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

Application of

BOSTON-MAINE AIRWAYS CORP.

for issuance of an amended certificate of public
convenience and necessity pursuant to 49 U.S.C. § 41102
(Interstate Large-Aircraft Operations)

REPLY OF
BOSTON-MAINE AIRWAYS CORP.
AND MOTION FOR LEAVE TO FILE AN OTHERWISE UNAUTHORIZED
DOCUMENT

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May 6, 2003
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Docket OST-00-7668

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REPLY OF
BOSTON-MAINE AIRWAYS CORP.
AND MOTION FOR LEAVE TO FILE AN OTHERWISE UNAUTHORIZED DOCUMENT

Boston-Maine Airways Corp., d/b/a Pan Am Clipper Connection

(“BMAC”) hereby submits this Reply, with an included Motion for leave to file an
otherwise unauthorized document,¹ in response to the Answer (styled as a “Response”)
of the Air Line Pilots Association (“ALPA”), filed on April 25, 2003 in response to
BMAC’s Supplement No. 6, filed April 18, 2003 in the captioned proceeding.² ALPA

¹ Motion For Leave To File. Pursuant to Rule 6(c) of the Rules of Practice, BMAC hereby moves for leave to file this Reply as an otherwise unauthorized document in the event that the Department decides to consider the assertions in ALPA’s Response, which is itself an unauthorized pleading. Receipt and consideration of BMAC’s Reply is warranted by considerations of fairness and will assist the Department in reaching a sound decision in this proceeding.

² ALPA asserts that it did not receive a copy of BMAC’s filing, and insinuates (ALPA Response, p.1, fn.1) that BMAC may have filed Supplement No. 6 in the DOT’s Docket but failed to serve any of the persons listed on the Service List attached to its filing. BMAC certified that it served every person listed on the Service List (including ALPA) and has subsequently verified that its pleadings were duly received by all other parties served by mail.
continues to oppose BMAC’s application for authority to utilize Boeing 727 aircraft in its scheduled interstate air transportation operations.

For the reasons discussed below, BMAC submits that ALPA is seeking relief for its basic labor complaint in the wrong forum against the wrong party, and that ALPA’s argument that BMAC is unfit to operate large aircraft is patently specious. BMAC urges the Department to again reject ALPA’s repeated and transparently baseless opposition to BMAC’s application for authority to operate large aircraft.

In support of this Reply, BMAC states as follows:

1. **ALPA Is In The Wrong Forum Attacking The Wrong Party.** ALPA has repeatedly acknowledged that the true motivation for its opposition to BMAC’s large aircraft application is its belief “that the real purpose [of BMAC’s application] 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” (ALPA Response, p. 3, citing ALPA’s prior Answer, filed September 19, 2002, pp. 6-7).

As BMAC has previously noted, and as the Department has held (Show Cause Order 2002-12-20, p. 9), if ALPA wishes to pursue a Railway Labor Act complaint against Pan American Airways Corp. (Pan Am), that complaint should be adjudicated between and ALPA and Pan Am before the National Mediation Board (the NMB) and the courts, and not before the Department, which has no jurisdiction or expertise to
resolve airline labor disputes. For that reason, it would be inappropriate for BMAC to respond to ALPA’s putative labor complaint in this licensing proceeding. BMAC submits, however, that ALPA’s repeated attempts to use the DOT’s licensing procedures to advance its interests in a labor relations dispute constitutes a clear abuse of the Department’s administrative procedures.

2. **ALPA Has Failed To Present Any Evidence That BMAC Is Unfit To Operate Large Aircraft.** ALPA initially opposed BMAC’s application for authority to operate large aircraft on the basis of an argument that BMAC’s recent losses incurred in small-aircraft operations demonstrated that its management is unfit to supervise large aircraft operations. BMAC has previously and conclusively demonstrated that ALPA’s fitness argument is completely unsupported by any prior Department fitness-determination precedent, and that ALPA’s financial-performance argument is particularly baseless and inappropriate in the midst of the worst traffic declines and financial travail in the history of the U.S. airline industry.

BMAC’s large aircraft application is based on a fundamentally sound operating plan, supported by substantial financial resources, and managed by an operating and executive management team with exceptional experience credentials, an established track record of safe, reliable and publicly-responsive operations, and an unblemished record of substantial compliance with all applicable aviation laws and regulations.

In the face of that indisputably clear fitness demonstration, ALPA resorts to a baseless and irresponsible allegation that BMAC’s current expanded large-aircraft
service proposal demonstrates that BMAC’s initial single-aircraft interstate service proposal must have been “disingenuous” (ALPA Response, pp. 3-4). BMAC strongly objects to ALPA’s offensive and unjustified insinuation that BMAC’s submissions to the Department in this proceeding have been less than wholly forthcoming. On the contrary, BMAC’s initial application made clear that its proposed interstate service proposal was an initial and limited proposal consistent with BMAC’s present intentions at that time (Application, p. 5).

BMAC anticipated that it would be initially limited to utilization of a single B-727 aircraft (with a second aircraft to serve as a spare) consistent with its initial single-market service proposal. In that expectation, BMAC anticipated that it would simply file subsequent 45-day Notices of its desire to increase the size of its interstate aircraft fleet from time to time as the need for such fleet expansions arose, subject to appropriate fitness review and approval by the Department. When the Department confirmed its intention to limit BMAC’s initial large-aircraft authority to a single B-727 aircraft, BMAC clearly stated its non-objection to that limitation based on BMAC’s understanding that it “would remain free to apply for authority to operate additional large aircraft in interstate service during the first year of service should circumstances warrant” (Show Cause Order 2002-12-20, p. 11, fn. 24; emphasis added. See also, Final Order 2003-2-24, p. 3, ordering para. 3).

ALPA appears to regard BMAC’s application for foreign large aircraft authority as further “evidence” that BMAC’s initial interstate application was less than candid
(ALPA Response, p. 2). ALPA should be aware, however, that the Federal Aviation Statutes (49 U.S.C. Section 41108(b)) and the Department’s Regulations (14 CFR Section 201.4(c)) expressly require that applications for interstate and foreign authority must be submitted in separate applications. BMAC’s separate application for foreign large aircraft authority was filed in compliance with those legal requirements.

Finally, ALPA repeatedly notes that BMAC “has not even obtained FAA approval to commence operating any large aircraft” (ALPA Response, pp. 2, 6), as if that fact somehow casts doubt on BMAC’s fitness to operate large aircraft. That is an exceptionally cheap shot. As ALPA well knows, the FAA/CSET Part 121 Operations Specifications amendment procedure is very time-consuming, and is subject to delays wholly unrelated to the applicant’s fitness, including the unavailability of FAA/CSET personnel due to vacations and sick leave, federal holidays, FAA travel schedules, and the competing requirements of other applicants concurrently involved in the Part 121 certification process.

BMAC’s Part 121 Operations Specifications amendment application is progressing well and is on the normal track for completion within the next few months. Throughout the ongoing certification process, BMAC has been working closely with its FSDO and CSET teams to strengthen BMAC’s management and technical capabilities and BMAC is confident that its personnel meet the expectations of its FSDO and CSET teams required to manage multiple aircraft operations.
3. **BMAC’s Application Is Not Subject To A “Public Need”**

**Demonstration.** The most puzzling argument presented by ALPA in its opposition to BMAC’s large aircraft application is its astonishing assertion that BMAC has failed to demonstrate “an urgent public need for the new service it wishes to provide” (ALPA Response, p. 5; *emphasis added*). Suffice it to say that the enactment of the Airline Deregulation Act of 1978 nearly 25 years ago terminated any statutory requirement for a “public need” demonstration as a prerequisite for new and expanded certification under 49 U.S.C. § 41102(b)(1). ALPA vigorously opposed enactment of the Airline Deregulation Act, and it may be still having difficulty accepting the deregulated-entry regime established by that Act, but ALPA’s preference for the “good old days” of tight economic regulation of the U.S. airline industry cannot change the reality of the present law.

**WHEREFORE,** Boston-Maine urges the Department reject ALPA’s repeated and unjustified efforts to deprive Boston-Maine of the authority to utilize large aircraft in its interstate and foreign air transportation operations.

Respectfully submitted,

[Signature]

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the Reply of Boston-Maine Airways Corp. by messenger, telecopier transmission, or United States mail, properly addressed and with postage prepaid, upon each of the persons listed in the Service List attached hereto.

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Washington, D.C.
May 6, 2003
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