

BEFORE THE
DEPARTMENT OF TRANSPORTATION
WASHINGTON, D.C.

Essential Air Service at

St. Paul Island, Alaska

Under 49 U.S.C. § 41731 *et seq.*

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) Docket DOT-OST-2019-0038
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JOINT MOTION AND REPLY OF
FLOAT ALASKA, LLC AND CORVUS AIRLINES, INC.

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August 21, 2020

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FLOAT ALASKA, LLC AND CORVUS AIRLINES, INC.**

FLOAT Alaska, LLC (“FLOAT Alaska”) and Corvus Airlines, Inc. d/b/a Ravn Alaska (“Corvus”) hereby reply to the Opposition of Alaska Central Express, Inc. (“ACE”), dated August 19, 2020, regarding essential air service (“EAS”) at St. Paul Island, Alaska (“STP”). ACE’s Opposition has no merit and should be rejected for the reasons stated below.

The ACE Opposition contains certain mischaracterizations and inaccurate assertions. This narrowly-tailored Joint Reply addresses those mischaracterizations and inaccuracies so that the Department will have a more accurate and complete record upon which to base its consideration of next steps and determination regarding EAS at STP. Accordingly, to the extent leave to file this Joint Reply is necessary, good cause exists for the Department to consider this Joint Reply.

I. FLOAT Alaska Acquired Corvus.

ACE claims that Corvus, which was recently acquired by FLOAT Alaska, is not the successor of the Corvus d/b/a Ravn Alaska that was selected by the Department to provide subsidized EAS at St. Paul Island in DOT Order 2019-10-2. See ACE Opposition at 1. This claim is wrong and demonstrates ACE’s fundamental

misunderstanding of the court-approved transaction pursuant to which FLOAT Alaska acquired the stock and substantially all of the assets of Corvus Airlines, Inc. This is clearly reflected in the description of the “Acquired Assets” as set forth in the Asset Purchase Agreement (“APA”)¹ approved by the Bankruptcy Court as follows:

“[A]ll of the capital stock of Corvus Airlines, Inc., a Washington corporation, and the corporate books and records of such corporation and corporate proceedings, financial and Tax records, work papers and other records that such corporation is required by Law to retain.”

APA § 1.1(f).

In addition, FLOAT Alaska acquired all of the principal assets of Corvus that are necessary to support the planned resumption of air service by Corvus d/b/a Ravn Alaska as follows:

Six Dash-8 aircraft, forklifts, de-ice trucks, GPUs, and other ground equipment, intellectual property including trademarks for Ravn Alaska and related domains, IATA Code 7H (subject to any required consent of IATA), all Passenger Service System assets and agreements (subject to any required consent of Sabre), the Certificate of Public Convenience and Necessity (subject to Department approval), the Air Carrier Certificate and Operations Specifications (subject to FAA approval), and all related manuals, among other items. See APA § 1.1(a) - (e), (h), (i).

And, with respect to EAS, such as that for St. Paul Island, FLOAT Alaska acquired “all Seller’s rights to subsidies or other benefits under the Essential Air Service program”, subject to “any required consent by any Governmental Body.” APA § 1.1(j).

¹

The Asset Purchase Agreement is contained in Attachment 1 to ACE’s Opposition.

Simply put, it is not only “a first glance” (as ACE states) that indicates that FLOAT Alaska acquired Corvus, but a detailed review and understanding of the APA demonstrates that to be the case.

Second, ACE mischaracterizes language in the Bankruptcy Court’s Order (“Court Order”)² to the effect that the transaction was not a merger or consolidation to argue erroneously that Corvus under FLOAT Alaska’s ownership is not the successor to the Corvus that was selected for EAS at STP in 2019.

The transaction was not a merger or consolidation of FLOAT Alaska and the Debtors, as the Court Order correctly states: “the Transaction does not amount to a consolidation, merger, or de facto merger of the Buyer and Debtors, or any of them.” See Court Order § V.K.. Rather, the transaction was a stock and asset acquisition of Corvus by FLOAT Alaska, as clearly reflected in the Court-approved APA and discussed above.

The fact that FLOAT Alaska agreed to be responsible for “Assumed Liabilities” and “Permitted Obligations” of Corvus, and not all liabilities and obligations of the Debtors, does not alter this conclusion that FLOAT Alaska acquired Corvus and that Corvus, as owned by FLOAT Alaska, became the successor to Corvus Airlines, Inc., the carrier selected to provide subsidized EAS at STP in 2019 by DOT Order 2019-10-2. It simply reflects the fact that the liabilities not assumed (and the assets not acquired) by FLOAT Alaska remain with the bankruptcy estate.³ Indeed, many corporate acquisitions, particularly those involving exits from bankruptcy, involve the exclusion of

² The Bankruptcy Court Order is provided as Attachment 2 to ACE’s Opposition.

³ See section 363 of title 11 of the United States Code (the “Bankruptcy Code”). It is also worthy of note that the United States of America, through the Department of Justice, on behalf of its agencies, was and is a party to the Ravn Air Group, Inc. et al. bankruptcy case, and expressly approved the form of the Bankruptcy Court’s Order approving the sale.

liabilities and obligations from the acquisition transaction.⁴ That does not change the fact that a transaction is indeed an acquisition, and, in this case, that Corvus is the successor for purposes of EAS at STP to the Corvus that was selected for that service in 2019, including “all Seller’s rights to subsidies or other benefits under the Essential Air Service program”.

II. Corvus Is Actively Working With the Department And The FAA To Resume Operations, Including EAS At St. Paul Island.

ACE attempts to portray Corvus as being many “months if not years” from receiving authorization to resume scheduled air service, as if Corvus was a new entrant carrier. ACE Opposition at 5. But, as the Department is well aware, Corvus is actively working with the Department and the FAA expeditiously to resume scheduled operations, and is not starting from scratch. Instead, Corvus plans to use the aircraft it previously used (Dash-8), to destinations it previously served, with many of the same personnel (including most of the same key technical/operational managers) as were at Corvus prior to the bankruptcy filing and cessation of operations. Indeed, on August 11, 2020, Corvus filed with the Department a Notice of intent to resume operations and an Application for a waiver of the 45-day advance filing requirement for restarting operations. See Corvus Notice/Application (Docket DOT-OST-2020-0134). And, Corvus is working closely with its Anchorage FAA Certificate Management Office to receive expedited approval to commence operations.

ACE’s effort to expedite a decision on EAS at St. Paul Island, particularly when it would offer service with 9-seat aircraft,⁵ instead of Corvus’ 29-seat Dash-8 aircraft, and

⁴ See Bankruptcy Code section 363(f).

⁵ See ACE Proposal for EAS at STP, dated August 3, 2020 (Docket DOT-OST-2019-0038). The community requested service with aircraft having more than three times that seating capacity. See

when St. Paul continues to restrict travel in light of the COVID-19 pandemic,⁶ should be rejected. In issuing the Order soliciting applications for EAS at St. Paul Island, the Department expressly acknowledged: *"If Ravn resumes EAS for St. Paul prior to the Department selecting a carrier to provide EAS at St. Paul, or if an entity that acquires RAVN assumes the EAS contract for St. Paul prior to that time, however, the Department may rescind this request for proposals and terminate the carrier selection case."* DOT Order 2020-6-16 at 2 (emphasis in original). In that regard, Corvus confirms that it intends to resume EAS at St. Paul Island and assume the previous pre-bankruptcy EAS contract awarded to Corvus for STP service, as soon as the Department and the FAA grant Corvus authority to resume service.

Respectfully submitted,



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Proposed EAS RFP STP Service Requirements, from City of St. Paul, June 15, 2020 (Docket DOT-OST-2019-0038).

⁶ See City of St. Paul Island, Emergency Ordinance 20-96, dated July 31, 2020 (prohibiting all travel to St. Paul Island except for (1) essential travel for Essential Services and Critical Infrastructure workforce and (2) critical personal needs; requiring that all individuals permitted to travel to St. Paul Island (1) submit to a COVID-19 test before leaving the departure location and (2) self-quarantine for 14 days; and requiring that all individuals residing with the arriving individual must self-quarantine for 14 days).

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Joint Motion and Reply of FLOAT Alaska, LLC and Corvus Airlines, Inc. has been served this August 21, 2020, upon each of the following addressees:

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