By this order, we 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.
Background

By Order 2000-10-1, issued October 2, 2000, the U.S. Department of Transportation ("the Department") found BMAC fit, willing, and able to conduct interstate scheduled passenger air transportation using small aircraft.\textsuperscript{1} By Order 2004-8-21, issued August 18, 2004, the Department amended BMAC’s authority to permit it to operate three large aircraft\textsuperscript{2} in interstate scheduled operations.\textsuperscript{3}

Subsequently, by Order 2008-2-3, issued February 1, 2008, the Department tentatively found that BMAC 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.

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 tentatively concluded that the President and other key personnel either did not familiarize themselves with the orders, which, in and of itself, raises questions concerning their managerial competence, or that

\textsuperscript{1} 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.

\textsuperscript{2} Large aircraft is defined as any aircraft with an original design capacity of more than 60 passenger seats or an 18,000 pound payload.

\textsuperscript{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.
they knew that the orders were inaccurate and did not inform the Department, which directly reflects on their compliance disposition.

In light of these tentative findings, the Department proposed to revoke the interstate certificate held by 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. Interested persons were given 30 days to file objections to the order, with answers to objections due 7 business days thereafter.

Pleadings

Request for Extension

On February 8, 2008, BMAC filed a motion with the Department requesting a 30-day extension of time, or until April 2, 2008, in which to file objections and a commensurate extension of time, or until April 11, 2008, in which to file answers to objections. In support of its request, BMAC stated that the requested extension would give the air carrier additional time to decide among the following three courses of action in response to the Department’s order: (1) file objections to the order, (2) attempt to sell the company’s stock to new owners, or (3) shut down BMAC entirely and liquidate its assets.

By Order 2008-2-24, issued February 19, 2008, the Department denied BMAC’s motion, stating that the air carrier failed to demonstrate that the relief requested is in the public interest or is required in the interest of due process. Thus, the dates for filing objections to Order 2008-2-3 and answers to objections remained unchanged, with objections due by March 3, 2008, and answers due March 12, 2008.

Shortly thereafter, the Federal Aviation Administration (“FAA”) informed the Department that BMAC would cease all scheduled flights effective February 29, 2008, but continue to conduct charter flights. According to BMAC’s web site, the air carrier has, in fact, ceased scheduled operations.

Objection

On March 3, 2008, BMAC filed an objection in the docket to the Department’s order proposing to revoke the air carrier’s economic authority. In its objection, BMAC argues, among other things, that the Department’s tentative findings in Order 2008-2-3 should apply solely to the air carrier’s fitness to operate large aircraft. The air carrier agrees that the Department’s unknowing reliance on fraudulent financial information as the basis for granting BMAC authority to operate large aircraft “nullifies and vitiates the probative value of the falsified evidence on which the Department’s decision was based (Order 2008-2-3, pp. 15-16), and, thus, warrants the withdrawal of the Department’s grant of that large-aircraft authority to BMAC…”

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4 The Department issued Order 2008-2-24 before the date that answers to the air carrier’s motion were due to provide BMAC as much notice as possible about the denial. BMAC did not claim any prejudice to this action.
5 BMAC Objection at 7.
6 Id. BMAC also disagrees with the Department’s tentative finding on the air carrier’s financial fitness to continue its operations, but is not inclined to continue to defend the adequacy of its working capital resources.
In this regard, BMAC claims that there is “no basis in the record of this proceeding for finding that BMAC is financially or otherwise unfit to continue to engage in...small aircraft operations”\(^\text{7}\) and requests that the Department permit it to retain its small aircraft authority in order to, at a minimum, enable the air carrier to facilitate a sale of the company.\(^\text{8}\)

BMAC asserts that the record of this case clearly demonstrates that the fraudulent filings submitted to the Department by Mr. John Nadolny, BMAC’s former Vice President and General Counsel, were made without the knowledge or complicity of any person employed by or involved with BMAC. In support of its assertion, the air carrier notes that no other individual, other than Mr. Nadolny, has been the subject of prosecution or other complaints after extensive investigations of BMAC’s senior management were conducted by the Department’s Inspector General (“DOT/IG”), the Justice Department’s Assistant U.S. District Attorney in New Hampshire (“DOJ/ADA”), and the air carrier’s own outside counsel.

In addition, BMAC argues that its owners and senior management had no reason to believe that Mr. Nadolny, “as a trusted long-time officer holding a position of great responsibility over BMAC’s legal affairs, including DOT and FAA regulatory proceedings”\(^\text{9}\) and “unsupervised authority over the matters entrusted to his responsibility,”\(^\text{10}\) would present them with inaccurate information regarding “the status and progress on the DOT large-aircraft application case.”\(^\text{11}\) The air carrier maintains that its owners, Messrs. Timothy Mellon and David Fink, hired Mr. Nadolny in 1988 as an attorney for Guilford Transportation Industries, a related company, and steadily promoted him since he had “never given his employers any reason to doubt his honesty, loyalty, and good judgment.”\(^\text{12}\) Therefore, BMAC believes that its management, including its technical personnel, remains fit to oversee and manage BMAC’s small aircraft operations and have a satisfactory compliance disposition.

Moreover, the air carrier believes that the FAA’s concerns about BMAC’s staffing levels and the Department’s consumer protection matter related to ticket refunds discussed in Order 2008-2-3, alone, would not warrant revocation of an air carrier’s authority to operate small aircraft.\(^\text{13}\)

Considering all of the above, BMAC requests that the Department not revoke its economic authority to operate small aircraft. In fact, BMAC states that it has recently signed a Letter of Interest with Maine Aviation Aircraft Charter, LLC (“Maine Aviation”\(^\text{14}\)). BMAC states that “if

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\(^{7}\) BMAC Objection, at 11.  
\(^{8}\) The air carrier does not dispute that the Department relied on falsified financial information in granting the air carrier authority to operate large aircraft, and agrees with the Department’s tentative decision to revoke the air carrier authority to conduct large aircraft operations.  
\(^{9}\) BMAC Objection, at 19.  
\(^{10}\) Id.  
\(^{11}\) Id., at 24.  
\(^{12}\) Id., at 22.  
\(^{13}\) Id., at 9.  
\(^{14}\) Maine Aviation currently operates as an air taxi under 14 CFR Part 298. By Order 2007-8-12, issued August 15, 2007, the Department found Maine Aviation fit to conduct commuter air carrier operations; however, the air carrier’s commuter authority has not yet been made effective. BMAC states that neither
the preconditions to a definitive agreement are met, including reaching an agreement on price, appropriate representations, warranties, and indemnifications, the parties hope to close on the Stock Purchase Agreement on or about April 22, 2008.”

Since BMAC’s owners intend to sell the company with both its DOT economic authority and its FAA operating authority in effect, the company requests that the Department allow it to retain effective small aircraft authority. BMAC further notes that since the air carrier has voluntarily suspended its scheduled operations using small aircraft, and it does not intend to operate any large aircraft after April 6, 2008, there is no risk to consumers if the Department permits BMAC to retain the authority to facilitate the sale of the company.

No other pleadings were filed.

Decision

The Department has carefully reviewed and considered BMAC’s objections to our tentative findings. Based on our review and the totality of the circumstances, the Department finds that BMAC has failed to demonstrate 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. Accordingly, the Department has determined it appropriate to revoke its interstate certificate authority, effective immediately, and dismiss its applications for foreign scheduled and exemption authority.

In its objection, BMAC failed to provide any evidence supporting its financial ability to continue or expand its operations. BMAC argued that the Department’s tentative finding in Order 2008-2-3 with respect to financial fitness applied solely to its ability to conduct operations using large aircraft. We disagree. In Order 2008-2-3, the Department specifically stated that based on “BMAC’s poor financial history, its present financial condition, and the concerns raised by the FAA,” the air carrier lacked “the financial wherewithal to continue to operate.” This tentative finding applied to all of BMAC’s operations and was clearly supported by the financial information provided by the air carrier. Because BMAC has failed to demonstrate its financial fitness to operate, the Department maintains that the air carrier is not financially fit to continue to conduct any air transportation regardless of aircraft size.

With respect to BMAC’s management, we continue to find that the company’s senior management lacks the managerial competence and compliance disposition necessary to oversee certificated air carrier operations. In its objection, BMAC argued that the investigations conducted and completed by the DOT/IG, DOJ/ADA, and the air carrier’s own outside counsel...
implicated only Mr. Nadolny, with no adverse findings against the company or its senior management. We note, however, that these investigations were conducted in the context of a criminal proceeding where no other BMAC employee was charged with criminal activity. However, the question of BMAC’s managerial competence is part of the Department’s responsibility under section 41110(e) of Title 49 of the United States Code to evaluate the air carrier’s continuing fitness to operate as a U.S. certificated air carrier. In that context, the Department continues to find that BMAC lacks the managerial competency necessary to oversee air carrier operations, and the company has not provide any compelling evidence to support its claim that its senior management are fit to manage a U.S. certificated air carrier.

BMAC argued that its management closely followed the application process and the Department’s orders, and relied on daily updates from Mr. Nadolny on the company’s pending applications. However, considering the events that have occurred, the Department may only conclude that the company’s senior management (1) failed to pay close enough attention to the Department’s orders which clearly specified the financial position of the air carrier and the financial statements the Department relied upon to determine its financial fitness, (2) did not know the company’s true financial position, or (3) knew that the information in the order was inaccurate and did not inform the Department. All of these circumstances, regardless of which one actually occurred, are indicative of either managerial incompetence or an unsatisfactory compliance disposition.

BMAC’s assertion that neither the FAA’s staffing concerns, nor the Department’s consumer protection consent order discussed in Order 2008-2-3, in and of themselves, warrant revocation of an air carrier’s economic authority is misplaced. As stated in Order 2008-2-3, the Department’s tentative findings and conclusions concerning BMAC are based on the totality of the circumstances, and these occurrences reflect negatively upon the air carrier’s managerial competence and compliance disposition.¹⁹

Lastly, as the Department stated in Order 2008-2-24, which denied BMAC’s request for extension of the procedural dates in this matter, “revocation of BMAC’s authority, if made final, would not preclude the sale of the company or its assets. Indeed, under the circumstances here, any new owner of the company would be required to undergo its own fitness determination before it could commence air transportation as a U.S. certificated air carrier.”²⁰ Though BMAC stated that it intended to close on the sale of the company to Maine Aviation on or around April 22, 2008, we have yet to receive any information indicating that the transaction has occurred or will actually occur. Furthermore, BMAC failed to demonstrate that postponing action on BMAC’s certificate authority is in the public interest or is in the interest of due process.

CONCLUSION

In light of the above, the Department concludes that BMAC is not fit to conduct operations as a U.S. certificated air carrier and denies BMAC’s request to maintain its certificate authority to operate small aircraft to facilitate the sale of the company to Maine Aviation. Thus, the Department revokes the interstate scheduled certificate authority issued to BMAC and dismisses its applications for foreign scheduled and exemption authority.

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ACCORDINGLY:

1. We revoke the interstate scheduled certificate of public convenience and necessity issued to Boston-Maine Airways Corp., by Order 2004-8-21 on August 18, 2004, effective immediately.

2. We dismiss the application filed in Docket DOT-OST-2003-14985 by Boston-Maine Airways Corp., for a certificate of public convenience and necessity to conduct foreign scheduled air transportation of persons, property, and mail.

3. We dismiss the application filed in Docket DOT-OST-2004-19919 by Boston-Maine Airways Corp., for exemption authority.

4. We will serve a copy of this order on the persons listed in Attachment A.

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
SERVICE LIST FOR
BOSTON-MAINE AIRWAYS
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Appendix A

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