

Served: February 28, 2003

234910



**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.**

Issued by the Department of Transportation
on the 28th day of February, 2003

Application of

**BOSTON-MAINE AIRWAYS CORP.
d/b/a PAN AM CLIPPER CONNECTION**

for an amendment to its certificate of public convenience
and necessity under 49 U.S.C. 41102

Docket OST-2000-7668- 35

FINAL ORDER

By Order 2002-12-20, served December 30, 2002, we directed all interested persons to show cause why we should not make final our tentative findings and conclusions stated in it and award an amended certificate of public convenience and necessity to Boston-Maine Airways Corp. d/b/a Pan Am Clipper Connection authorizing it to engage in interstate scheduled air transportation of persons, property, and mail, using large aircraft.¹ Interested persons were given 14 calendar days to file answers to the order.

On January 13, 2003, the Air Line Pilots Association (ALPA) filed an objection to the show-cause order. In its objection, ALPA stated that the Department's determination that Boston-Maine would have sufficient working capital to meet our financial fitness criteria for the proposed large aircraft operations was in error. ALPA argues that this error occurred because the Department considered only the projected operating costs of the proposed large aircraft operations, failing to consider the ongoing operating costs of Boston-Maine's existing small aircraft operations. Because Boston-Maine's existing small operations have not been profitable,² ALPA believes that the Department must consider the expenses associated with these operations in determining the level of funding required for Boston-Maine to be determined financially fit. Further, if such methodology were utilized, ALPA argues that Boston-Maine would lack sufficient financial resources to meet the Department's minimum requirements.

¹ Boston-Maine already holds effective certificate authority to engage in interstate scheduled passenger transportation using small aircraft. See Order 2001-12-21, issued December 27, 2001.

² ALPA notes that Boston-Maine's current small aircraft operations for the twelve months ended June 30, 2002, resulted in a net loss of \$2.26 million.

On January 15, 2003, Boston-Maine filed a reply to ALPA's objection in which it states that ALPA's position in this case is flawed. In support of its position, Boston-Maine argues that there is no support in the Federal Aviation Statutes, the Department's Regulations, or 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. Further, Boston-Maine argues that ALPA's proposed financial fitness test is inherently speculative since it depends on an assumption that prior losses incurred in a carrier's existing services will continue in the future and will provide a reliable indicator of an applicant's results in its proposed expanded operations.

We have carefully considered the points raised by ALPA in its objection. However, like the applicant, we disagree with ALPA's premise that the Department incorrectly determined the level of funds required for Boston-Maine to meet our financial fitness standard. It is the Department's practice to determine an applicant's financial fitness based on the level of funds required to cover the applicant's pre-operating costs for the proposed operations, and to provide the company with a working capital reserve equal to one-quarter of its operating expenses for the first year of the proposed operations. Further, 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 liabilities). This policy is applied to applicants seeking expanded authority (whether through the addition of larger aircraft, or through the addition of aircraft beyond the numerical limits set in the applicant's current authority) regardless of whether its past operations have been profitable. Indeed, companies may not have positive working capital despite profitable operations, just as those companies experiencing operating losses may not be in a negative working capital position. This policy effectively protects the public while implementing Congress's intent, through the Airline Deregulation Act, to enhance competition through a liberal entry policy.

A review of the financial information currently on file in this case fully supports the Department's tentative conclusion in Order 2002-12-20 that Boston-Maine will have sufficient financial resources available to it to enable it to commence its proposed limited large aircraft operations without posing an undue risk to consumers or their funds.³ However, as we noted in Order 2002-12-20, prior to receiving effective certificate authority for the large aircraft operations at issue, Boston-Maine will need to submit up-to-date financial information, including independent third-party verification of its funds then on deposit. If this updated information does not demonstrate that Boston-Maine continues to have available sufficient

³ Specifically, as we noted in Order 2002-12-20, based on the forecasts provided, Boston-Maine requires funding totaling \$1.36 million to meet the Department's financial fitness criteria. Further, based on the information available, Boston-Maine currently has approximately \$1.39 million available to support its planned large aircraft operations.

funds to meet our financial fitness criteria, we will take action to stay the effectiveness of the large aircraft authority awarded.⁴

ACCORDINGLY,

1. We find that Boston-Maine Airways Corp. d/b/a Pan Am Clipper Connection is fit, willing, and able to engage in interstate scheduled air transportation of persons, property, and mail, using large aircraft, subject to limitations.
2. We issue an amended certificate of public convenience and necessity to Boston-Maine Airways Corp. d/b/a Pan Am Clipper Connection to engage in interstate air transportation in the form and subject to the Terms, Conditions, and Limitations attached.
3. Should Boston-Maine Airways Corp. d/b/a Pan Am Clipper Connection propose to operate more than one large aircraft, we direct it to notify the Department in writing at least 45 days prior to the proposed operation and demonstrate its fitness to conduct such operations before their commencement.⁵
4. We direct Boston-Maine Airways Corp. d/b/a Pan Am Clipper Connection to submit to the Air Carrier Fitness Division a progress report within 45 days following the end of its first year of certificated operations using large aircraft.⁶

⁴ At that time, the funds required to meet our financial fitness test will be reevaluated. Should Boston-Maine have unpaid pre-operating expenses in excess of the level originally forecast, or should its current working capital situation be negative, it will need to demonstrate access to funds sufficient to cover these added pre-operating expenses and the negative working capital position, as well as the working capital reserve computed based on its first year operating expense forecast.

⁵ This notice should be submitted to the Air Carrier Fitness Division. The carrier may contact the Air Carrier Fitness Division prior to submitting its notice to determine what fitness information must be provided.

⁶ The report shall include a description of the carrier's current operations (number and type of aircraft, principal markets served, total number of full-time and part-time employees), a summary of how these operations have changed during the year, a discussion of any changes it anticipates from its current operations during its next year of operations, current financial statements, and a listing of current senior management and key technical personnel.

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

By:

READ C. VAN DE WATER
Assistant Secretary for Aviation
and International Affairs

(SEAL)

*An electronic version of this document is available on the World Wide Web at:
<http://dms.dot.gov>*



Certificate of Public Convenience and Necessity
for
Interstate Air Transportation
(as reissued)

This Certifies That

BOSTON-MAINE AIRWAYS CORP.
d/b/a PAN AM CLIPPER CONNECTION

is authorized, subject to the provisions of Subtitle VII of Title 49 of United States Code, the orders, rules, and regulations issued thereunder, and the attached Terms, Conditions, and Limitations, to engage in interstate air transportation of persons, property, and mail.

This Certificate is not transferable without the approval of the Department of Transportation.

By Direction of the Secretary

Issued by Order 2003-2-24
On February 28, 2003
Effective on (See Attached)

Read C. Van de Water
Assistant Secretary for
Aviation and International Affairs



Terms, Conditions, and Limitations

BOSTON-MAINE AIRWAYS CORP.
d/b/a PAN AM CLIPPER CONNECTION

is authorized to engage in interstate air transportation of persons, property, and mail between any point in any State, territory, or possession of the United States or the District of Columbia, and any other point in any of those entities.

This authority is subject to the following provisions:

- (1) The authority to operate small aircraft under this certificate became effective on December 19, 2001.*
- (2) The authority to operate large aircraft under this certificate will not become effective until six (business) days after the Department has received the following documents; provided, however, that the Department may stay the effectiveness of this authority at any time prior to that date:*
 - (a) A copy of the holder's amended Operations Specifications authorizing such operations from the Federal Aviation Administration (FAA).*
 - (b) A certificate of insurance on OST Form 6410 evidencing liability insurance coverage meeting the requirements of 14 CFR 205.5(b) for all of its aircraft.*
 - (c) A statement of any changes the holder has undergone in its ownership, key personnel, operating plans, financial posture, or compliance history, since the date of the Show Cause Order in this case.*
 - (d) A revised list of pre-operating expenses already paid and those remaining to be paid, as well as independent verification that the holder has available to it funds sufficient to cover any remaining pre-operating expenses and to provide a working capital reserve equal to the operating costs that would be incurred in three months of operations.*

**This certificate is being reissued to remove the condition prohibiting the holder from engaging in large aircraft operations.*

- (3) *Pending receipt of effective authority, the holder may not accept payment of any kind (i.e., cash, check, or credit card) or issue tickets for the large aircraft operations proposed under this certificate, and any advertisement or listing of such flights by the holder must prominently state: "This service is subject to receipt of government operating authority."*
- (4) *The holder shall at all times conduct its operations in accordance with the regulations prescribed by the Department of Transportation for the services authorized by this certificate, and with such other reasonable terms, conditions, and limitations as the Department of Transportation may prescribe in the public interest.*
- (5) *The holder's authority is effective only to the extent that such operations are also authorized by the Federal Aviation Administration (FAA), and comply with all Department of Transportation requirements concerning security.*
- (6) *The holder shall at all times remain a "Citizen of the United States" as required by 49 U.S.C. 40102(a)(15).*
- (7) *The holder shall maintain in effect liability insurance coverage as required under 14 CFR Part 205. Failure to maintain such insurance coverage will render a certificate ineffective, and this or other failure to comply with the provisions of Subtitle VII of Title 49 of the United States Code or the Department's regulations shall be sufficient grounds to revoke this certificate.*
- (8) *The holder is authorized to conduct charter flights in interstate and/or foreign air transportation in accordance with the provisions of 14 CFR 212.*
- (9) *The holder may reduce or terminate service at any point or between any two points, subject to compliance with the provisions of 49 U.S.C. 41734 and all orders and regulations issued by the Department of Transportation under that section.*
- (10) *The holder may not provide scheduled passenger air transportation to or from Dallas (Love Field), Texas, except within the limits set forth in section 29 of the International Air Transportation Competition Act of 1979, as amended by section 337 of the Department of Transportation and Related Agencies Appropriations Act, 1998.*
- (11) *Should the holder propose any substantial changes in its ownership, management, or operations (as that term is defined in 14 CFR 204.2(l)), it must first comply with the requirements of 14 CFR 204.5.*

(12) In the event that the holder ceases all operations for which it was found "fit, willing, and able," its authority under this certificate shall be suspended under the terms of 14 CFR 204.7 and the holder may neither recommence nor advertise such operations unless its fitness to do so has been redetermined by the Department. Moreover, if the holder does not resume certificated operations within one year of its cessation, its authority shall be revoked for dormancy.

SERVICE LIST FOR BOSTON-MAINE AIRWAYS CORP.

Attachment A

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