Applications of

BOSTON-MAINE AIRWAYS CORP.

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

FINAL PETITION OF
BOSTON-MAINE AIRWAYS CORP.

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November 14, 2005
BEFORE THE
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.

Applications of

BOSTON-MAINE AIRWAYS CORP.

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

Docket OST-00-7668 and
Docket OST-03-14985

November 14, 2005

FINAL PETITION OF
BOSTON-MAINE AIRWAYS CORP.

Boston-Maine Airways Corp., d/b/a Pan Am Clipper Connection ("BMAC")

hereby submits this Final Petition, pursuant to Rule 4 of the Rules of Practice of the
Department of Transportation (the "Department"), to make one last request to the
Department to take expedited action to grant (in part) the relief requested in BMAC's
Emergency Motion filed in the captioned proceeding on October 12, 2005.

Although BMAC is innocent of any wrongdoing, BMAC is suffering unavoidable
and substantial operating losses as a result of its current limitation to the operation of
only three B-727-200 aircraft. That limitation effectively precludes BMAC from bidding
on contacts for Public Charter flight programs and charter contracts for the Department of
Defense. Without the grant of very limited and temporary relief by the Department in the
near future, BMAC will be forced to go out of business – a gross injustice to BMAC, its
shareholders and employees, and the traveling public which relies upon BMAC’s services in markets not served by any other carrier.

**SPECIFIC RELIEF REQUESTED.**

BMAC hereby requests the Department to issue an expedited Order, following the submission of any requested new or updated fitness information by BMAC, granting, on a temporary and provisional basis, an exemption to authorize BMAC to operate at least two (2) additional B-727-200 aircraft for a period of one year.¹

**BASIS FOR GRANT OF THE REQUESTED RELIEF.**

This Petition has been necessitated by an unexpected and unexplained delay of the issuance of a report to the Department by its Inspector General (the “IG”) of the findings reached by the IG in its investigation of BMAC, undertaken at the request of the Department on August 2, 2005. BMAC believes that the IG has completed its investigation of the questions relating to BMAC specified in the Department’s August 2nd letter (no further BMAC witnesses have been interviewed and no further documents have been requested since September 9, 2005).

For reasons that BMAC is not privy to, BMAC has been advised that the IG is not yet able or willing to submit a report of its findings relating to BMAC to the Department, responsive to the questions relating to BMAC set forth in the August 2nd letter, until after the IG has completed its investigation of the serious misconduct committed by BMAC’s

¹ The Department has previously found BMAC to be fit to operate up to three B-727 aircraft, and deferred action on the balance of BMAC’s application to operate a total of seven B-727 aircraft (Order 2004-8-21, served August 18, 2004).
former General Counsel, Mr. John R. Nadolny, and possibly not until after the question of Mr. Nadolny’s guilt or innocence has been settled or adjudicated.

In light of that apparent indefinite delay of the issuance of a final report by the Inspector General, for reasons which BMAC believes have nothing to do with the issues involving BMAC, but in the interest of confirming the Department’s ability to take further action if such action is warranted by subsequent developments, BMAC proposes that the foregoing urgently-requested grant of limited exemption authority to BMAC by the Department be expressly made subject to a condition providing that the authority granted will be immediately revoked in the event of a subsequent adverse decision by the Department on the subject of BMAC’s fitness based on a future final report of the IG or any other evidence establishing that BMAC is unfit for continued certification under the continuing fitness requirement of Section 41110(e) of the Federal Aviation Statutes.

In further support of this Petition, BMAC hereby states as follows:

1. At the outset, BMAC hereby reiterates that it fully understands and agrees that the discovery and disclosure (by BMAC) of extremely serious wrongdoing by BMAC’s former General Counsel, Mr. Nadolny, has cast a serious shadow over the subject of BMAC’s fitness and credibility. As BMAC’s internal investigation has established, and as BMAC believes that the IG’s investigation will confirm, that blot on BMAC’s reputation is wholly undeserved, and it has caused extremely grave harm to BMAC.

2. Beginning on June 1, 2005, when the first of Mr. Nadolny’s now-admitted wrongful acts (his forgery of the signature of the issuer of a Performance Bond) first
came to light, BMAC has undertaken an exhaustive investigation of Mr. Nadolny’s conduct, and into the conduct or possible involvement of any other officers and employees of BMAC, going back to BMAC’s first certificate application in July 2000. That investigation by BMAC turned up evidence of the existence of even more serious wrongful actions by Mr. Nadolny (involving Mr. Nadolny’s admitted falsification of financial statements and his alteration of third-party bank statements which were submitted to the Department under Mr. Nadolny’s sworn Title 18 Certification). BMAC promptly submitted detailed disclosures of that extremely serious misconduct to the Department. BMAC also took immediate action to avoid any future repetition of undiscovered misconduct by any officer or employee of BMAC. A detailed description of the further misconduct discovered by BMAC, and the corrective measures instituted by BMAC, was submitted by BMAC to the Department on July 27, 2005. BMAC’s exhaustive internal investigation turned up no evidence that any other officer or employee of BMAC was involved in, or was aware of, Mr. Nadolny’s actions.

3. On August 2, 2005, the Department’s Assistant Secretary for Aviation and International Affairs requested the Department’s Inspector General to undertake an investigation into the circumstances involving the submission of inaccurate and falsified information by BMAC to the Department, including the question of whether other individuals at BMAC were involved in, or knew of, Mr. Nadolny’s actions. BMAC has fully cooperated with that investigation, and has responded promptly and fully to every request by the IG’s Special Investigator for access to documents and for interviews with individuals on the matters covered by the IG’s investigation. BMAC sincerely believes
that the IG’s investigation of BMAC’s role is now complete, and that the IG’s investigation has not disclosed the existence of any evidence that any other individual employed by BMAC was involved in, or aware of, Mr. Nadolny’s actions.

4. BMAC expected, and believes that the Department expected, based on the relatively limited number of individuals to be investigated for possible unlawful acts and the relatively brief time period encompassed by the IG’s investigation, that the IG’s investigation into the possible complicity of other individuals at BMAC with Mr. Nadolny would be concluded in a matter of 4-6 weeks, and that the IG would submit a report of its investigation of BMAC to the Department as soon as that portion of its investigation was complete. Indeed, BMAC’s Emergency Motion, filed on October 12, 2005, was predicated on BMAC’s good faith belief that at least a preliminary report of the IG’s findings regarding the possible involvement of other officers and employees of BMAC was submitted to the Department during a meeting between the IG’s Special Investigator and senior officials of the Department held in Washington on October 6, 2005.

5. BMAC now understands that a report of the IG’s findings regarding the possible involvement in, or knowledge of, Mr. Nadolny’s actions by other BMAC officers and employees, responsive to the scope of the investigation requested in the Assistant Secretary’s August 2nd letter, was not delivered to the Department during the

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2 See, e.g., letter dated September 14, 2005 from the Chief of the Department’s Fitness Division to the undersigned counsel for BMAC, referencing the anticipated completion of the IG’s investigation in the near-term future (Bertram letter, p. 2, 2nd para.).
October 6th meeting. BMAC understands further that the IG may not be able to issue any report of its investigation of BMAC to the Department until after a concurrent and ongoing IG and Justice Department investigation into possible criminal violations which may have been committed by Mr. Nadolny has been completed – a process that may not be completed for as long as a year or longer.

6. As noted above, BMAC is not privy to the reasons why the IG is unwilling or unable to issue a partial report of its investigation to date, relating solely to the question of whether the IG’s investigation has turned up any evidence which implicates any other officer or employee of BMAC in Mr. Nadolny’s actions. On the other hand, BMAC fully understands the reasons why the Department is unwilling to take any further action on BMAC’s pending applications for expanded authority, which require a fitness determination, until after it receives at least a preliminary report of the IG’s findings reached during the course of its investigation into the matter of BMAC’s involvement in, or knowledge of, the actions of Mr. Nadolny. That inquiry was a primary purpose of the requested IG investigation, and the IG’s findings (or, at least, its preliminary findings) on that subject are of pivotal importance to the Department.

7. For compelling reasons based on the desperate urgency of BMAC’s current circumstances, and based on the apparent lack of any evidence of guilt on BMAC’s part, and based on considerations of elemental fairness and due process, BMAC earnestly urges the Department and the IG to confer with each other to resolve the impasse created by the ongoing delay of the IG’s report. BMAC is currently losing more than $1 million each month as a direct result of the limitations on its current authority to operate
additional B-727 aircraft, and BMAC will not be able to survive for more than a limited number of weeks if it is unable to secure at least partial expanded large-aircraft authority from the Department in the very near future.

8. BMAC submits that a failure to resolve the foregoing inter-departmental impasse between the Department and its own IG will result in a grave injustice to BMAC, and a particularly indefensible injustice if BMAC is later shown to be correct in its firm belief that the IG’s investigation has turned up no evidence, or any basis for suspicion, that BMAC’s current officers and employees had any involvement in, or knowledge of, Mr. Nadolny’s reprehensible misconduct and breach of trust. Whatever the reasons for the delay of the IG’s report of its findings to date, and in light of the Department’s understandable inability to act on BMAC’s pending applications without at least a preliminary report of the IG’s findings regarding BMAC’s involvement with Mr. Nadolny’s actions, the delay of at least a partial IG report will soon have the effect of imposing a wholly unjustified “death sentence” on BMAC. Such an outcome would be a serious and unjustified denial of BMAC’s statutory right to fairness and administrative due process in its treatment by the Department.

9. In conclusion, BMAC may not be able to survive past December 31, 2005 without a concrete indication, as soon as possible, of the Department’s willingness to consider the grant of limited, temporary and revocable exemption authority to BMAC to operate at least two additional B-727 aircraft on an expedited basis (and subject to BMAC’s submission of satisfactory updated fitness evidence). This Final Petition is BMAC’s last-gasp effort to remain alive until its innocence of wrongdoing is ultimately
vindicated by the IG’s final report, and by the Department’s reconfirmation of BMAC’s fitness based on that report and other evidence available to the Department. A key and indisputable element of that evidence includes BMAC’s virtually unblemished history of strict compliance with all of the economic, operational and safety requirements applicable to its air carrier operations throughout its six-year history of such operations.

By every measure of conscientious compliance with the law, responsible corporate and operational performance, and safe, reliable and responsible service to the public, BMAC has consistently demonstrated that it takes its air carrier obligations very seriously. It is simply indisputable that BMAC has conclusively demonstrated that it meets and exceeds every standard of air carrier fitness applied by the Department in the course of its certification functions.

In those circumstances, and based on BMAC’s demonstrated high level of fitness under every criterion applied by the Department, and based on the informal reports which BMAC believes that the Department has received from the IG to date relating to the IG’s findings with regard to BMAC reached in its investigation of BMAC, BMAC respectfully submits that it is entitled to be granted the limited, temporary and revocable expanded large-aircraft authority it seeks without further delay.

WHEREFORE, Boston-Maine urgently petitions the Department to resume the processing of BMAC’s pending application for expanded large-aircraft authority, and to issue an expedited Order, following its receipt and consideration of any requested updated fitness information from BMAC, granting an exemption to BMAC authorizing it to operate at least two (2) additional B-727-200 aircraft for a period of one year.
Respectfully submitted,

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BOSTON-MAINE AIRWAYS CORP.

CERTIFICATE OF SERVICE

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

Nathaniel P. Breed, Jr.
Washington, D.C.
November 14, 2005
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