

**BEFORE THE
U.S. DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.**

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Application of)	
)	
SKYWEST CHARTER, LLC)	Docket DOT-OST-2022-0071
)	
for authority to conduct scheduled)	
passenger operations as a commuter air)	
carrier under 49 U.S.C. § 41738)	
)	
_____)	

**MOTION FOR LEAVE TO FILE AND SURREPLY OF THE
AIR LINE PILOTS ASSOCIATION, INTERNATIONAL**

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July 28, 2022

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Air Line Pilots Association, International (“ALPA”), moves for leave to file this Surreply to the Reply of SkyWest Charter, LLC (“Reply”) and the letter of the Regional Airline Association under 14 C.F.R. § 302.6(c) in light of the substantial issues they address.¹

I. SkyWest and SkyWest Charter Ignore ALPA’s Arguments.

Bluster aside, SkyWest, Inc., and its alter-ego company, SkyWest Charter, LLC, do not deny that under their proposal:

- SkyWest plans to shift much of its Essential Air Service (“EAS”) work from its current scheduled FAR Part 121 operation to a wholly-owned public charter

¹ “SkyWest, Inc.,” “SkyWest Charter, LLC,” and “SkyWest Holdings” are collectively referred to herein as “SkyWest” under otherwise indicated.

operator, SkyWest Charter, under FAR Part 135 (*compare* Application, Ex. SWC-500 *with* Order 2022-3-8);

- Unless the Department approves the application to shift the work to its alter-ego charter subsidiary, SkyWest plans to terminate service to at least 18 EAS small communities (ALPA Answer at 3)²;
- SkyWest’s planned shift to its charter subsidiary can only occur if the Department decides to award federal money under the Alternate Essential Air Service “pilot program” under 49 U.S.C. § 41745 (“AEAS pilot program”) (Reply at 5-9);
- SkyWest’s planned shift is not justified by financial losses, since SkyWest admits these EAS markets are profitable (ALPA Answer at 3 & n.4);
- SkyWest’s planned shift is not justified by any shortage of fully-qualified first officers, since SkyWest’s inability to prevent its captains from leaving the airline, leading to staffing “imbalances,” is affecting these EAS markets, by SkyWest’s own admission (*infra* note 6 (SkyWest Q1 Earnings Call)).

As a result, the conclusion is inescapable: SkyWest Charter’s proposal is a coordinated subterfuge to undermine One Level of Safety standards by avoiding in part the safety-critical First Officer Qualification (“FOQ”) rules, 78 Fed. Reg. 42324 (July 15, 2013), that apply to Part 121 operations, but not to Part 135. In addition, SkyWest

² SkyWest tries to dodge its alter-ego structure as a mere “organizational matter” under which “[SkyWest Airlines] will not control [SkyWest Charter]” and “[SkyWest Charter] will be managed separately....” (Reply at 9-10.) But a glance at the ownership chart at Ex. SWC-302 shows that SkyWest, Inc., owns and controls 100% of SW Charter Holdings, Inc., which owns and controls 100% of SkyWest Charter, LLC. The cross-pollination of management is undeniable: The head of SkyWest Charter has been the Chief Operating Officer of SkyWest Airlines since 2014. The CFO of SkyWest Charter is SkyWest’s current Treasurer. SkyWest Charter’s three Board members are SkyWest, Inc.’s CEO, Chief Commercial Officer, and Chief Financial Officer.

This is not a close case. SkyWest Charter is not an even remotely independent airline. It is SkyWest’s alter ego by any definition.

would be able to implement less stringent safety requirements under Part 135 in other areas as well. The Regional Airline Association (“RAA”) filed in this docket to support SkyWest Charter’s application in a similar vein.³ (RAA letter (July 11, 2022).)

If successful, SkyWest can be expected to argue that fully-qualified first officers are not necessary for small-community operations since it will use the same twin-engine jets it used under FAR Part 121, and therefore all of its FAR 121 scheduled EAS service can be shifted to AEAS charters under FAR 135. When considering SkyWest’s dominance in EAS flying – it is the provider on 51% of the non-Alaskan EAS routes – and its plan to operate SkyWest Charter “in smaller markets” (Reply at 10) – there will be little to stop the AEAS pilot program from becoming the exception that eats the EAS rule.⁴

II. The Department Must Not Enable an End-Run Around Part 121 Through AEAS Grants.

The Department evaluates the fitness of domestic certificate applicants under subpart II, chapter 417, subchapter II of the aviation statutes. 49 U.S.C. § 41738. Assessing the viability of their business plans is essential to a fitness determination. 14 C.F.R. § 204.3; DOT Certificated Air Carrier information packet at 17 (Sept. 2012). Here,

³ SkyWest is a member of RAA and SkyWest’s CEO is the Vice Chair of RAA. Another RAA member, Republic, whose CEO is on the RAA Executive Committee, is petitioning FAA for a weakening of the FOQ rules, as we explained. (ALPA Answer at 2 (July 8, 2022).)

⁴ According to the Department, of the 93 EAS markets in the Continental U.S., Hawaii, and Puerto Rico, SkyWest is the operator in 48 of them. We exclude the eight current AEAS points from the Department report’s tally of 111. DOT subsidized EAS report (June 2022).

SkyWest Charter's Reply makes clear that its business plan rests entirely on discretionary AEAS federal funding under 49 U.S.C. § 41745. The carrier assumes that the Department will grant money to the small communities SkyWest has targeted with its business plan.

That assumption is misplaced. Congress commanded that "[i]n carrying out subpart II of this part..., the Secretary of Transportation *shall consider* the following matters, among others, as being in the public interest and consistent with public convenience and necessity: (1) assigning and maintaining *safety as the highest priority in air commerce*; (2) before authorizing new air transportation services, *evaluating the safety implications* of those services." 49 U.S.C. § 40101 (emphasis added). Under these circumstances, the Department cannot award federal grant monies just to ameliorate a carrier's staffing issues in a way that is inconsistent with upholding safety as "the highest priority in air commerce." *Id.*

As the Secretary himself has said this month, the FOQ rules were "set by Congress and set for safety reasons, and I haven't seen anything that changes those safety reasons."⁵ Here, SkyWest has not made a case to weaken the FOQ rules.

SkyWest's desire to shift from the highest level of safety to a lower one – whatever the

⁵ Blair Miller, *Travelers frustrated with flight cancellations, delays that some blame on pilot shortage*, WPIX (July 20, 2022), <https://www.wpxi.com/news/local/travelers-frustrated-with-flight-cancellations-delays-that-some-blame-pilot-shortage/KMOQOHPHUZEBLNBYNB5HCRJGGY> (interview of Secretary Buttigieg on WPIX Channel 11 news, Pittsburgh, PA).

business reason – is manifestly not in the public interest. Applications founded on an expectation of Departmental action inconsistent with the public interest should be denied.

III. The Department Should Be Wary of Indefinite “Solutions” to a Short-Term Issue.

The Department should not sanction a long-term “solution” that undermines the margin of safety to address a short-term problem. The main reason for this application appears to be SkyWest’s presumed captain “imbalance” problem, which will be “mitigated” next year during the “back half of 2023.”⁶ Certificate authority, however, is forever: save for dormancy, domestic certificates do not expire. *See, e.g.,* Order 2022-7-3, *Waltzing Matilda Aviation*, DOT-OST-2021-0078 (July 3, 2022). A near-permanent government-issued certificate is an inappropriate response to a temporary corporate-created issue.

IV. Public Charters Are Unauthorized for EAS by Statute.

Another point from the Reply bears rebuttal. Contrary to the implications of SkyWest and RAA, the Department does not allow scheduled service for EAS communities to occur under public charter rules. While SkyWest states that “today’s [Part 380 public] charters have evolved to [include]... scheduled flights” (Reply at 6),

⁶ SkyWest Earnings Call, Q1 2022 (Apr. 28, 2022), <https://seekingalpha.com/article/4504902-skywest-inc-skyw-ceo-chip-childs-on-q1-2022-results-earnings-call-transcript>.

nowhere does it explain how the Department is to read the word “scheduled” out of the EAS statute.⁷ Nor does it show how *Ironwood’s* scheduled-means-scheduled principle is no longer good precedent. Order 2011-1-16 at 7, *EAS at Ironwood, MI, et al.*, DOT-OST-1996-1266 and 1711 (Jan. 22, 2011). In fact, if it believed its own statements, then this application would be unnecessary.⁸ Rather, SkyWest Charter relies on the narrow AEAS small-community grant pilot program – a limited carve-out from the EAS program – to attempt to achieve indirectly what the statute forbids SkyWest from doing directly.

CONCLUSION

SkyWest Charter’s business plan is unsound. It assumes the Department is ready to degrade the level of air safety for small communities by granting federal funds to permit a dominant and profitable scheduled airline to shift its work to a wholly-owned charter subsidiary and use lesser-qualified first officers in the process. The business plan is contrary to the public interest.

⁷ Despite the applicant and RAA’s assertions, other FAR 135 public charters, such as JSX a/k/a Jet Suite X, a/k/a Delux Public Charters, and Blade, do not provide Essential Air Service to small communities. Rather, they cater to those who seek elite private-jet experiences without being slowed down by TSA airport security. Contour, by contrast, is not under common ownership with a Part 121 carrier. Since its inception, it has been a public charter operator under FAR 135 and has expressly relied on the AEAS program. *Application of Corp. Flight Mgmt., Inc.*, DOT-OST-2013-0061 (Mar. 22, 2013), Ex. CFM-700.

⁸ Had SkyWest Charter relied on a supposed “evolution” that has rendered charters indistinguishable from scheduled service, the Department would have been forced to explain why it would plan to exceed its statutory authority under 49 U.S.C. § 41732.

For the foregoing reasons, as well as those stated in ALPA's Answer, the Department should deny the application of SkyWest Charter, LLC.

Dated: July 28, 2022

Capt. Joseph G. DePete
President

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have this 28th day of July, 2022, served the foregoing Answer of the Air Line Pilots Association, International by email on the following persons:

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