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John Touliopoulos
Manager Financial Evaluation
Financial Evaluation Division
Regulatory Approvals and Compliance Directorate
Canadian Transportation Agency
Ottawa Ontario K1A 0N9

Via Email

Mr. Touliopoulos:

First of all, thank-you for the invitation to comment on the Draft “Publicly Available” Interpretation Note, dated August 17 2012. The issue is one that is of significant interest to the members of the Helicopter Association of Canada. Your efforts to consult with stakeholders on the content of the interpretation note will contribute to a more transparent system for stakeholders who are preparing to provide goods or services by air, and a better understanding of the issue on the part of the helicopter community. We believe ultimately all of the criteria tend to focus on a means to gauge the reasonable expectations of the passengers on board aircraft.

Any discussion of the definition of the “publicly available” definition being applied by the CTA raises operational and competitive issues and both of these factors figured prominently in the feedback we received from our operator-members.

Notwithstanding that “each case is unique”, the members of HAC believe that there should be transparent guidelines to ensure that companies or individuals who are preparing to offer a particular service are able to make an informed evaluation of whether or not they will be required to hold a CTA License. Furthermore, the members of the commercial aviation community, using the same interpretation guidelines should be able to understand why a particular operation is, or is not competing with them on a level-playing field, since the “publicly available” criteria and the requirement for a CTA license naturally dictate whether the operation will be a commercial operation conducted under Sub-Parts 703 or 704, or whether Part VI or Sub-Part 702 of the CARs would

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apply. As you may know, *all* operator-members of the HAC hold an AOC however, we have a number of members who also hold a POC under Part VI.

We will focus our comments on the elements of the DRAFT Interpretation Note dated August 17 2012.

HAC has no comments on Parts I-IV.

Part V

Following “**Indifference as to who uses the service generally means the service is publically available**”, HAC would recommend adding a new section entitled:

“Consider the expectations of the individual(s) being carried”

HAC believes that the reasonable expectations of the individual and their ability to influence or control their transportation circumstances are central to the consideration of “publically available”. If for example, an individual’s ability to influence the circumstances of transportation is tied entirely to their decision to remain employed, then this would tend to suggest that the service is “publically available”. That is, are they able to control the circumstances of their air transportation by means other than leaving the employ of the company operating the aircraft?

If for example, the passengers were rank-and-file employees or contract employees of the aircraft operator being transported to the work-site, their choice may be dictated by the fact of employment with the company. This is very different from senior company executives who may have some influence over their conveyance circumstances or the mode of transportation being used to carry them to a meeting. Members of the general public who may be carried on a government aircraft (a Police helicopter transporting a prisoner, or a MEDEVAC patient, or even forest firefighters or hockey teams, for example) have very little control over the type of transportation, or knowledge of the circumstances of the transportation.

HAC would also recommend an amendment to the section entitled “**Number of persons to whom the service is offered**” by adding “***and the size of the aircraft being operated***”

If larger aircraft are being used to transport a larger number of individuals, then this would tend to suggest that the occupants have less control over the transportation circumstances. A good example of this would be a larger aircraft being used to transfer employees or contractors of a company or government agency to their place of employment. Naturally inside any company or government agency there are very few individuals who can influence the method or circumstances of transportation.

HAC would also recommend an amendment to the section entitled “**Requiring Compensation for a service does not necessarily make it publically available**” by

adding ***“and the absence of direct compensation does not necessarily avoid a determination that the service is publically available”***

While we agree that “inter-company charges for the use of corporate aircraft or payment made for the use of a private aircraft” do not necessarily make it publically available, the fact that individuals are being transported with no direct cost to those individuals or to that corporation do not necessarily mean that the service is *not* publically available.

Related companies should be permitted to “JV” for aircraft services without a license when the aircraft’s occupants have no reasonable expectation of a commercial level of service, but different provincial governments (Manitoba and Ontario, for example) should not be permitted to “JV” for aircraft services without a commercial AOC, for example.

Federal and Provincial levels of government should not be permitted to “JV” between these different levels of government for aircraft services without a commercial AOC. These are different and unrelated “companies”. Even if they are both government bodies, they are different levels of government.

Different arms of the Federal Government should be permitted to “JV” for services without an AOC only IF the expectations of the individuals carried is consistent with the “expectations” discussion, above. That is, without a commercial AOC, an aircraft owned and operated by the Canadian Wildlife Service could be “JV’d” for services to Fisheries and Oceans or the RCMP for example, but would be limited to carrying the senior-most executives and would not be able to carry members of the general public or employees of government who have a reasonable expectation that the operation will be conducted as a commercial operation.

HAC would recommend adding:

Direct or indirect compensation for services and the nature of the relationship between the company or individual, and the person(s) being carried should be considered

Companies engaged in joint business ventures should be considered to be separate companies, and the services should be deemed to be publically available since compensation for the use of one company’s aircraft may form part of the overall joint venture agreement. In the same way, the revenue that casino passengers generate for the casinos is the indirect compensation that they provide for the casino’s air service.

Furthermore, if the relationship between the company providing the transportation service and the people being transported is only through the joint venture agreement or the implied agreement that exists between the casino owner and their clientele, those individuals or employees have no influence over the type of transportation being used or any understanding of the type of operation that is being used.

Part VI Specific Types of Services

The HAC agrees with the interpretations of the CTA set out in the table, except as discussed below:

Personal Aircraft

The use of personal aircraft to transport family, friends and other personal acquaintances should not be considered to be a publically available service as long as there is no direct or indirect compensation for the flight.

Fractional Ownership

The use of aircraft in a fractional ownership regime should be evaluated according to the expectations of the individuals being carried discussed above, and should be limited to the senior-most executives in the corporation, and should not extend to employees of the corporation(s) or to the use of larger aircraft for the reasons discussed above.

Excluded Services

Virtually all Canadian helicopter operators engaged in the movement of people in aerial firefighting and aerial sightseeing operations do so in the context of a CTA license and a CAR 703 or 704 AOC. We believe that firefighters and passengers in sightseeing operations have a reasonable expectation that they will be transported in the context of a commercial operation, and we see no reason to exclude these operations from the requirement for a CTA license, the application of CAR 703 or 704, and a commercial AOC. We appreciate that both of these services are NAFTA Specialty Air Service (SAS) operations and would need to continue to be designated as such for the purposes of that agreement unless this issue can be resolved through trilateral discussions between the signatory countries.

Thank-you for the opportunity to comment.

Regards,

A handwritten signature in blue ink, appearing to read "Fred L. Jones".

Fred L. Jones BA LLB
President & CEO