

# COWBOY CHARTER OPERATORS

## Putting a Stop to Part 134 1/2 Charter Activity

By Lindsey C. McFarren

The legitimate on-demand charter community—those with a valid Part 135 air carrier certificate—refer to those operators conducting illegal charter activity as “Part 134 1/2 operators” or perhaps more commonly: “Those scoundrels who offer transportation at cut-throat prices, steal my clients, and have no regard for regulatory requirements.” One region of the country is even referred to as “The Wild West” of charter operations because of the allegedly rampant 134 1/2 activity.

Illegal charter operations came to the public eye in 2005 with the Challenger crash at Teterboro, when Platinum Jet Management and Darby Aviation became the Department of Transportation (DOT) and Federal Aviation Administration’s (FAA) “Most Wanted” aviation bad guys. The enforcement proceedings against these two companies—and their owners and employees—have been closely watched by the aviation industry. The illegal activities of Platinum Jet and Darby have resulted in DOT penalties; FAA revocation of certificates; and finally, federal fraud indictments, guilty verdicts and jail time for some Platinum Jet and Darby executives and employees.

These enforcement proceedings have certainly been two of the most drawn out and dramatic cases in our industry’s history; but those two companies are not the only ones to conduct illegal charter activity and become the focus of enforcement activity.

Typically, when an aircraft operator crosses the line into illegal air charter activity, it’s because the operator has run afoul of Part 119, Part 135 or both.

Part 119 outlines the requirements for air carriers and commercial operators. It defines *direct air carrier* as a person who provides, or offers to provide, air transportation and who has control over the operational functions performed in providing that transportation. It also defines a *wet lease* as any leasing arrangement whereby a person agrees to provide an entire aircraft and at least one crewmember.

There are a few circumstances in which a wet lease may be legally conducted under Part 91 (see Part 91.501). However, any time flights are conducted under a wet lease and for compensation or hire, the individual or company arranging the flight and holding operational control must have a Part 135 on-demand air carrier certificate.

Part 135 outlines the requirements for commuter and on-demand operations. Specifically, it is applicable to the commuter or on-demand operations of each person who holds, or is required to hold, an air carrier certificate under Part 119.

Below are summaries of other, lesser-known enforcement cases resulting from illegal charter activities. Two of these cases demonstrate how Part 135 certificate holders can step outside the authorizations of their certificate and become illegal charter operators themselves.

### Nix Flying Service

The scenario presented in *Administrator v. Nix* in the late 1990’s is a pretty standard example of the Part 134 1/2 concept. Tommy Hue Nix, the owner of Nix Flying Service in Belmont, Mississippi, received a 120-day suspension of his commercial pilot certificate due to conduct of illegal activities. Over the course of several years, Nix provided both the aircraft and pilot to Belmont Homes, Inc. for compensation through a somewhat familiar scheme. The aircraft was owned by Nix’s wife’s company Aircraft Leasing. The pilots were employed by Nix Flying Service. Neither company held a Part 135 air carrier certificate. Although the lease agreement and pilot services agreement were separate contracts, during the course of the FAA’s investigation, it became clear that Aircraft Leasing had virtually no involvement in the actual flights. Belmont Homes’ employees called Nix to arrange flights. Nix was found to have held operational control of the flights, choosing pilots, handling flight planning and

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other arrangements, and securing the aircraft from Aircraft Leasing. Because Nix performed these tasks for compensation or hire, the flights could not be operated legally under Part 91.

Nix was found to have violated FAR 119.49(g) which prohibits any person from operating as a direct air carrier or as a commercial operator without, or in violation of, an appropriate certificate and appropriate operations specifications. Nix also conducted these faux commercial operations without proper pilot training, violating Parts 135.293(a) and (b) and 135.299(a).

### Don Bessette Aviation, Inc.

*Administrator v. Bessette* illustrates illegal activities conducted by an operator with a valid Part 135 air carrier certificate. Trinity Hospital secured transportation for compensation from Don Bessette Aviation, Inc. Though the aircraft and pilot services were contracted separately, the specific terms of the aircraft lease essentially forced certain pilots to be used on the flights. Bessette Aviation supplied the aircraft, while a separate company, Aviation Services, provided the pilots. Aviation Services, previously been owned by Don Bessette's holding company, was sold to two pilot-employees in May 2003. The two entities were co-located and undoubtedly related. As the Administrative Law Judge stated, "As a practical matter, aircraft and pilot were leased as a team."

However, Part 119 also requires compliance with issued Operations Specification. In 2004 when Bessette Aviation conducted the illegal flights, its Ops Specs limited the company to single-pilot on-demand activity in only one specific aircraft with only one named pilot. The irony of this case is that Bessette Aviation held the appropriate certificate to provide an aircraft and pilots for compensation, but the aircraft and pilot used for some of the flights were not listed on Bessette Aviation's Ops Specs. Further, the pilot used was not trained in the aircraft used, according to Part 135 regulations.

Bessette Aviation was found to have operated flights on April 14 and 22, 2004, under Part 135 in violation of FAR 119.49(c)(5), 119.49(c)(6), 135.293(a)(1), 135.293(b), and 135.299(a). Bessette Aviation faced a civil penalty of \$3,000 for these violations. FAR 119.49 refers to Ops Specs requirements, while 135.293 and 135.299 address pilot training for Part 135 operations.

### Interstate Helicopter

On March 4, 2008, a Cessna Citation I operated by Interstate Helicopters, encountered American White

Pelicans on departure from Wiley Post Airport in Oklahoma City. Tragically, the encounter resulted in five fatalities, including both pilots and three passengers. Interstate Helicopters was a certificated Part 135 air carrier. However, it was only authorized to fly helicopters, not the aircraft that crashed in 2008. The flight had been chartered by United Engines. The Citation I was owned by an orthopedic clinic. The pilots were not employed by Interstate Helicopters. Interstate Helicopters reportedly "leased" the airplane to United Engines on a number of occasions, sometimes invoicing the airplane as a "sales demo". (The president and CEO of United Engines testified neither he nor the company had any intention of buying an aircraft and he had told Interstate Helicopters that repeatedly.) The NTSB claimed Interstate Helicopter's arrangements "circumvented" proper certification and authorization. The FAA revoked Interstate Helicopter's Part 135 certificate in September 2008. (Interstate Helicopter was issued a new certificate in January 2009.) It's not just the operator who faced enforcement action – another pilot involved with Interstate Helicopters received a 30-day suspension of his airline transport pilot certificate for failing to meet Part 135 training requirements on one of these so-called "demo flights."

### Combating Illegal Charter

Although we might not always agree with the FAA's regulations or enforcement of those regulations, the air carrier qualifications and requirements exist for a reason. Aside from the obvious concern of losing business to the Part 134 ½ operators, legitimate air charter operators are subject to FAA oversight. Training requirements are more stringent for pilots flying Part 135 operations than for Part 91 operations; maintenance standards are also stricter. Part 135 pilots and maintenance personnel are subject to drug and alcohol testing. Finally, the DOT requires a minimum level of insurance coverage be obtained by the individual or company prior to the FAA issuing a Part 135 certificate. In short, Part 119 and 135 requirements provide an additional level of operational safety over Part 91 regulations and ensure the operator is able to appropriately handle losses if that level of safety fails.

### NATA/FAA Hotline

NATA and the FAA launched the Illegal Charter Hotline almost two years ago in a step to combat illegal charter activity. The hotline, which is staffed by an independent third

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party, receives dozens of calls each year. The original intent of the hotline was to allow any employee or agent of a Part 135 on-demand certificate holder to call a special toll-free hotline, 888-SKY-FLT1 (or 888-759-3581), to report a suspected illegal commercial flight in which an aircraft operator without an FAA Part 135 certificate is accepting compensation for transportation in violation of both FAA and DOT regulations. However, the hotline also receives reports of other types of suspicious activity. Most of the calls are placed by reporters who choose to remain anonymous. Every call is assigned a case code so reporters can call back with additional information or to receive updates.

What type of activity should be reported?

Many different types of suspicious activity can be reported through the illegal charter hotline. Below are some hypothetical examples:

- A pilot could call to report a request from a non-certificated entity to fly a commercial flight—or a “demo flight” that seems sneaky!
- A charter operator or astute client could report deceptive marketing practices, such as misleading websites or magazine ads, of certificated charter operators, non-certificated aircraft operators acting as legal charter operators, or brokers.
- An FBO employee could call with details on a suspicious-looking operation.
- A charter operator could report a broker who may be crossing the lines of legality.
- A charter operator could report an aircraft owner who has been using the aircraft in ways that indicate the owner is receiving compensation for the flights.

Hotline Report Guidelines

**Call during office hours.** Call the hotline during normal office hours, Monday through Friday from 9 AM to 5 PM EST. If you receive the voicemail, leave a message with contact information so an agent can return your call. The hotline is not affiliated with the FAA or NATA, and agents always asks callers if they prefer contact information be kept confidential.

**Provide details.** The more details you can provide in the report, the more likely the FAA will be able to successfully investigate the situation. Provide the tail number of the aircraft in question; information about the operator or pilots; specific flights you think were or will be operated

illegally; and the reason you believe flights are being operated illegally. For example, some callers suggest another operator—without proper certification—has provided quotes for transportation to the legal operator’s clients. Typically the “suspicious” operator’s fees are much lower than the operator who is playing by the rules and the honest operator loses a client to the lower price. If you find yourself in this situation, be prepared to share the details of the flights you lost to the other operator. Who was the client? What were the dates and destinations of the flights? Is there proof the other operator took those flights (for example, is flight plan information available or did the client show you an itinerary or invoice)? It might sound far-fetched for a client to give a legal operator the itinerary or invoice of an illegal charter flight but some clients will submit information once they learn they’ve been duped by a shady operator. Of course, others will just be happy to have found a cheap alternative to legal aircraft charter.

## Consumer Education

NATA has created two free consumer publications, “Chartering and Aircraft, A Consumer Guide” and “Risks of Illegal Charter,” to aid consumers in both choosing a legitimate on-demand air charter operator and avoiding illegal operators. Both publications are suitable for printing and are available for download at the online store on NATA’s website ([www.nata.aero](http://www.nata.aero)). Legitimate air charter operators should provide these publications to their prospective and current clients, especially if a client is receiving solicitations or quotes from questionable aircraft operators.

## Conclusion

Legitimate air carriers that spend valuable resources to maintain legal operations need to report aircraft owners and operators who seem less concerned with complying with regulatory requirements. Use the hotline to report suspicious activity. Provide as many details about the situation as possible and leave your contact information, knowing it will be kept confidential. And educate your clients! Our industry has been tarnished enough by the improper actions of Part 134 ½ operators. It’s time to tame the cowboys. **A**

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