

ORIGINAL

Decision No. 74271

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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

Application No. 49001

John W. McInnis, for applicant.
Brownell Merrill, Jr., for Air California;
Barry Churton, for Pacific Air Lines, protestants.
Tully H. Seymour, for the City of Newport Beach; Alvin S. Cox, for Air Traffic Safety Committee, interested parties.
Sergius M. Boikan, Counsel, for the Commission staff.

O P I N I O N

By Decision No. 73487, dated December 19, 1967, the Commission granted to Pacific Southwest Airlines (PSA) a certificate of public convenience and necessity as a passenger air carrier between San Diego, Orange County Airport, San Francisco International Airport and Sacramento. By Decision No. 73737, dated February 14, 1968, rehearing was granted on Decision No. 73487 limited to oral argument, which was held before the Commission en banc on March 18, 1968, at San Francisco.

Argument was directed primarily towards two segments of the certificate granted by Decision No. 73487. Air California (AC), which presently operates between Orange County and San Francisco pursuant to authority of this Commission, contends that the record does not establish a need for an additional service between said points. A similar contention was made by Pacific Air Lines (PAL), an interstate carrier, as to the proposed service between San Francisco and Sacramento. Because of the noise created by

aircraft using the Orange County Airport, the interested parties requested the Commission to declare a moratorium on the certification of carriers in this area pending the results of a contemplated study.

Although AC concedes that it may in the future have to compete with PSA or some carrier or carriers between Orange County and San Francisco, it urges that the need for certification of PSA at this time is not supported by the record and will only dilute the existing traffic, which is not shown to be sufficient to support both AC and PSA service between Orange County and San Francisco. AC contends that the certification of PSA now would divert traffic to the point of destroying AC, a fledgling carrier. The staff believes that PSA certification is unwarranted in that having the burden to do so it did not demonstrate that the size and strength of the Orange County-San Francisco market would support its entry. The only evidence in the nature of a traffic study on the volume of the Orange County-San Francisco market was supplied by AC. No further record was made on rehearing, which was limited to oral argument based on the existing record.

The issue on this Orange County phase, therefore, is simply whether applicant PSA sustained its burden of proof on the record that public convenience and necessity require its certification for this route in addition to its other routes, granted and pending.

PSA Exhibit 10 was prepared for the purpose of showing that at the outset PSA would generate its own market in the form of self-diverted traffic from its Los Angeles-San Francisco operation. According to the exhibit an average of 15,000 passengers a month would prefer to use PSA's proposed service rather than its existing Los Angeles-San Francisco service. In addition to meeting the transportation needs of this segment of the traveling public, PSA

A. 49001 bem a

argues that it would also relieve the pressure now being exerted upon its Los Angeles International Airport operation, particularly during the peak periods. The fact that AC is presently performing some of this relief to LAX and that some of whom PSA considered its passengers may have switched loyalty to AC was not covered by the evidence or the argument.

PSA Exhibit 10 was predicated upon a review of PSA commercial accounts, credit cards and in-flight interviews. It was received in evidence over the objection of AC that the underlying material from which it was prepared was not made available. The in-flight interviews and the questions asked were unavailable, nor was the precise timing of any of the material indicated. As a consequence, the record is defective to the extent that it is not possible to determine the validity of the exhibit. Cross-examination of the PSA witness, who lacked supporting material, disclosed the absence of important considerations, such as when the interviews were conducted and under what circumstances, the preference of credit card holders with respect to the use of airports and the reasons therefor. Cross-examination established that the PSA witness could not indicate the actual use of airports by employee-holders of commercial air accounts with respect to company locations.

AC introduced Exhibit 35 through a management consultant which indicates an annual Orange County-San Francisco market of 398,000 in 1967 with a possible high of 752,000 in 1970. Based upon actual figures for January through April and estimated figures for May through December, AC expected to transport 323,676 passengers for the year 1967. According to the controller of AC, fifty percent of this traffic would be diverted to PSA if PSA were certificated, and in his opinion it would not be long before AC would be forced out of

A. 49001 bem a

business if the certification eventuated now. AC's study gave no consideration to the annual traffic growth of the Los Angeles (including Orange County)-San Francisco market, which is expected by PSA to reach 12.6 million by 1975 (Exhibit 12). However, in a contested application involving competitive certification of passenger air carriers under our Act, it is incumbent upon the applicant to establish the size of the market and the expected division of traffic between carriers in the event the requested authority is granted.

By Decision No. 74114 dated May 14, 1968, in Application No. 49512, a contested matter, the Commission authorized PSA to operate between Ontario and San Francisco, but denied it authority to operate between San Francisco and Sacramento. Said recent decision is substantially determinative of the San Francisco-Sacramento portion of the instant application and as a practical matter should determine that issue for the present.

The carrier operating between San Diego and Orange County is Bonanza (now a part of Air West), an interstate carrier. Except for a statement of position, Bonanza (headquartered in Arizona) took no part in these proceedings. The record however does not establish that an additional air carrier is presently needed in the public interest to provide additional air service for this short and sparsely traveled route. Nor did it appear that PSA would be interested in this minor route without a certificate beyond to San Francisco. Apparently its principal objective was to be able to send its aircraft to San Diego, where its maintenance facilities are located, on a business rather than on a dead-head basis.

Findings of Fact

1. PSA has failed to show that public convenience and necessity require its proposed service as an additional passenger air carrier between Orange County Airport and San Francisco International Airport.

A. 49001 bem a

2. PSA has failed to establish the size of the Orange County Airport-San Francisco International Airport market for passenger air carrier service; or that another passenger air carrier, if certificated to that service at this time, would not dilute the traffic and thereby bring serious financial difficulties to the presently certificated carrier.

3. The Commission has currently considered the application of PSA in a similarly contested matter (Decision No. 74114, dated May 14, 1968 in Application No. 49512) for the San Francisco International Airport-Sacramento Municipal Airport route. In that matter it was found that PSA did not establish that there was enough traffic, actual or potential, to support such a service. There is no evidence in this record to cause the Commission to alter its prior decision to deny PSA entry into the San Francisco International Airport-Sacramento Municipal Airport operations.

4. PSA has failed to establish that the air travel market between San Diego and Orange County Airport presently requires an additional carrier. Consequently, the Commission finds that PSA has failed to establish that public convenience and necessity require that PSA be certificated to serve between San Diego and Orange County.

Since applicant with the burden of proof has failed to establish that public convenience and necessity require its service as proposed, the application should be denied without prejudice.

A. 49001 bem a

ORDER

IT IS ORDERED that Decision No. 73487 is set aside and that Application No. 49001 is denied without prejudice.

The effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California, this 19th day of JUNE, 1968.

President

William M. Bennett

Commissioners

Commissioners

Commissioner William M. Bennett, being necessarily absent, did not participate in the disposition of this proceeding.

*I will file a dissent
Peter E. Mitchell*

*I will file a separate
concurring opinion.*

Fred P. Monahan

COMMISSIONER FRED P. MORRISSEY CONCURRING:

I concur in the decision to set aside Decision No. 73487 and to deny without prejudice Application No. 49001. The only alternative presented to the Commission after the oral argument on March 18, 1968 was an order recommending reopening the matter of certification of PSA between San Francisco and Orange County. Unfortunately the San Francisco - Sacramento and San Diego - Orange County segments apparently would be left in limbo.

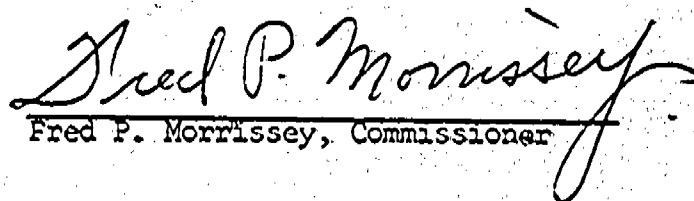
More important, however, are the basic issues before this Commission injected by PSA's application to compete with Air California over the Orange County - San Francisco segment. The questions presented by that application are, first, how long and under what circumstances can this Commission shelter a financially-insecure airline from competition, and, second, what showing must the applicant-competitor make to convince this Commission to remove the shelter and provide the benefits of a competing service to the people of California.

The guiding principle in regulation is to serve the public interest, i.e., to offer the public the best service available at reasonable cost. Past experience should have taught us that in the airline business, competition is a strong factor in the promotion of good service. At the same time, however, we recognize that in the field of commercial aviation some consideration should be given to the new airline that has expended large sums of money to pioneer a service, to purchase its initial planes, and yet is still barely making its way.

Thus the answer to the first question is really dependent upon the answer to the second. Taking into consideration the rationale in the previous paragraph, the removal of the shelter depends upon the applicant-competitor proving three things to the

Commission. First, it must prove that the market can support two airlines; second, it must show that the novice air carrier would not be financially ruined by its entry into the market; third, it must show that the public will be better served by the competition.

It is clear that my colleagues have not been convinced following the oral argument that PSA has made its case. I strongly believe in the benefits of competition and trust that the applicant will accept the challenge to provide the necessary prerequisites to certification. The required evidence was essentially outlined by staff counsel in oral argument where he described four steps for applicant in his proof of public convenience and necessity under the existing situation. These include an estimate of total traffic in the market, the anticipated division of this traffic, the resulting assignment of revenues and expenses, and finally a determination of the financial results based on this evidence. Without adequate supporting evidence of this nature, this Commission cannot grant competitive air rights.


Fred P. Morrissey, Commissioner

San Francisco, California

June 19, 1968

COMMISSIONER PETER E. MITCHELL DISSENTING:

I would support the original Decision No. 73487, dated December 19, 1967, Application No. 49001, authorizing Pacific Southwest Airlines to fly between San Diego, Orange County, San Francisco, and Sacramento. In lieu thereof, I would be in favor of the recommendation of the assigned Commissioner (in the rehearing) to reopen the matter for further hearings to receive updated evidence.

Considering the long delays involved in these hearings and the changed status of the parties, I can only suggest that Pacific Southwest Airlines consider filing a new application with current data for the same route. This, of course, is contingent upon Pacific Southwest Airlines' continued interest in providing such service.


Peter E. Mitchell, President