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

Office of the Chief Counsel

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

MAY - 3 2012

First Officer Scott Kinder
[redacted]

Dear Mr. Kinder,

This is in response to your email of January 25, 2012, asking whether the decision in the July 5, 2011 letter of interpretation to James W. Johnson from Rebecca B. MacPherson, Assistant Chief Counsel for Regulations ("July 5, 2011 letter"), was meant to apply to part 121 rest requirements in general or only as they relate to a specific section of the part 121 flight and duty regulations. A specific section may dictate the amount or timing of the rest, but the quality of the rest required is the same, no matter where the term appears in the regulations. The FAA has consistently found that any rest period must be "1) continuous, 2) determined prospectively (i.e., known in advance) and 3) free from all restraint by the certificate holder." *See*, Letter to Glenn Jimenez from Rebecca B. MacPherson, Assistant Chief Counsel for Regulations (Jun. 2011).

At issue in the July 5, 2011 letter was whether a pilot's obligation to respond to a telephone call or message from a certificate holder during a post-trip rest period interrupted the rest period. The FAA found that any period during which a pilot is under a present obligation to answer a telephone call or message would not be considered part of a rest period.[1] Your email states that United Airlines has taken the position that the July 5, 2011 letter applies to § 121.485 only. This is a misreading of the July 5, 2011 letter, which did not qualify when the definition of "rest" is to be applied. Consistent with previous interpretations, the July 5, 2011 letter clearly stated that "all rest periods share the same freedom-from-obligation requirements."

The FAA has also previously stated that "(i)t follows that our legal interpretations regarding the use of beepers, reserve pilots, on-call or standby status, and crewmember rest apply to both part 121 and part 135 notwithstanding the specific section addressed in the interpretation." *See*, Letter to Jim Mayors from Rebecca B. MacPherson, Assistant

[1] The emphasis here is on the *obligation* to answer. The FAA notes that the "one phone call" policy is a limited exception to the requirement that the rest period be continuous, provided that the certificate holder *does not require* the pilot to answer or respond to the call. The policy allows crewmembers, on their own volition, to receive a phone call without the phone call being viewed as disruptive and breaking the continuous rest period.

Chief Counsel, Regulations (Mar. 2009). As a result, the July 5, 2011 letter's "freedom-from-obligation" finding is to be applied to all rest periods, no matter which section of the regulations a required rest period falls under.

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 Robert H. Frenzel, Manager, Operations Law Branch, 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