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

Application of

BOSTON-MAINE AIRWAYS CORP.  Docket OST-00-7668-


RESPONSE OF AIR LINE PILOTS ASSOCIATION TO SUPPLEMENT NO. 6 TO THE APPLICATION OF BOSTON-MAINE AIRWAYS CORP. FOR AMENDED CERTIFICATE AUTHORITY

Communications with respect to this document should be sent to:

JERRY D. ANKER
RUSSELL BAILEY
Air Line Pilots Association
1625 Massachusetts Avenue, NW
Washington, DC  20036
Phone: 202-797-4087 or 4086
Facsimile: 202-797-4014

Attorneys for
Air Line Pilots Association

Dated: April 25, 2003
RESPONSE OF AIR LINE PILOTS ASSOCIATION TO SUPPLEMENT NO. 6 TO THE APPLICATION OF BOSTON-MAINE AIRWAYS CORP. FOR AMENDED CERTIFICATE AUTHORITY

Air Line Pilots Association (ALPA) respectfully submits this response to Supplement No. 6 to the application of Boston-Maine Airways Corp. (BMAC). In this Supplement, filed April 18, 2002,¹ BMAC is proposing a substantial expansion of its first-year service proposal, and requesting the Department to modify its previous Orders that expressly restricted BMAC’s initial large-aircraft operation to a single B-727 aircraft.

¹ It is unclear whether Supplement No. 6 was served on anyone other than the Department. Although a “Service List” was attached to the document, there was no statement or certificate indicating that any of the persons listed on the Service List had actually been served. ALPA’s counsel appear on the Service List but we did not receive service; rather, we learned of the filing only through routine monitoring of the Docket.

The new interstate service proposal set forth in Supplement No. 6 would require a total of three B-727 aircraft. (Supplement No. 6, p. 2). However, in a separate application filed the same day as Supplement No. 6, seeking a certificate to perform foreign air transportation, BMAC proposes to add four more aircraft to its fleet to provide new international service. (Application of BMAC, Docket OST-03-14985, filed April 18, 2003, p. 6). Thus, BMAC is effectively seeking authority to expand its fleet from one B-727 to seven such aircraft.

For the reasons set forth below, ALPA opposes BMAC’s request to expand its large-aircraft authority and urges the Department to deny it. When it originally sought authority to operate large-aircraft, BMAC repeatedly represented to the Department that it intended initially to operate only one B-727. The Orders granting such authority specifically restricted BMAC to that one aircraft, and expressed substantial doubt that its current management team had the necessary experience to operate more than a single large aircraft. So far, the carrier has not even obtained FAA approval to commence operating any large aircraft. Nor has it taken

\footnote{This pleading, like Supplement No. 6, has a “Service List” attached that includes the names of ALPA’s counsel, but we did not receive service of the pleading and do not know whether any other party did.}
any action to strengthen its management team to remove the
Department’s doubts concerning its fitness. In these circumstances, the
Department should adhere to the one-aircraft restriction contained in its
prior Orders.

ALPA is not surprised that BMAC is now revising the service
proposal it submitted with its original application, for we never believed
that service proposal was ingenuous. As we stated in our Answer to the
Application, filed September 19, 2002 (pp. 6-7, footnote omitted):

We question whether the [service] proposal is
genuine, or whether it is merely a smokescreen
designed to conceal BMAC’s real purpose in
seeking large-aircraft authority . . . . [W]e strongly
suspect that the real purpose is to shift most or all
of the flying currently being performed by Pan
Am [BMAC’s sister carrier, whose pilots are
represented by ALPA] to BMAC, in order to
escape Pan Am’s obligations under its collective
bargaining agreement with ALPA under the
Railway Labor Act. We believe that if the
Department engages in searching inquiry of
BMAC it will discover that this is the case. And if
we are correct, the disingenuous nature of the
application would be reason enough in itself to
deny the requested certificate amendment.

BMAC, however, insisted that, at least for the first year, it planned
to operate only that one B-727 aircraft. In Supplement No. 2, filed
September 26, 2002 (p. 4) it stated:

In response to the Fitness Division’s comment
noting its practice of limiting initial grants of large
aircraft authority to the number of aircraft which the
applicant proposes to operate during the first year of
expanded service, BMAC confirms that it plans to operate one B-727-200 aircraft in scheduled interstate service during the first year . . . .

And in Supplement No. 3, filed October 21, 2002 (p. 4) it stated:

BMAC understands and accepts the Department's policy and practice of placing a limitation on the number of large aircraft which an applicant for initial large aircraft authority will be authorized to operate during its first year of such operations, based on the number of aircraft proposed to be operated in the applicant's application.

BMAC anticipates at this time that a single B-727 aircraft will be wholly adequate to support its very limited single market interstate service proposal . . . .

Not only did the Department rely on these representations, but it is clear that the Department was not prepared to find BMAC fit to operate more than one large aircraft. In tentatively granting the requested authority, the Department stated:

We are concerned . . . that Boston-Maine's team of key technical personnel has little experience in overseeing large aircraft operations of the type proposed. While Boston-Main has added two positions (Manager of Flight Operations and B727 Fleet Manager) specifically to provide stronger oversight of the proposed large aircraft operations, the individuals selected to fill these positions (Mr. Jollifee and Mr. Bailey) lack strong management experience in such operations. Nonetheless, the FAA has advised us that Boston-Maine's key technical team as a whole is likely to be sufficient for the single B727 operations proposed.

In light of this, we tentatively conclude that Boston-Maine's management team, as a whole, will possess sufficient experience to ensure that its limited B727 operations are properly overseen.
However, should the carrier expand its large aircraft operations, concerns over the strength of this team might arise. Therefore, we propose to restrict Boston-Maine’s initial B727 operations to the single aircraft proposed in its application. Should Boston-Maine wish to add additional large aircraft to its operations at some later date, it would first need to have its fitness for such operations determined.

Order 2002-12-20, served December 30, 2002, pp. 7-8 (emphasis added; footnotes omitted).

The Department was so determined to limit the carrier’s initial large-aircraft operations that it refused to permit it even “to use a second B727 as needed as a maintenance spare.” Id. at p. 11 n. 24.

BMAC has provided no new information that would justify removing the single-aircraft restriction at this time. Except for a large infusion of cash, apparently from its owners, “all of the other ownership, citizenship, management, financial and other fitness information submitted previously by BMAC in this Docket remains essentially unchanged.” (Supplement No. 6, p. 5). Nor has BMAC made any demonstration that there is an urgent public need for the new service it wishes to provide. Although it claims to be responding to “service reductions implemented by other carriers” (id. at p. 2), it has not identified or quantified those service reductions, nor presented any other data indicating any need for its proposed service. In any event, BMAC’s sister
carrier, Pan Am, is fully capable of providing any additional service that might be required in the markets that BMAC is proposing to serve.

Despite BMAC’s grandiose plans, it has so far not even completed the process of amending its Part 121 Operations Specifications, which must be accomplished before it can commence any B-727 operations. It has thus not yet been able to put even one B-727 in the air. We submit that, until it has conducted B-727 service for a sufficient period of time to demonstrate its fitness as a large-aircraft carrier, the Department should not remove the one-aircraft restriction that it imposed only a short time ago.

Respectfully submitted,

ＪＥＲＲＹ Ｄ．ＡＮＫＥＲ
ＲＵＳＳＥＬＬ ＢＡＩＬＥＹ
Air Line Pilots Association
1625 Massachusetts Avenue, NW.
Washington, DC 20036
Phone: (202) 797-4087 or 4086.

Attorneys for
Air Line Pilots Association
CERTIFICATE OF SERVICE

This is to certify that true and correct copies of Response of Air Line Pilots Association to the Application of Boston-Maine Airways Corp. for Amended Certificate Authority were served this 25th day of April, 2003 as follows:

VIA FACSIMILE AND U.S. MAIL, POSTAGE PREPAID:

Nathaniel P. Breed, Jr.
Zuckert, Scoult & Rasenberger
888 - 17th Street NW
Washington DC  20006
Fax No. 202-342-0683

VIA U.S. MAIL, POSTAGE PREPAID:

John R. Nadolny
Senior Vice President & General Counsel
Boston-Maine Airways Corp.
Pease International Tradeport
14 Aviation Avenue
Portsmouth NH  03801

Fernando Miranda
Airport Manager
Luis Munoz Marin International Airport
PO Box 362829
San Juan PR  00936-2829

Mark Rowell
Airport Manager
Pease International Tradeport
36 Airline Avenue
Portsmouth NH  03801

Jeffrey A. Manley
Wilmer, Cutler & Pickering
2445 M Street NW
Washington DC  20037-1420

Anthony Liquori, Manager
Flight Standards District Office 5
Federal Aviation Administration
2 Al McKay Avenue
Portland ME  04102

Daniel A. Wolf, President
Cape Air
Barnstable Municipal Airport
660 Barnstable Road
Hyannis MA  02601

Joel Stephen Burton
Donald T. Bliss
O'Melveny & Myers LLP
555 - 13th Street NW, Suite 500 West
Washington DC  20004

Carl B. Nelson, Jr.
Associate General Counsel
American Airlines, Inc.
1101 - 17th Street NW, Suite 600
Washington DC  20036

Louise Fawbush