In the matter of the continuing fitness of

**BOSTON-MAINE AIRWAYS CORP.**

under 49 U.S.C. § 41110(e)

Docket DOT-OST-2000-7668

Application of

**BOSTON-MAINE AIRWAYS CORP.**

for a certificate of public convenience and necessity under 49 U.S.C. § 41102 to engage in foreign scheduled air transportation of persons, property, and mail

Docket DOT-OST-2003-14985

Application of

**BOSTON-MAINE AIRWAYS CORP.**

for an exemption from 49 U.S.C. § 41102 to engage in foreign scheduled air transportation of persons, property, and mail between U.S. Points and the Caribbean

Docket DOT-OST-2004-19919

Motion of

**AIR LINE PILOTS ASSOCIATION**

to revoke the certificate of public convenience and necessity under 49 U.S.C. § 41102 issued to Boston-Maine Airways Corp.

Dockets DOT-OST-2000-7668
DOT-OST-2003-14985

SHOW CAUSE ORDER

By this order, we propose to revoke the certificate of public convenience and necessity issued to Boston-Maine Airways Corp. ("BMAC"), and dismiss its applications for foreign scheduled
certificate and exemption authority for its failure to continue to remain fit, willing, and able to provide air transportation as a U.S. certificated air carrier. Our review of the record in this case indicates that BMAC does not possess (1) the financial wherewithal to continue or expand its operations without posing an undue risk to consumers and their funds, (2) the managerial competence necessary to oversee its current and proposed operations, and (3) a proper regard for the laws and regulations governing its services to ensure that its aircraft and personnel conform to applicable safety standards and to ensure that acceptable consumer relations practices will be followed.

The Department’s tentative findings are based on the following circumstances:

- On August 27, 2002, BMAC filed an application for certificate authority to conduct scheduled passenger operations using 141-seat B-727 aircraft. The Department was later informed that the financial information submitted by BMAC in support of its request had been falsified, and that the air carrier did not actually possess the financial resources necessary to meet the Department’s financial fitness requirements for the requested authority.

- Over the past five years, BMAC’s actual financial condition has been extremely poor, and the air carrier has continued to sustain losses. The severity of BMAC’s financial situation has inhibited the air carrier’s ability to maintain an adequate number of necessary personnel, has likely had a negative impact on consumer refunds, and has caused the air carrier to significantly scale back its operations.

- BMAC’s President claims that the company was not aware that its Senior Vice President and General Counsel, who submitted falsified documents to the Department, had engaged in such behavior. Whether or not that assertion is true, the company, through its President and other key personnel, were in a position where they should have been aware of this activity. Consequently, the company’s management should be held accountable for these serious falsifications. Given that the Department issued three public orders summarizing our financial fitness requirements and the air carrier’s alleged financial position, which was based on the falsified material, we may only conclude that the President and other key personnel either did not read the orders, which, in and of itself, raises questions concerning their managerial competence, or that they knew that the orders were inaccurate and did not inform the Department, which directly reflects on their compliance disposition.

The circumstances listed above indicate that BMAC (1) was not fit at the time that it received certificate authority to operate its B-727 aircraft and therefore, it is not eligible to hold such authority; (2) is not financially fit and does not possess the managerial competence to conduct any air transportation operations; and (3) has failed to comply with the regulations governing its operations. Thus, the Department proposes to revoke the air carrier’s certificate authority in accordance with 49 U.S.C. § 41110(e).

**Statutory Standard**

Section 41110(e) of Title 49 of the United States Code (the Transportation Code) provides that the requirement that air carriers be “fit” to perform air transportation services is a continuing one and that an air carrier’s authority shall be amended, modified, suspended, or revoked if it fails to
remain fit, willing, and able to provide the air transportation authorized by its certificate, which includes failure to comply with the regulations governing its operations.

**Background**

Based in Portsmouth, New Hampshire, BMAC was organized as a corporation under the laws of the State of New Hampshire in March 1999. The company is a wholly-owned subsidiary of Pan Am Systems, Inc. (“PASI”), which is owed by two U.S. citizens, Mr. Timothy Mellon (94.2 percent) and Mr. David Fink (5.2 percent), who is also President of the air carrier.¹

By Order 2000-10-1, issued October 2, 2000, the U.S. Department of Transportation (“the Department” or “DOT”) found BMAC fit, willing, and able to conduct interstate scheduled passenger air transportation using small aircraft.² Ultimately, by Order 2004-8-21, issued August 18, 2004, the Department amended BMAC’s authority to permit it to operate three large aircraft in interstate scheduled operations.³ BMAC conducts interstate scheduled and charter operations using a fleet of seven 19-seat Jetstream 3100 aircraft and three 141-seat B-727-200 aircraft. Operating under the trade name “Pan Am Clipper Connection,” BMAC uses its Jetstream 3100 aircraft in scheduled passenger operations, serving Portsmouth, New Hampshire (PSM); Bedford, Massachusetts (BED); and Trenton, New Jersey (TTN). BMAC uses its B-727 aircraft to conduct private charter flights.

**Applications and Pleadings**

*Application to Operate One Large Aircraft*

On August 27, 2002, BMAC filed an application in Docket DOT-OST-2000-7668 requesting that the Department amend its interstate scheduled certificate to permit the air carrier to operate large aircraft.⁴ In its application, BMAC provided updated fitness data as well as information pertaining to its proposed operations and its current financial position. To demonstrate its financial ability to support large aircraft operations, BMAC provided a copy of the air carrier’s unaudited June 30, 2002, balance sheet.⁵ Also, the air carrier stated that its parent company, Pan American Airlines, Inc. (“PAA”), had extended it a $750,000 line-of-credit. On September 9, 2002 (Supplement 1), BMAC provided a copy of PAA’s June 30, 2002, balance sheet, evidencing the company’s ability to extend BMAC the-line-of credit.⁶

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¹ BMAC was previously owned by Pan American Airlines, Inc. (“PAA”), and Guilford Transportation Industries (“Guilford”), both of which were owned by Mr. Mellon and Mr. Fink. PAA also owned the now defunct air carrier Pan American Airways Corp. (“Pan Am”). Guilford is the aircraft lessor for some of BMAC’s aircraft.

² Small aircraft is defined as any aircraft with an original design capacity of no more than 60 passenger seats or an 18,000 pound payload.

³ See Order 2004-8-21, confirming oral action of July 16, 2004, granting such authority. The Department earlier had found BMAC fit to operate one large aircraft (Order 2003-2-24, issued February 28, 2003), but that authority was never made effective.

⁴ Large aircraft is defined as any aircraft having an original design capacity of more than 60 passenger seats or an 18,000 pound payload.

⁵ See Exhibit BMA-104 to BMAC Application for Amended Certificate, filed August 27, 2002.

⁶ See Exhibit BMA-S/1-1 to Supplement 1 filed September 2, 2002.
On September 19, 2002, the Department informed BMAC that based on our review of PAA’s balance sheet, it did not appear that the company had the financial ability to extend BMAC a $750,000 line-of-credit.

Also on September 19, 2002, the Air Line Pilots Association (“ALPA”) filed an answer opposing BMAC’s application. ALPA stated that other companies that share common ownership with BMAC and its sister air carrier, Pan American Airways Corp. (“Pan Am”), previously had been found to have engaged in violations of the Railway Labor Act (“RLA”). ALPA alleged that BMAC was requesting large aircraft authority so that most or all of the operations being performed by Pan Am could be shifted to BMAC.

BMAC replied to ALPA’s answer on September 24, 2002, stating that ALPA’s answer was motivated by a complaint arising out of a “perceived potential labor dispute between ALPA and Pan Am,” and argued that ALPA’s complaint was filed in the wrong forum and against the wrong party.

Shortly thereafter, on September 26, 2002 (Supplement 2), BMAC provided a September 15, 2002, balance sheet for PAA. BMAC argued that although PAA had negative working capital, the company had $1.2 million in cash. Additionally, BMAC noted that it intended to sell approximately $4.6 million worth of assets, which would give the company more than $2 million in working capital.

By letter dated October 17, 2002, the Department informed BMAC that receipts from potential sales could not be used in making a fitness determination. Thus, on October 21, 2002 (Supplement 3), BMAC provided its unaudited balance sheet at September 30, 2002, as well as a statement from Fleet Bank dated October 21, 2002, to demonstrate the company’s financial fitness.

On November 4, 2002 (Supplement 4), and December 4, 2002 (Supplement 5), BMAC provided updated information about the air carrier’s management to show that it had personnel qualified to oversee its proposed operations.

Based on our review of the record, by Order 2002-12-20, issued December 27, 2002, the Department tentatively found BMAC fit to engage in interstate scheduled air transportation using one large aircraft. In that order, the Department informed the air carrier that it would need to

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7 ALPA Motion, filed September 19, 2002, at 2.
8 Id.
9 BMAC Reply, filed September 24, 2002, at 1
10 BMAC Reply, filed September 24, 2002, at 1, 2.
11 See Exhibit BMA-S/2-1 to Supplement 2, filed September 26, 2002.
12 Id.
14 See Exhibit BMA-S/3-5 to Supplement 3, filed October 21, 2002.
15 See Exhibit BMA-S/3-4 to Supplement 3, filed October 21, 2002.
16 In that order, the Department expressed concern that BMAC’s key technical personnel had little experience overseeing large aircraft operations of the type proposed. However, because the FAA had
have $1.36 million to meet the Department’s financial fitness test. With respect to ALPA’s concerns, we noted that ALPA might have a future claim against Pan Am if its owners were to shift its operations to BMAC in such a manner that would violate the RLA; however, we concluded at that time that BMAC did not lack a satisfactory compliance disposition. We also stated that ALPA could request that we review the continuing fitness of the parties involved if the owners of BMAC and Pan Am later were found to have engaged in the behavior anticipated by ALPA and the courts determined that the carriers thereby violated the RLA.

On January 13, 2003, ALPA objected to the Department’s tentative findings, stating that the Department’s determination that BMAC would have sufficient working capital to meet our financial fitness criteria for its proposed large aircraft operations was in error. ALPA argued that the Department considered only the projected operating costs of the proposed large aircraft operations, failing to consider the ongoing operating costs of BMAC’s existing small aircraft operations. ALPA further argued that if the Department considered the level of funding required for all of BMAC’s operations, the air carrier would lack sufficient financial resources to meet the Department’s minimum requirements.

BMAC replied to ALPA’s objection on January 15, 2003, arguing that there is no Department precedent for ALPA’s contention that the financial results of the existing operations of an applicant for expanded authority should be considered in assessing the future financial fitness of that applicant for expanded authority.

After carefully considering the entire record, including ALPA’s arguments, the Department determined that BMAC was fit to conduct its proposed operations and issued Order 2003-2-24 on February 28, 2003, making final our tentative findings and conclusions that BMAC was fit, willing, and able to engage in interstate transportation of persons, property, and mail using one large aircraft. In that order, the Department stated that when an applicant already has established operations, we include in our funding requirement the level of funds needed to cover any current working capital deficit (i.e., the difference between the applicant’s current assets and current

advised the Department that BMAC’s team as a whole was qualified for the single B-727 aircraft operations proposed, the Department concluded that BMAC’s team as a whole possessed sufficient experience. Nonetheless, the Department noted that if BMAC proposed to expand its fleet to more than one large aircraft, concerns over the strength of the management team might arise.

In evaluating an applicant’s financial fitness, the Department generally asks that the company have available to it sufficient resources to cover all pre-operating costs plus a working capital reserve equal to the operating costs that would be incurred in three months of “normal” certificated operations. Because projected expenses during the first several months of actual air transportation operations frequently do not include all costs of operations that will be incurred during a normal period of operations, it is our practice to base our three-month test on one quarter of the first year’s operating cost forecast. In calculating available resources, projected revenues may not be used.

For its large aircraft operations, BMAC projected first year operating expenses of $4.76 million, one quarter of which is $1.19 million. Further, the air carrier had $170,000 in pre-operating expenses remaining to be paid. Thus, the air carrier required $1.36 million to meet the Department’s financial fitness criteria.

ALPA Objection, filed January 13, 2003, at 3.
liabilities). This policy effectively protects the public while implementing the intent of the Airline Deregulation Act to enhance competition through a liberal entry policy. Further, the Department stated that review of the financial information on file at that time fully supported the Department’s tentative conclusion in Order 2002-12-20. The Department noted, however, that BMAC’s authority to operate large aircraft would not become effective until the air carrier provided evidence from the Federal Aviation Administration (“FAA”) authorizing large aircraft operations.

Application for Foreign Authority and to Operate Additional Large Aircraft

Subsequently, on April 18, 2003 (Supplement 6), before its large aircraft authority was made effective, BMAC amended its August 27, 2002, application, requesting that the Department grant the air carrier the authority to operate two additional large aircraft in interstate scheduled passenger service. On that same date, BMAC filed an application in Docket DOT-OST-2003-14985 for certificate authority to conduct foreign scheduled passenger air transportation using four additional large aircraft, thus bringing its fleet under its proposal to seven total large aircraft. BMAC submitted a revised operating plan, as well as updated operating expense forecasts. In support of its requests, BMAC provided an unaudited balance sheet at March 31, 2003, and a statement from Mellon Bank dated April 16, 2003, to show the company’s ability to support the expanded operations.

On April 25, 2003, ALPA filed an objection to BMAC’s amended application, arguing that when combined, BMAC’s April 18, 2003, filings in Dockets DOT-OST-2000-7668 and DOT-OST-2003-14985 show a proposed fleet increase to seven large aircraft from its then current authorized single large aircraft operations. ALPA noted that the Department was not prepared to find BMAC fit to operate more than one large aircraft, and contended that except for a large infusion of cash, BMAC’s previously submitted fitness information remained unchanged, thus, suggesting that BMAC is not fit to operate more than one large aircraft.

On May 6, 2003, BMAC submitted a reply to ALPA’s response, asserting that ALPA was seeking relief for a labor complaint in the wrong forum. BMAC urged the Department to reject ALPA’s claims and grant the air carrier authority to operate additional large aircraft.

On July 7, 2003, the Department requested additional information from BMAC about its proposed operations. Specifically, the Department requested that the air carrier provide consolidated financial projections for its proposed interstate and foreign scheduled passenger operations and resubmit financial statements demonstrating its ability to support the combined operations.

BMAC responded to the Department’s request on July 17, 2003 (Supplement 7), submitting a statement from Fleet Bank dated July 1, 2003, and a statement from Mellon Bank dated July 1, 2003. The air carrier also provided updated information regarding its management.

21 Current liabilities are financial obligations payable within the next 12 months.
22 See Exhibit BMA-S/6-5 to Supplement 6, filed April 18, 2003.
23 See Exhibit BMA-S/6-6 to Supplement 6, filed April 18, 2003.
24 ALPA Objection, filed April 25, 2003, at 5.
26 Id.
On July 29, 2003, the Department requested further information pertaining to certain management personnel’s resumes and BMAC’s joint reservation system with Pan Am. BMAC filed a response to this information request on August 8, 2003 (Supplement 8), providing updated personnel information and addressing the reservation system functionality. On October 3, 2003 (Supplement 9), BMAC submitted further information about its management personnel.

On October 23, 2003, the Department advised BMAC that since the FAA had not yet authorized BMAC to operate any large aircraft, the Department would defer action on BMAC’s request to operate additional large aircraft until it could provide evidence that the FAA had granted the air carrier large aircraft authority.

On May 20, 2004 (Supplement 10), BMAC supplemented its application with additional information, stating that it expected to receive authorization from the FAA to operate large aircraft on or about June 25, 2004. The air carrier also provided updated fitness information, including management personnel changes, BMAC’s balance sheet at March 31, 2004, a Mellon Bank statement dated April 1, 2004, a Fleet Bank statement dated March 31, 2004, a list of pre-operating expenses, and a liability insurance certificate.

On June 17, 2004 (Supplement 11), BMAC informed the Department that it was in the final stages of its FAA certification process and that it anticipated the FAA would issue it amended Operations Specifications on June 28, 2004, authorizing large aircraft operations. The air carrier also filed updated first-year projections and a revised calculation of the Department’s financial fitness test based on those revised first-year projections. In this regard, BMAC requested that the Department make its large aircraft authority for interstate and foreign scheduled passenger operations effective.

On June 22, 2004, the Department informed BMAC that its March 31, 2004, balance sheet did not balance and requested that the air carrier submit a revised balance sheet, together with a statement that there had not been any events in the preceding months that would have caused significant changes to the company’s March 31, 2004, balance sheet. The Department also requested that BMAC provide third-party verification of funds the air carrier had on deposit and an updated income statement.

BMAC responded to the Department’s request on June 24, 2004 (Supplement 12). The company provided a corrected balance sheet at March 31, 2004, an income statement for the period January 1, 2004 to May 31, 2004, a statement from Fleet Bank dated May 28, 2004, and a statement from Mellon Bank dated June 1, 2004, as third-party verification of funds. Our review of this information was satisfactory and, after consulting with the FAA, on July 16, 2004,
the Department orally granted BMAC effective authority to operate three large aircraft in interstate scheduled air transportation.

By Order 2004-8-21, issued August 18, 2004, the Department confirmed its oral action and amended and reissued BMAC’s interstate certificate to reflect its effective date and the use of three large aircraft in interstate operations. In that order, the Department also indicated that BMAC’s request to operate four additional large aircraft would be addressed in the context of its request for foreign scheduled authority.

**Labor Dispute**

On September 9 and 10, 2004, an evidentiary hearing was held in connection with a labor case filed by ALPA in the District Court of New Hampshire to consider a motion filed by ALPA for a preliminary injunction under the RLA to restrain Guilford, Pan Am, and BMAC, collectively referred to as the defendants, from violating the statutory rights of Pan Am pilots and their union, ALPA. Air Line Pilots Ass’n, Int’l v. Guildford Transportation Industries, Inc., D.N.H. No. 04-331-JD. ALPA alleged that the defendants formed BMAC to divert work from Pan Am, a unionized corporation, to BMAC, a non-unionized corporation, with the intent of eventually dissolving Pan Am. ALPA argued that the defendants intended to take such action to enable Pan Am to circumvent its labor agreements with its pilots.

ALPA’s motion was granted and, on October 13, 2004, the court issued an injunction, ordering the defendants to:

1. Restore to the status quo rates of pay, rules, and working conditions of the Pan Am flight crewmembers as they existed on July 15, 2004, including but not limited, all those embodied in the collective bargaining agreement between Pan Am and ALPA, until all required bargaining, mediation, and dispute resolution procures of the Railway Labor Act are exhausted.

2. Refrain from using BMAC or any other affiliated operations, to operate B-727s or other large jet aircraft in service traditionally performed by Pan Am and that Pan Am is capable of performing.

3. Refrain from transferring to BMAC any aircraft from the Pan Am certificate to the BMAC certificate.

In light of the above order, the Department found it appropriate to defer action on BMAC’s application for foreign authority and additional aircraft operations pending the outcome of the litigation.35

**Application for Exemption Authority**

On December 15, 2004, the air carrier filed an application in Docket DOT-OST-2004-199919 for an exemption from section 41102 to provide foreign scheduled air transportation to St. Kitts and Nevis while its application for foreign scheduled certificate authority remained pending before the Department. BMAC maintained that the requested authority was consistent with the injunction order, arguing that (1) the service proposed was not traditionally performed by Pan

35 Shortly after issuance of the injunction order, Pan Am informed the Department that it intended to cease all operations, which it did, effective November 1, 2004.
Am; (2) Pan Am was not capable of performing the service because effective November 1, 2004, that air carrier had ceased all operations; and (3) the aircraft to be used in the proposed service were not transferred to BMAC from Pan Am.\textsuperscript{36}

**Motion for Revocation**

On December 29, 2004, ALPA filed a motion with the Department to revoke BMAC’s existing certificate authority, alleging that the air carrier lacked the compliance disposition required to remain fit. ALPA claimed that BMAC’s owners, as well as some of its key personnel, hereinafter referred to as the “Mellon Group,” had not displayed a proper regard for the law. To support its argument, ALPA pointed out that, in the past, the Mellon Group had “been found to have violated a number of federal laws, including the RLA.” ALPA further contended that companies owned and managed by the Mellon Group have (1) “repeatedly transferred work from unionized to non-unionized groups to avoid the collective bargaining obligations under the RLA,” (2) “repeatedly discharged pilots because they were unwilling to fly in violation of FAA [Federal Aviation Administration] safety rules,” (3) “repeatedly refused to comply with final and binding decisions of system boards of adjustment as required under the RLA,” and (4) “willfully violated environmental laws.”\textsuperscript{37}

On January 7, 2005, BMAC filed an answer to ALPA’s motion, maintaining that the air carrier continued to be fit, willing, and able to conduct air transportation operations, and refuting ALPA’s claims that the air carrier lacked a satisfactory compliance disposition. BMAC contended that ALPA’s motion was “merely another attempt to use the Department’s licensing procedures to delay the air carrier’s efforts to operate large aircraft in interstate and foreign scheduled operations.” The air carrier noted that ALPA did not allege or cite any evidence that BMAC itself had displayed an unsatisfactory compliance disposition in any other aspect of its operations or corporate activity. BMAC contended that ALPA’s assertions was based entirely on the alleged conduct of other parties affiliated with BMAC, including its now defunct sister air carrier Pan Am. The air carrier maintained that such activities were unrelated and should have no bearing on the air carrier’s certificate authority. Further, BMAC noted that ALPA had repeatedly opposed the air carrier’s attempts to obtain additional authority from the Department.

BMAC did not dispute the fact that it shares common ownership and senior executive officers with other companies. However, the air carrier emphatically claimed that the Mellon Group had never exercised control over BMAC in a manner that would cause the air carrier to violate federal aviation laws and regulations or federal labor laws.\textsuperscript{38} Regarding the cases ALPA cited in support of its arguments, BMAC stated that such “examples of alleged misconduct are either unfounded, premature, have been resolved by corrective action, are irrelevant, or are grossly exaggerated.”\textsuperscript{39}

\textsuperscript{36} Application of BMAC for Grant of Exemption, dated December 15, 2004, at 6-7.
\textsuperscript{37} ALPA Motion, filed December 29, 2004, at 3.
\textsuperscript{38} BMAC Answer, filed January 7, 2005, at 5.
\textsuperscript{39} Id. at 6.
On January 13, 2005, ALPA filed a reply and an accompanying motion for leave to file an otherwise unauthorized document. On January 18, 2005, BMAC filed a response which was accompanied by a motion for leave to file.

Submission of Falsified Documents

On June 1, 2005, ALPA provided further evidence of its alleged claim against BMAC’s key personnel. Among other things, ALPA stated that in December 2004, Mr. John Nadolny, Senior Vice President and General Counsel for BMAC and its sister air carrier, Pan Am, submitted a performance bond (surety bond) to ALPA in connection with a labor-related case that was purportedly issued by Great American Insurance Company (“Great American”) and signed by Mr. Nadolny on behalf of Pan Am.  According to ALPA, an insurance investigator employed by American Financial Group, the parent of Great American, informed ALPA that Great American did not in fact issue the bond and “that the signature on the bond that purports to be that of an attorney-in-fact acting on behalf of Great American is not genuine.”

On June 3, 2005, BMAC filed an answer in the docket acknowledging that Great American did not issue the bond. Additionally, on June 9, 2005, BMAC filed a statement pointing out that Mr. Nadolny “acknowledges that he was directly involved in, and takes responsibility for, the irregularities affecting the procurement of the Performance Bond delivered to ALPA’s counsel in connection with the negotiated settlement agreement between ALPA and Pan Am.” BMAC informed the Department that Mr. Nadolny had resigned from his positions as Senior Vice President and General Counsel for BMAC, Pan Am, and certain other affiliated companies, and provided the record with Mr. Nadolny’s letter of resignation from both Pan Am and BMAC, effective June 3, 2005.

On June 13, 2005, ALPA filed a comment and a motion for leave to file. ALPA questioned whether Mr. Nadolny retained any positions with any corporation affiliated with, or related to, BMAC, and whether Mr. Nadolny acted without the knowledge of other Pan Am management personnel.

On June 15, 2005, BMAC filed an answer to ALPA’s comment, along with a motion for leave to file. BMAC reiterated that Mr. Nadolny was no longer employed in any capacity by BMAC, Pan Am, Guilford Transportation Industries, or any other corporation affiliated with any of those companies. BMAC further noted that Mr. Nadolny stated that he acted alone, and that he was acting neither at the direction of his superiors, nor with the knowledge or approval of his superiors. BMAC further represented that Pan Am’s senior management group had received no information about the surety bond problem until they saw ALPA's June 1, 2005, pleading.

Since the majority of the pleadings filed by BMAC between January 7 and June 30, 2005, were signed by Mr. Nadolny, the Department questioned the veracity of BMAC’s representations

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40 In its supplement, ALPA states that it had entered into an agreement with Pan Am to settle a lawsuit that ALPA had brought against the carrier pursuant to the Worker Adjustment and Restraining Notification Act. ALPA states that under the terms of the settlement agreement, Pan Am was required to make payments to ALPA and to some pilots, and to deliver a surety bond to ALPA that would ensure that the payments would be made. ALPA Supplement, filed June 1, 2005, at 1-2.
41 ALPA Motion, filed December 29, 2004, at 3.
42 BMAC Answer, filed June 9, 2005, at 2.
43 Id.
made in its requests for authority to operate three large aircraft and to engage in foreign scheduled passenger air transportation using four additional large aircraft. Therefore, by letter dated July 20, 2005, the Department informed the air carrier that we were unwilling to accept the factual statements made in this case without additional assurance from current senior company officials that the facts stated in those pleadings were true and accurate. We also directed BMAC to provide further information and clarification regarding the issues raised by ALPA to enable us to establish a complete and accurate record.

By letter dated July 26, 2005, BMAC indicated that Mr. Nadolny had also submitted inaccurate fitness information to the Department. In particular, BMAC stated that the Mellon bank statement dated April 1, 2005, and its balance sheet dated March 31, 2005, were inaccurate. The air carrier further stated that it recognized the possibility that other financial information filed with the Department may have been altered and that it would institute its own internal investigation.

**Inspector General Investigation**

In light of these circumstances, on August 2, 2005, Mr. Karan K. Bhatia, DOT Assistant Secretary for Aviation and International Affairs, requested that the DOT Office of the Inspector General (“Inspector General”) initiate an investigation into the circumstances involving the information filed by BMAC in proceedings before the Department. In light of these circumstances, the Department deferred action on all open dockets regarding BMAC’s authority until completion of the investigation.

Although the Inspector General had not yet completed its investigation, on October 12, 2005, BMAC requested that the Department resume its review of the air carrier’s applications for foreign scheduled and foreign exemption authority and authorize it to operate four additional large aircraft. BMAC argued that the delay in processing its pending applications was causing the air carrier to “endure severe economic damage and operating losses.”

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44 On August 24, 2005, Captain Dirck Hecking, a former employee of Pan Am, filed a motion in docket DOT-OST-2000-7668 to revoke BMAC’s certificate authority. This motion was the first of several documents filed in the docket by Captain Hecking. On August 29, 2005, BMAC filed an answer to Captain Hecking’s motion requesting that the Department consider his motion at the same time that we address ALPA’s motion for revocation. Since the Department had deferred action on ALPA’s motion, we found it appropriate to also defer action on Captain Hecking’s submissions. In light of the action taken in this order, we hereby dismiss Mr. Hecking’s motion as moot.

On August 29, 2005, BMAC also filed a request in the docket for additional time to comply with Condition No. 4 of Order 2004-8-21, issued August 18, 2004. That condition directed BMAC to submit to the Department a first-year progress report within 45 days following the end of its first year of operations using large aircraft. BMAC requested a one-year extension to submit its first-year progress report, or six months following the completion of the Department’s investigation, whichever was later. BMAC stated that “highly unusual and disruptive events” had “impeded BMAC’s introduction and utilization of B-727-200 aircraft into its fleet since the issuance of Order 2004-8-21.” Because the Department had deferred action on all fitness-related matters pertaining to BMAC pending the outcome of the investigation, we found it appropriate, in this instance, to defer submission by BMAC of the progress report. Thus, by letter dated September 14, 2005, the Department informed BMAC that upon completion of the investigation, BMAC would have 30 days to file its first-year progress report.

45 BMAC Submission, filed October 12, 2005, at 7.
On November 14, 2005, the air carrier requested that the Department, at a minimum, grant it authority to add two additional large aircraft, which would bring its fleet to five large aircraft in interstate service. BMAC maintained that its poor financial condition was a direct result of its inability to operate additional large aircraft.

In response to BMAC’s request, the Department, by letter dated December 5, 2005, informed the air carrier that not only was the Inspector General’s investigation still pending, but also the record of this case lacked much of the information necessary for us to determine its fitness to conduct its proposed expanded operations. In that letter, the Department provided BMAC with the opportunity to refresh the record and assured the air carrier that our review of the air carrier’s fitness would continue.

Subsequently, on December 30, 2005, BMAC submitted updated fitness information. The company provided, among other things, updated information about new management personnel and projected revenues and expenses for the year ending December 31, 2006, including those associated with the operation of additional large aircraft. BMAC also provided several financial statements, including (1) an audited balance sheet as of December 31, 2002, and an income statement for the year ended December 31, 2002; (2) an audited balance sheet as of December 31, 2003, and an income statement for the year ended December 31, 2003; (3) an audited balance sheet as of December 31, 2004, and income statement for the year ended December 31, 2004; and (4) unaudited balance sheets at June 30, 2004, and at October 31, 2005.46

With respect to BMAC’s financial ability to operate additional large aircraft, the company stated that its sister company, Springfield Terminal Railway Co. (“ST”) had committed to extend BMAC a $7.2 million line-of-credit.47 To demonstrate ST’s ability to extend BMAC the line-of-credit, the air carrier provided copies of ST’s October 31, 2005, balance sheet and statement of cash flows for the period January 1 through October 31, 2005.48

BMAC also discussed the results of its internal investigation of the Nadolny matter. The air carrier stated that it had further identified several inaccurate submissions made to the Department under Mr. Nadolny’s supervision pertaining to the air carrier’s requests to operate large aircraft and to conduct foreign scheduled operations.49 For example, in support of its application to operate one large aircraft, BMAC provided a balance sheet at September 30, 2002, showing current assets totaling $960,090 ($109,700 of which was cash) and current liabilities totaling of $318,000, which indicated that BMAC had working capital of $642,070.50 According to the air carrier, this balance sheet was not accurate. BMAC also informed us that the $750,000 cash

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46 BMAC’s Response to DOT’s Request for Updated Fitness Information, filed December 30, 2005, Exhibits BMA-6, BMA-7, BMA-8, BMA-9, and BMA-10.
47 BMAC’s Response to DOT’s Request for Updated Fitness Information, filed December 30, 2005, at 5.
48 ST’s financial information was filed confidentially under 14 CFR 302.12.
49 See Appendix A for a description of BMAC’s inaccurate filings. Also see BMAC’s Response to DOT’s Request for Updated Fitness Information, filed December 30, 2005, Attachment BMA-20.
50 See Exhibit BMA-S/3-5 to Supplement 3, filed October 21, 2002.
infusion it stated it received from its parent company, PAA, and which it used to meet the Department’s financial fitness test for operations using one large aircraft, did not in fact occur.\textsuperscript{51}

In another example, BMAC stated that the April 16, 2003, Mellon Bank statement provided in Supplement 6 was inaccurate.\textsuperscript{52} In fact, the air carrier indicated that it did not even have an account with Mellon Bank until April 18, 2003, two days after the date of the alleged statement of account. BMAC stated that the document presented to the Department was actually the account statement for Boston & Maine Corporation, a railroad company, representing that company’s account balance as of April 7, 2003.\textsuperscript{53}

Concerning Mr. Nadolny’s actions, BMAC stated that it believed “Mr. Nadolny acted wholly alone, and without the knowledge or complicity of any other person employed or retained by BMAC.”\textsuperscript{54} BMAC claimed that because of the legal nature of the fitness proceedings, Mr. Nadolny had exclusive oversight of the preparation and submission of financial information to the Department in relation to the BMAC fitness review.\textsuperscript{55} The air carrier further noted that because Mr. Nadolny had 18 years of service with the company with no indication of any problems, he was given substantial independence to manage insurance and legal matters.\textsuperscript{56} Further, BMAC indicated that Mr. Nadolny had “access to BMAC’s financial reports, and was able to reproduce those reports without necessarily involving the Finance Department.”\textsuperscript{57}

\textit{Continuing Fitness}

On April 24, 2006, BMAC filed additional information in the docket responding to the Department’s December 5, 2005, Information Request. Specifically, the air carrier provided an audited balance sheet at December 31, 2005, as well as an audited income statement for calendar year 2005. BMAC also submitted information about changes to its management.

By letter dated June 23, 2006, the Department informed BMAC that although the Nadolny investigation was still classified under Department of Justice guidelines as “open,” and any written products would not be available for request until the conclusion of any legal actions that might be taken by the Office of the United States Attorney, we, in consultation with the Inspector General, found it appropriate to resume action on BMAC’s pending applications.

In that letter, however, we informed BMAC that after examining its audited financial statements, the air carrier’s overall financial condition was extremely poor and that it did not appear as though BMAC had the financial wherewithal to conduct its proposed operations. The Department also noted that BMAC’s audited financial statements for calendar years 2003, 2004, and 2005 showed the company having negative working capital of $14 million, $26 million, and $22 million, respectively. In addition, the Department indicated that the financial statements for

\begin{itemize}
  \item \textsuperscript{51} BMAC Supplement 3, filed October 21, 2002, at 3.
  \item \textsuperscript{52} See Exhibit BMA-S/6-6 to Supplement 6, filed August 18, 2003.
  \item \textsuperscript{53} BMAC’s Response to DOT’s Request for Updated Fitness Information, filed December 30, 2005, Attachment BMA-20 at 8.
  \item \textsuperscript{54} BMAC’s Response to DOT’s Request for Updated Fitness Information, filed December 30, 2005, at 10.
  \item \textsuperscript{55} \textit{Id}.
  \item \textsuperscript{56} \textit{Id}.
  \item \textsuperscript{57} \textit{Id}.
\end{itemize}
BMAC’s parent company, PAA, for calendar years 2002, 2003, and 2004, showed PAA having negative working capital of $41 million, $21 million, and $67 million, respectively. Further, our review of the financial statements for ST, BMAC’s sister company that committed to extend the air carrier a line-of-credit, indicated that the company did not have the funds necessary to support BMAC’s operations and capital expenditures, let alone its own. In light of the above, the Department stated that BMAC would need to demonstrate that it had access to $22 million to meet our financial fitness requirements.\footnote{The capital requirement of $22 million includes the amount of funds needed to cover BMAC’s negative working capital plus the capital required to fund its proposed expansion of operations.}

In response to the Department’s June 23, 2006, letter, BMAC filed a copy of its March 31, 2006, balance sheet and its revised first-year projections, reducing its initial request for four additional large aircraft to two additional large aircraft. The air carrier indicated that it intended to pursue charter operations with its large aircraft instead of scheduled operations. Further, it also claimed that another affiliated company, Pan Am Railways, Inc. (“PAR”) had a $30 million credit facility with Bank of America, and PAR committed to extend BMAC use of that credit line up to $7.0 million.\footnote{BMAC Updated Fitness Information, filed July 18, 2006, at 6. BMAC also submitted a letter from Mr. Fink, who is also Chief Executive Officer of PAR, committing the use of PAR’s Bank of America line-of-credit to BMAC.}

On July 20, 2006, ALPA submitted comments to BMAC’s updated fitness information claiming that BMAC had misrepresented itself in its unaudited March 31, 2006, balance sheet. ALPA suggested that BMAC relabeled some of its current liabilities as long term debt, reducing the air carrier’s negative working capital, and thereby reducing its working capital requirement by more than $19 million.\footnote{ALPA Comment, filed July 20, 2006, at 2-3.} On July 21, 2006, BMAC filed an answer to ALPA’s comment, stating that it refused to respond to ALPA’s “insinuations.”\footnote{BMAC Answer, filed July 21, 2006, at 2.}

Still concerned about BMAC’s financial condition, by letter dated August 22, 2006, the Department reiterated its concerns about BMAC’s financial ability to support additional large aircraft operations and requested that BMAC provide audited financial statements.\footnote{In its August 22, 2006, letter, the Department also noted to BMAC that the FAA had expressed concerns about the air carrier’s operations and had denied the company authority to operate additional small aircraft until the air carrier could demonstrate to the FAA that adequate equipment, including spare parts, supplies, and materials, were available for proper servicing, maintenance, and preventive maintenance of aircraft. To that end, the Department directed BMAC to explain what corrective actions it was taking to address the FAA’s concerns.} Thus, on December 19, 2006, BMAC provided an audited balance sheet at August 31, 2006.\footnote{See Exhibit BMA-FR-100 to BMAC’s Updated Fitness Information, filed December 19, 2006.}

After reviewing the information that BMAC submitted, the Department determined that further information was necessary, and by letter dated January 26, 2007, the Department directed BMAC to provide a copy of its balance sheet at December 31, 2006, as well as bank statements for the period December 1 – 31, 2006.
BMAC submitted the request information on January 26, 2007. Specifically, the company provided its December 31, 2006, balance sheet, as requested, two statements from Bank of America, a statement from United Heritage Bank, and a statement from Valley National Bank. On February 15, 2007, BMAC submitted a bank statement that it had inadvertently omitted from its January 26, 2007, submission. In that submission, the air carrier noted that it had received a capital contribution of $400,000 from its sister company, ST, and proceeds from the sale of its assets.

**TENTATIVE DECISION**

After careful review of the record and based on the totality of the circumstances, we tentatively find that BMAC is not fit, willing, and able to provide air transportation as a U.S. certificated air carrier and its authority should be revoked. Our review of the record in this case indicates that BMAC has failed to establish that it possesses the (1) financial wherewithal to continue or expand its operations without posing an undue risk to consumers and their funds, (2) managerial competency to oversee its current and proposed operations, and (3) proper regard for the laws and regulations governing its services to ensure that its aircraft and personnel conform to applicable safety standards and that acceptable consumer relations practices will be followed.

Specifically, we find that BMAC’s authority to operate large aircraft was based on false financial information submitted to the Department, without which the air carrier would not have been found fit to hold such authority when it first sought to expand its operations. We find further that BMAC’s management knew or should have known about the false financial information and it therefore fails to have an adequate compliance disposition and lacks the competence necessary to oversee the air transportation authorized in the air carrier’s certificate. Finally, not only was BMAC’s financing insufficient to be found fit in 2004, but the air carrier has, since that time, been in extremely poor financial condition, placing undue risk on consumers and their funds, and therefore, has failed to demonstrate its financial fitness at this time.

Importantly, when an applicant applies for initial or expanded economic authority, the burden of establishing that it is fit for the operations it proposes rests with that applicant. In determining an applicant’s fitness, it is the Department’s practice, as is the case herein, to review, among other things, the applicant’s financial wherewithal to conduct its proposed operations.

With respect to BMAC’s request to operate large aircraft, the Department unknowingly relied on false financial information in making its fitness determination. As stated previously, after having reviewed the air carrier’s pre-operating and first-year expense forecasts for its three large aircraft, the Department determined that BMAC needed approximately $2.3 million to meet our financial fitness requirements. In support of its ability to operate three large aircraft, BMAC

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67 See, e.g., Order 91-3-17, issued March 8, 1991, Tropical Airways, Application for Fitness Redetermination.
68 See Order 2002-12-20, issued December 27, 2002. In instances where a company has agreed to provide funding to support an applicant’s proposed operations, we also review that company’s financial ability to extend that funding amount.
provided a balance sheet at March 31, 2004, showing that the air carrier had $7.7 million in current assets and $500,900 in current liabilities, giving it positive working capital of $7.2 million, along with $10.5 million in total assets, no long term debt, and $10 million in total shareholder’s equity. Based on this information, the Department found that BMAC had access to sufficient resources to operate up to three large aircraft in scheduled passenger service without posing undue risk to consumer funds, and by Order 2004-8-21, issued August 18, 2004, the Department confirmed its oral action of July 16, 2004, making BMAC’s authority effective on that date.

BMAC later admitted that its March 31, 2004, balance sheet, which it used to prove that it had sufficient funding to meet the Department’s financial fitness test, did not accurately portray the financial position of the air carrier at the time it received effective authority. Therefore, in an effort to establish its financial fitness around the time the Department granted BMAC effective authority to operate three large aircraft, BMAC, in its December 30, 2005, submission recreated its balance sheet, using ledger balances, at June 30, 2004. That recreation showed the air carrier as having had, as of June 30, 2004, current assets of $935,231, current liabilities of $2.7 million, and negative working capital of $1.8 million. Based on this information, BMAC’s true working capital had a variance of $9.0 million from what it certified was true in its March 31, 2004, balance sheet. Moreover, BMAC had total assets of only $2.5 million and negative shareholder’s equity of $16.2 million for the same time period. Thus, the air carrier had no equity against which it could borrow and clearly failed the Department’s financial fitness test, under which BMAC needed to demonstrate that it had access to $2.3 million. Had the Department been aware of the company’s true financial condition, it would not have granted the authority that BMAC was seeking.

Regarding an air carrier’s management and compliance disposition, the Department has long held that violations that have occurred under an executive’s leadership can support a finding that he or she lacks an adequate compliance disposition. Moreover, “a carrier’s key personnel are responsible for conducting its operations in a way so as to ensure that reasonably expected compliance problems do not occur.” It is also well-established that key personnel need not have had actual knowledge of problems if they should have known of the deficiencies. Indeed, failure by an executive of a company seeking certification to pay sufficient attention to the proceeding is negligent and demonstrates lack of managerial competence.

The false information at issue in this proceeding was knowingly submitted to the Department from 2002 to 2005 by Mr. Nadolny, BMAC’s then Senior Vice President and General Counsel. Although BMAC asserts that Mr. Nadolny had exclusive oversight responsibilities of the fitness process for the air carrier and the ability to reproduce its financial reports without involvement of the air carrier’s finance department, and it was, therefore, unaware of the numerous submissions of fraudulent information made by him, we tentatively find that BMAC’s assertion not only begs credulity but, even if true, demonstrates a glaring lack of competence in the air carrier’s

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69 See Exhibit BMA-S/10-3 to Supplement 10.
70 ATX, Inc., Fitness Investigation, Docket 48780, Opinion and Order on Review, issued April 5, 1994, at 7.
71 Id., citing Yute Air Alaska, Order 89-11-48.
72 ATX, at 8.
73 Aero West, Fitness Investigation, Docket 40662, Order on Review, issued October 24, 1984, at 7.
management to oversee the operations of a certificated air carrier and supports a finding that the air carrier’s management does not have the compliance disposition required by our fitness standards.

Moreover, we find it hard to believe that the chief legal officer of an air carrier, especially one as small as BMAC, could prepare or alter already-prepared documents over a three-year period in such a drastic fashion as was done here without arousing the slightest attention of any other officer or key personnel of BMAC and, in particular, that of the air carrier’s two owners or Chief Financial Officer. Indeed, as the air carrier’s Senior Vice President and General Counsel, Mr. Nadolny reported directly to BMAC’s President and minority owner, Mr. David Fink. Based on this reporting relationship alone, BMAC’s President should have been aware of Mr. Nadolny’s actions, if not his motive for altering certain financial information in favor of the air carrier’s proposed expansion. Even if Mr. Nadolny’s unlawful actions at first were unknown, given the contentious nature of this fitness proceeding and the numerous requests to BMAC for financial information by the Department over a considerable period of time, it strains credulity to assert that the financial information attributed to BMAC that was published in the important Department show cause order, which formed a primary basis for that tentative decision but which was patently overstated, would go unnoticed by Mr. Fink. Accordingly, even if, as suggested by the air carrier, Mr. Fink had no direct actual knowledge of Mr. Nadolny’s deliberately deceptive actions, it is clear that he should have known of or exercised the discretion to discover those illegalities and that his failure to have done so reflects extremely negatively on both his compliance disposition and his ability to effectively manage and run an airline. Hence, we tentatively conclude that BMAC is not fit under Mr. Fink’s direction and control.

We also tentatively find that BMAC’s other key management personnel should have been aware of the company’s weak financial posture and therefore, its financial ability, or lack thereof, to acquire, operate, and support large aircraft in interstate and foreign air transportation. It stands to reason that as part of a company’s normal business practice, the financial condition of a company would be discussed among its key management personnel, including its Chief Financial Officer and Treasurer, prior to any decision to pursue expanded operations. Moreover, as noted above, in issuing BMAC authority to operate large aircraft, the Department specifically referenced in its public orders the financial statements and the capital required to meet the Department’s financial fitness criteria. Therefore, the air carrier’s assertion that it was completely ignorant of Mr. Nadolny’s fraudulent submissions suggests that BMAC’s key management personnel are completely uninvolved in the air carrier’s current and proposed operations, which itself suggests that these individuals lack the managerial competence to oversee the air carrier. In the alternative, it is possible that they knew of the air carrier’s precarious finances, and perhaps even noticed the significant discrepancies in financial data submitted to the Department, but in the confines of the corporate culture of a closely held company in which the owners are actively involved in day-to-day decisions, they did not speak up.74 Thus, while other key personnel may individually be qualified to hold their respective positions and regardless of any complicity on their part in the scheme to defraud the Department, the failure of these persons to recognize and/or act on the false information leads us to tentatively conclude that BMAC lacks the managerial competence necessary to hold certificate authority.

74 This situation, if it existed, creates its own fitness issues. See Order 88-6-6, issued June 3, 1988, Application of Ryan Air Service (Closely held corporation in which owners may be involved in day-to-day decisions creates potential for interference with operating officers’ carrying out necessary duties.).
In addition, it is particularly troubling that the FAA has advised the Department this it has been extremely concerned about the ability of BMAC’s management to oversee the air carrier’s existing operations, never mind expanded operations. The FAA has informed the Department that the air carrier’s staffing levels have decreased so much that BMAC’s maintenance manuals had to be rewritten because the positions responsible for specific tasks remained vacant. This situation further supports the Department’s tentative finding that BMAC lacks adequate managerial competence.

Furthermore, the false submissions to the Department are not the only compliance disposition issue BMAC has had with the Department. In 2006, the Department’s Office of Aviation Enforcement and Proceedings investigated BMAC for its apparent failure to comply with federal laws requiring timely credit refunds to consumers and Department enforcement case precedent applicable to timely refunds to consumers for cash ticket purchases. That investigation was concluded with the issuance of Consent Order 2006-7-7, issued July 7, 2006, which found that BMAC had violated 14 CFR Part 374, which requires airlines to make prompt credit refunds as required by the Consumer Credit Protection Act and Regulation Z of the Board of Governors of the Federal Reserve System, 15 U.S.C. §§1601-1693r and 12 CFR Part 226. That order further found that BMAC had engaged in an unfair and deceptive practice and unfair method of competition in violation of 49 U.S.C. 41712 and directed the air carrier to cease and desist from further violations and assessed the air carrier $50,000 in civil penalties.

Our tentative determinations that BMAC lacks the requisite disposition to comply with the laws of the United States as well as the managerial competence to run an airline clearly are, without more, sufficient to support our tentative conclusion that the air carrier has failed to demonstrate that it continues to be fit to hold authority to operate as an air carrier. Even so, we also tentatively find that, in addition to the fact that had the Department known BMAC’s true financial position in 2004, we would not have found the air carrier fit to receive expanded authority, we tentatively conclude that the air carrier today has failed to demonstrate its financial fitness. In this regard, after learning of the false submissions to us, we provided BMAC numerous opportunities to update the record and submit current information on its financial posture. Our review of the financial statements ultimately submitted reveals that BMAC’s financial condition, along with that of its parent, PAA, has been extremely poor for more than five years.75 According to BMAC’s September 30, 2007, balance sheet filed with the Bureau of Transportation Statistics, BMAC reported current assets of $3.4 million and current liabilities of $5.9 million, giving the company negative working capital of $2.5 million.

Considering BMAC’s poor financial history, its present financial condition, and the concerns raised by the FAA regarding the air carrier’s cutback in management personnel, the Department tentatively finds that the air carrier lacks the financial wherewithal to continue to operate, let alone expand its operations to include foreign scheduled authority with additional large aircraft, without posing an undue risk to consumers and their funds. Further, we already have experienced BMAC failing to provide consumers timely refunds, which can be indicative of direct public harm stemming from financial shortfalls, and based on the concerns raised by the FAA, we believe that BMAC’s weak financial condition may adversely affect the air carrier’s ability to fund the maintenance of its aircraft, creating a safety risk. Thus, we tentatively find

75 We reviewed the financial information on PAA because BMAC stated that its access to funding would be provided by PAA.
that the air carrier lacks the requisite financial resources necessary to continue to operate the services as a certificated air carrier without posing an undue risk to consumers.

**ACCORDINGLY:**

1. We direct all interested persons to show cause why we should not issue an order finding that (1) Boston-Maine Airways Corp. is not fit, willing, and able to hold a certificate of public convenience and necessity, (2) its applications for foreign scheduled certificate authority in Docket DOT-OST-2003-14985 and exemption authority in Docket DOT-OST-2004-19919 should be dismissed and (3) its certificate of public convenience and necessity authorizing it to engage in interstate scheduled air transportation issued by Order 2004-8-21 on August 18, 2004, should be revoked.

2. We direct interested parties having objections to the issuance of an order making final any of the proposed findings and conclusions set forth herein to file them with Department of Transportation Dockets Section, West Building Ground Floor, 1200 New Jersey Avenue, SE (M-30, Room W12-140), Washington, D.C. 20590, in Dockets DOT-OST-2000-7668, DOT-OST-2003-14985, and DOT-OST-2004-19919, and serve them upon all persons listed in Appendix B no later than 30 days after the service date of this order; answers to objections shall be filed no later than 7 days thereafter.

3. If timely and properly supported objections are filed, we will accord full consideration to the matters or issues raised by the objections before we take further action.76

4. In the event that no objections are filed, we will consider all further procedural steps to be waived, and we will enter an order making final our tentative findings and conclusions set out here.

5. We will serve a copy of this order on all persons listed in Appendix B.

6. We will publish a summary of this order in the Federal Register.

By:

MICHAEL W. REYNOLDS
Acting Assistant Secretary
for Aviation and International Affairs

An electronic version of this document is available on the World Wide Web at:
http://www.regulations.gov

76 Since we have provided for the filing of objections to this order, we will not entertain petitions for reconsideration.
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<th>Exhibit #</th>
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* This table was created from BMAC’s Response to DOT’s Request of Updated Fitness Information filed December 30, 2005, Attachment BMA-20.
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<td>Working Capital Calculated off incorrectly prepared balance sheet, only way BMAC would meet fitness requirement. With recalculations of corrected balance sheet, including a $7.2 million line-of-credit from Springfield Terminal, BMAC can support operations. Provided ST financials 3/31/04.</td>
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<td>Working Capital Combined Calculated based on incorrectly prepared balance sheet; only way BMA would meet fitness requirement. With recalculations of corrected balance sheet, including a $7.2 million line-of-credit from Springfield Terminal, BMAC can support operations. Provided ST financials 6/30/03.</td>
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<td>Working Capital Interstate Calculated based on incorrectly prepared balance sheet; only way BMA would meet fitness requirement. With recalculations of corrected balance sheet, including a $7.2 million line-of-credit from Springfield Terminal, BMAC can support operations. Provided ST financials 6/30/03.</td>
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<td>Boston Maine P&amp;L dated 7/1/02 - 6/30/03 Inaccurate figures reported on yearly income statement, source of incorrect figures unknown. According to internal unaudited statement, estimates loss to $4.43 million for fiscal year ending 6/30/03. According to general ledger, loss amounts to $5.94 million for same time period.</td>
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<tr>
<td>Mr. Nathaniel P. Breed Jr</td>
<td>General Counsel</td>
<td>Boston-Maine Airways Corp</td>
<td>888 Seventeenth Street NW Suite 700</td>
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<td>Mr. Robert Culliford</td>
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<td>Pease International Airport</td>
<td>14 Aviation Avenue</td>
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<td>Mr. Leonard Beers</td>
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<td></td>
<td>5950 Hazelton National Drive Suite 500</td>
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<td>Mr. William Royal</td>
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<td>FAA Tampa CMO-29</td>
<td>5601 Mariner Street</td>
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<td>Mr. Vic Roxas</td>
<td>PMI for Boston-Maine Airways Corp</td>
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<td>Mr. Frederick Walker</td>
<td>Manager ASO-200</td>
<td>Federal Aviation Administration</td>
<td>1701 Columbia Avenue College Park, GA 30337</td>
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<td>Mr. Eddie Thomas</td>
<td>Regional Counsel ASO-7</td>
<td>Federal Aviation Administration</td>
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<td>Mr. Peter Lynch</td>
<td>Asst Chief Counsel for Enforcement AGC-300</td>
<td>Federal Aviation Administration</td>
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<td>Mr. Jerry Anker</td>
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<td>Air Line Pilots Association</td>
<td>1625 Massachusetts Avenue NW</td>
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<td>Mr. Russell Bailey</td>
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<td></td>
<td>6213 Coffman Road</td>
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<tr>
<td>Captain Dirck Hecking</td>
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