

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

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<b>Application of</b>	)	
	)	
<b>BOSTON-MAINE AIRWAYS CORP.</b>	)	<b>Docket OST-00-7668-</b>
	)	
<b>for issuance of an amended certificate of public convenience and necessity pursuant to 49 U.S.C. § 41102 (Interstate Large-Aircraft Operations).</b>	)	
	)	

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**MOTION FOR LEAVE TO FILE ANSWER  
AND  
ANSWER OF AIR LINE PILOTS ASSOCIATION  
IN OPPOSITION TO THE APPLICATION**

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Dated: September 19, 2002

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Air Line Pilots Association, International (ALPA) respectfully requests leave to submit this answer in opposition to the application of Boston-Maine Airways Corp. (BMAC) for an amended certificate of public convenience and necessity.

ALPA is the collective bargaining representative of the pilots employed on Pan American Airways Corp. (Pan Am), a sister corporation of BMAC. As stated in the application, BMAC and Pan Am are wholly-owned subsidiaries of Pan American Airlines, Inc. (PAA), a holding company. BMAC pilots are not represented by any labor organization.

BMAC is seeking to amend its certificate to enable it to operate large aircraft, specifically B-727s. This would permit it to perform precisely the same type of service that its sister carrier, Pan Am, currently operates. As stated in the application (p. 2), Pan Am currently operates “a fleet of Stage 3-compliant Boeing B-727-200 aircraft.” BMAC’s stated goal is to be able

to perform interstate scheduled passenger operations utilizing 141-passenger B-727-200 aircraft in various interstate city-pair markets, both in conjunction with the interstate and foreign scheduled service operations of its sister carrier, Pan Am, and as separate stand-alone operations, as described in this Application.

(Id.)

We believe BMAC’s real purpose in seeking authority to operate B-727s is to enable it to establish a non-union operation that would parallel and duplicate Pan Am’s operation. Pan Am would then be able to escape its contractual obligations to its union-represented pilots and its collective bargaining obligations under the Railway Labor Act simply by shifting flying to its sister corporation BMAC. The beneficial owners of BMAC have previously been found to be in violation of the Railway Labor Act for engaging in precisely this tactic on one of their railroad properties, and we believe that is their real purpose here.

See Brotherhood of Locomotive Engineers v. Springfield Terminal Ry., 210 F.3d

18 (1st Cir. 2000) (railroad owned by Guilford Transportation Industries, Inc.

unlawfully shifted work to a related corporation to escape its collective

bargaining obligations). Although this Department is not charged with

responsibility for enforcing the federal labor laws, we believe it should scrutinize

closely any apparent effort by a carrier to use the Department's processes to escape its obligations under those laws. We submit that BMAC has neither demonstrated the necessary fitness to operate an expanded airline using large aircraft nor presented a credible business plan for such an operation. We urge the Department to deny the application on these grounds.

**I. BMAC'S HISTORY OF HUGE FINANCIAL LOSSES MAKES IT UNFIT TO OPERATE AN EXPANDED AIRLINE WITH LARGE AIRCRAFT.**

The materials submitted by the applicant clearly show that BMAC has so far failed to operate successfully as a small-aircraft airline. Its dismal record to date precludes a finding that it has the necessary managerial skill to operate an expanded airline using large aircraft.

In less than three years of operations, BMAC has accrued almost \$ 4 million in losses (shown on its balance sheet as negative "retained earnings"). (Exhibit BMA-104). This number exceeds the total assets of the Company, even when its "available credit facility" is counted as an asset. (Id.) For the 12-month period July 1, 2001 through June 30, 2002, BMAC suffered losses of over \$2.25 million, on revenues of only \$3.9 million. (Exhibit BMA-S/1-1). In other words, during that period the Company lost more than \$1 for every \$2 in revenue. While it is true that many airlines have suffered losses in the period after 9/11, BMAC's losses are of an altogether different order of magnitude than those of other carriers. Moreover, results for earlier periods were no better. Losses for

calendar 2000 were similar (Exhibit BMA-105), and results for calendar 2001 were even worse, with losses exceeding revenues by a substantial margin. (*Id.*, p. 2).

In the absence of some plausible explanation for these huge losses, the inference of inept management is inescapable. BMAC should not be given authority to operate a larger airline, with larger aircraft, until it has established a record of success on its present scale. At the very least, the Department should conduct a searching inquiry to determine the reasons for these losses, particularly as they reflect on the competence of BMAC's management.

Finally, it is important to note the recent announcement by Pan Am of a substantial reduction in its own operations. (See *Aviation Daily*, Sept. 17, 2002, p.3). This new development raises not only the question of whether it makes sense for BMAC to begin B-727 operations while its sister airline is sharply reducing such operations, but also whether the parent company is really able to guarantee the long-term viability of either airline in the current economic environment.

## **II. BMAC HAS NOT PRESENTED A VIABLE BUSINESS PLAN FOR EFFECTIVE USE OF LARGE AIRCRAFT.**

The only business plan BMAC presents for the use of large aircraft is to place one B-727 in service "to operate two nonstop round-trip flights a day, five days a week," between San Juan, Puerto Rico and St. Thomas, U.S. Virgin Islands. (*Application*, p. 5). No information is provided to show that the introduction of this new service in what is already a heavily-served market

would attract sufficient passengers to be successful. Although BMAC does provide revenue and cost projections showing an anticipated load factor of approximately 65 percent and an annual profit of \$4.4 million for this proposed service (Exhibit BMA-101), no explanation is provided as to how these numbers were derived. In the absence of some credible explanation, and in light of BMAC's history of huge financial losses, its projection of profits for its first year of operations in a market in which it has no experience whatever are hardly worthy of much credit.

Moreover, this service proposal seems highly dubious on its face. BMAC's proposed 2 flights a day would be competing with, inter alia, approximately 13 daily flights by Cape Air and approximately 12 daily flights by American and American Eagle. Although BMAC's proposed fare is lower than those of the airlines currently serving the market, these competitors could be expected to meet BMAC's fare in order to protect their markets. Even though BMAC's B-727 would be larger than most of its competitors' aircraft, it is difficult to imagine how a new entrant offering only 2 daily frequencies could compete successfully with carriers already well-established in the market.

Furthermore, assuming that this service proposal is viable at all, BMAC gives no reason why it makes sense for BMAC, rather than Pan Am, to provide the service. Pan Am already serves San Juan, and has an existing infrastructure there -- gates, agents, ramp workers, and the like. Does BMAC intend to incur the totally unnecessary expense of duplicating these facilities? And what

justification can there be for dedicating a separate aircraft solely to providing two daily roundtrips between San Juan and St. Thomas, when this short segment could easily be combined with some other San Juan service provided by Pan Am, thereby achieving higher utilization of both aircraft and crews? If these questions have answers, they are certainly not found in the materials submitted by the applicant.

The application projects \$707,000 just in start-up expenses for this service, most of which have apparently already been incurred. (Exhibit BMA-103). Almost all of these expenses could have been avoided by utilizing Pan Am instead of BMAC to provide the San Juan-St. Thomas service. We question whether a management of an airline that is suffering huge losses can be described as "fit" when it incurs expenses of this magnitude to start up a new service that could easily and more efficiently be provided by a sister company without incurring any such costs.

In short, BMAC's San Juan-St. Thomas service proposal simply makes no business sense, and thus reflects negatively on the carrier's fitness. But we believe the service proposal raises an even more serious issue. We question whether the proposal is genuine, or whether it is merely a smokescreen designed to conceal BMAC's real purpose in seeking large-aircraft authority. As stated at the outset, we strongly suspect that the real purpose is to shift most or all of the flying currently being performed by Pan Am to BMAC, in order to escape Pan Am's obligations under its collective bargaining agreement with ALPA and

under the Railway Labor Act. We believe that if the Department engages in searching inquiry of BMAC it will discover that this is the case.<sup>1</sup> And if we are correct, the disingenuous nature of the application would be reason enough in itself to deny the requested certificate amendment.

### CONCLUSION

For the reasons stated, the application for an amended certificate of public convenience and necessity should be denied. In the alternative, if the Department determines to grant the certificate, it should include a condition limiting the use of large aircraft to the San Juan-St. Thomas market as outlined in the application.

Respectfully submitted,

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<sup>1</sup> For example, the Department might ask BMAC whether it would accept a condition in its certificate limiting it to service between San Juan and St. Thomas for the first year, and requiring that additional service proposals be submitted to the Department for review before the condition is lifted or modified.