

**ORIGINAL**

Decision No. 20657

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of CALIFORNIA TIME AIRLINES, INC., a California corporation, for a certificate of public convenience and necessity as a passenger air carrier between the airports of Los Angeles and/or Burbank, San Jose, and/or Oakland and/or San Francisco, Lake Tahoe and Santa Ana (Orange County Airport), pursuant to Chapter 4, Part 2, Division 1 of the Public Utilities Code.

Application No. 47843  
(Filed August 25, 1965;  
Amended October 15, 1965,  
October 20, 1965)

Application of California Airlines for a certificate of public convenience and necessity to engage in the intrastate transportation of persons and property.

Application No. 47913  
(Filed September 22, 1965;  
Amended November 15, 1965)

Application of PACIFIC SOUTHWEST AIRLINES for a certificate of public convenience and necessity.

Application No. 47921  
(Filed September 27, 1965)

(Appearances are listed in Appendix A)

O P I N I O N

Pursuant to the Commission's Rules of Procedure, Sections 69-72, the proposed report of Examiner Richard D. Gravelle was filed in the above-entitled matters on February 28, 1966.

Exceptions to the proposed report were filed by Pacific Air Lines, Inc. (PAC), on March 21, 1966. On April 4, 1966, the City of San Jose filed its Replies to the Exceptions of Pacific Air Lines, Inc. PAC and the City of San Jose were the only parties to file exceptions or replies to exceptions to the proposed report.

PAC on April 6, 1966 filed a Motion for Presentation of Oral Argument pursuant to Rule 67 of the Commission's Rules of

Procedure. These matters have had two sets of briefs filed herein and the parties have had the opportunity to take exception to the proposed report. PAC has filed over 270 pages of written argument in these proceedings and the first day of hearing was devoted entirely to oral argument on the interpretation of Sections 2754 and 2756 of the Public Utilities Code. We find that further oral argument is unnecessary. The motion of April 6, 1966, by PAC is hereby denied.

The Commission has considered the evidence of record herein, the various briefs, the arguments, the proposed report and the exceptions and replies to exceptions thereto. It would serve no useful purpose to repeat here the discussion of the nature of these proceedings. The proposed report accurately sets forth the material issues raised by the parties and the pleadings. The exceptions of PAC and the replies thereto by the City of San Jose have been carefully considered. The Commission is of the view that there is nothing therein which would justify revision of the proposed report.

The Commission concurs in the substance if not in the form of the proposed report at pages 1 through 31 and the first three lines of page 32 thereof, and therefore adopts it as if set forth at length herein.

The motions made by applicant Pacific Southwest Airlines for a temporary certificate of public convenience and necessity and the petition of January 20, 1966 made by the City of San Jose for the issuance of a temporary certificate of public convenience and necessity to Pacific Southwest Airlines should be denied.

Application No. 47843 and Application No. 47913, insofar as they seek authorization to operate the route segment San Jose-Los Angeles, should be dismissed.

Based upon the evidence of record in these proceedings the arguments, the briefs, the proposed report and the exceptions and replies to exceptions thereto, the Commission finds that:

1. Pacific Southwest Airlines has demonstrated that it possesses the business experience in the field of air operations, the financial stability and the requisite insurance coverage to receive a certificate of public convenience and necessity as a passenger air carrier.

2. Pacific Southwest Airlines has established that it can economically serve the San Jose-Los Angeles route as a passenger air carrier operating a minimum of four round trips daily with Lockheed Electra aircraft at a fare of \$11.43 plus tax, one way or Boeing 727 aircraft at a fare of \$13.50 plus tax, one way.

3. There presently exists a need for passenger air carrier service between San Jose-Los Angeles with equipment comparable to and at fares competitive with those now available at San Francisco International Airport and Oakland International Airport.

4. Pacific Air Lines, Inc., a federally certificated air carrier is presently serving the San Jose-Los Angeles route segment.

5. The service of Pacific Air Lines, Inc. between San Jose-Los Angeles has not been adequate to meet or satisfy the existing need therefor.

6. Notwithstanding the service improvements made by Pacific Air Lines, Inc. as to the San Jose-Los Angeles route during the course of these proceedings and contemplated in the future, there is sufficient passenger air traffic available for the San Jose-Los Angeles route from the geographic area comprising southern San Mateo County, Santa Clara County, northern Santa Cruz County

and southern Alameda County to allow both Pacific Air Lines, Inc. and Pacific Southwest Airlines to operate said route economically, provided equipment and rates comparable to those available at San Francisco International Airport and Oakland International Airport are offered.

7. The public interest requires service by competing air carriers over the San Jose-Los Angeles route to stimulate improvements in the service offered by each air carrier to the public.

8. Certification of Pacific Southwest Airlines as a passenger air carrier between San Jose-Los Angeles will not burden interstate commerce by interfering with a federally certificated interstate air carrier.

9. Availability of adequate air transportation service between San Jose-Los Angeles will aid the growth and development of the Bay Area as well as the general growth of the State of California.

10. Public convenience and necessity require the granting of a certificate as a passenger air carrier between San Jose-Los Angeles to applicant Pacific Southwest Airlines.

Based upon the foregoing findings of fact the Commission concludes that the application of Pacific Southwest Airlines for a certificate of public convenience and necessity between San Jose-Los Angeles should be granted.

Pacific Southwest Airlines is hereby placed on notice that operative rights, as such, do not constitute a class of property which may be capitalized or used as an element of value in rate fixing for any amount of money in excess of that originally paid to the State as the consideration for the grant of such rights. Aside from their purely permissive aspect, such rights extend to

the holder a full or partial monopoly of a class of business over a particular route. This monopoly feature may be modified or canceled at any time by the State, which is not in any respect limited as to the number of rights which may be given.

O R D E R

IT IS ORDERED that:

1. A certificate of public convenience and necessity is granted to Pacific Southwest Airlines, authorizing it to operate as a passenger air carrier as defined in Section 2741 of the Public Utilities Code, between the points and over the route particularly set forth in Appendix B, attached hereto and hereby made a part hereof.

2. In providing service pursuant to the certificate herein granted, applicant shall comply with and observe the following service regulation:

(a) Within thirty days after the effective date hereof, applicant shall file a written acceptance of the certificate herein granted. By accepting the certificate of public convenience and necessity herein granted, applicant is placed on notice that it will be required, among other things, to file annual reports of its operations and to comply with and observe the insurance requirements of the Commission's General Order No. 120-A. Failure to file such reports in such form and at such time as the Commission may direct, or to comply with and observe the provisions of General Order No. 120-A, may result in a cancellation of the operating authority granted by this decision.

3. Within one hundred and twenty days after the effective date hereof, applicant shall amend its tariff and timetables to reflect the authority herein granted. Such filings shall be made effective not earlier than five days after the effective date of

this order on not less than five days' notice to the Commission and the public and shall comply with the regulations governing the construction and filing of tariffs in the Commission's General Order No. 105-A.

4. Applications Nos. 47843 and 47913, insofar as they apply to the San Jose-Los Angeles route, are hereby dismissed.

5. The motions made by Pacific Southwest Airlines for a temporary certificate of public convenience and necessity and the petition of January 20, 1966, made by the City of San Jose for issuance of a temporary certificate of public convenience and necessity to Pacific Southwest Airlines are hereby denied.

The effective date of this decision shall be ten days after the date hereof.

Dated at San Francisco, California, this 3rd day of May, 1966.

[Signature] President  
August 1966  
[Signature] Commissioners

*We will file a concurring opinion.*  
*Frederic B. Holloff*  
*George T. Brewer*

*I adopt in full the Examiners proposed report and Commission herein based upon the record and findings herein. See my separate vote. J. Lawrence Brundage.*

APPENDIX A

LIST OF APPEARANCES

Robert H. Volk and F. Jack Liebau, for California Time Airlines, Inc.;  
Howard S. Boros, Donn C. Douglass and Gilbert M. Gass, for  
California Airlines; and John W. McInnis, for Pacific Southwest  
Airlines; applicants.

Theodore I. Seaman, Ted Laskin and Don Atkinson, for City of San Jose;  
W. M. Beeler, for Greyhound Lines, Inc.; Tad Muraoka and Alden O.  
May, for International Business Machines Corporation; Charles C.  
Miller, for San Francisco Chamber of Commerce; Bill L. Hendrie,  
for Greater San Jose Chamber of Commerce; Robert A. Eaton, for  
Trans California Airlines, Inc.; Brobeck, Phleger and Harrison, by  
Gordon E. Davis, for United Air Lines, Inc.; Thomas M. O'Connor,  
William J. Bovine and Frank J. Needles, for City of San Francisco;  
Joseph R. Standell, James Allen and C. Schmidt, for Federal  
Aviation Agency; Robert S. Crossland, for Lisle Funeral Home;  
Lawrence William Snickles III; Pierson F. Foerderer, for Lockheed  
Missiles and Space Company; William M. Hardy; James E. Norton;  
John Lerch; Ben K. Lerer, for Fifth Avenue Coach Lines, Inc.;  
Transport Workers Union of America, AFL-CIO; and International  
Association of Machinists; interested parties.

Robert M. Raymer, R. Barry Churton and James F. Bell, for Pacific Air  
Lines, Inc., protestant.

B. A. Peeters, Charles Gerughty, Kenji Tomita and Paul Clover, for  
the Commission staff.

GF/ds \*

Appendix B

PACIFIC SOUTHWEST AIRLINES  
(a corporation)

Original Page 1

Pacific Southwest Airlines, by the certificate of public convenience and necessity granted in the decision noted in the margin, is authorized to transport passengers by air in either direction:

Between Los Angeles International Airport  
and San Jose Municipal Airport.

Issued by California Public Utilities Commission.

Decision No. 70657, Application No. 47921.



CONCURRING OPINION  
OF  
COMMISSIONER HOLOBOFF AND COMMISSIONER GROVER

We concur in the findings, conclusions and order, but we would not adopt the examiner's proposed report in its entirety.

PSA did not serve San Jose as of January 1, 1965 (or at any time close to that date) and it therefore is not entitled to a San Jose grandfather certificate pursuant to the first sentence of Section 2756 of the Public Utilities Code. The temporary certificate authorized by the second sentence of Section 2756 is, in effect, a temporary grandfather certificate (even without a hearing it may take time to determine whether or not an applicant is entitled to the grandfather certificate contemplated by the first sentence); accordingly, PSA is not entitled to a temporary San Jose certificate under Section 2756. To this extent we agree with the discussion of grandfather rights which appears in the examiner's proposed report. The remainder of the examiner's discussion of grandfather rights is unnecessary to the decision.

This is no longer a case requiring consideration of the Ashbacker doctrine. The other two applicants have withdrawn their requests for San Jose-Los Angeles authority, and Pacific has not applied for any authority from this Commission. Pacific has been accorded a full and fair hearing on its protest.

We agree that the Commission has jurisdiction under Section 2754 to grant, with or without a hearing, a temporary certificate. However, the novelty, importance and complexity of the issues in this case have made it an inappropriate proceeding in which to exercise such jurisdiction.

We would approve and adopt that part of the examiner's proposed report which is covered by the headings "The Merits of the Applications and Protest" and "Federal-State Jurisdiction."

San Francisco, California

May 3, 1966

*Frederick B. Holoboff*  
FREDERICK B. HOLOBOFF Commissioner  
*George G. Grover*  
GEORGE G. GROVER Commissioner

CONCURRING OPINION

BENNETT, WILLIAM M., Concurring Opinion:

Today's Opinion and Order may come as a mild surprise to the parties affected but at long last the Commission has moved.

I concur and wholeheartedly with today's Opinion but I criticize, and most strongly, the inexcusable delay in making a judgment on a simple economic matter. The Commission now finds that public convenience and necessity require the granting of a certificate. This public need was as true on the day the application was filed as it is now and for the ridiculously long period of time the Commission has taken to render today's brief Opinion just so long has the public been denied the efficient and superior services of PSA to and from the points in question.

Regulation as Governor Hiram Johnson intended it to function was meant to be more responsive to the public need than is the manner in which this case has been handled. By the procrastination which marks this case applicants and parties to this proceeding were deprived of a decision one way or another; the public is denied sorely needed air service; a community is beyond its understanding at the ponderous plodding way in which a regulatory body moves and the Commission is building ever more its growing reputation as a body of indecision and delay.

The benefits of improved air service involve not only San Jose but those California cities proximate thereto such as Gilroy and Salinas and the Monterey coastal area, Santa Cruz and all of those communities bordering on the Santa Clara Valley. These are the people, Californians, from whom has been withheld by the inaction of this Commission air service which can be nothing but a benefit to the communities affected. And this Commission exists to be responsive to the public need and when as here decisions are forthcoming after so long a time then that public need has been neglected.

The matter before us involves a corporate judgment by

PSA to risk capital and equipment to develop air service between San Jose and Los Angeles. This is a decision not entirely free from risk although I am confident that this route will be well travelled. Nonetheless if PSA wishes to invest its capital in this route this is a matter which requires no great consideration by this Commission by way of authorization. And when it is remembered that the traffic between these two points will undoubtedly be heavy and that the public is clamoring for such service then the decision becomes relatively simple and because of its simplicity one which should have been quickly made.

So far as I am concerned the growth of California and the increasing requirement for intercity traffic makes additional air service as here one of the bright spots of the future. The railroad corporations of California have abandoned all pretense of carrying passengers by train. And thus an increasing burden is cast upon the air carrier. PSA is to be commended and to be encouraged for meeting the public need of this area.

And as an aside I would like to see the same type of service not only between the points here in question but as well between coastal cities such as San Francisco and Los Angeles to other cities in the Valley such as Fresno and so on.

Speaking as a Commissioner and I suppose a traveller as well and relying upon the record I take note of the fact that PSA operates an efficient commuter service without peer. The travelling public is too often met with unspeakable frustrations of other carriers when effort is made on short time to obtain a ticket from other airlines. It is almost a test beyond endurance to stand in the presence of a ticket agent and beneath the inexorable movement of a minute hand while such agent proceeds to write a commute ticket the complexity and length of which is exceeded only by the form of the typical insurance policy. And this endless ticket writing ritual must be endured as a preliminary to the quarter mile dash from counter to the next intervening counter where more airline ritual must be observed. However, the

last barrier when crossed permits entry to the plane.

By approval of this request, I think I speak for the grateful air traveller who purchases his PSA ticket with a sense of delight at the speed and simplicity of the transaction and the fleeting time it takes from ticket counter to a seat on the plane and thence off to the smog laden skies of Los Angeles or in reverse to the fog enshrouded towers of San Francisco. These benefits of PSA are now and should be extended to those persons travelling between San Jose and Los Angeles.

I am going out of my way to suggest to those other carriers who seek to give competition to PSA - and let us hope that they do - that more than anything else it is the simplicity and efficiency that awaits the traveller on PSA which attracts him to it. And by way of contrast I do not think it unfair to state that at times entry to other carriers through the laborious process of ticketing and so on seems at times for the weary American traveller even more difficult than entry to such forbidden places as Cuba and China. The airline carriers should get away from the notion that they are performing the function of the State Department in issuing a passport or visa - they are simply issuing a piece of paper whereby a person is authorized to travel. With this concept in mind perhaps other carriers could find a way to make the ticket process somewhat less complex than it is.

The folklore of America has told us repeatedly that that rugged individualist who sought to improve his economic lot in life by devising a superior device for the extermination of rodents - that is a better mouse trap - soon rose to a position

of affluence at the end of the 19th Century. The air carriers of California who are in competition with PSA here and in other routes need simply build a better air service and Californians will be the better off if they do.



**WILLIAM M. BENNETT**  
**Commissioner**

Dated: May 3, 1966

San Francisco, California