

ORIGINAL

Decision No. 75488

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
CABLE FLYING SERVICE, INC., a )  
corporation, doing business as )  
CABLE COMMUTER AIRLINES, for a )  
certificate of public convenience )  
and necessity to establish, )  
maintain and operate a passenger )  
and freight airline service. )

Application No. 49481

(Order to Show Cause -  
Filed November 6, 1968)

Adams, Duque and Hazeltine, by  
F. Jack Liebau, for respondent.  
David R. Larrouy, Counsel, and  
Robert Hannam for the Commission  
staff.

O P I N I O N

By Decision No. 73119, dated September 26, 1967, in the above application, Cable Flying Service, Inc., (respondent), was granted a certificate of public convenience and necessity authorizing it to operate as a passenger air carrier, as defined in Section 2741 of the Public Utilities Code, as follows:

"Cable Flying Service, Inc., by the certificate of public convenience and necessity granted in the decision noted in the margin, is authorized to transport passengers by air in either direction in multi-engine aircraft employing both a pilot and co-pilot and having a minimum passenger seating capacity of five passengers, having a gross weight under 12,500 pounds, flying

"a minimum of one flight in each direction daily except Saturday:

1. Between San Bernardino (including either Norton Air Force Base Airport or Rialto Municipal Airport as an alternate if available), Ontario International Airport, on the one hand, and Los Angeles International Airport, on the other hand, with flag stop privileges at Cable Airport and El Monte Airport.
2. Between Los Angeles International Airport, on the one hand, and Inyokern Airport, on the other hand, with flag stop privileges at either Fox Field or Palmdale Air Force Plant No. 42."

On November 6, 1968, the Commission filed the herein considered order to show cause directing respondent to show cause why the certificate should not be revoked. As grounds for revocation, the order to show cause states that by Decision No. 74770, dated October 1, 1968, in Case No. 8812, (Golden West Airlines, Inc. v. Cable Flying Service, Inc.), the Commission found the operations of respondent were not subject to the provisions of Public Utilities Code, Sections 2740 - 2769.5 (Passenger Air Carrier's Act, hereinafter the act). These sections include Section 2741 which reads 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."

In Case No. 8812, supra, respondent contended that its operations were not subject to the provisions of the act for the reason, among others, that on June 7, 1968, it commenced operating a scheduled individual fare basis interstate air passenger service from the Los Angeles International Airport (LAX) via Ontario to Lake Havasu, Arizona. The Commission found that these assertions were true and concluded as a result respondent's operations are not subject to the provision of the act.

A public hearing was held before Examiner Rogers in Los Angeles on January 15, 1969, and the matter was submitted subject to the filing of briefs. The briefs have been filed. The matter is ready for decision.

At the hearing staff counsel requested that the Commission take official notice of Decision No. 74770, and rested.

Respondent's counsel requested that the Commission take official notice of Section 2759 of the act as originally enacted,<sup>1/</sup> which section has since been repealed. His position was that there is no authority for revoking the certificate.<sup>2/</sup>

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1/ As originally enacted Chapter 736, Statutes 1965, Section 2759 read: "The commission may at any time suspend the certificate of any passenger air carrier for failure to comply with the insurance regulations established pursuant to Section 2761 of this chapter. For any other good cause, the commission may at any time upon notice to the holder of any certificate and opportunity to be heard, suspend, revoke, alter, or amend any such certificate."

2/ See Section 2755 of the Passenger Air Carriers' Act (Chapter 318, Statutes 1967), which provides: "The rights conferred by a certificate issued pursuant to Section 2754 or 2757 may not be revoked or suspended absent a finding by the commission, after notice and hearing, that the holder has abandoned such rights, or is no longer fit, willing, or able to perform all or part of the certificated services, or to conform to the law and to the rules and regulation of the commission."

Respondent's president testified that respondent initiated service in November of 1967 pursuant to Decision No. 73119, supra; that service to and from Inyokern has been suspended due to a lack of profit in that routing; and that in all other respects the certificated services are being rendered.

He further testified that respondent desires to retain the existing certificate for the reasons that it believes the legislature will enact a statute which will modify the act to require that an intrastate passenger air carrier, which also operates interstate, obtain a certificate from the Commission; that if this is done and the certificate is revoked, respondent will be required to file an application for a passenger air carrier certificate and respondent does not believe it should be burdened with the additional time and expense required to prepare an application for routes for which it claims it presently holds a certificate; and that respondent desires that the decision in this matter be held in abeyance until the code amendments have been enacted or rejected. The witness further stated that the publicity caused by the ..

revocation of the certificate would be harmful; that there was a news release<sup>3/</sup> stating that the Commission had no jurisdiction over respondent's operations and respondent suffered severe losses<sup>4/</sup> due to the publicity; and that is not fair to respondent's operations to require it to get a new certificate. The witness further testified that when the news release was made public, respondent not only had a severe drop-off in reservations but the telephone lines were tied up with calls for cancellations of reservations that it would have had.

The witness further testified that respondent's only certificated rights are between LAX, on the one hand, and Ontario, El Monte and Palmdale, on the other hand; that respondent is also operating between Burbank and LAX, for example, without a

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3/ Exhibit No. 2 - O.S.C.

"LOS ANGELES, November 7 -- The California Public Utilities Commission has directed Cable Commuter Airlines to show cause why a certificate of public convenience and necessity issued to Cable in September, 1967, should not be revoked.

The Commission order followed by five weeks a Commission decision which said Cable was exempt from CPUC jurisdiction as long as the airline maintains out-of-state service such as it now renders between Los Angeles and Lake Havasu, Arizona.

The certificate granted Cable in 1967 was for authority to fly two intrastate routes: San Bernardino-Ontario-Los Angeles, with flag-stop privileges at Cable Airport in Upland and at El Monte Airport, and Inyokern-Los Angeles with flag stops at Fox Field in Lancaster or Palmdale Air Force Plant No. 42.

The 'show-cause' order directs Cable to appear before the Commission January 15 in the Commission's Los Angeles Courtroom, 107 South Broadway.

In a separate decision, the Commission also dismissed Cable's application to fly between Ontario and Orange County, Orange County and Los Angeles, and Ventura County and Los Angeles on the same grounds: namely, the Commission decision of October 1 exempted the airline from Commission jurisdiction."

4/ Exhibit No. 1 - O.S.C.

certificate; that respondent still flies to Arizona; and that the proposed legislation states that upon the submission of an application for routes that were operated on a given date, a certificate could be issued with or without a hearing.

Respondent's public relations director testified that the Commission's press release (Exhibit No. 2 - O.S.C.) is factually correct but misleading; that it is a poor press release because it is written improperly; and that a press release should give the main facts first and go on down to the minutiae of the release.

The parties stipulated that if the Commission were to revoke respondent's certificate as a result of this proceeding it might have a harmful impact on respondent's operations.

Arguments

The respondent argues that revocation of its certificate is limited by Section 2755 of the Public Utilities Code (footnote 2/ supra) and that, except as granted by said section, the Commission has no power to revoke a certificate.<sup>5/</sup>

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5/ It should be noted that in its defense to a complaint by a competing carrier (Golden West Airlines, Inc. v. Cable Flying Service, Inc., Decision No. 74770, supra) respondent claimed that, as a result of interstate operations, it is not subject to the Passenger Air Carriers' Act. The Commission found this contention to be true, and that, pursuant to Section 2741 of the Public Utilities Act, respondent's operations are not subject to the provisions of the passenger Air Carriers' Act.

Staff counsel argues that since the Commission has found that the operations of respondent are not those of a passenger air carrier (Decision No. 74770, supra), its certificate should be revoked, and that, the existing certificate being of no effect, the Commission has the power to cancel it pursuant to Section 1708<sup>6/</sup> of the Public Utilities Code.

We agree with staff counsel. It is obvious that at the time, as reflected by Decision No. 74770, supra, respondent started interstate operations, it immediately terminated operations as a passenger air carrier subject to the jurisdiction of this Commission and hence none of the provisions of the Passenger Air Carriers' Act, now in effect, are applicable to it. Included in the non-applicable provisions are those of Section 2755 relied on by respondent.

#### Finding

We find that respondent is operating scheduled interstate air passenger services and is not subject to the provisions of the Passenger Air Carriers' Act.

#### Conclusions

We conclude that:

1. Respondent's operations are not those of a passenger air carrier as defined in Section 2741 of the Public Utilities Code.
2. The respondent's certificate of public convenience and necessity as a passenger air carrier should be revoked.

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<sup>6/</sup> "The commission may, at any time, upon notice to the public utility affected, and after opportunity to be heard as provided in the case of complaints, rescind, alter, or amend any order or decision made by it. Any order rescinding a hearing, or amending a prior order or decision shall, when served upon the public utility affected, have the same effect as an original order or decision."

A. 49481 LM \*

O R D E R

IT IS ORDERED that the certificate granted by Decision No. 73119, in Application No. 49481 is hereby revoked.

The Secretary shall cause personal service of a copy of this decision to be made upon Cable Flying Service, Inc.

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

Dated at San Francisco, California, this 25<sup>th</sup> day of MARCH, 1969.

William J. Quinn  
President

Augustine

W. H. Quinn

Fred P. Morrissey  
Commissioners

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