

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

Application and Notice of)
)
CORVUS AIRLINES, INC.)
)
for a waiver of the 45-day advance)
filing requirements of §204.7 and)
Notice of intent to resume interstate)
scheduled air transportation)
_____)

DOCKET DOT-OST-2020-0134

Essential Air Services at)
)
ST. PAUL, ALASKA)
)
)
Under 49 U.S.C. 41731 *et seq.*)
_____)

DOCKET DOT-OST-2019-0038

**OPPOSITION OF ALASKA CENTRAL EXPRESS, INC.
TO APPLICATION OF CORVUS AIRLINES, INC. AND
RESPONSE TO JOINT MOTION AND REPLY OF
FLOAT ALASKA, LLC AND CORVUS AIRLINES, INC.**

Communications with respect to this document may be served upon:

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Dated: August 24, 2020

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Alaska Central Express, Inc. ("Alaska Central") hereby submits its opposition to the application of Corvus Airlines, Inc. ("New Corvus") in Docket DOT-OST-2020-0134 for authority to resume operations and for a waiver of the 45-day prefilling requirement for applications submitted pursuant to Section 204.7 of the DOT regulations. Alaska Central is also responding to the Joint Motion and Reply of FLOAT Alaska, LLC and Corvus Airlines, Inc. ("Joint Motion") filed on August 21, 2020 to the Opposition of Alaska Central and specifically to the prior assertion of FLOAT Alaska submitted in the St. Paul EAS Proceeding (Docket DOT-OST-2019-0038) claiming that it was a successful bidder in the Corvus Bankruptcy Proceeding and that it purchased Corvus Airlines, Inc. ("Old Corvus").

In the Joint Motion FLOAT Alaska and New Corvus continue to misstate the nature of the Bankruptcy Court approval of the Asset Purchase Agreement ("APA") FLOAT Alaska entered into with the bankrupt entity—Old Corvus, which agreement was approved by the U.S. Bankruptcy Court for the District of Delaware. The Court Order ("Sale Order") was attached as Attachment 2 to the Alaska Central Opposition. The Joint Motion badly mischaracterizes the terms of the Sale Order in an attempt to persuade the Department that New Corvus is the successor to Old Corvus by avoiding any discussion of the Sale Order terms directly cited by Alaska Central in support of its position that New Corvus is not legally entitled to claim successor status. This short response to New Corvus and FLOAT Alaska should be accepted for filing to ensure the Department has an accurate understanding of the terms of the Sale Order.¹

On August 19, 2020 Alaska Central submitted its Opposition to statement of position in the ongoing St. Paul Essential Air Service Proceeding (Docket-DOT-OST-2019-0038) of FLOAT Alaska that it acquired Corvus Airlines, Inc. ("Old Corvus") and intends to resume service of Old Corvus including the provision of essential air service to St. Paul, Alaska. (FLOAT Alaska is the majority owner of New Corvus). Alaska Central was the only carrier that submitted a timely formal proposal to serve St. Paul in the EAS Proceeding. It is the position of Alaska Central that although FLOAT Alaska purchased certain of the assets of the bankrupt entity Old Corvus, the Bankruptcy Court Order approving the sale of the specific assets to FLOAT Alaska did not permit the purchaser to hold itself out as Old Corvus or be considered a continuation of the operations of Old Corvus. As the Application of New Corvus assumes the

¹ Good cause clearly exists for the Department to accept this Opposition. To the extent necessary, Alaska Central hereby moves for leave to file this Opposition.

applicant is standing in the shoes of Old Corvus and intends to resume operations as a continuation of the services of Old Corvus, its plans are contrary to the terms of the Order of the Bankruptcy Court approving the sale of assets to FLOAT Alaska.

Rather than repeat the detailed arguments in its Opposition to the statement of position of FLOAT Alaska in the St. Paul EAS Proceeding (Docket-DOT-OST-2019-0038), Alaska Central hereby incorporates by reference its August 19th Opposition filed in that proceeding. The Alaska Central Opposition included as attachments the Bankruptcy Court Order and the Asset Purchase Agreement, which are also attached to the New Corvus Application as Exhibit CORVUS-1.

It bears repeating that, first, New Corvus did not acquire Old Corvus as a going concern but rather only a distinct group of assets—Dash 8 aircraft, ground support equipment, certificates to the extent they are transferrable and certain intellectual property. New Corvus was not the only entity that purchased significant air transport related assets from Old Corvus. Alaska Central also purchased air carrier related assets from the bankrupt estate, namely 9 Beechcraft 1900C model aircraft.

Second, FLOAT Alaska and New Corvus carefully skirt in the Joint Reply the significant conditions the Bankruptcy Court Sale Order placed upon its approval of the APA. As previously stated in Alaska Central's Opposition, the Court's approval of the APA states unequivocally that:

The Buyer is not a mere continuation of the Debtors or their estates, or any of them, and there is no continuity of enterprise between the Buyer and the Debtors, or any of them. The Buyer is not holding itself out to the public as a continuation of the Debtors. The Buyer is not a successor to the Debtors or their estates by reason of any theory of law or equity, and the Transaction does not amount to a consolidation, merger, or de facto merger of the Buyer and the Debtors, or any of them.

New Corvus attacks the contention of Alaska Central that the Court stated its approval did not constitute a merger but carefully avoids the first part of the Court's approval condition quoted above that "[t]he Buyer is not a mere continuation of the Debtors or their estates, or any of them, and there is no continuity of enterprise between the Buyer and the Debtors..." FLOAT Alaska and New Corvus did not and cannot deflect the plain meaning of this important condition to the Court's approval of the APA. New Corvus is not Old Corvus but rather is an entity that purchased some but not all of the assets of Old Corvus. Hence, contrary to the contention of New Corvus, when it claims that by virtue of the approval of the APA it "became the successor to [Old Corvus]" such is clearly not the case as stated in the Sale Order. Joint Motion and Reply, page 3.

Nor did FLOAT Alaska and New Corvus address the argument of Alaska Central that in Section VII.P. of the Sale Order, at page 7, the Court conditioned its approval on the basis of the following limitation on the actions of the asset purchaser:

Upon the consummation of the Sale of the Acquired Assets to Buyer, (a) Buyer shall not be, as a result of the purchase of the Acquired Assets or otherwise, considered to have continued the business operations associated with the Acquired Assets without interruption or substantial change, and (b) substantial continuity in the operation of the Debtors' business before and after the purchase of the Acquired Assets shall not be considered to exist.

Not surprisingly, FLOAT Alaska and New Corvus did not refute the clear meaning of this section of the Sale Order and nor could it as it has no answer to the Alaska Central contention that the Sale Order precludes by its terms New Corvus describing itself as a successor to Old Corvus and claiming a continuum of operations that the Sale Order specifically states is not the case.

Finally, although New Corvus states that it is working with both DOT and FAA to obtain authority necessary from both agencies in order to resume service, it is important for both DOT and FAA to understand the legal framework on which New Corvus rests. Contrary to the many statements of New Corvus that it is a successor to Old Corvus (Joint Motion and Reply pages 1, 3 and 4) the controlling terms of the Sale Order state unequivocally otherwise. Claiming successor status is far different from actually being the legal successor to Old Corvus and DOT and FAA must appreciate the difference and look past the rhetoric of FLOAT Alaska and New Corvus in addressing any request of New Corvus for authority to conduct air carrier operations.

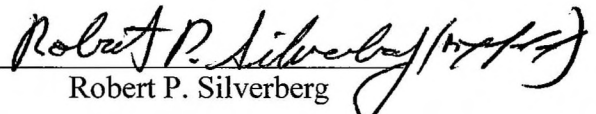
Respectfully submitted,

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Dated: August 24, 2020

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