U.S. Department
of Transportation
Federal Aviation Administration

Office of the Chief Counsel

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

AUG 14 2014

Gregory S. Winton
The Aviation Law Firm
One Research Court, Suite 450
Rockville, MD 20850

Dear Mr. Winton:

This letter responds to your request for legal interpretation sent to my office on February 12, 2014. You have asked several questions regarding expense-sharing flights that involve exclusive use of a website "by both pilots and aviation enthusiasts, comprising a specific and discreet group of individuals who have demonstrated a common interest and common purpose to share an aviation adventure[.]"

As described in your letter, pilots and aviation enthusiasts apply for membership to the website which is "only available to pilots who ensure they intend to conduct private operations." Upon enrollment, members have access to an isolated, non-public network. The network allows pilots to post an Aviation Adventure with a specific date and time and the points of operation. According to your letter, a member may "select an Aviation Adventure for which he or she has a bona fide common purpose" and request to participate in the planned Aviation Adventure. The pilot may accept or reject the request. If accepted, the pilot may accept a pro rata reimbursement from his or her passengers under 14 C.F.R. § 61.113(c).

We recently answered questions regarding a similar web-based expense-sharing scheme in a legal interpretation to Rebecca MacPherson. See Legal Interpretation to Rebecca B. MacPherson (Aug. 13, 2014). We believe that legal interpretation answers the questions presented in your request for legal interpretation. The MacPherson Interpretation involved AirPooler, a peer-to-peer general aviation flight sharing company that developed an internet-based discovery platform that allows private pilots to offer available space on flights they are intending to take. We concluded that pilots participating in the AirPooler website required a part 119 certificate because they were engaged in common carriage. Although common carriage is not defined by regulation, Advisory Circular No. 120-12A (Private Carriage Versus Common Carriage of Persons or Property) describes common carriage as

"(1) a holding out of a willingness to (2) transport persons or property (3) from place to place (4) for compensation or hire."[1]

You suggest there is no holding out under the program described above because the website indicates that transportation is only available to an enthusiast who has demonstrated a common interest in the specific time, date, points of operation, and the particular Aviation Adventure. We disagree. Holding out can be accomplished by any "means which communicates to the public that a transportation service is indiscriminately available" to the members of that segment of the public it is designed to attract. See Transocean Airlines, Enforcement Proceeding, 11 C.A.B. at 350 (1950). Based on your description, the website is designed to attract a broad segment of the public interested in transportation by air.

This response was prepared by Anne Moore, an attorney in the International Law, Legislation, and Regulations Division of the Office of the Chief Counsel. If you have any additional questions regarding this matter, please contact us at your convenience at (202) 267-3073.

Sincerely,

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

[1] In Woolsey v. National Transportation Safety Board, 993 F.2d 516 (5th Cir. 1993), the Fifth Circuit noted that the Advisory Circular's guidelines are not only consistent with the common law definition, but entirely appropriate within the aviation context.