

Decision No. 75015

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Southwest Airlines
for a certificate of public convenience
and necessity, in either direction,
between San Diego, Long Beach, Long Beach,
San Jose/San Francisco/Oakland and San Diego
to Sacramento via Long Beach and San Francisco.

} Application No. 50261

In the Matter of the Application of AIR
CALIFORNIA for a Certificate of Public
Convenience and Necessity to provide passenger
air service between Long Beach on the one hand
and San Jose and Oakland on the other hand.

} Application No. 50381

In the Matter of the Application of PACIFIC
AIR TRANSPORT, INC. for a Certificate of Public
Convenience and Necessity to provide passenger
air service between Long Beach, San Jose,
Oakland and San Francisco.

} Application No. 50438

ORDER DENYING PETITION FOR
TEMPORARY CERTIFICATE OVER ALL
ROUTE SEGMENTS BEING APPLIED FOR
IN APPLICATION NO. 50261

In Application No. 50261 Pacific Southwest Airlines (PSA)
seeks authority to conduct air passenger service between San Diego
and Long Beach on the one hand and San Francisco, Oakland, San Jose
and Sacramento on the other hand. PSA also seeks authority to operate
between San Francisco and Sacramento on a turn-around basis.

In Application No. 50381 Air California seeks authority to
operate from San Diego and Long Beach to Oakland and San Jose,
and between San Diego and Oakland-San Jose on a non stop basis.

In Application No. 50438 Pacific Air Transport (PAT) seeks
authority to operate from Long Beach to San Francisco, Oakland and
San Jose.

The three applications were consolidated because they involved the same primary route and because each applicant protested the applications of the other two parties. Western Airlines (Western) filed a protest to each application. In addition Air West filed a protest to PSA's request to operate between the Bay Area and Sacramento. Thirteen days of hearing were conducted before Examiner Foley between September 30 and October 22, 1968. The matter is now under submission subject to filing briefs on or before December 1, 1968.

At the close of the hearing PSA petitioned for a temporary certificate to commence operations within thirty days on all the route segments requested in its application. Answers opposing this petition were filed by Air California and Western. By letter dated October 30, 1968 PAT also objected to PSA's petition. The City of Long Beach filed an answer in support of PSA's request.

In its petition PSA asserts that Sections 2754 and 2767 of the Public Utilities Code provide the legal authority to grant its request. Furthermore, PSA states that it has adequate aircraft, personnel and finances to commence service over all the route segments involved while Air California and PAT lack the necessary equipment and facilities. PSA contends that inadequate airport facilities, such as insufficient passenger parking areas, counter spaces and gates, at Los Angeles International Airport (LAX) and at San Francisco International Airport (SFO) require approval of its request. By being permitted to commence operations at Long Beach, PSA maintains, congestion at LAX and SFO would be reduced to the betterment of the public interest.

In response Air California denies that it lacks the equipment, personnel and facilities to commence immediate service between Long Beach and the Bay Area. It further contends that

airport congestion is a problem only at peak travel times, particularly on Fridays and Sundays and on holidays and that there would be no lessening of flights operating from LAX during the holiday rush periods because PSA normally adds extra sections during such times. Air California urges that under Section 2767 no emergency exists which justifies granting PSA's request and that under Section 2754 the requirement that a hearing be held before temporary authority can be authorized means that the formal decision-making process, including the consideration of the appropriate transcripts and briefs, must be completed before the Commission may act.

Finally Air California asserts that granting PSA's request would be unfair and a violation of due process in a competitive certificate proceeding because PSA would receive a clear competitive advantage by receiving authority to penetrate the market first.

In its response Western states that it plans to commence additional nonstop service between Long Beach and San Francisco, and new single-plane nonstop service between Long Beach and Oakland on December 13, 1968. Western further states that the Long Beach Airport facilities could not accommodate a sudden, large increase of passengers and equipment on such short notice as would occur if PSA's request is approved.

The Commission concludes that this is not a proper proceeding for granting indefinite temporary authority to any applicant. No evidence has been introduced which justifies the conclusion that congestion at LAX and SFO constitutes a national emergency or a natural disaster justifying exemption under Section 2767. Moreover, since competitive applications and protests have been filed in these proceedings, the issuance of an indefinite temporary certificate to one applicant under Section 2754 is not justified.

However, the Commission does take official notice that there is serious congestion at LAX during holiday periods, particularly during the Christmas and New Year holiday period. In order to alleviate some of this congestion, therefore, we conclude that all three applicants should be authorized to operate between San Diego and Long Beach to San Francisco, Oakland and San Jose during the period December 15, 1968 through January 10, 1969.

After consideration the Commission finds that:

1. The facts relating to airport congestion do not constitute a national emergency or natural disaster requiring temporary certification of immediate air passenger service over the route segments requested in Application No. 50261.

2. The public convenience and necessity do not require that temporary operating authority be granted to commence immediately permanent air passenger service over the route segments involved in Application No. 50261.

3. The facts relating to airport congestion at Los Angeles International Airport during the Christmas and New Year's holiday period do justify temporary certification of PSA, Air California and PAT to provide air passenger service between Long Beach and the Bay Area from December 15, 1968 through January 10, 1969.

O R D E R

IT IS ORDERED that:

1. The petition of Pacific Southwest Airlines for a temporary certificate of public convenience and necessity to commence immediately permanent air passenger carrier service over all the route segments being applied for in Application No. 50261 is denied.

2. A temporary certificate of public convenience and necessity is granted to Pacific Southwest Airlines, Air California, and Pacific Air Transport, authorizing each carrier to operate as a passenger air carrier as defined in Section 2741 of the Public Utilities Code, between San Diego and Long Beach to San Francisco, Oakland and San Jose, during the period from December 15, 1968 through January 10, 1969.

3. Each applicant accepting the temporary certificate granted herein shall file a written acceptance of the certificate within ten days after the effective date of this order.

4. Each applicant accepting the temporary certificate granted herein shall comply with and observe the insurance requirements of the Commission's General Order No. 120-A. Failure to comply with the provisions of this general order may result in cancellation of the operating authority granted by this order.

5. Each applicant shall amend its tariff and timetables to reflect the authority granted herein on or before December 14, 1968.

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

Dated at San Francisco, California, this 26th day of NOVEMBER, 1968.

William J. Agnew, Jr.
President
John E. Mitchell
William L. Barnett

Commissioners

- Commissioner A. W. Gatev, being necessarily absent, did not participate in the disposition of this proceeding.

-5- Commissioner Fred P. Morrissey, being necessarily absent, did not participate in the disposition of this proceeding.