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

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

JUN 6 2006

Jamie Walker
President
Jet Linx Aviation
Eppley Airfield
3910 Amelia Earhart Plaza
Omaha, Nebraska 68110

Dear Mr. Walker,

This is in response to your October 27, 2005 letter to Robert F. Johnson requesting a legal interpretation of your proposed website functionality. As discussed in a November 15, 2005 letter from John W. Escott, Regional Counsel, FAA Central Region, to you, your letter was forwarded to the Chief Counsel's office at FAA Headquarters in Washington, D.C.

Factual Summary

You asked for a legal interpretation, therefore, for purposes of this letter, we assume by "functionality," you mean to ask whether the proposed website operations present any potential legal problems with Jet Linx's authority to operate under 14 CFR part 135, on-demand operations. It appears from a review of your operations specifications, that although you describe a fractional ownership program in your letter, all of Jet Linx's operations are conducted under part 135 on-demand operation rules. You describe the "Confirmed Flight Itineraries" and the "Requested Flight Itineraries" features for the proposed website. In either of these proposed options, a Jet Linx client would have the opportunity to arrange to share flights with other clients. The shared flights would be on a flight a client has already booked and is willing to share, with another client that proposes to book a flight as long as another client is willing to share some portion of a flight, or on a resulting "empty flight." Jet Linx only has authority to conduct on-demand operations, under part 135.

Applicable Law

14 CFR 119.3 Definitions

. . . . .

Commuter operation means any scheduled operation conducted by any person operating one of the following types of aircraft with a frequency of operations of at least five round trips per week on at least one route between two or more points according to the published flight schedules:
(1) Airplanes, other than turbojet powered airplanes, having a maximum passenger-seat configuration of 9 seats or less, excluding each crewmember seat, and a maximum payload capacity of 7,500 pounds or less; or

. . . . .

On-demand operation means any operation for compensation or hire that is one of the following:
(1) Passenger-carrying operations conducted as a public charter under part 380 of this title or any operations in which the departure time, departure location, and arrival location are specifically negotiated with the customer or the customer's representative that are any of the following types of operations:
(i) Common carriage operations conducted with airplanes, including turbojet-powered airplanes, having a passenger-seat configuration of 30 seats or fewer, excluding each crewmember seat, and a payload capacity of 7,500 pounds or less, except that operations using a specific airplane that is also used in domestic or flag operations and that is so listed in the operations specifications as required by section 119.49(a)(4) for those operations are considered supplemental operations:
. . . . .
Scheduled operation means any common carriage passenger-carrying operation for compensation or hire conducted by an air carrier or commercial operator for which the certificate holder or its representatives offers in advance the departure location, departure time, and arrival location. It does not include any passenger-carrying operation that is conducted as a public charter operation under part 380 of this title.

Analysis

Based on the information you provided, we have concerns that some of your proposed operations will be scheduled operations. Under both proposed operations, "Confirmed Flight Itineraries" and "Requested Flight Itineraries," you describe operations that meet the definition of scheduled operation in 14 CFR 119.3. Under "Confirmed Flight Itineraries," you describe posting a database of already negotiated occupied flights, empty flights, and idle aircraft flights for a possible match with a client's itinerary.

First, we viewed Jet Linx's prototype webpage as you suggested and found that the databases for both "empty flights" and "occupied flights" included the three elements that define a scheduled operation. In both situations, the databases included departure location, a departure window, and an arrival location. For "empty flights" and "occupied flights" having a time set within which the aircraft must leave satisfies the "departure time" element.

Second, under "Confirmed Flight Itineraries," you describe posting a database of "idle aircraft." Jet Linx's prototype webpage in this database listed a departure location and a departure window, with no arrival city. Again, we would caution Jet Linx that a scheduled operation is one where three elements are offered in advance by a certificate holder or its representative. To the extent that Jet Linx holds out these elements, even if the holding out is through different medium, i.e. two elements are published in electronic or pager form, and the third is communicated by telephone, we would find this to be scheduled service. To the extent that Jet Linx simply notifies the public that it has an aircraft in a particular city available for hire, we might consider this an on-demand operation. However, this departure window ranged from several days to as little as 36 minutes, i.e. an airplane is scheduled to travel from point A to point B and is available to depart between 1:24 pm and 2:00 pm. The shorter the departure window or in this case availability window, the more it looks as though this is a scheduled operation. We view these proposed operations as scheduled operations and not authorized by your operations specifications. One example we found on your website was a light jet available in a small airport in Utah for a total of 30 minutes. Such a short window indicates that the aircraft must be en-route or in a certain location, once the window expires and therefore, the aircraft is not idle. In fact, to the extent that Jet Linx needs to move the aircraft to point B after the

30 minute window and to the extent Jet Linx verbally tells a client where the aircraft is traveling, we would consider such communication to be a holding out of the destination airport. Such a holding out, in addition to a holding out of the departure airport and a time by which an aircraft must depart, is a scheduled operation.

Third, your "Requested Flight Itineraries" proposed operations also give us concern. We were unable to access this portion of your website, but you described posting unconfirmed flights for clients to share. It appears you contemplate also publishing on your website at least some of the same elements described above so that clients can find flights that match their itinerary. To the extent Jet Linx intends to publish these three elements for "Requested Flight Itineraries," we have concerns that such flights are scheduled and not on-demand flights. We would not see a problem with a Jet Linx operation that matches a client's unconfirmed shared flight while not holding out the three elements.

Therefore, the FAA seeks to make it absolutely clear that any operations, where the certificate holder or its representative holds out the three elements, could be determined to be a scheduled operation that must be operated under part 135 commuter rules[1] or even part 121 domestic[2] rules[3] In other words, your proposed "empty flights" and "occupied flights" operations, appear to us, to be a holding out by Jet Linx of a scheduled operation. We also caution you as to your proposed "idle aircraft" and "Requested Flight Itineraries," as they also could be interpreted to be scheduled operations.

We trust this interpretation has answered your questions. This was prepared by Douglas Mullen, Attorney, reviewed by Joseph Conte, Manager, Operations Law Branch of the Office of the Chief Counsel and coordinated with Flight Standards Service.

Sincerely,

Rebecca B. MacPherson
Assistant Chief Counsel, Regulations Division

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[1] If scheduled and the aircraft was not a turbojet airplane with a maximum seating configuration of 9 or less seats and a maximum payload capacity of 7500 pounds or less, the part 135 commuter rules would apply. See the definition of commuter operation in 14 CFR 119.3.

[2] If scheduled and the aircraft was not a turbojet airplane with a maximum seating configuration of more than 9 seats or a payload capacity of more than 7500 pounds, and operated within the 48 contiguous states, the part 121 domestic rules would apply. See the definition of domestic operation in 14 CFR 119.3. Part 121 flag rules would apply if all of the other conditions in the prior sentence apply but the airplane is operated between any point within the 48 contiguous states and any point outside the 48 contiguous states or the airplane is operated between Alaska or Hawaii and any point outside of Alaska or Hawaii or the airplane is operated between any two points outside the U.S. See the definition of flag operation in 14 CFR 119.3.

[3] As you are probably aware, FAA regulations permit on-demand operators to conduct a limited number of scheduled operations in certain types of aircraft. For example, the definition of on-demand operation 14 CFR 119.3 includes scheduled passenger-carrying operations of less than five round trips per week on at least one route between two or more points according to a published flight schedule. This exception is limited to rotorcraft and non-turbojet airplanes with a maximum passenger-seat capacity of 9 seats or less and a maximum payload capacity of 7,500 pounds or less.