

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

Application of)	
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)	
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)	
)	
)	

**ANSWER OF THE
AIR LINE PILOTS ASSOCIATION, INTERNATIONAL**

Capt. Joe DePete
President

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July 8, 2022

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INTRODUCTION**

SkyWest, Inc., should not be permitted to degrade the margin of safety of our air transportation system by using its new alter-ego company, SkyWest Charter, LLC,¹ to shift its current Essential Air Service (“EAS”) small-community flying from itself to its surrogate, to operate high performance jet aircraft under public charter rules with lesser experienced, lesser-qualified first officers on the flight deck. Its proposal is a subterfuge to avoid the safety-critical First Officer Qualification (“FOQ”) rules as Congress authorized in the Airline Safety and FAA Extension Act of 2010, which regional airlines

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

like SkyWest are seeking to weaken (*see, e.g.*, Petition of Republic Airways Inc. for Exemption, Docket No. FAA–2022–0535 (Apr. 14, 2022)).² Although the Air Line Pilots Association, International (“ALPA”), supports small community EAS air service, and supports Part 135 operations as a useful and limited addition to the aviation system, SkyWest’s proposed ersatz scheduled operation would abuse the public charter rules to shortchange small-community customers of the air service that Congress mandated under the single, highest level of aviation safety from which they have long benefitted. The Department should deny the application.

Description of SkyWest’s Application

SkyWest Charter applies for a commuter air carrier certificate from the Department under 14 C.F.R. Part 298 to allow its sister carrier, SkyWest Airlines, Inc., to shift its scheduled service to EAS small communities that SkyWest Airlines, Inc., does not want to serve to SkyWest Charter.³ Application at 4. According to the “detailed description” of SkyWest Charter’s proposal, it “will operate the proposed service as public charters under Part 380.... The flights will be conducted as on-demand operations under FAR [Federal Aviation Regulation] Part 135.” Application, Ex. SWC-

² Act, Pub. L. 111-216. The Pilot Certification and Qualification Requirements for Air Carrier Operations, 78 Fed. Reg. 42324 (July 15, 2013), established the First Officer Qualification rules (“FOQ Rules”).

³ SkyWest Charter plans to serve 25 communities, including at least 18 EAS points. Ex. SWC-500. Those 18 are among the 29 EAS points where SkyWest wants to cease operations. Order 2022-3-8 at 2 (Mar. 11, 2022) (“EAS Hold-In Order”). SkyWest Charter is offering this proposed service to other EAS markets as well. *See* Letter from Cape Girardeau, MO, to DOT, Docket DOT-OST-2005-20736 (June 22, 2022).

500 at 2. Confusingly, the application also refers in several places to scheduled service. Assertions of scheduled service are inconsistent with a proposal to operate under the “public charter rules of Part 380.”

SkyWest told the Department it wanted to end its Part 121 service to these unwanted EAS markets at first, on February 2, 2022, because of “staffing imbalances” and later, on March 10, 2022, because of “pilot staffing challenges.” EAS Hold-In Order at 2, 3. Significantly, the airline was not losing money on these EAS routes, rather, as the CEO said in April 2022, “these were profitable cities, some of our strong profitability [sic], these are great markets.”⁴ SkyWest evidently believes it can rectify its staffing issues by reducing the level of safety on its flight decks through a loophole. That loophole, if valid, would exempt the carrier from having two fully qualified, experienced, and type-rated ATP and R-ATP -certificated pilots on the flight deck. Yet SkyWest told Wall Street analysts on April 28, 2022, that its pilot staffing challenges

⁴ Q1 2022 Earnings Call Transcript, Q&A: “So fundamentally, we’re a 121 certificate. We do not have a 135 certificate. So we have -- we actually have been working with a lot of 135 operators and utilize them very strong within our existing pipeline. *As Wade mentioned, when we unfortunately had to -- had to notify the Department of Transportation, the 29 cities that we needed to pull out of, these were profitable cities, some of our strong profitability, these are great markets.* It’s just impossible to serve those with the other contractual obligations that we had.” Emphasis added.

To the extent that a reduction in EAS scheduled service frequency levels could be a workable solution, that concept has already been supported by many communities and approved by the Department. *See, e.g., EAS at Moab, UT*, Docket No. DOT-OST-1997-2827, Order 2019-6-10 (June 17, 2019) (allowing SkyWest seasonal frequency reduction for Moab, UT EAS). In any case, given the strong profitability of these markets, and the possibility of fewer frequencies, there is no need to disturb the existing Part 121 scheduled service and replace it with less qualified pilots operating the same aircraft under less stringent Part 135 rules with fewer seats and greater costs. Approval of a new Part 135 carrier here is unwarranted.

have to do with its *captains, not first officers*: specifically, it is unable to prevent its experienced and highly-sought-after captains from being hired away by other airlines. SkyWest, Inc., Q1 2022 Earnings Call, transcript available at seekingalpha.com.⁵

As we will explain, SkyWest's proposal will do nothing to alleviate its stated captain retention problem. Its proposal is clearly contrary to fundamental One Level of Safety principles intended to protect operations in smaller communities and is designed to use a loophole to undermine the First Officer Qualification rules as Congress directed. Pub. L. 111-216, *supra*.

The first part of the loophole is created by the 30-passenger limit for on-demand charters (definition of "on-demand operation," 14 C.F.R. § 110.2). To fit through the loophole, SkyWest will have to pull 20 seats out of each 50-seat CRJ-200 airplane. (These airplanes will likely be the same tail numbers as flew these routes under Part 121. Application, Ex. SWC-305.). The second part of the loophole is created by the opportunity to use Federal Aviation Regulation (FAR) Part 135. Under FAR 135, while Air Transport Pilot (ATP) rated pilots are required to fly as captains in turbojet aircraft,

⁵ "We have long been preparing for an increase in mainline pilot retirements. However, the 6,000 early retirements taken at the majors during COVID and the steep demand recovery has resulted in a new much higher demand for experienced SkyWest pilots, particularly captains. This demand has created imbalance of pilots here and across the regional industry. Of course, pilot attrition was anticipated and planned for in our models and strategies. However, rapid increase in captain attrition was not. With the return to travel and the new industry-wide demand has resulted in SkyWest pilots being the most sought after in the industry." Remarks by Chip Childs, CEO, SkyWest, on earnings call, at <https://seekingalpha.com/article/4504902-skywest-inc-skyw-ceo-chip-childs-on-q1-2022-results-earnings-call-transcript>.

just as in Part 121 operations, a Restricted-ATP (“R-ATP”)⁶ or ATP is not required for first officers; first officers need only be commercial multi-engine instrument rated. If valid, the loophole would enable SkyWest to cancel its Part 121 scheduled service under the highest standard of safety for airline operations, to create a new carrier using the same planes (Application, Ex. SWC-300 to -303) to begin Part 135 commuter air carrier charter service to the same small-community airports. In other words, it is creating a surrogate entity to shift airplanes, assets, and an operation subject to the highest standard of safety to an operation under a lesser standard of safety and therefore exposing the traveling public to increased risk. As we explain, however, the loophole is not valid for EAS service, however, because EAS service must by law be scheduled service.

ARGUMENT

I. Congress Intended Essential Air Service to Be Scheduled Service; SkyWest Charter’s Application Does Not Fit the Bill.

Small communities receiving Essential Air Service (“EAS”) are entitled to “scheduled air transportation” by statute. 49 U.S.C. § 41732. “Public charter operations are not by definition, scheduled service.” *EAS at Ironwood, MI, et al.*, DOT-OST-1996-1266 and -1711, Order 2011-1-16 at 7 (Jan. 22, 2011) (reaffirming Order 2010-9-26, *infra*).⁷

⁶ The FOQ rules created the R-ATP to allow pilots who have military training or an aviation degree and associated flight training to serve as first officers in Part 121 operations with fewer than 1,500 hours.

⁷ Public charters require passengers to become “participants” under an “Operator-Participant” contract. 14 C.F.R. § 380.32. Under those contracts, there may be no guarantees of single-plane or nonstop service,

The Department has flatly rejected charter service as a substitute for EAS scheduled service. *EAS at Ironwood, MI, et al.*, DOT-OST-1996-1266 & -1711, Order 2010-9-26 at 3 (Sept. 30, 2010) (declining to entertain proposals from two charter operators). As a result, SkyWest Charter would not be permitted to offer charter services to EAS communities without a waiver from 49 U.S.C. § 41732. Yet in the *Ironwood* case above, the Department ruled out precisely such a waiver: “we are not able to allow communities [which sought a waiver to allow charter services] to rewrite the framework of the EAS program by exempting them from the basic requirement that all essential air service be provided by scheduled operations.” Order 2011-1-16 at 7.

Even if the Department had not spoken so forcefully on this point in its precedents, such a waiver would be contrary not only to the statute but to the public interest criteria of 49 U.S.C. § 40101. A waiver would facilitate a retreat from the highest level of safety for EAS small communities, contrary to the statutory public interest criteria of “assigning and maintaining safety as the highest priority in air commerce,” § 40101(a)(1), and “preventing deterioration in established safety procedures,” § 40101(a)(3). A waiver would also reduce the usefulness of the service to small-community travelers on charters who need viable connections to onward scheduled flights. Depriving these communities of connectivity would be contrary to

among other differences. Online, these differences are only disclosed to the consumer via a box to be checked before making payment.

another criterion, “maintaining a *complete and convenient* system of continuous scheduled interstate air transportation for small communities.” 49 U.S.C. § 40101(a)(11). As the Department has repeatedly found, small communities should not have to settle for less than the statute mandates.⁸ The Department should uphold the statutory obligation to provide scheduled service to EAS communities.⁹

II. Shifting from Part 121 to 135 Introduces Unnecessary Risk to Passengers and the National Aviation System

A shift by SkyWest from FAR 121 to FAR 135 introduces unnecessary risk to passengers and the system, reflecting a failure to learn the lessons of the “One Level of Safety” regulations. To be clear, ALPA supports small community EAS air service. ALPA also supports Part 135 operations as a useful and limited addition to the aviation system. But the FAA committed to One Level of Safety in 1995 after a series of fatal Part 135 accidents. The FAA’s premise for “One Level of Safety” was the principle that it mandated Part 135 scheduled airlines to migrate to the higher Part 121 standard by

⁸ If SkyWest intends for the applicant to be a scheduled operator, then in light of *Ironwood*, the Department should force the applicant to explain to interested parties how it intends to mix apples and oranges by using charter rules to provide what would be “simulated” scheduled service. In the foreign context, the Department has acted against air carriers that circumvent scheduled service limits by operating suspiciously frequent charter flights. *In re Air India*, Docket No. DOT-OST-2007-0125, Order 2020-6-13 (June 22, 2020) (COVID repatriation charters evaded prohibition on scheduled flights).

⁹ If SkyWest intends to force small communities to rely on receiving a discretionary Alternate EAS grant under 49 U.S.C. § 41745 from the Department to enable its surrogate model, it should so state. Notably, as of the latest Department report, none of the small communities SkyWest specifies is receiving Alternate EAS service. https://www.transportation.gov/Subsidized_EAS_report48states_HI_PR_Jun2022.

certain dates. The Air Line Pilots Association advocated tirelessly toward the goals of “One Level of Safety” for more than three decades leading to its adoption in 1995.

The One Level of Safety Notice of Proposed Rule Making (NPRM)¹⁰ states “The need for this rulemaking is supported by a study conducted by the National Transportation Safety Board (NTSB)¹¹, testimony at Congressional hearings, and accident statistics” and was prompted because the accident rate for Part 135 commuter airlines continued to be higher than the rate for Part 121 airlines. The NPRM described three accidents of Part 135 commuter flights that killed 38 people to justify FAA’s scrutiny of commuter safety.¹² As a result, the FAA changed the FARs: before the rule, scheduled passenger operations in airplanes with over 30 seats were conducted under Part 121, and those with 30 seats or fewer were conducted under Part 135. After the rule was promulgated, scheduled passenger operations in airplanes with 10 to 30 seats, and any *scheduled* passenger operations in turbojet airplanes, regardless of seating

¹⁰ Commuter Operations and General Certification and Operations Requirements, 60 Fed. Reg. 16230 (proposed Mar. 29, 1995).

¹¹ Nat’l Transp. Safety Bd. Safety Study: Commuter Airline Safety, NTSB/SS-94/02 (Nov. 1994).

¹² The accidents recited in the NPRM operated between large airline hubs and smaller communities:

- On December 1, 1993, a Jetstream 31 operated by Express II (branded as Northwest Airlink), from Minneapolis-Saint Paul crashed at Hibbing, MN, on an instrument approach, killing 18 people.
- On January 7, 1994, a Jetstream 41 operated by Atlantic Coast Airlines (as United Express), from Washington Dulles stalled while executing an instrument approach to Columbus, Ohio. Of the eight people on board, five died and three survived.
- On December 13, 1994, a Jetstream 3200 operated by Flagship Airlines (as American Eagle), from Greensboro, NC, crashed at Raleigh-Durham, NC, on an instrument approach, killing the two pilots, and 15 of the 18 passengers.

configuration, were and are required to operate under Part 121. *Charter* services, however, were not covered by the One Level of Safety Final Rule.

If the Department approves SkyWest's proposal, the Department will effectively roll back the clock to a time before the "One Level of Safety" rule took effect by permitting a Part 135 operation to supplant an operation conducted under Part 121. The Department will be allowing an alter ego operation to provide turbojet operations under charter rules that, as discussed, would reduce the pilot experience and qualifications on the flight deck for both the captain and first officer: under Part 121, both pilots must hold an ATP or R-ATP (requiring a minimum of 750 – 1500 hours flight experience) as well as a type rating in the specific aircraft being operated, but under Part 135, while the captain must hold an ATP and be type-rated, the first officer need only possess a commercial pilot certificate (requiring as little as 190 hours). Again, because the requirements for captain are the same under Parts 121 and 135, this proposal would not affect SkyWest's stated captain staffing/retention problem. But the proposal would undermine the intent of the 1995 Final Rule and the First Officer Qualification "FOQ" rule. The proposed Part 135 surrogate operation would differ from the current operation in other ways as well: neither the anti-fatigue rules of FAR Part 117 nor the mandatory retirement age for pilots apply to Part 135 operations. The result: increased operational risk and a negative impact on safety.

Recall that the FOQ rules themselves reflect the U.S. Government's response to intolerable risk. They came about after 33 fatal regional airline aviation accidents and incidents between 2004 and 2009, including four accidents that killed more than 115 people, in which the NTSB identified pilot training and qualification deficiencies as causes. Indeed, the CRJ-200 regional jet is a faster, higher performance and less forgiving aircraft than the Colgan Air Flight 3407 turboprop that crashed in Buffalo, New York on February 12, 2009, which was the final precipitating event giving rise to the FOQ rules. Congress and the FAA acted, and the current rules resulted.

In sum, SkyWest's proposal is a clear attempt to replace its own FAR 121 EAS operation with a FAR 135 operation at a lower standard of safety, simply to be able to hire commercial rated pilots at a lower flight experience level. It does not address SkyWest's stated problem. The Department should not countenance a loophole created by Parts 135, 298, and 380 to permit a lesser standard of safety at these small communities.

CONCLUSION

Alter-ego swaps of the type proposed here have no place in the realm of commercial, reliable, and safe aviation. For the foregoing reasons, the Department should deny the application of SkyWest Charter, LLC, to set up an alter-ego operation at a lesser standard of safety, and of lesser utility to the small-community travelling public.

Dated: July 8, 2022

Capt. Joe DePete
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Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have this 8th 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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