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

Office of the Chief Counsel

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

SEP 29 2017

Mr. Jeremy Ross
Associate General Counsel
Alaska Airlines | Virgin America | Horizon Air
P.O. Box 68900 – SEAZL
Seattle, WA 98168

Re: Alaska Airlines/Virgin America Single Operating Certificate

Dear Mr. Ross:

By letter dated March 3, 2017, you asked the Federal Aviation Administration (FAA) to allow Alaska Airlines to include, on a temporary basis, both "Alaska Airlines" and "Virgin America" on the Alaska Airlines Air Carrier Operating Certificate ASAA802A 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 by attachment an interpretation issued with regards to the American Airlines/US Airways Single Operating Certificate (Jan. 12, 2015).

Alaska Air Group, Inc., (AAG), the parent company of Alaska Airlines, entered into an agreement to acquire 100 percent of Virgin America on April 1, 2016. Virgin America will merge into Alaska Airlines and operate under Alaska Airlines' certificate. On June 6, 2016, Alaska Airlines advised the Department of Transportation (DOT) of the agreement wherein AAG would acquire Virgin America. On the same date, the carriers requested an exemption from the provisions of section 41105 of Title 49 of the United States Code to the extent necessary to allow them to operate under common ownership of AAG pending the DOT's issuance of a final order transferring international route authorities and certificates. DOT granted the exemption on December 8, 2016. The carriers notified the FAA of the pending merger and submitted a Joint Transition Plan that was accepted by the FAA on March 1, 2017. The FAA issued Operations Specification (OpSpec) A502 to both Alaska Airlines and Virgin America on the same date.

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 DOT 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.

Alaska Airlines and Virgin America 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 Alaska Airlines and Virgin America's operations will be sufficiently merged to permit an SOC during the first quarter of 2018, at which point the Virgin America certificate will 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 carriers apply for the SOC. Both Alaska Airlines and Virgin America will need to continue to work with the JTT and their respective CMOs to assure that the first and third requirements are satisfied.

With respect to the second requirement, the DOT issued Order 2017-6-13 on April 18, 2017, which (1) granted a de facto transfer under section 41105 of Title 49 of the United States of the certificates and other economic authorities held by Virgin America, to Virgin America under the ownership and control of AAG the parent company of Alaska Airlines; (2) transferred and amended the economic authorities currently held by Virgin America to Alaska Airlines and/or Virgin America, subject to the condition that the authority may only be used in a manner consistent with the terms of the air transport agreements between the United States and our aviation partners; and (3) transferred and amended the certificates and certain other economic authorities held by Alaska Airlines to Alaska Airlines, Inc. and/or Virgin America, Inc.

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, which would not meet the requirements of part 119. The primary concern on the part of the FAA is that there must 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 Alaska Airlines and Virgin America 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 AAG, Virgin America has already begun to integrate many of its functions with Alaska Airlines. In addition, both carriers appear to understand the need for a single management team that exercises full operational control over the SOC. Accordingly, the FAA does not foresee any legal or practical impediments to issuing an SOC in the name of "Alaska Airlines, Inc. and/or Virgin America, Inc." at the appropriate time. The FAA expects Alaska Airlines to appropriately amend the SOC 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 DOT 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,

Lorelei Peter
Assistant Chief Counsel for Regulations, AGC-200

VIA EMAIL and FEDEX

March 3, 2017

Lorelei Peter
Assistant Chief Counsel for Regulations
Office of the Chief Counsel
Federal Aviation Administration
800 Independence Ave, S.W.
Washington, DC 20591

Re: Alaska Airlines-Virgin America – dual-name operating certificate

Dear Ms. Peter,

On June 6, 2016, Alaska Airlines advised the Department of Transportation (DOT) in accordance with the provisions of DOT's rules under 14 C.F.R. § 204.5 of an agreement whereby Alaska Air Group, Inc. (AAG), the parent company of Alaska Airlines, would acquire Virgin America. The carriers also requested an exemption from 49 U.S.C. § 41105 to the extent necessary to allow them to operate separately under common ownership pending the Department's action on a contemporaneously filed international route transfer application, subject to certain conditions. By DOT Order 2016-12-6 dated December 8, 2016, DOT granted the exemption. Similarly, both Alaska Airlines and Virgin America also advised the FAA of their pending merger and subsequently submitted a Joint Transition Plan to the FAA, which the FAA accepted on March 1, 2017.

The purpose of this letter is to ascertain whether the FAA would have any objections to listing both Alaska Airlines and Virgin America on a single operating certificate (SOC) once issued for a limited period of time. More specifically, whether there is a legal impediment to the FAA issuing a SOC in the name of Alaska Airlines, Inc. and Virgin America Inc.

Since the time of the announcement of their proposed merger, Alaska Airlines and Virgin America have made great progress toward harmonizing their processes and procedures under Operations Specifications paragraph A502, Air Carrier Merger and/or Acquisition per the FAA-approved Transition Plan, in an effort to achieve an SOC. Both carriers have been working closely with the FAA's assigned Joint Transition Team (JTT) to implement the plan for achieving SOC during the first quarter of 2018.

As you are aware, the requirements for issuance of an Air Carrier Operating Certificate are governed by FAA regulations under 14 CFR Part 119, Subpart C, § 119.39, which specify that an applicant may be issued an Air Carrier Certificate or Operating Certificate if the FAA Administrator finds the applicant:

1. meets the applicable requirements of Part 119;
2. holds the proper DOT economic authorities; and
3. is properly and adequately equipped and able to conduct a safe operation under the appropriate provisions of 14 CFR Part 121 or Part 135 and operation specifications issued under Part 119.

As provided in its Transition Plan, once Alaska Airlines' and Virgin America's operations have been sufficiently merged to permit issuance of a SOC, Virgin America's existing certificate will be surrendered to the FAA, while Alaska Airlines will be the surviving certificate holder (#ASAA802A). The determination as to the carriers' ability to meet the first and third requirements listed above rests solely with the Administrator, and we believe there will be no serious impediments to meeting those requirements when the carriers apply for an SOC. Both carriers are committed to continue working with the JTT and their respective FAA offices to ensure this happens.

As to the second requirement, the DOT has already initiated the review process of transferring and amending Virgin America certificate and other authorizations. We expect that, once completed, DOT will issue a final route transfer order to the effect that any economic authorities held individually by either carrier will be reissued in the name of "Alaska Airlines, Inc. and/or Virgin America Inc."

Listing both names on the FAA Air Carrier Operating Certificate for an interim period, while the two carriers complete other aspects of their scheduled merger, is not without precedent and has been followed by the FAA with regard to several recent air carrier mergers. Listing both carriers' names on the certificate would be a temporary measure that recognizes the fact that at the time an SOC is issued, the two carriers will be fully merged for the purpose of FAA oversight, but will have additional steps to complete before the merger is completely implemented. Once the merger is fully implemented, we propose that the certificate be amended to identify "Alaska Airlines" as the sole name on the surviving certificate.

As was the case with previous mergers, Alaska Airlines strongly supports this approach in order to address certain potential international regulatory issues. For example, the Mexican Dirección General de Aeronáutica Civil (DGAC) is administratively unable to transfer Virgin America's operating authorities to Alaska Airlines until the U.S. approvals connected with the FAA SOC are issued. A dual-named air carrier certificate would allow the combined air carrier to operate on the legacy Virgin America routes in the interim.

In keeping with precedent in previous air carrier mergers, our proposal for issuance of a dual name certificate at the time of a SOC issuance will be based on the following conditions:

1. the two carriers will be under merged common control as subsidiaries of AAG;

2. the combined entity has sufficiently coordinated and executed its transition plan such that the FAA is satisfied that the combined entity can meet all requirements of 14 CFR Part 119 as well as Part 121, 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 CFR § 119.65; and
4. the combined entity is reflected on the certificates and other authorizations issued by DOT regarding economic authority.

We recognize that the FAA would not ordinarily permit two names on an operator certificate. In this instance, we submit that Alaska Airlines and Virgin America have already taken the steps necessary to ensure that any concerns on the part of the FAA will be fully resolved by the time the largely merged entity applies for a SOC. As a wholly-owned subsidiary of AAG, Virgin America has already begun to integrate many of its functions with Alaska Airlines. In addition, as evidenced by the close coordination between the two carriers and the FAA, both carriers fully understand the need for a single management team that exercises full operational control over the SOC.

Should you require any additional information to evaluate this request or if you have any questions regarding this correspondence, please feel free to contact me at 206-392-5453.

Very best regards,

Jeremy Ross
Associate General Counsel
Alaska Airlines | Virgin America | Horizon Air
P.O. Box 68900 - SEAZL
Seattle, WA 98168
Jeremy.Ross@AlaskaAir.com