

**ORIGINAL**

Decision No. 73172

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application  
of AIR CALIFORNIA for a certificate  
of public convenience and necessity.

Application No. 49522  
(Filed July 6, 1967)

Application of PACIFIC SOUTHWEST  
AIRLINES for a certificate of  
public convenience and necessity  
for route certification in either  
direction between Orange County  
Airport and San Jose Airport/Oakland  
Airport.

Application No. 49564  
(Filed July 31, 1967)  
(Amended July 31, 1967)

(Amended Title)

- J. Thomas Talbot and Brownell Merrell, Jr., of Gates, Talbot, Morris and Merrell, for Air California, applicant in Application No. 49522 and interested party in Application No. 49564.
- Laurence L. Pillsbury, for Pacific Southwest Airlines, applicant in Application No. 49564 and interested party in Application No. 49522.
- Lloyd S. Macdonald, for SFO Helicopter Airlines;
- J. Kerwin Rooney and John E. Nolan, for Port of Oakland, Board of Port Commissioners of the City of Oakland;
- R. Barry Churton, for Pacific Air Lines, Inc., interested parties.
- Clyde T. Neary and Milton J. DeBarr, for the Commission staff.

O P I N I O N

By these applications, as amended, Air California (AC) and Pacific Southwest Airlines (PSA) seek authority to operate as a passenger air carrier between Orange County Airport, on the one hand, and San Jose Municipal Airport and Oakland International Airport, on the other hand. AC also seeks local authority between the points San Jose Municipal Airport, Oakland International Airport and San Francisco International Airport; PSA does not seek such local authority. The proposed one-way fares are \$14.85 plus tax for both carriers utilizing Lockheed Electra L-188 aircraft and \$5.00 plus tax

for AC on the short haul traffic between each of the three Bay Area points. PSA also seeks authorization of the use of Boeing B-727-100 and B-727-200 aircraft as well as Douglas DC-9-30 aircraft.

Public hearing was held before Examiner Gravelle at San Francisco on July 27, 28 and 31, 1967 and August 1, 1967. The matters were submitted on the latter date.

These applications have been consolidated for hearing at the request of PSA, although that applicant did not file its original application until hearing dates had been set for the application of AC. These same carriers have been involved as applicant and protestant in another proceeding before this Commission involving service between Orange County Airport and San Francisco International Airport. (Application No. 49001)

Without setting forth the details of the evidence presented by each applicant as to its business experience in air operations or insurance coverage, this record discloses each applicant to be qualified with respect to those considerations. The financial stability of PSA is sound while that of AC, though healthy, must be viewed with consideration that it has been in operation for less than a year and still has the burden of some of the initial \$600,000 of pre-commencement expenditures.

Testimony in this proceeding indicates that Boeing B-727 type aircraft may not yet be physically operated to or from Orange County Airport. PSA at this time operates one Douglas DC-9-30 aircraft in its fleet. Though this is a type which would be suitable for the proposed service, PSA has not indicated that it would or could be used exclusively on the routes sought here. Realistically, therefore, the service proposed by these applications should be performed in Lockheed Electra L-188 equipment. PSA now

owns six of this type aircraft, while AC had three at the time of hearing and was expecting a fourth by August 18, 1967, to be operationally available by August 21, 1967. PSA operates its Electras throughout its entire system which includes San Diego, Los Angeles, Burbank, San Jose, San Francisco, Oakland and Sacramento. AC now flies only between Orange County and San Francisco.

The proposed initial schedule of PSA calls for three round trips daily, two to Oakland by way of San Jose and one direct to San Jose from Orange County. No specific or tentative schedule was presented by PSA showing the time of day these flights would be offered.

The initial AC schedule, Exhibit No. 6, shows the proposed Oakland-San Jose service integrated into the existing Orange County-San Francisco service. Monday through Thursday eight round trips would be offered, Orange County-San Francisco, the 0700 southbound flight making a stop at San Jose, with the last direct flight daily at 1930. On Fridays one additional round trip is proposed departing at 2015 northbound and 2115 southbound. Oakland would receive three northbound flights from Orange County, the first two of which would make a stop at San Jose; the times of departure are 0730, 0930 and 1900. San Jose would also have one direct flight northbound departing Orange County at 1700. Southbound, Exhibit No. 6 shows Oakland departures at 0700, 1145 and 1700, with the middle flight stopping at San Jose and one additional direct flight from San Jose departing at 1830. The Saturday schedule offers four round trips Orange County-San Francisco; one Orange County-Oakland; two Orange County-San Jose-Oakland; and one Orange County-San Jose-San Francisco; while the Sunday schedule is seven round trips Orange County-San Francisco; one Orange County-San Jose;

one Orange County-Oakland; and two Orange County-San Jose-Oakland. The scheduled times on Saturday range between 0700 and 1930 and on Sunday between 0930 and 2115. Under the AC proposal this initial schedule would be followed for the first two months of operation, or until some market penetration had been achieved; it would then be increased to direct service between Orange County and either San Jose or Oakland on a three or four round-trip-a-day basis and ten between Orange County and San Francisco.

These proceedings did not bring forth the abundance of supporting witnesses that have been heard in other passenger air carrier matters; one witness from the Port of Oakland testified in support of AC, while a representative of Food Machinery Corporation from San Jose testified in support of the inauguration of some such service and the need therefor without choosing between either applicant. He did state that most of his company's Orange County air travelers were now utilizing the service of AC. Exhibits Nos. 5 and 8 are resolutions addressed to the Commission, urging support of AC. They come from the Orange County Board of Supervisors, Alameda County Board of Supervisors, City Council of the City of Santa Ana and City Council of the City of La Palma.

Exhibit No. 4 is a market study prepared by James E. Thompson, an economist retained by AC. Its objectives include a determination of the size of the three Bay Area markets, growth trends and probable penetration by AC. Additionally, AC relied upon studies that were made for and presented in PSA's Application No. 49001 which indicated that passengers surveyed, during two separate periods, flying AC planes, were either destined for or coming from points in either Santa Clara County, Alameda-Contra Costa Counties. These points totaled 17 percent of the persons responding

to the survey. Richard A. Dick, the executive vice president of AC who has been responsible, among other things, for internal traffic forecasts for budgeting purposes, presented Exhibit No. 3, which indicates his market projection from September 1967 through June 1968. He employed an 8 to 10 percent diversion from persons now going to San Francisco and further calculated a growth from persons now using other carriers at San Jose or Oakland to Los Angeles of some 10,000-11,000 for September 1967. His prior projections have proved to be accurate as they match quite closely with the traffic experienced by AC. Exhibit No. 4, the Thompson report, at Table 5 indicates a total Orange County-Bay Area market of 510,000 for 1967 and 585,000 for 1968. The breakdown is as follows:

	<u>1967</u>	<u>1968</u>
San Francisco	291,000	334,000
Oakland	137,000	157,000
San Jose	82,000	94,000

PSA presented its market analysis utilizing its "self diversion" theory on the basis that 12 percent of its present San Jose-Los Angeles traffic would prefer to go to Orange County and 9 percent of its Oakland traffic would do likewise. These percentages were arrived at by a study of the accounting records of PSA and interviews aboard PSA aircraft. However no records of the interviews were kept and concerning which we are unable therefore to determine the precise questions asked, the number of persons responding or even when the surveys were taken. The study of the accounting records by way of where tickets were sold or where credit card holders or commercial accounts reside is useful but insufficient to present an accurate picture of the desire of a particular passenger or body of passengers to avail themselves of a different point of origin or departure.

Nevertheless, inasmuch as these proceedings present a situation where each applicant seeks authority to serve a point or points now served by the other applicant and no service is now provided between any of the points, we can safely conclude that some passengers now utilizing the existing service to or from Los Angeles or San Francisco would avail themselves of the proposed service, if offered. Consequently, if only AC were to be certificated then PSA would lose some traffic from its San Jose and Oakland to Los Angeles routes; if only PSA were to be certificated AC would lose some traffic from its only route. If both are certificated, the traffic would be divided about equally between the two carriers.

We find the market forecasts presented by AC to be the most reliable set forth in this record. Exhibit No. 7 presented by Robert Soulerin, the controller of AC, indicates a need to transport some 45,662 passengers monthly to cover total operating expenses over the three routes; his testimony also reflects the advantages of adding the two new points to the AC system, thereby allowing a larger base for the spreading of costs by way of increased flights and flight hours. The projection of Mr. Dick in Exhibit No. 3 indicates some 46,000 total passengers in September 1967 growing to 59,000 in June 1968. If the two carriers were to compete in this market dividing traffic evenly, which we find to be a reasonable assumption, in June of 1968 AC would transport some 49,000 total passengers, barely enough to meet total operating costs and those costs would not be equalled until at least April 1968.

We find that a need for the service proposed here presently exists but that the market is insufficient to allow both applicants to economically provide that service.

Counsel for PSA made four salient points in his closing argument. First, that PSA would be adversely affected by the certification of AC as the only carrier over these routes. Second, that California experience has shown competition among air carriers to be beneficial to the growth of the air market due to better scheduling, more promotion and other such factors, including the good reputation enjoyed by PSA. He warned of the damper which would be placed on the incentive of AC if it were not exposed to competition. Third, that if only one carrier is allowed to fly the route it should be PSA since its size both financially and with regard to service and equipment allows it more flexibility. PSA could more readily absorb losses if the markets fail or more readily provide additional service if that is called for. He warned the Commission that if AC is certificated and fails the public may lose three routes instead of one or two. Fourth, he urged the Commission to ignore the urgency which AC set forth for the grant of authority here. The fact that AC has made equipment and employment commitments in advance of securing operating authority and may therefore lose some \$2,000 daily each day after September 1, 1967 that it does not operate these routes is a problem which it must solve itself.

The arguments advanced by counsel for PSA do not deal with the more basic issues with which the Commission is here confronted. Service by any carrier over these routes would adversely affect both AC and PSA since they would lose traffic to the new service. Service by PSA, as we have observed, or by both PSA and AC would most adversely affect AC not only as to the proposed routes, but also as to its existing route. The detriment, if any, to PSA by way of AC certification only can be absorbed by that

applicant. AC is pioneering in a new segment of the Southern California market, i.e., traffic susceptible of travel through Orange County Airport, is developing strong support on its present route, and is seeking to solidify its position through the natural extension of its market to San Jose and Oakland. We would be doing a disservice to the public if at this early stage of AC's development of its market (with Orange County Airport as its hub) were we to certificate competition at this time. In this instance we have a formidable competitor with great financial resources, and we would be not only over-certificating but also over-burdening the fledgling AC. ✓

Here, no question as to the quality of the service of either AC or PSA has been raised; we note that each has an excellent reputation. Since the service proposed will open new routes not now benefiting from air operation the market forecasts are only that--forecasts. If, in the future, the actual market is such that it will support another carrier or would be stimulated by the addition of another carrier or if the service of AC should deteriorate we believe applications for competitive certifications will materialize.

At the present the need for AC to expand its route is greater than the need of PSA to extend to a new intrastate route. We note in passing that PSA is also seeking certification by the Civil Aeronautics Board for interstate service.

In granting authority to AC and precluding the service sought by PSA at this time, we find that the public is receiving the maximum benefit under the circumstances. It is the public interest with which we must be primarily concerned, despite the fact that applicant PSA may be denied an expansion of its service at this time.



AC has not presented on this record sufficient evidence to authorize local passenger air carrier service between San Jose, San Francisco and Oakland. That portion of its application will be denied.

Findings

1. There presently exists a demand and need for passenger air carrier service between Orange County Airport, on the one hand, and Oakland International Airport and San Jose Municipal Airport, on the other hand, as reflected by Air California Exhibits Nos. 3 and 4.

2. The size of the presently existing passenger air carrier market between the above-named points has not been proved adequate to economically support service by both Air California and Pacific Southwest Airlines.

3. The certification of Pacific Southwest Airlines between the above-named points would have a serious detrimental effect upon the financial stability of Air California.

4. The granting of a certificate of public convenience and necessity to Air California between the above-named points will benefit its overall operation by widening service from its base. This is in the public interest.

5. Pacific Southwest Airlines has not established a need for its service between Orange County Airport and San Jose Municipal Airport/Oakland International Airport.

6. Air California possesses the requisite business experience in the field of air operations and maintains in effect the minimum insurance coverage sufficient for a grant of a certificate of public convenience and necessity as a passenger air carrier.

7. The financial stability of Air California is adequate to provide service between the points sought and herein granted.

8. Air California has not established a need for passenger air carrier service between the points of San Francisco International Airport-San Jose Municipal Airport-Oakland International Airport.

9. Air California can economically provide adequate service to the points Orange County Airport-San Jose Municipal Airport-Oakland International Airport in Lockheed Electra L-188 aircraft at a one-way fare of \$14.85 plus tax, flying a minimum schedule as set forth in Exhibit No. 3.

10. Public convenience and necessity require the granting of a certificate as a passenger air carrier between Orange County Airport and San Jose Municipal Airport/Oakland International Airport to applicant Air California.

Conclusions

Based upon the foregoing findings of fact and the evidence herein the Commission concludes that the application of Pacific Southwest Airlines should be denied, that the application of Air California for certification between San Francisco International Airport-Oakland International Airport and San Jose Municipal Airport should be denied and that the application of Air California between Orange County Airport, on the one hand, and San Jose Municipal Airport and Oakland International Airport, on the other hand, should be granted.

Air California 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.

In the interest of simplicity we will herein restate the entire operating authority of Air California and in an effort to alleviate financial loss to Air California, will make this decision effective immediately and shorten the required tariff filing notice to five days.

O R D E R

IT IS ORDERED that:

1. A certificate of public convenience and necessity is granted to Air California, a corporation, authorizing it to operate as a passenger air carrier as defined in Section 2741 of the Public Utilities Code, as set forth in Appendix A, attached hereto and hereby made a part hereof. Said certificate shall not preclude transportation of persons between the points San Francisco International Airport-Oakland International Airport-San Jose Municipal Airport so long as such persons are passengers either originating from one of said points and destined for Orange County Airport or originating from Orange County Airport and destined for one of those points.

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

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 tariffs 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. Application No. 49564 of Pacific Southwest Airlines for a certificate of public convenience and necessity is denied.

5. That portion of Application No. 49522 of Air California seeking authority as a passenger air carrier to transport local traffic between San Francisco International Airport-Oakland International Airport-San Jose Municipal Airport at a one-way fare of \$5.00 plus tax is denied.

6. The certificate of public convenience and necessity granted in paragraph 1 of this order shall supersede the certificate of public convenience and necessity granted by Decision No. 71310,

A. 49522, A. 49564 HJH

which certificate shall be revoked effective concurrently with the effective date of the tariff filings required by ordering paragraph 3 hereof.

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

Dated at San Francisco, California, this 10th day of OCTOBER, 1967.

I will file a dissent.  
Peter E. Mitchell

Jack P. Monnessey

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President  
William L. Bennett  
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 Auditor  
William Spence Jr.  
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 Commissioners

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APPENDIX A

AIR CALIFORNIA  
(a corporation)

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Air California, by the certificate of public convenience and necessity granted in the decision noted in the margin, is authorized to transport passengers in either direction in Lockheed L-188 (Electra) aircraft at a one-way fare of \$14.85 plus tax and with minimum schedules as set forth in Exhibits Nos. 3 and 6 in Application No. 49522:

Between Orange County Airport, on the one hand,  
and San Jose Municipal Airport, Oakland  
International Airport and San Francisco  
International Airport, on the other hand.

Issued by California Public Utilities Commission.

Decision No. 73172, Application No. 49522.

COMMISSIONER PETER E. MITCHELL DISSENTING:  
COMMISSIONER FRED P. MORRISSEY DISSENTING:

We would grant the applications of both Air California and Pacific Southwest Airlines to operate as passenger air carriers between Orange County on the one hand and San Jose Municipal Airport and Oakland International Airport on the other hand. Transportation in California has executed great strides since the day Juan Rodriquez Cabrillo first entered California waters by ship in 1542. Since that time the transportation industry has utilized covered wagons, buses, automobiles, railroads and airlines as a means of transportation of people and products within and without the state. California has seen its population double every 20 years since 1860. Population increases in California in recent years have averaged 1,500 persons per day. It is anticipated that by 1970 our population will be over 20,000,000.

California is one of the most urbanized states in the nation. The term megalopolis is used to describe the Bay Area complex from Sacramento to San Jose; similarly, the area from San Diego to Santa Barbara is also a megalopolis. There is no question at present that California will continue its rapid expansion in population. Within the Bay Area complex and the Southern California region, Santa Clara County and Orange County are witness to progressive statistics attesting to their rapid augmentation in population and commerce.

It is evident that the days of the covered wagon are behind us. The railroads have already indicated that they have no interest in passenger traffic. While buses and automobiles are available for passenger transportation, the time and effort involved in their use militate against them. The airlines make available to California residents swift and easy access to urban areas within and without the state. The

A. 49522 and A. 49534  
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California Public Utilities Commission should encourage, wherever possible, passenger air service between communities in this state.

Application No. 49522, filed by Air California, and Application No. 49534, by Pacific Southwest Airlines offer the communities located in Orange County, Santa Clara County and Alameda County an opportunity for better communication with their neighbors in the state. At the present time the communities located in Orange County are served by one passenger air carrier, namely, Air California. The residents of Santa Clara County have two major airlines operating from the San Jose Municipal Airport, Pacific Southwest Airlines and Pacific Air Lines, which serve California cities. Other communities in the State of California with less or equal population than Orange and Santa Clara Counties have several major airlines available to them. Sacramento County with population figures less than Santa Clara County, and San Diego County with population figures akin to Orange County, have numerous major airlines serving their residents.

The Legislature of this state in 1965, added Chapter 4 to Division 1 of the Public Utilities Code. The sections therein contain provisions for the certification and regulation of passenger air carriers in California by the Public Utilities Commission. Section 2753 sets forth the factors which the Legislature states the Commission shall take into consideration in awarding certificates to passenger air carriers.

"An applicant shall submit his written verified application to the commission. The application shall be in such form and contain such information and be accompanied by proof of service upon all passenger air carriers with which the proposed service is likely to compete and such other interested parties as the commission requires.



"In awarding certificates of public convenience and necessity pursuant to Section 2752, the commission shall take into consideration, among other things, the business experience of the particular passenger air carrier in the field of air operations, the financial stability of the carrier, the insurance coverage of the carrier, the type of aircraft which the carrier would employ, proposed routes and minimum schedules to be established, whether the carrier could economically give adequate service to the communities involved, the need for the service, and any other factors which may affect the public interest."

It is apparent from a review of the record compiled in these proceedings that Pacific Southwest Airlines more adequately meets the tests devised by the Legislature than Air California. The business experience of Pacific Southwest Airlines is evidenced by its continuously successful operations over a period of years. The financial stability of Pacific Southwest Airlines is reflected by a net income for the first six months of 1967, as \$2,195,000. (Transcript, page 429). Air California commenced flying operations January 16, 1967, and their approximate net loss as of June 30, 1967 is \$800,000. (Transcript, page 260). In addition, Pacific Southwest Airlines has more aircraft available and because of the aircraft maintenance program, which it operates itself, can achieve better utilization of its aircraft. Other factors, which the Legislature has designated as modifying conditions relating to adequate service to the communities involved, the need for the service and insurance coverage of the carriers, can be met by both carriers.

Thus, if we apply Section 2753 to the applications before us, strictly speaking, Pacific Southwest Airlines is the most qualified and should be authorized to operate between Orange County, San Jose and Oakland. Nonetheless, in view of the dynamic growth of this state in

population and economy, there is room for both Air California and Pacific Southwest Airlines to serve the route in question. Both these airlines should be certificated and allowed to serve the communities with a minimum schedule, which will alleviate any possibility of a financial loss to either airline. Such certification of both airlines will benefit not only the airlines themselves, but the communities and the residents located in these areas.

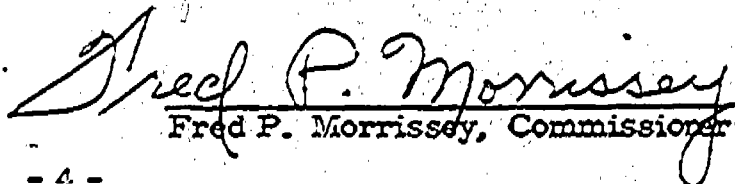
There can be no question that a simple examination of the present routes of Air California and Pacific Southwest Airlines show a capacity for integration of the requested authority in their present certificates. The points of service requested are generally within the area limits of operating authority of both carriers. Air California serves presently from Orange County to San Francisco, while Pacific Southwest Airlines flies between Sacramento to the north and San Diego to the south.

Modern transportation should be supported and encouraged in all segments of its operation. The Legislature has recognized this in setting out standards in Section 2753, which the Commission must take into consideration. The certification requested in these applications is merely an adjunct to the routes both carriers are presently serving. Pacific Southwest Airlines and Air California should be authorized to continue and expand the excellent service they are presently providing to the people of the State of California.

San Francisco, California

October 11, 1967

  
Peter E. Mitchell, President

  
Fred P. Morrissey, Commissioner