." at the appropriate time. The FAA would want the SOC to be appropriately amended once the merger is fully implemented and only one corporate entity remains.

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,

Rebecca B. MacPherson
Assistant Chief Counsel for Regulations