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ORIGINAL

Decision No. 74770

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

GOLDEN WEST AIRLINES, INC., a California corporation, Complainant, vs. CABLE FLYING SERVICE, INC., a corporation doing business as Cable Commuter Airlines, Defendant.	Case No. 8812 (Filed May 31, 1968)

Gerald R. Knudson, Jr., for complainant.
Russell & Schureman, by R. Y. Schureman, for defendant.
Mark T. Gates, Jr. and Thomas Talbot, for Los Angeles Airways, intervenor.
David R. Larrouy, Counsel, for the Commission staff.

O P I N I O N

Golden West Airlines, Inc. (complainant) requests that the Commission issue a permanent cease and desist order under Section 2763 of the Public Utilities Code directing Cable Flying Service, Inc. (defendant) to refrain from conducting scheduled passenger air carrier operations between Orange County Airport and Los Angeles International Airport (hereinafter referred to as LAX), on the one hand, and between Ventura County Airport and LAX, on the other hand.

Public hearing was held before Examiner Foley on July 8, 1968 in Los Angeles. Intervenor Los Angeles Airways, Inc. and staff counsel supported the position of complainant. The matter was submitted subject to concurrent filing of briefs on or before July 22, 1968; such briefs have been filed.

Complainant is presently authorized, by Decision No. 73613 dated January 9, 1968, to operate scheduled air passenger service between various locations in the Los Angeles area, including between Orange County Airport and LAX. It is also authorized to operate such service between the Ventura County Airport and LAX by Decision No. 74325 dated July 2, 1968. It is currently operating on both these routes.

Defendant is authorized by Decision No. 73119 (dated September 26, 1967) to operate between San Bernardino and Ontario International Airport, on the one hand, and LAX, on the other hand; and also between Inyo-Kern and LAX. It has pending before the Commission Application No. 50108, filed on March 22, 1968, for authority to operate between Orange County Airport and LAX, and between Ventura County Airport and LAX. Hearings on Application No. 50108 have been completed and the matter is under submission.

The complaint alleges and defendant admits that notwithstanding its pending Application No. 50108 it has been operating on the Orange County and Ventura routes without a certificate of public convenience and necessity from the Commission. Defendant states that its operations on the Orange County route commenced on June 1, 1968, and that its operations on the Ventura route commenced on or about July 1, 1968.[1/]

Defendant contends that its operations in California no longer fall under the provisions of the Passenger Air Carriers' Act, Sections 2740-2769.5 of the Public Utilities Code, for these reasons:

1/ These operations by defendant were restrained by the Commission's temporary cease and desist order (Decision No. 74419, dated July 16, 1968), issued under Section 2763 of the Public Utilities Code. By stipulation offered by the defendant the Commission and defendant agreed to limit this temporary order to intrastate commerce.

(1) Defendant's Air Taxi/Commercial Operator Certificate issued by the Federal Aviation Administration constitutes a certificate of public convenience and necessity from the federal government, and therefore under Section 2743 of the Public Utilities Code the Commission lacks jurisdiction over defendant.

(2) The enactment by Congress of the Federal Aviation Act of 1958 and the promulgation by the Civil Aeronautics Board (CAB) of Part 298, Classification and Exemption of Air Taxi Operators (14 CFR 298), in its Economic Regulations have preempted California from requiring defendant to obtain a certificate for the operations involved herein because any such requirement would constitute unlawful regulation of interstate commerce.

(3) Defendant is no longer a "passenger air carrier" as defined by Section 2741 of the Public Utilities Code because it established on June 7, 1968 and is operating a scheduled interstate air passenger service from LAX via Ontario to Lake Havasu, Arizona.

We do not agree with the first and second reasons but we do accept the third, and we conclude that as long as defendant maintains scheduled out-of-state air passenger operations between fixed terminal points it is not required to have a certificate from the California Public Utilities Commission for the operations involved herein.

I

Section 2743 of the Public Utilities Code provides that the provisions of the Passenger Air Carriers' Act do not apply to carriers who operate in this state pursuant to a "certificate of public convenience and necessity issued by the federal government." Defendant claims that its status under the CAB's regulations as an air taxi operator (ATO) qualifies for this exemption. We do not agree.

In evaluating defendant's claim we turn to the provisions of the Federal Aviation Act and the Economic Regulations promulgated thereunder by the CAB. The Federal Aviation Act of 1958 provides for the regulation and promotion of civil aviation and for the safe and efficient use of the navigable airspace. This Act, which repealed the Civil Aeronautics Act of 1938, re-enacted the provisions of the 1938 Act pertaining to air carrier economic regulation, with only such deletions as were necessary to eliminate obsolete matter.

The Federal Aviation Agency, created by the 1958 Act, was made responsible for the management of the national airspace, airworthiness of aircraft and safety in civil aeronautics. Its jurisdiction includes the intrastate operation of all aircraft, regardless of the purpose for which such aircraft are operated, insofar as safety and flight operations are concerned. In Section 2744 of the Public Utilities Code, California recognizes and defers to this statutory federal preemption of safety matters and flight operations.

The 1958 Act also provides that the CAB remains responsible for the economic regulation of air transportation and for aircraft accident investigation. The economic regulation prescribed under the Act extends only to air common carriers performing interstate, overseas or foreign air transportation. These air carriers, unless specifically exempted from regulation by the CAB, must obtain a certificate of public convenience and necessity from it. The issuance of such a certificate also brings within the jurisdiction of the CAB intrastate operations of these certificated carriers, except that a state may control and regulate the wholly intrastate rates of such air carriers. (See People v. Western Air Lines, Inc. (1954), 42 Cal.2d 621, appeal dismissed 348 U.S. 859). United Air Lines is an example of a CAB certificated carrier which also engages

in wholly intrastate operations in California and whose wholly intrastate rates are regulated by the Commission through its constitutional authority over intrastate rates (Article XII, California Constitution). It is clear that under Section 2743 the provisions of the Passenger Air Carriers' Act are not applicable to such an air carrier as United Air Lines since it has a federal certificate of public convenience and necessity.

The provision in the Federal Aviation Act which authorizes certificates of public convenience and necessity is Section 401(a)-(n), Certificate of Public Convenience and Necessity-Essentiality (49 U.S.C. 1371(a)-(n)). Specific regulations dealing with such certificates are contained in Parts 201, 202, 203, 205 and 206 of the CAB's Economic Regulations:

Part 201 Applications for certificates of public convenience and necessity.

Part 202 Terms, conditions and limitations of certificates of public convenience and necessity; interstate and overseas route air transportation.

Part 203 Terms, conditions and limitations of certificates of public convenience and necessity; foreign air transportation.

Part 205 Inauguration and temporary suspension of scheduled route service authorized by certificates of public convenience and necessity.

Part 206 Certificates of public convenience and necessity; special authorizations.

Defendant does not claim that its operations are conducted under either Section 401 or Parts 201, 202, 203, 205 and 206 but rather under Part 298, Classification and Exemption of Air Taxi Operators, (ACFR 298). Section 298.11 of this part exempts defendant from Section 401(a) of the Act, which provides that an air

carrier shall not "engage in any air transportation unless there is in force a certificate issued by the Board authorizing such air carrier to engage in such transportation." While the statutory sources for the regulations contained in Parts 201, 202, 203, 205 and 206 are stated to be Section 204, General Powers and Duties of the Board (49 USC 1324), and Section 401, the statutory sources for Part 298 under which defendant's operations are conducted are stated to be Sections 204, supra, (14 CFR 1324), 411, Methods of Competition (14 CFR 1381), and 416, Classification and Exemption of Carriers (14 CFR 1386). Furthermore, Subpart C of Part 298, Limitations on Exemptions, Section 298.21, Scope of Service Authorized, (14 CFR 298.21), pertaining to ATO operations, refers to the "exemption authority", not certificate authority, provided to such operators (14 CFR 298.21(a)). It is concluded, therefore, that defendant's operations are not conducted pursuant to regulations promulgated under Section 401 of the Act. This conclusion receives further support from Part 241, Uniform System of Accounts and Reports for Certificated Carriers, in which certificate of public convenience and necessity is defined as a "certificate issued to an air carrier under Section 401 of the Act" (14 CFR 241.03).

Section 298.3(a) of Part 298 of these regulations establishes the classification of air carriers known as ATOs. An ATO is defined as an air carrier which engages in direct air transportation[2/] of passengers, property or mail within the 48

2/ "Air Transportation" is defined in the Federal Aviation Act as "interstate, overseas, or foreign air transportation or the transportation of mail by aircraft," (Sec.101 (10) Fed. Aviation Act, 49 USC 1301 (10)).

contiguous states or Hawaii and which (1) does not utilize large aircraft (i.e. aircraft over 12,500 pounds maximum certificated takeoff weight) and which (2) does "not hold a certificate of public convenience and necessity or other economic authority issued by the Board" (14 CFR 298.3(a); emphasis added). In promulgating the ATO classification, the CAB has stated that Part 298 has "the further purpose of exempting such air taxi operators as long as they remain in the class from the requirement of holding a certificate of public convenience and necessity for operations within the continental limits of the United States, and for operations in foreign air transportation, regardless of the frequency or regularity of service they provide" (17 FR 636). The conclusion is inescapable that defendant does not qualify for the exemption contained in Section 2743 of the Public Utilities Act. Since under federal law defendant can conduct operations as an ATO only if it does not have a certificate of public convenience and necessity or other operating authority from the CAB, a fortiori, it cannot qualify for the Section 2743 exemption because the latter is limited to those carriers with such federal certificates. It is clear, therefore, that defendant's exemption authority to operate as an ATO does not constitute a certificate of public convenience and necessity from the federal government.

In support of its contention defendant introduced a statement entitled "To Whom It May Concern", from the CAB describing the scope of operating authority of an ATO (Exhibit No. 6). Nowhere in this document, however, is it stated that defendant holds a certificate of public convenience and necessity. It declares that ATOs conduct operations pursuant to Part 298 of the CAB's regulations and that they "are not required to obtain any further

authorization from the Board". This statement of authority is to be contrasted with the actual federal certificate of public convenience and necessity introduced by intervenor Los Angeles Airways (LAA). This document is specifically entitled "Certificate of Public Convenience and Necessity (as amended) for Route 84; Los Angeles Airways, Inc." This certificate specifically describes the routes over which LAA is authorized to operate and uses the word "certificate" in several places.

Defendant further contends that it comes under the Section 2743 exemption because it is the holder of an Air Taxi/ Commercial Operator certificate issued by the Federal Aviation Administration. This contention is rejected. This certificate does not pertain to economic regulation and it is not issued by the CAB. It is not a certificate of public convenience and necessity. It pertains to aircraft safety and flight operation factors and is issued by the Federal Aviation Administration. These regulations are promulgated by the Federal Aviation Administration (see 14 CFR Part 135, Air Taxi Operators and Commercial Operators of Small Aircraft) and refer to aircraft requirements, operating rules, pilot qualifications and aircraft and equipment. In short, a certificate issued under these regulations has nothing to do with economic regulation of ATOs.

II

Defendant maintains that by reason of the 1958 Act and Part 298 of the CAB's Economic Regulations, the federal government has preempted any state regulation of air passenger common carrier service in interstate and foreign commerce within the state.[3/]

3/ Defendant concedes that even if the Commission agrees that federal preemption applies its operations involved herein would nevertheless be subject to the constitutional regulatory authority over its intrastate rates. People v. Western Air Lines, supra.

We assume, arguendo, that some of defendant's passengers flying from Ventura or Orange County to LAX are involved in interstate commerce in that they could be traveling to or from LAX as part of an interstate journey. Without doubt every ATO that conducts scheduled operations to or from any airport from which operate federal certificated air carriers must carry at one time or another some passengers in interstate commerce. But this fact does not automatically result in the conclusion that insofar as regulatory jurisdiction is concerned federal preemption has resulted. (Wilmington Transport Co. v. Railroad Com. of California, 236 U.S. 151 (1915); Head v. New Mexico Board of Examiners, 374 U.S. 424 (1963).) And recently the Commission concluded that by Part 298 the CAB had not preempted the Commission from its constitutional authority to regulate intrastate rates and charges of an ATO obviously engaged in interstate commerce within the state. (In re J. W. Dowdle dba Catalina-Vegas Airlines, Swift Air and Las Vegas Airline, Decision No. 72339, dated April 25, 1967.) We further conclude that the doctrine of federal preemption is inapplicable to regulation of defendant's Orange County and Ventura-LAX operations under the Passenger Air Carriers' Act.

In applying the three tests laid down by the United States Supreme Court in order to determine the federal preemption question we do not find that the subject matter, air transportation, requires only national supervision, insofar as economic regulation is concerned; or that Congress intended to occupy the field or that there is a fundamental "conflict between the two schemes of regulation that both cannot stand in the same area" (Head v. New Mexico Board of Examiners, 374 U.S. 424, 430 (1963); Florida Avocado Growers v. Paul, 373 U.S. 132, 141 (1963).

With regard to subject matter no cases have been found wherein the Supreme Court has forbidden economic regulation of air transportation by the states. This unquestioned jurisdiction of state commissions to regulate intrastate air transportation is convincing evidence that air transportation, as such, is not exclusively under national supervision. See People v. Western Air Lines, 42 C.2d 621, 642-5; appeal dismissed, 348 U.S. 859.

Only recently the Court of Appeals for the Ninth Circuit noted that the states have control of intrastate air transportation (Island Airlines, Inc. v. C.A.B., 363 F.2d 120, 122 (1966)).[4/] Moreover, in CAB v. Friedkin Aeronautics, 246 F.2d 173 (9th Cir. 1957), in which the CAB sought jurisdiction over Pacific Southwest Airway's (PSA) intrastate operations, the CAB not only expressed the view in its brief that its jurisdiction was not exclusive, but that

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4/ In this case the court denied Hawaii's contention that it was denied equal footing with all the other states in the union because of an accident of geography unless the CAB relinquished control over interisland flights to Hawaiian state regulation. The court found that the legislative history of the Hawaiian Statehood Act showed specific congressional intent that federal control over intrastate air transportation, insofar as interisland transportation was concerned, remain in effect.

In an earlier decision in this same litigation the CAB stated in its brief that "air transportation solely within one of the islands of the State of Hawaii would not be subject to CAB regulation. See Hearings Senate Committee on Interior and Insular Affairs on S.50, 86th Cong. 1st Sess., 54 (testimony of CAB General Counsel Stone)"; (Brief of CAB in Island Airlines, Inc. CAB, No. 19752, 352 F.2d 735 (9th Cir. 1965), p.60, n.36).

a state could impose regulation upon intrastate segments of interstate air transportation:

> "Contrary to the statement of the district court (R. 14,648, p.84) we did not contend there, and we do not contend here, that Congress has occupied the entire field of economic regulation of air carriers. On the contrary, we recognize that there are important areas of economic regulation which have been left to the states.8/
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> "8. California has been upheld in its assertions of authority to regulate intrastate rates of interstate air carriers. Western Air Lines, v. P.U.C. of California, 342 U.S. 908 (1952); People v. Western Air Lines, 268 P.2d 723 (Calif., 1954), appeal dismissed 348 U.S. 859 (1954). So far as we are aware, neither the California Courts nor the California Commission assert any power in the State to regulate rates charged for intrastate segments of interstate journeys. See People v. Western Air Lines, supra, at pp. 737, 738.
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> "Several states (but not California) also require that interstate carriers obtain certificates of public convenience and necessity for intrastate transportation performed in aircraft also carrying interstate traffic and crossing state lines." (Brief of CAB in Nos. 14,688 and 14,649, U.S. Court of Appeals for the Ninth Circuit, pp. 13-14.)5/

It seems clear, therefore, that the CAB does not consider that it has total economic regulatory jurisdiction over all air transportation.

Similarly there does not appear to be any indication of congressional intent to occupy exclusively the field of regulating

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5/ While the Court of Appeals held in the Friedkin case that the CAB might have jurisdiction over a wholly intrastate air carrier such as PSA if it was carrying interstate traffic, the CAB apparently abandoned further prosecution of this question. PSA, as well as Air California and other wholly intrastate air carriers, are currently operating large aircraft in California without a CAB certificate of public convenience and necessity. It seems reasonable to conclude that if intrastate air carriers operating large aircraft, which may carry some passengers in interstate commerce, can be subject to state regulation then ATOs conducting similar operations within a state may also be subjected to reasonable state regulation.

air transportation. As the Commission stated in its opinion in the Catalina-Vegas Airlines case, supra:

> "When considering the effect of state regulation of racially discriminatory practices on interstate airlines the Supreme Court was 'satisfied that Congress in the Civil Aeronautic Act of 1938, and its successor had no express or implied intent to bar state legislation in this field and that the Colorado statute, at least so long as any power the Civil Aeronautics Board may have remains "dormant and unexercised" will not frustrate any part of the purpose of the federal legislation.' (Colorado Com. v. Continental Air Lines, 10 L ed 2d at 91.) Lastly, and most persuasively on this subject, the CAB requires air taxi operators serving points in Alaska, or points in Alaska and Canada, to obtain authority either from Alaska or the CAB. (14 CFR 298.21(c).) At least the CAB is of the opinion that Congress did not want to prohibit state regulation in this field." (Decision No. 72339, p. 11.)

Defendant suggests that because Part 298 expressly mentions state authority over ATO service in Alaska, it must be concluded that control by any other state of ATO operations involving some possible interstate air transportation within its boundaries is denied. This suggestion is without merit. Section 298.21(c) is a provision dealing particularly with ATO service in Alaska.[6/] Neither it nor any other section in Part 298 discusses state authority in general or denies any state authority over ATO operations.

Since it does not appear that state economic regulation of air transportation wholly within its borders, which may also involve some interstate commerce, inherently requires federal preemption and since congressional intent to preempt such state regulation is

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6/ Alaska permitted the CAB to regulate the state's intrastate air commerce during the transition period from territory to state. It has been held that Alaska may terminate this arrangement at any time. (See Interior Airways, Inc. v. Wien Alaska Airlines, Inc., Civil Aeronautics Board, 188 F.Supp. 107 (1960).)

lacking, we must determine if there is an irreconcilable conflict between the federal and state schemes of regulation. We do not find any such conflict here. While we agree with defendant that the CAB has jurisdiction to regulate defendant's operations in California which are in interstate commerce, it has not exercised this jurisdiction. The CAB has decided not to regulate ATOs by exempting them from the 1958 Act through Part 298 of its Economic Regulations. There has been no action by the federal government to suspend or displace state regulation.

Defendant urges that despite this exemption the fact that Part 298 creates a class of air carriers in which it is included constitutes regulation on a scale which results in preemption. This argument overlooks the fact that Part 298 creates a class of air carriers which is provided the benefit of a blanket exemption from the 1958 Act and therefore is not regulated. In the Catalina-Vegas Airlines case, the Commission noted the reasons as expressed by the CAB for exempting ATOs from regulation under the Act:

> "At least four reasons for the adoption of the exemption for air taxi operators from CAB economic regulation have been put forward by that agency: (CAB ER-167 dated February 20, 1952, 17 FR 635; CAB ER-16024 dated April 5, 1965, 30 FR 4636.)
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> (1) The reported operations of these carriers amount to approximately 2 percent of the total revenue plane mileage of the certificated domestic trunk and local service carriers.
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> (2) Air taxi operators often render service to points not served by certificated carriers, and even when they parallel service by certificated carriers, they are not really in competition with them.
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> (3) The burden of imposing CAB-type regulation might well be too great for air taxi operators to bear.
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> (4) The CAB staff is inadequate to perform the task of regulating air taxi operators.

> "These reasons show that the CAB is concerned with the relative size of the air taxi operation from the CAB viewpoint; with the impact of air taxi operations on certificated carriers; with the economic burden of CAB regulation on air taxi operators; and with the priority of tasks that the CAB is called upon to perform in relation to its budgetary restrictions. It is hardly necessary to say that an operation insignificant from the point of view of the CAB's regulatory jurisdiction may well be significant from the point of view of this Commission's much smaller jurisdiction." (Decision No. 72339, p. 14.)

The Commission explained further its reasons for rejecting the argument that exemption constitutes economic regulation and thereby prevents any state regulation of ATOs, as follows:

> "It is difficult to accept respondent's contention that federal authority has been exerted in Part 298 by way of exemption from regulation, or that the CAB is economically regulating respondent's operation by not regulating it. Of course, the CAB could if it wished withdraw the benefit of Part 298 from respondent's Catalina-mainland operation, and thereby displace this Commission's regulation. But, as local air commerce becomes substantial, detailed regulation by a central bureau in Washington, D. C., will become both impracticable and ineffective. It will be impracticable because long-distance regulation from the nation's capital would entail unendurable expense and delay for small local operators; because the governmental machinery necessary to administer all local regulation from a central bureau would be unwieldy; and because senior officials of the federal agency could not give proper attention to the manifold problems entailed in regulating all the local carriers of the nation, without undue distraction from their more important function of regulating the trunkline and supplemental air carriers. Centralized regulation of local air carriers from Washington, D.C., would be ineffective, because the central bureau could not possibly have thorough and current knowledge of local problems and conditions, and because centralized control would deny to the patrons of local air lines, and to the general public directly affected by local air service, a readily accessible means of obtaining relief from inadequate service, undue discriminations, and unreasonable rates.
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> "The California Public Utilities Commission has considerable experience in regulating airlines. Under our constitutional rate jurisdiction and under the Passenger Carriers Act we have an important

> interest in developing an air transportation system adequate to the state's needs; we are well equipped to protect the public's interest in such transportation.
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> "We conclude that federal law has not displaced state regulation of respondent's operation." (Decision No. 72339, pp. 15-16.)

We believe that these views are equally applicable here. Defendant has not presented any convincing reasons that these views, in the absence of any provision in the 1958 Act clearly demonstrating that Congress intended to preempt state regulatory authority over intrastate air transportation, or air carrier operations which involve incidentally some interstate air transportation, are incorrect or unwise.

It is asserted that the recent CAB order which amends Part 298 to permit ATOs voluntarily to file joint or through rates with CAB certificated air carriers demonstrates that preemption has occurred (CAB ER-542 dated July 6, 1968, 33 FR 9764). In particular, defendant contends that proof of exemption is shown by the CAB's denial of a request by Skymark Airlines, an intrastate air carrier operating wholly in California, to file joint rates and yet remain outside the jurisdiction of the CAB. But this conclusion does not follow. The change in Part 298 does not require that ATOs file joint rates; it merely permits them to do so. It does not eliminate the benefit of exemption from federal regulation.

Nothing in the cases cited by defendant, Buck v. Kuykendall, 267 U.S. 307; Baltimore Shippers and Receivers Assoc. v. California P.U.C., 268 F.Supp. 836; Railroad Transfer Service, Inc. v. Chicago, 386 U.S. 351, is contrary to the result reached herein. The Buck case did not involve reasonable regulation of interstate commerce, but rather the complete obstruction of such commerce by a state statute which was specifically directed at common carriers engaged exclusively in interstate commerce. (267 U.S. 313, 316.)

In Railroad Transfer, Inc. the Supreme Court concluded that several sections in the Interstate Commerce Act expressly established that federal preemption was applicable. In Baltimore Shippers, the court concluded that federal preemption was applicable to commercial zones within California established under the Interstate Commerce Act but exempted from regulation. The court found that these zones were identical with terminal areas under the Freight Forwarder Act which had been held to be preempted from any state regulation. The court also found that these commercial zones fitted into a comprehensive scheme of regulation in combination with the Motor Carrier Act. Finally, there was a direct conflict between federal and state regulation because California sought to impose its higher minimum rates instead of lower rates which prevailed under the federal exemption. No such comprehensive scheme of economic regulation or state-federal conflict appear to be present here.

III

The record shows that on June 7, 1968 defendant commenced scheduled service between LAX and Lake Havasu, Arizona via Ontario. The schedule shows that this service is conducted five days each week with one round trip daily between LAX and Lake Havasu (Exhibit No. 10). The one-way fare between LAX and Lake Havasu is $29.98 plus tax; and it is $22.00 plus tax between Ontario and Lake Havasu. The record further shows that defendant has contracted for landing privileges with the operator of the Lake Havasu Airport (Exhibit No. 11); and that defendant has contracted with Apache Airlines for ground services, ticketing, etc. at Lake Havasu (Exhibit No. 12). Defendant has advertised this schedule and during the period June 7-29 its passenger manifests show that it transported sixteen

revenue passengers on this route (Exhibit No. 14) while there were some 230 available seats in defendant's aircraft. While defendant's load factor is very low and while the service would not appear to be profitable we must find that it is conducting a scheduled air passenger service out-of-state. In light of this finding we turn to defendant's contention that it is no longer subject to the Passenger Air Carriers' Act.

Section 2741 of the Public Utilities Code provides as follows:

> "As used in this chapter, 'passenger air carrier' means a person or corporation owning, controlling, operating, or managing aircraft as a common carrier of passengers for compensation wholly within this state, between terminal points including intermediate points, if any."

We are presented with differing interpretations of this statute. Defendant contends that under this language passenger air carrier means a carrier which operates wholly in California, and that if the carrier is engaged in multistate operations (i.e., providing scheduled air carrier service between points in two or more states) it is exempt from California certificate and service regulation. Defendant therefore claims that since it is currently operating a scheduled service five days a week between LAX and Lake Havasu, Arizona, it is not subject to the Passenger Air Carriers' Act and it does not require a certificate to operate between either Ventura or Orange County and LAX.

Complainant, intervenor and staff counsel maintain, on the other hand, that defendant's interpretation is incorrect. They assert that under defendant's interpretation the clause "between terminal points including intermediate points, if any," which follows the words "wholly within this state", would be redundant and meaningless. They contend that by definition the terminal points of

a carrier operating only within the state would be wholly within the state. They urge that this clause modifies the phrase "wholly within this state" and that the clause demonstrates the clear intent of the Legislature to have intrastate route segments, irrespective of other multistate operations, come under the statute. Under this reasoning, since defendant's operations between either Ventura or Orange County and LAX are routes between terminal points wholly within this state, these operations would be subject to the regulatory provisions of the Passenger Air Carriers' Act. After considering these interpretations and reviewing the legislative history we conclude that defendant's interpretation is correct.

We conclude that the last clause in Section 2741 refers to operations between fixed termini; that is, to scheduled operations between fixed points and any authorized intermediate stops. Hearings were held in 1961 and 1962 before the Assembly Interim Committee on Public Utilities and Corporations with regard to air passenger carrier legislation introduced in earlier sessions, particularly with regard to A.B. 152 introduced during the 1961 Legislative Session. In its report (Final Report of the Assembly Interim Committee on Public Utilities and Corporations, Vol. 16, Number 8; Assembly Interim Committee Reports, December 1, 1962) the Committee, after determining that there was a need for scheduled air common carrier service to areas of lesser population, made the following recommendation:

> "The Committee recommends that the Public Utilities Code be amended so that any air common carrier operating wholly within the State of California and without a certificate of public convenience and necessity from the Civil Aeronautics Board or other federal agency designated to issue such a certificate be required to obtain a certificate of public convenience and necessity from the California Public Utilities Commission...."

> "This committee does not recommend any state regulation for air charter operators at the present time. The committee wishes to point out, however, that continued operations of a type testified to before this committee by charter aircraft operators may well subsequently result in regulatory control by the State of California." (16 Assembly Interim Committee Reports, No. 8, Assembly Interim Committee on Public Utilities and Corporations, p. 39 (Dec. 1, 1962).)

In addition we note that the section in A.B. 152, introduced in the 1961 Legislative Session, which defines air passenger carrier, contained the words "wholly within this state, between fixed termini or over a regular route". It is also noted that the Air Passenger Carriers' Act is concerned with common carrier operations and that except with regard to insurance the Commission does not regulate charter aircraft operators or other irregular route air carriers.

Acceptance of complainant's position would require that the Commission assert jurisdiction over defendant by making a strained interpretation of Section 2741. In effect, complainant contends that the statute should be read as if the words "wholly within this state" appear after the last word in the section. We believe that legislation is needed before such an interpretation is possible.

We conclude, therefore, that the last clause in Section 2741 refers to air carrier operations between fixed termini over a regular route (i.e. - scheduled common carriers of passengers) which own, operate, manage or control such aircraft operations wholly within this state. Since defendant is not operating wholly within this state it is not subject to the Passenger Air Carriers' Act and it does not require certification from this Commission for the routes involved herein. This conclusion places the regulation of ATO operations on the same basis as regulation of air carriers which

operate large aircraft, such as United Air Lines, and which operate across state lines under a federal certificate.

The Commission finds that:

1. Defendant's exemption from the Federal Aviation Act of 1958 under Part 298 of the CAB's Economic Regulations does not constitute a certificate of public convenience and necessity from the federal government, and defendant is not exempt from regulation by this Commission by means of Section 2743 of the Public Utilities Act.

2. California has not been preempted by the Federal Aviation Act of 1958 from regulating intrastate air transportation and from regulating air carriers which operate wholly within this state, and which may incidentally carry some passengers in interstate commerce.

3. Defendant is currently operating scheduled air passenger service between LAX and Lake Havasu, Arizona, via Ontario.

4. Pursuant to Section 2741 of the Public Utilities Act, defendant's operations herein are not subject to the provisions of the Passenger Air Carriers' Act (Public Utilities Code Sections 2740-2769.5) so long as defendant operates and maintains scheduled out-of-state service.

O R D E R

IT IS ORDERED that:

1. The Temporary Cease and Desist Order (Decision No. 74419), issued by the Commission on July 16, 1968, is hereby revoked and is without further effect.

C. 8812 ds

2. The complaint is dismissed.

Dated at San Francisco, California, this 1st day of OCTOBER, 1968.

William Symons Jr.
President

Commissioners

I will file a dissent
Fred P. Morrissey.

I will file a dissent
Wm Johnson

MM *

Decision No. 74770

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GOLDEN WEST AIRLINES, INC., a California corporation, Complainant, vs. CABLE FLYING SERVICE, INC., a corporation doing business as Cable Commuter Airlines, Defendant.	Case No. 8812

COMMISSIONER GATOV, Dissenting:

I dissent.

Admittedly, the language of Section 2741 is not as clear as it might be. If, however, the interpretation given it by the majority is correct, it makes one wonder why the Legislature took the time and bother to propose, study and enact the passenger air carriers' legislation in the first instance.

The Commission should now give short shrift to pending applications in which any out-of-state service is involved. In fairness to "authentic" intrastate operators and applicants, it should, in addition, cancel the defendant's certificates and the certificates of other air carriers similarly situated.

Commissioner

San Francisco, California,
October 2, 1968

C. 8812 D. 74770

COMMISSIONER FRED P. MORRISSEY DISSENTING

The effect of the Commission's decision today makes it possible for a passenger air carrier, certificated by this Commission, to automatically exempt itself from our jurisdiction by merely scheduling one or more flights outside the State. I do not believe that the Legislature intended this result -- one which encourages passenger air carriers to evade regulation, encourages destructive economic competition, and violates the spirit of the Passenger Air Carriers Act. The purpose of this Act is to provide a comprehensive scheme of legislation to promote orderly and efficient commercial air travel in California, and thus to prevent destructive economic competition.

While the Passenger Air Carriers Act may not be absolutely clear, a careful reading of the pertinent sections of the Act, especially Sections 2741, 2743 and 2752, indicates that the Commission has adequate authority to regulate the intrastate routes of all passenger air carriers, provided the carrier does not hold a CAB certificate. We should exercise this authority in the public interest.

As a consequence of today's action, the public should be put on notice that this decision casts a cloud over the significance and value of our certificates of public convenience and necessity issued under the Passenger Air Carriers Act.

Fred P. Morrissey

Fred P. Morrissey, Commissioner

San Francisco, California

October 2, 1968