

Decision No. 74512

**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Valley Airlines, Inc. )  
to operate passenger and cargo air )  
carrier service by and between San )  
Jose, California and other points )  
noted in this application; to estab- )  
lish fares; to establish times of )  
operations; to establish frequency )  
of service. )

Application No. 50107  
(Filed March 22, 1968)

Leander Laurel James; James H. Stanhope; John R. Roden,  
Aviation Advisory Service; for applicant.  
Thatcher, Jones, Casey & Ball, by J. F. Thatcher, for  
Skymark Airlines, Inc.; Lloyd MacDonald and Kenneth  
C. Nagel, for San Francisco-Oakland Helicopter  
Airlines; protestants.  
R. E. Costello, for Air West, Inc., interested party.  
Janice E. Kerr, Counsel, and Robert W. Hannam, for  
the Commission staff.

O P I N I O N

By this application, as amended, Valley Airlines, Inc., requests a certificate of public convenience and necessity to operate as a passenger air carrier over two routes. Route I is from San Jose to Stockton via Livermore and Oakland and return via Oakland and Livermore. Route II is between San Jose and Fresno with a stop at Salinas in each direction. Applicant also requests authority to transport air cargo. Since no operating authority from this Commission is required to commence an intrastate air cargo service within California, only the request for a passenger air carrier certificate will be considered herein.

Public hearing was held before Examiner Mooney in San Francisco on May 1, 3 and 8, 1968. The matter was submitted on the latter date.

Applicant was incorporated August 4, 1967, and holds Operating Certificate No. 7WE-162 issued by the Federal Aviation Agency

on November 21, 1967. The operating specifications of said certificate, as amended, authorize applicant to conduct air-taxi operations as a commercial operator utilizing single- or multi-engine, passenger and cargo aircraft of 12,500 pounds or less maximum certified takeoff weight. The authority includes both day and night operations in both classes of aircraft and instrument flight conditions (IFR) as well as visual flight conditions (VFR) in the multi-engine equipment.

Applicant has been operating a charter, air-taxi service at the San Jose Municipal Airport since December 1967, with the following leased equipment: Aero Commander, Model 560-A, 7 place, multi-engine; Piper, Model PA-23, 5 place, multi-engine; and Piper, 4 place, single engine. It proposes initially to use the two multi-engine aircraft only for the certificated service, and will execute new leases for a six-month period for said equipment. It has made arrangements to have an additional 7 place, multi-engine Aero Commander available for standby service on an hourly lease arrangement. Said aircraft will be equipped for both visual and instrument flight procedures and will be operated by a pilot only. A copilot will be furnished in accordance with federal regulations when certain instrument flight procedures are required due to weather conditions. No additional equipment is required to commence the proposed scheduled service. Multi-engine equipment will be used exclusively, and larger aircraft will be phased into the operation as passenger load factors warrant.

Applicant will provide insurance coverage pursuant to General Order No. 120-A. In this connection it has certificates of insurance on file with the Commission for all of the equipment it now has under lease.

The application was amended at the hearing on May 8, 1968 to provide that no passengers will be ticketed between Oakland and San Jose.

Applicant's Articles of Incorporation authorize the issuance of 2,000 shares of stock with a par value of \$100 per share. Applicant obtained a permit from the Division of Corporations to sell 169 shares. Of this number, 165 shares have been sold to various directors and four shares remain unsold. The stated par value of \$100 was paid for each share. No promotional stock was issued. The Board of Directors has approved an application to the Division of Corporations for authority to issue and sell 500 additional shares at the stated par value for a total of \$50,000 and, in addition thereto, has authorized the officers of the corporation to obtain an additional \$50,000 by loan should additional capital be required. All of said additional financing, if needed, will be obtained from the Board of Directors to the extent possible.

The president, who is also the chairman of the board of directors, testified as follows: He has had substantial experience in the field of air operations; the other directors are businessmen pilots who have business interests in the areas proposed to be served; the proposed service is designed to serve the business commuter between the Bay Area hub and peripheral cities which do not have adequate air service available; except when a copilot is required the Piper and Aero Commander which applicant proposes to use initially have passenger seating capacities of 4 and 6, respectively; applicant is now in a solvent financial condition; it is estimated that applicant will experience a passenger load factor of 30 percent for the first month, ranging up to 40 percent during the first six months; based on its present financial position and the projected income from scheduled operations plus contract and charter operations with the equipment assigned to the scheduled service, it is expected that applicant, while not operating at a profit, nevertheless will maintain

its solvent position during said first six-month operating period; thereafter it is anticipated the passenger load factor will increase so as to average 55 percent for the first year which would provide a profitable operation; the forecasts are conservative, and it is believed that applicant will experience more favorable operating results.

The president further testified as follows: There has been a rapid increase in population and industrial growth in the areas proposed to be served; he has conferred with Chambers of Commerce and businesses in said areas while attempting to develop a charter market and has determined that there is a need for the proposed scheduled commuter service; two schedules will initially be provided over each route; one schedule will be in the early morning and the other in the afternoon to accommodate business commuters; if it appears a midday schedule is warranted, it will be added; the aircraft assigned to scheduled service would generally not be used for charter operations which will, for the most part, be performed with other aircraft; applicant's contract and charter operations have expanded beyond the break-even point; separate accounting procedures will be established for scheduled and charter operations; applicant has obtained authority to conduct operations at the San Jose Municipal Airport and has entered negotiations for authority to operate at the other airports which will be finalized when and if the sought certificate is granted.

The proposed fares, exclusive of taxes, are as follows

(Exhibit 6):

| <u>Between</u>       | <u>No. of<br/>Stops</u> | <u>Proposed<br/>Fares</u> |
|----------------------|-------------------------|---------------------------|
| San Jose - Livermore | 0                       | \$ 8.95                   |
| San Jose - Stockton  | 2                       | 12.95                     |
| Oakland - Livermore  | 0                       | 8.95                      |
| Oakland - Stockton   | 0                       | 9.85                      |
| Oakland - Salinas    | 2                       | 16.85                     |
| Stockton - Livermore | 1                       | 8.95                      |
| Stockton - Salinas   | 3                       | 22.85                     |
| San Jose - Salinas   | 0                       | 10.83                     |
| San Jose - Fresno    | 1                       | 21.85                     |
| Fresno - Salinas     | 0                       | 16.85                     |

Note: Applicant proposes a 10-ticket commute book at a 10 percent discount.

The president asserted that no other certificated passenger air carrier now provides service over the identical routes proffered herein. He stated that applicant would not overfly any of the intermediate points on the proposed routes unless adverse weather conditions made it impracticable to land. He agreed to a restriction in the certificate, if granted, that would prohibit applicant from linking points served in a manner not shown in the schedule.

Three witnesses testified in support of the application. A representative of a construction company in Fresno testified that there is no scheduled passenger air service between Fresno and Salinas; that members of his company travel frequently to Salinas and would use the proposed service between said points; that the Monterey Airport is a number of miles beyond Salinas and for this reason is not convenient to use; that the population of Fresno is growing rapidly; that numerous new plants are coming into the area; and that there is a need for the proposed service. A representative of a real estate firm in Stockton testified that his firm handles the sale and exchange of ranches in various areas, including the San Jose area;

that there is no direct scheduled air passenger service between Stockton and San Jose and Salinas; that members of his firm and prospective customers frequently travel between said points and would use the proposed service; and that the proposed service would benefit businessmen in the area. The Administrative Analyst for the San Jose Municipal Airport testified regarding the proposed service. The analyst explained that there has been a substantial increase in the potential market for air service from San Jose to all points and that applicant has, in accordance with established policy, deposited \$1,000 in cash with the airport which will be held for six months to assure that the new service will continue for a reasonable time. In addition, a number of letters from various cities, airports and businesses favoring the proposed service were appended to the application.

The application was protested by Skymark Airlines, Inc., and San Francisco-Oakland Helicopter Airlines, Inc. Both protestants opposed the proposal in the application to serve between San Jose and Oakland. The amendment to the application provides, as stated above, that no passengers will be ticketed between said points. In addition, Skymark pointed out that both it and Air West, Inc., provide service between San Jose and Fresno and asserted that both carriers have more than sufficient capacity to satisfy existing and foreseeable public need on this route. In this connection, applicant does not propose to offer direct service between San Jose and Fresno and, as heretofore stated, has agreed to a restriction in its certificate that would prohibit linking the two points with direct non-stop service. Furthermore, the question of the extent of Skymark's present authority is at issue in another proceeding before the Commission. San Francisco-Oakland Helicopter additionally objected

to the proposed service between Livermore, on the one hand, and Oakland or San Jose, on the other hand. It asserted that although it does not serve Livermore at this time, it may obtain authority from the Civil Aeronautics Board to serve said point, and that if this authority is obtained, the Commission may be in conflict with federal jurisdiction if it authorized applicant to serve Livermore. The specific federal regulation to which San Francisco-Oakland Helicopter referred is Section 298.21 (b)(3) of the CAB Economic Regulations which provides that an air taxi operator may not hold itself out to provide regular or reasonably regular service between points served by scheduled helicopter passenger service. As hereinabove pointed out, applicant holds an operating certificate as an air taxi. However, since the record herein shows that San Francisco-Oakland Helicopter is not now serving Livermore, we need not consider the question raised by San Francisco-Oakland Helicopter regarding jurisdiction, nor is it necessary to comment further on the competitive aspect of the protests.

Air West appeared as an interested party and not as a protestant. Since its position was hardly more than an assertion that it was opposed to the grant of additional authority between any California points which already receive service by one or more air carriers, we believe no further discussion is necessary.

Staff counsel and a representative of the Commission's Transportation Division actively participated in the development of the record.

#### Findings and Conclusions

Upon consideration of the evidence, the Commission finds that:

1. Applicant possesses the requisite experience in the field of air operations to provide the proposed service.

2. Applicant has the required insurance coverage to commence the proposed operation.

3. Applicant's present financial position is stable and its prospective financial position should be sufficient to render the proposed service.

4. Applicant will use multi-engine aircraft only in providing the proposed service. It will replace the four- and six-passenger aircraft (exclusive of copilot, if required) it has available to commence the proposed service with larger aircraft as soon as it is economically feasible to do so.

5. Applicant has established that it will comply with all applicable safety regulations.

6. The record establishes that no other certificated passenger air carrier serves Livermore or Salinas or provides service along the identical routes proposed by applicant.

7. There is no merit to the protest of San Francisco-Oakland Helicopter or the statement of position by Air West.

8. The services proposed by applicant will not be unduly competitive or directly comparable with those provided by Skymark.

9. Applicant has agreed to restrictions in the certificate, if granted, which would prohibit it from:

- a. Ticketing and transporting passengers between San Jose, on the one hand, and Oakland, on the other hand.
- b. Providing direct, nonstop service between any two cities proposed to be served that would bypass any of the intermediate points between said cities on Route I and/or Route II.



10. Applicant can economically give adequate service to points sought in the application, as a passenger air carrier flying multi-engine aircraft having a certified takeoff weight of 12,500 pounds or less at the fares and schedules set forth in the amendment to the application (Exhibit 6) and this opinion.

11. There is sufficient public need to establish that public convenience and necessity require the proposed service.

12. The certificate granted to applicant should be conditioned to provide that applicant shall keep its books in a manner to show a separation of its common carrier operations from the other services it provides and a segregation thereof by routes and shall report periodically to the Commission.

Based upon the foregoing findings of fact, the Commission concludes that a certificate of public convenience and necessity should be granted to applicant.

Applicant is 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 Valley Airlines, Inc., 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.

2. Valley Airlines, Inc., is hereby authorized to establish one-way fares exclusive of tax, as follows:

| <u>Between</u>       | <u>Fares</u> |
|----------------------|--------------|
| San Jose - Livermore | \$ 8.95      |
| San Jose - Stockton  | 12.95        |
| Oakland - Livermore  | 8.95         |
| Oakland - Stockton   | 9.85         |
| Oakland - Salinas    | 16.85        |
| Stockton - Livermore | 9.85*        |
| Stockton - Salinas   | 22.85        |
| San Jose - Salinas   | 10.83        |
| San Jose - Fresno    | 21.85        |
| Fresno - Salinas     | 16.85        |

\* Increased over that shown in Exhibit No. 6 to comply with Section 460, Public Utilities Code. ✓

3. Valley Airlines, Inc., is authorized to establish a ten-ride commute fare at a ten percent discount.

4. In providing service pursuant to the certificate herein granted, applicant shall comply with and observe the following service regulations. Failure so to do may result in a cancellation of the operating authority granted by this decision.

- (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.
- (b) Within one hundred and twenty days after the effective date hereof, applicant shall establish the service herein authorized and file tariffs and timetables, in triplicate, in the Commission's office.

- (c) The tariff and timetable 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 the effective date of the tariff and timetable filings shall be concurrent with the establishment of the service herein authorized.
- (d) The tariff filings made pursuant to this order shall comply with the regulations governing the construction and filing of tariffs set forth in the Commission's General Order No. 105-A.

5. The authority herein granted is conditioned upon:

- (a) Valley Airlines, Inc., maintaining its books of account and records on a basis that will indicate separately its common carrier operations both as to revenue and expense and by route flown.
- (b) Valley Airlines, Inc., submitting monthly to the Commission, during its first year of certificated operations, an operating statement reflecting its common carrier operations on or before the fifteenth day of each month for the preceding month and submitting quarterly, during its first two years of certificated operations, a balance sheet and profit and loss statement for the preceding quarter on or before the fifteenth day of the month following the end of said quarter.

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

Dated at San Francisco, California, this 6<sup>th</sup> day of AUGUST, 1968.

William S. Lyons  
President

William G. Bennett

August

Fred P. Monissey  
Commissioners

Valley Airlines, Inc., by the certificate of public convenience and necessity granted by the decision noted in the margin, is authorized to transport passengers by air in either direction in multi-engine aircraft having a minimum passenger seating capacity of four passengers, having a certified maximum gross takeoff weight of 12,500 pounds or less, flying a minimum of two flights daily, excluding Saturdays, Sundays and holidays, between the named points along the following described routes, subject to the restriction shown:

Route I: San Jose-Livermore-Oakland-Stockton.

Route II: San Jose-Salinas-Fresno.

Restrictions:

1. No passenger will be ticketed or transported between San Jose, on the one hand, and Oakland, on the other hand.
2. No direct, nonstop service shall be established between any two cities authorized to be served that would bypass any of the intermediate points between said cities on Routes I and/or Route II.
3. Except for service between Stockton and Salinas, and Oakland and Salinas, which service shall be via intermediate points as required by Restriction 2, the authority granted herein is limited to service over the specific route segments described, and service between points on Route I, on the one hand, and Route II, on the other hand, shall not be provided. ✓

Issued by California Public Utilities Commission.

Decision No. 74512, Application No. 50107.