

**ORIGINAL**Decision No. 71446

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
 INTER-CITY AIRWAYS, INC., for )  
 certificate of public convenience )  
 and necessity. )

Application No. 48100  
 (Filed December 6, 1965)  
 (Amended January 6, 1966)

Joseph S. Bianchi and L. Dale Gasteiser,  
 for applicant.  
Stephen J. Slade, for Los Angeles Airways,  
 Incorporated, protestant.  
Russell & Schureman by R. Y. Schureman and  
Robert W. Hancock, for ABC Airlines;  
R. W. Russell by K. D. Walpert, for  
 City of Los Angeles, interested parties.  
Edward C. Crawford and George L. Hunt,  
 for the Commission staff.

O P I N I O N

By this application Inter-City Airways, Inc. seeks a certificate of public convenience and necessity to operate as a passenger air carrier as that term is defined in Section 2741 of the Public Utilities Code between various points in the Los Angeles area and Los Angeles International Airport. Public hearing was held before Examiner Gravelle at Los Angeles on July 20, 1966.

Applicant has been operating since November 1964. Its aircraft have been two passenger Bell helicopters. The future plans of applicant do not include the use of larger equipment inasmuch as the heliports used have a limitation of 3,000 pounds on the gross weight of the aircraft.

A balance sheet prepared from applicant's records by a member of the Commission staff indicates that as of May 31, 1966 applicant had an accumulated loss of \$22,803.00. It had capital stock outstanding in the sum of \$22,500.00. In its largest month of operation, March 1965, applicant transported 148 passengers.

In its smallest month, January 1966, 32 passengers. It has historically served 16 terminal points and both its past as well as its proposed operation is an "on call" service with no schedules, although fares are charged on a per passenger basis. Applicant's President testified that he believed it would take another \$50,000.00 by way of investment, and until June of 1968, before applicant would be able to operate without a loss.

At the conclusion of the hearing, protestant Los Angeles Airways, Incorporated moved for dismissal of the application on various grounds, one of which was lack of jurisdiction. Protestant argues that applicant does not fall within Chapter 4 of Part 2 of Division 1 of the Public Utilities Code, in that it is not a passenger air carrier nor a common carrier. Protestant relies principally upon Section 2753 of the Public Utilities Code which specifically envisions the institution of minimum schedules by a certificated passenger air carrier and upon Assembly Concurrent Resolution No. 5 adopted by the Legislature of the State of California at its extraordinary session of 1965. Said resolution amplifies the intent of the Legislature in enacting Sections 2740 - 2765 of the Public Utilities Code with particular reference to the exclusion of those "operators who operate on an occasional or contract basis."

It is clear that applicant has been conducting and contemplates continuing operations between terminal points wholly within this State. We are mindful of Coast Rotors Co., 59 Cal. P.U.C. 8, a matter decided prior to the enactment of Chapter 4 of Part 2 of Division 1 of the Public Utilities Code and in which an operator similar to applicant was found to be a transportation company and a common carrier. However, it is clear from Section 2753 and Assembly Concurrent Resolution No. 5 that certain operations were to be excluded from the certification provision of Chapter 4.

We find that applicant's operations do not now fall within the provision of the certification requirement of Sections 2740 - 2765 of the Public Utilities Code. When and if applicant's operations become regular between terminal points wholly within this State, applicant will be required to secure a certificate of public convenience and necessity from this Commission.

ORDER

IT IS ORDERED that Application No. 48100 of Inter-City Airways, Inc. for a certificate of public convenience and necessity is denied.

The effective date of this order shall be the date hereof.

Dated at San Francisco, California, this 18<sup>th</sup> day of October, 1966.

[Signature]  
President

[Signature]

[Signature]

[Signature]  
Commissioners

In my view, applicant is a common carrier and, moreover, under the provisions of Chapter 4, may not operate without a certificate from this Commission. I do not believe that either Section 2753 nor Assembly Concurrent Resolution No. 5 exempts this type of on-call operation; the reference in Section 2753 to "minimum schedules" does not mean that, without a definite schedule, a passenger air carrier is not subject to our regulation. In any event, the question is not free from doubt, and it is to be hoped that the Legislature will act to clarify it at the earliest opportunity.  
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Louis H. Throver