U.S. Department
of Transportation
Federal Aviation Administration

Office of the Chief Counsel

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

MAY 13 2014

Susan B. Jollie
[redacted]

Dear Ms. Jollie,

This letter is in response to your request for a legal interpretation regarding the operation of public charters by Corporate Flight Management (CFM), which have been authorized and approved by the Department of Transportation (DOT) under 14 C.F.R. part 380, and the applicability of regulations governing aircraft safety requirements and flight operations as administered by the Federal Aviation Administration (FAA). CFM is seeking confirmation that "no additional FAA authorization is required to conduct its proposed public charter operations, or any other type of public charter operations that it may choose to provide in the future, using aircraft with 30 or less seats under Part 135 operating rules."

Background

On December 20, 1995, FAA published a final rule creating 14 C.F.R. part 119, Certification: Air Carriers and Commercial Operators, which reorganized into one part the various air carrier certification and operations specifications requirements that formerly existed in SFAR 38-2 and in parts 121 and 135. [insert cite as footnote] (60 Fed. Reg.65832) Part 119 was issued as part of a large rulemaking effort known as the "commuter rule," to upgrade the requirements that apply to scheduled operations conducted in airplanes that have a passenger seat configuration of 10 to 30 passengers, so that those operations would be conducted under the requirements of part 121. The final rule was silent with respect to part 380 public charters.

On March 19, 1997, the FAA published another final rule "amending part 119 to correct errors, make terminology consistent, or clarify the intent of the regulations published on December 20, 1995." [insert cite as footnote] (62 Fed. Reg. 13248) This final rule "revised the definitions of 'on-demand operation,' 'scheduled operation,' and 'supplemental operation' in § 119.3, (which has been moved in its entirety to § 110.2) [Insert cite as footnote] (76 FR 7486, Feb. 10, 2011) to make it clear that public charter operations conducted under 14 CFR part 380 are not considered scheduled operations." (*Id.*) Direct air carriers conducting part 380 operations were then split by aircraft size between Supplemental (over 30 seats) and On-Demand (30 or less seats) operations. Left

unchanged by this final rule were the definitions for Domestic, Flag and Commuter operations, which were each defined as a scheduled operation.

The amendment to the original part 119 rule produced two results. First, part 380 operations were specifically carved out from the definition of scheduled operations, which in turn excluded those operations from the definition of domestic, flag or commuter operations and the specific operational and aircraft size limitations found in those definitions. Second, by placing part 380 operations into the on-demand definition, aircraft of 30 or less seats, including turbojet aircraft, could be used for those operations. Consequently, public charter flights by definition are not scheduled operations. In addition to being defined in § 110.2 as on demand operations, they are specifically defined in part 380 as being non-scheduled operations.

Section 380.2 defines a "U.S. public charter operator" as an indirect air carrier that is authorized to engage in the formation of groups for transportation on public charters. Section 380.2 also defines a "public charter" as a one-way or round-trip charter flight to be performed by one or more direct air carriers that is arranged and sponsored by a charter operator. Also, §380.2 states "a charter flight is a flight operated under the terms of a charter contract between a direct air carrier and its customers. It does not include scheduled air transportation, scheduled foreign air transportation, or nonscheduled cargo air transportation." All public charter passengers must sign an operator participant contract (§380.32) acknowledging that they are being transported on a charter as opposed to a scheduled flight. So, although the operations may look like scheduled operations, the passengers are treated as charter passengers in an on-demand operation.

Prior Interpretations

Since the creation of part 119, FAA has consistently interpreted the definitions as discussed above to allow part 380 operations to be conducted by direct air carriers that hold at least part 298 "air taxi" authority[1] for part 135 on-demand operations together with the appropriate operations specifications (OpSpecs). The FAA has confirmed this treatment in two recent interpretations.

In a Memorandum to Carl R. Welke from Rebecca MacPherson, Assistant Chief Counsel for Regulations (May 9, 2011), the FAA reiterated that "assuming the public charter operator successfully obtains authority from DOT and executes the proper Part 380 agreements" the direct air carrier may conduct the operations under a part 119 certificate permitting part 135 on-demand operations.

In a Letter to Robert Ceravolo from Mark W. Bury, Acting Assistant Chief Counsel for International Law, Legislation and Regulations (Jul. 24, 2013), the FAA found that:

> An on-demand operation includes any "passenger-carrying operation conducted as a public charter under part 380 of this chapter..." *See* 14 CFR § 110.2 So long as the direct air carrier conducts these flights as public charter flights under part

[1] See, 14 CFR § 298.3

380, the FAA does not impose a limit to the number of flights that may be conducted.

However, the FAA reiterates that a registered air taxi conducting public charter flights without a commuter authorization from the DOT is limited to four round trips weekly between each city pair. Any operator that wishes to conduct more than four round trips per week must first obtain a commuter air carrier authorization from DOT.

The Ceravolo interpretation also found that "the public charter operator and the direct air carrier can be owned by the same individual or organization and that "the public charter operator and the direct air carrier can be the same company," referring to 14 CFR § 212.7." However, strict financial safeguards must be in place in order to comply with the requirements in § 298.38 and part 380.

DOT Authorization and Approval

CFM received its DOT commuter authority on January 23, 2014. CFM subsequently received approval on February 14, 2014, to operate public charter flights between Pikeville, KY and Nashville, TN. DOT has confirmed to the FAA that CFM's public charter prospectus has also been approved.[2]

Conclusion

Based on the above analysis, the FAA finds that the proposed public charter operations, as approved by the DOT, may be conducted under CFM's part 135 air carrier certificate and OpSpecs authorizing on-demand operations. This finding covers the operations as proposed and does not make a finding regarding any proposed future operations that have not been approved by the DOT. In addition, this finding does not foreclose the ability of the FAA or DOT to make changes to the regulatory structure through notice and comment rulemaking.

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 letter has been prepared by Robert H. Frenzel, Manager, Operations Law Branch, Office of the Chief Counsel and coordinated with the Air Transportation Division of Flight Standards Service and the Assistant General Counsel for Aviation and Enforcement at the Department of Transportation.

Sincerely,

Mark W. Bury
Assistant Chief Counsel for International
Law, Legislation and Regulations, AGC-200

[2] A copy of CFM's public charter prospectus is attached to this letter as part of the record.