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

Application of

BOSTON-MAINE AIRWAYS CORP.

for an exemption pursuant to 49 U.S.C. §40109
(Interstate Large Aircraft Services)

REPLY OF
BOSTON-MAINE AIRWAYS CORP.

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March 30, 2005
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Application of  

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Docket OST-00-7668

March 30, 2005

REPLY OF  
BOSTON-MAINE AIRWAYS CORP.

Boston-Maine Airways Corp. ("BMAC") hereby submits this Reply, pursuant to Section 302.308) of the Procedural Regulations of the Department of Transportation (the "Department"), in response to the Answer of the Air Line Pilots Association, International ("ALPA") filed on March 29, 2005, in opposition to BMAC’s application for grant of an expedited emergency exemption from the current limitation to the operation of no more than three (3) large aircraft contained in BMAC’s currently-effective Interstate Certificate of Public Convenience and Necessity, so as to authorize BMAC to operate one (1) additional B-727-200 aircraft, for a total of four (4) large aircraft, pursuant to its Interstate Certificate.

In its brief Answer, ALPA contends that no new certificate or exemption authority may be granted to BMAC as long as ALPA’s attempts to attack BMAC’s fitness in two Department proceedings “remain pending” (ALPA Answer, p. 1).
The fundamental – and fatal – flaw in ALPA’s contention is that each of ALPA’s repeated efforts to attack BMAC’s fitness for certification are wholly lacking in any factual or legal merit. As BMAC has previously demonstrated, all of ALPA’s attacks on BMAC’s fitness are based on alleged violations of the Railway Labor Act, and other alleged noncompliance with laws, asserted to have been committed by persons and corporate entities other than BMAC. BMAC has further demonstrated that, with respect to ALPA’s allegations about those other parties, there is considerably less to them than meets the eye. By now it is patently clear that all of ALPA’s attacks against BMAC arise out of ALPA’s bitter pilot labor dispute with Pan American Airways Corp. (“Pan Am”), a dispute which was at the center of litigation in the Federal District Court for the District of New Hampshire and ultimately the U.S. Court of Appeals for the 1st Circuit. The Department is well aware of those proceedings, which are therefore not recounted here.

At bottom, as the Department found in Order 2004-8-21, served August 19, 2004 in this proceeding, BMAC and its management are fit and qualified to operate multiple large aircraft in interstate scheduled service, as well as interstate and international charter service. The owners and management of BMAC have at all times operated BMAC with a scrupulous regard for compliance with all legal and regulatory requirements applicable to BMAC, as demonstrated by BMAC’s long record of conducting safe, reliable and fully-compliant operations, and its virtual absence of consumer complaints and FAA and DOT enforcement complaints.
The Department found and concluded in Order 2004-8-21 that ALPA's attempts to attack BMAC's fitness did not warrant denial of BMAC's application for an amended Certificate of Public Convenience and Necessity to authorize BMAC's operation of large aircraft in its interstate operations (Order 2004-8-21, pp. 2-3, 6-7).

That determination by the Department is relevant to, and dispositive of, BMAC's pending request to operate one additional B-727-200 aircraft in its interstate operations pending final action by the Department on BMAC's pending request for authority to operate a total of seven large aircraft in both interstate and foreign operations.

ALPA questions the timing and motivation of BMAC's Application for authority to operate one additional aircraft, implying some ulterior motive. The fact is, BMAC had expected that the February 28, 2005 decision of the U.S. Court of Appeals for the 1st Circuit against ALPA and in favor of BMAC, Pan Am, and other parties would have cleared the way for the Department to move ahead favorably, and by now finally, on BMAC's pending application to operate four (4) additional large aircraft (Docket OST-03-14985). In anticipation of such action, like any reasonable business, BMAC endeavored and was successful in developing significant revenue-generating opportunities, such as the cruise line charter contracts referenced in its Application, which BMAC fully and reasonably expected to be in a position to perform almost two months after prevailing in the Court of Appeals. As the time for performance approaches, and with the continuing expectation that the Department will soon issue the authority sought by BMAC in Docket OST-03-14985, out of an abundance of caution,
BMAC has requested the limited relief of a single additional aircraft in order to enable BMAC to earn (rather than pay to a sub-service provider) the revenue associated with the business for which it has contracted.

ALPA’s repeated and continuing efforts to invoke its labor dispute with Pan Am in order to delay, harass and defeat the legitimate and commendable efforts of BMAC to expand and improve the economic efficiency of its public service through the addition of large aircraft to its small-aircraft fleet are unconscionable. BMAC believes that ALPA will not relent in its efforts to inflict delay and financial harm, and to thereby destroy BMAC, unless and until the Department unequivocally rejects ALPA’s strategy of pressing its labor grievances under the guise of attacks on BMAC’s fitness.

BMAC urges the Department to make it clear to ALPA that it will no longer countenance ALPA’s efforts to abuse the Department’s licensing procedures as a remedy to pursue its labor dispute with Pan Am – a remedy which ALPA has been unwilling to pursue against the appropriate party in the appropriate forum.
WHEREFORE, BMAC requests the Department to issue an Order or Notice of Action Taken granting it an exemption authorizing BMAC to operate one (1) additional large aircraft, for a total of four (4) large aircraft, in its performance air transportation of persons, property and mail pursuant to its Interstate Certificate of Public Convenience and Necessity.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing Reply of BMAC by messenger, telex copier 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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