

Decision No. 77155 ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)

HOLIDAY AIRLINES, INC.,

a California corporation, for authority to add Los Angeles International Airport to its existing Lake Tahoe authority.

Application No. 51159
(Filed June 12, 1969)

Loughran, Berol & Hegarty, by Marshall G. Berol, for Holiday Airlines, Inc., applicant.

Darling, Hall, Rae & Gute, by Donald K. Hall, for Western Airlines Inc., protestant.

Robert W. Russell, by Kenneth E. Cude, Department of Public Utilities and Transportation, City of Los Angeles, interested party.

Janice E. Kerr, Counsel, M. J. DeBarr, Jr. and Edward C. Cole, for the Commission staff.

O P I N I O N

Holiday Airlines, Inc., (Holiday) was granted authority to transport passengers by air in either direction at a minimum of one scheduled round-trip flight daily between Hollywood/Burbank Airport (BUR) and Tahoe Valley Airport (TVL). (Decision No. 74860 dated October 22, 1968 in Application No. 50516.) By this application, Holiday seeks to provide service at Los Angeles International Airport (LAX). Holiday would charge the same fare between LAX-TVL as it does between BUR-TVL: one way - \$24.52; round trip - \$49.05; plus a reduced round-trip fare of \$39.90 available Monday through Thursday. These rates were recently authorized by Decision

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No. 76814 dated February 17, 1970 in Application No. 51403. Western Airlines (Western) protested. Public hearings were held before Examiner Robert Barnett on December 17 and 18, 1969 at South Lake Tahoe, and on January 29 and 30, 1970 at Los Angeles.

Eight public witnesses testified in support of the application. They included a supervisor from El Dorado County, the airport manager of the Lake Tahoe Airport, the mayor of the City of South Lake Tahoe, the city manager of the City of South Lake Tahoe, the president of Tahoe College, two travel agents, and one real estate developer.

The supervisor testified that the Board of Supervisors passed a resolution supporting the application. He said that service into LAX would be convenient, economical, and a benefit to the community. He expects service into LAX to further open the Lake Tahoe area to the residents of Los Angeles. Many people from Los Angeles now own second homes in Lake Tahoe and more are expected as transportation improves. In the witness's opinion LAX offers superior access to the whole Los Angeles area than BUR because there is better ground transportation getting to and from LAX and because LAX is more centrally located. It is extremely inconvenient for residents of the South Lake Tahoe area to fly from Sacramento or Reno in order to get to LAX. In 1969 approximately 100,000 passengers were processed through TVL; by 1975 this figure is expected to be 400,000 passengers. The witness said that Holiday's service is very good.

The airport manager testified that TVL is operated by the County of El Dorado. Recent improvements have lengthened the runway to 8500 feet with a width of 150 feet; TVL can accommodate airplanes as large as the Boeing 707 and the DC-8. There is a new terminal under construction, including approach roads and parking, which will be completed by May 15, 1970. In 1969 Holiday handled approximately 75 to 80 percent of the 100,000 passengers utilizing the airport. The only other scheduled airline into TVL is Air West which has only five flights weekly from San Francisco. Air West has authority to fly between LAX and TVL but doesn't exercise the authority. The witness stated that numerous passengers have requested service into LAX and that persons living in other parts of El Dorado County, that is, other than the South Lake Tahoe area, want service to LAX rather than having to drive to Sacramento or Reno in order to fly into LAX. The witness expects the airport to handle approximately 200,000 passengers in 1970.

The city manager of South Lake Tahoe testified that the city has a year-round population of approximately 17,000 persons with an additional 15,000 owning second homes in the area. South Lake Tahoe (California side) is a tourist area with an average daily population of over 46,000 persons going up to a maximum of 85,000 to 100,000 persons daily in the summer months. In 1969 there were approximately 6,000 motel units on the California side of South Lake Tahoe and about 1,000 motel units on the Nevada side. At present 90 percent of the tourists to South Lake Tahoe

are from the Bay area and Sacramento. In the witness's opinion Los Angeles is an untapped market for second home owners and tourists, and this market can best be exploited with airline service into LAX. The other public witnesses testified to much of the same information as described in the testimony of the witnesses set forth above.

The president of Holiday Airlines testified that the addition of a station at LAX will not only provide the benefits referred to by the public witnesses but would also increase Holiday's business by about 25,000 passengers a year. At its inception Holiday expects to include the LAX station on its BUR-TVL route and carry passengers BUR-LAX-TVL. (Holiday also serves San Jose (SJC) - Oakland (OAK) - TVL.) The LAX-TVL portion of the flight would be nonstop. Only one flight a day is contemplated from LAX but this will be increased as the traffic warrants. The LAX stop will add approximately one-half hour to the travel time between BUR-TVL. The witness testified that Holiday's business is seasonal. Not only that, the business is concentrated on weekends. Therefore, in the witness's opinion, it would be economically feasible during the off-season, and perhaps during mid-week, to combine the BUR-LAX-TVL route with the SJC-OAK-TVL route so that one plane can make the trip via BUR-LAX-SJC-OAK-TVL.

The treasurer of Holiday presented evidence based upon a projected increase in passengers of approximately 25,000 at LAX that Holiday's operating revenues in 1970 would increase by about \$584,000 and operating expenses would increase by about \$434,000 showing a profit before taxes of \$150,000.

Western Airlines presented its manager of route proceedings and two persons who testified regarding the destination of certain of Holiday's passengers. In addition, Western extensively cross-examined Holiday's operating witnesses.

The manager of route proceedings testified primarily to the inaccuracy of the passenger and economic forecasts presented by Holiday in this proceeding. He based his claim of inaccuracy on asserted inconsistencies found in Holiday's exhibits, and on a comparison of Holiday's exhibits as presented in this proceeding with exhibits Holiday filed with the Civil Aeronautics Board (CAB) in Docket No. 21381 (In the Matter of the Application of Holiday Airlines Inc., for Exemption Authority). Based upon his analysis, and considering the proposed increased fares of Holiday (subsequently authorized by Decision No. 76814), the witness concluded that Holiday's total operating revenues for 1970 were overstated in the amount of \$374,477. When this overstatement is subtracted from Holiday's projected operating profit for 1970 of \$229,335 there is a loss to Holiday for 1970 estimated of \$145,142. The conclusion that he draws from this is that Holiday cannot economically provide the proposed service.

The general manager of Air Nevada^{1/} stated that his office is located at the Burbank Airport near the ticket counter of Holiday. He said that on numerous occasions he observed representatives of Park Avenue Tours (a travel agency) at the Burbank Airport handing coupon books to passengers on Holiday's flights to the Lake Tahoe Airport. These representatives handed the coupon books to the passengers at the Holiday ticket counter or at the gate. The coupons in these books may be exchanged for entertainment, drinks, and chips at the Sahara Tahoe casino, which is located in Nevada, upon presentation of the Holiday round-trip ticket to Lake Tahoe Airport. This procedure is followed on a regular basis, and coupon books are handed to passengers on almost every Holiday flight to the Lake Tahoe Airport. Holiday personnel are present when the coupon books are handed to the passengers and representatives of Park Avenue Tours and Holiday have been seen talking to each other at the Holiday ticket counter and gate. The witness personally took one of these tours to the Nevada side of South Lake Tahoe utilizing air transportation provided by Holiday.

A representative of Park Avenue Tours testified that she handled the package tours to the casinos on the Nevada side of South Lake Tahoe. She sold these tours separately from the air transportation and while she collected money for the tours she did not collect any monies for the air transportation. She did make airline reservations on Holiday for many of the people who bought her tours. These customers would have to go elsewhere to obtain their airline tickets.

^{1/} Air Nevada has C.A.B. exemption authority to operate from Los Angeles and San Francisco areas to Truckee, California, and Hawthorne, Nevada. It does not hold any operating authority from this Commission.

In addition to this testimony Western presented a number of brochures and advertisements published by the Nevada casinos which stated that persons could fly to the South Shore via Holiday Airlines and if they did so they would be entitled to various bonuses at the casinos.

Discussion

The first argument Western makes against granting Holiday authority to serve LAX is that Holiday has failed to show that it can economically provide the proposed service. In support of this argument Western has introduced testimony and exhibits showing that Holiday's overall operations will be unprofitable in 1970. However, in this proceeding we are not so much concerned with Holiday's overall operations as we are with the effect of adding LAX to Holiday's route. Holiday asserts that adding LAX will increase its passengers in 1970 by 25,410 with an increase in passenger revenue of \$584,430. Western claims that Holiday's forecast is overstated as to passengers by 1,145 and overstated as to revenue by about \$45,000. Nevertheless, this shows an increase in passenger revenue of approximately \$540,000 when LAX is added. Holiday's forecast for additional expenses in adding LAX amounts to approximately \$434,000. Western presented no figures to show that the expense estimate was wrong although it did assert that Holiday would require more flights into LAX to handle the passengers at LAX than was provided for in its estimate of operating expenses. When we consider just the evidence of the economic affect of adding LAX to Holiday's routes we conclude that even though Holiday is presently operating

at a loss and even though Holiday may operate at a loss in 1970 the addition of LAX should reduce Holiday's losses by at least \$100,000. This reduction of loss will strengthen Holiday's overall economic posture and thereby benefit California travelers.

We have no doubt that public convenience and necessity require Holiday to serve LAX-LTV. Los Angeles International Airport is the hub of all air traffic going into and out of southern California. As compared to the Burbank Airport LAX is far more accessible by public transportation, such as airport buses and city buses, as well as feeder airlines from the outlying airports in the southern California area. And, of course, LAX is the airport where travelers make their connecting flights to all points. Lake Tahoe is a rapidly expanding resort area which has been unable to adequately tap the Los Angeles market due, in part, to inadequate public transportation. Providing service to a centrally located airport will benefit not only those travelers originating in Los Angeles and going to Lake Tahoe either on business or vacation, but also those travelers originating in Lake Tahoe and going to Los Angeles for either business or vacation. The need and convenience for public ground transportation to get to and from airports in the Los Angeles area was a continuing theme of the public witnesses. LAX has such transportation, Burbank does not.

The second argument Western makes against granting Holiday authority to go into LAX is that Holiday is illegally engaging in interstate air transportation and promotion. Western asserts "that a significant number of Holiday's passengers in the past have been and are now destined for Nevada and therefore have moved and are moving in interstate commerce. Holiday therefore has been and is illegally engaging in air transportation covered by the Federal Aviation Act, not being the holder of a certificate of public convenience and necessity issued by the CAB." The evidence that Western claims supports this contention includes the fact that Transportation Consultants International (TCI) provides all of Holiday's sales, marketing, and reservation services in return for a minimum fee of \$12,000 per month plus a commission of 5 percent on all air transportation revenues (passenger and cargo) in excess of \$200,000 per month, and at the same time a division of TCI, the George R. Smith Company, represents, on a retainer basis, the hotel Sahara-Tahoe, in Stateline, Nevada, on the south shore of Lake Tahoe; the fact that certain resorts in Stateline, Nevada disseminate printed material and advertising which include the statement that "Holiday Airlines offers daily Super Electra-Jet service from Hollywood-Burbank Airport to Lake Tahoe Airport - just 7 miles from the Swinging Side of Lake Tahoe;" and the fact that casino coupon books are distributed to some of Holiday's passengers at Holiday's ticket counter and gate at the Burbank Airport.

In our opinion such evidence shows no more than that some persons who travel on Holiday eventually travel out of state. If that were all that need be shown to prevent this Commission from asserting jurisdiction over a transportation company it would be the rare transportation company that we would be able to regulate. In this day of large scale interstate and foreign travel it would be exceptional indeed if intrastate carriers did not at some time carry persons on a segment of an interstate or foreign journey. Neither the law, Commission cases, nor CAB cases, require the result sought by Western. The Passenger Air Carriers Act (Public Utilities Code Sections 2739-2769.5) gives the Commission authority to regulate all persons or corporations operating aircraft as a common carrier of passengers for compensation between points within this state. (Section 2741.) There is no dispute that Holiday is a common carrier of passengers for compensation and that Los Angeles and the City of South Lake Tahoe are points within this state.

Even when air transportation admittedly involves interstate commerce, this does not, of itself, preclude this Commission's exercise of jurisdiction. (Re San Diego-Catalina Air Service (1967) 67 CPUC 104.) On May 14, 1969, in a case before the CAB when Western raised the same contentions as here (Docket No. 20774, Application of Holiday Airlines Inc. for an exemption pursuant to Section 416 of the Federal Aviation Act of 1958, as amended), the CAB stated, in part, "Western's contention that by granting an exemption to Holiday the Board would be facilitating

an illegal interstate operation is without merit." In analogous situations where passengers were transported by bus from points in California to the California side of the Mexican border and where the passengers then got off the bus and walked across the border, this Commission has asserted jurisdiction and granted certificates of public convenience and necessity. (Re Dominic A. Mannino Decision No. 58412 dated May 12, 1959 in Application No. 40853; Re Tanner Motor Tours, Ltd. Decision No. 61751 dated March 28, 1961 in Application No. 42447.) And the Interstate Commerce Commission has held that it had no jurisdiction over a bus company which discharges passengers in California who thereupon walk across the state line. (Moore Service, Inc. Extension, MC-29679, Sub 3, decided April 19, 1962.) None of the usual indicia of a single-state carrier being in interstate commerce, such as, common arrangements with interstate carriers, through tickets, joint fares, or interchange of passengers, is present in this case.

As a final point, Western asserts that because the Nevada casinos grant discounts and concessions to persons flying into the Lake Tahoe area this, in some way, constitutes an illegal rebate by Holiday of part of the airline fare. There is no evidence to support this assertion. Holiday collects its fares from its passengers and pays no more than normal commissions to travel agents. Any bonuses casinos may give passengers is no concern of Holiday's.

Findings of Fact

1. The City of South Lake Tahoe has a year-round population of approximately 17,000 persons with an additional 15,000 persons owning second homes in the area. The California side of South Lake Tahoe is a tourist area with an average daily population of over 46,000 persons going up to a maximum of 100,000 persons daily in the summer months. In 1969 there were approximately 6,000 motel units on the California side of South Lake Tahoe and about 1,000 motel units on the Nevada side. At present 90 percent of the tourists to South Lake Tahoe are from the San Francisco Bay area and Sacramento. Los Angeles is an untapped market for second home owners and tourists, and this market can best be developed with airline service into LAX.

2. The Tahoe Valley Airport has been improved and can now accommodate airplanes as large as the Boeing 707 and the DC-8. There is a new terminal under construction, including approach roads and parking, which should be completed by May 15, 1970.

3. In 1969 Holiday handled approximately 75 to 80 percent of the passengers utilizing TVL. It is estimated that approximately 200,000 passengers will be handled at TVL in 1970; 400,000 by 1975.

4. Numerous persons have requested service into LAX for both business and personal reasons. They want service to LAX from TVL in order to obviate the drive to Sacramento or Reno to obtain such service. LAX in comparison to BUR offers superior access to

the whole Los Angeles area. LAX is far more accessible by public transportation, such as airport buses and city buses, as well as feeder airlines from outlying airports. LAX is the airport where travelers make their connecting flights to all points.

5. Adding LAX to Holiday's route will increase its passengers in 1970 by approximately 25,000 persons and will increase passenger revenue by over \$540,000. Additional expenses incurred serving LAX will amount to approximately \$434,000.

6. Even though Holiday is presently operating at a loss and may continue to operate at a loss in 1970 the addition of LAX should reduce Holiday's loss by more than \$100,000. This reduction of loss will strengthen Holiday's overall economic picture and benefit California travelers.

7. Holiday is a common carrier of passengers for compensation traveling solely between points in California. The airport in South Lake Tahoe is on the California side of the lake and approximately 7 miles from the Nevada border. Holiday has no common arrangements with interstate carriers, through tickets, joint fares, or interchange of passengers. Once a passenger debarks at TVL Holiday has terminated its control over the passenger and has fulfilled its transportation contract. Holiday does not operate in interstate commerce.

8. Holiday does not make rebates of any part of the airline fare to any passenger.

9. Holiday has extensive business experience in the field of air operations; has adequate financing to perform the proposed service; has insurance coverage that meets all requirements of law; has adequate equipment to perform the proposed service; will establish adequate minimum schedules; and will economically give adequate service between TVL and LAX.

10. Public convenience and necessity require the granting to Holiday of a certificate to operate as a passenger air carrier between Tahoe Valley Airport and Los Angeles International Airport.

11. In the interest of economy during off-peak travel Holiday should be permitted to combine its BUR-LAX-TVL route with its SJC-OAK-TVL route so that one plane can provide service via BUR-LAX-SJC-OAK-TVL. However, this route, and any other routing of Holiday, shall not be changed except by published schedule and tariff.

Based upon the foregoing findings of fact the Commission concludes that the application of Holiday Airlines for a certificate of public convenience and necessity to operate as a passenger air carrier between Tahoe Valley Airport and Los Angeles International Airport should be granted. For convenience we are restating Holiday's operating authority.

Holiday Airlines is hereby 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 Holiday Airlines, authorizing it to operate as a passenger air carrier as defined in Section 2741 of the Public Utilities Code, between the points and over the routes particularly set forth in Appendix A, attached hereto and made a part hereof.

2. In providing service pursuant to the certificate herein granted, applicant shall comply with and observe the following service regulations. Failure to do so 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 requirements of the Commission's General Orders Nos. 120-B and 129.

- (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.

3. The certificate of public convenience and necessity granted in paragraph 1 of this order shall supersede the certificates of public convenience and necessity granted by Decision No. 74860, which certificates are revoked effective concurrently with the effective date of the tariff filings required by paragraph 2(b) hereof.

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

Dated at San Francisco, California, this 28th day of APRIL, 1970.

William Squitieri
President

Augusta

W. H. ...

Vernon L. Stinson
Commissioners

The authority granted herein to Holiday Airlines, Inc. supersedes the previously granted certificate of public convenience and necessity granted in Decision No. 74860.

Holiday Airlines, Inc. by the certificate of public convenience and necessity granted in the decision noted in the margin is authorized to operate as a passenger air carrier between the points listed below:

OAK-TVL	OAK-SJC	LAX-OAK
SJC-TVL	BUR-LGB	LGB-OAK
BUR-TVL	BUR-LAX	LGB-SJC
LAX-TVL	LAX-LGB	BUR-OAK
LGB-TVL	LAX-SJC	BUR-SJC

Conditions

1. No passenger shall be carried whose transportation does not originate or terminate at TVL.
2. Tariffs and changes in tariffs setting forth routes shall be issued and filed with the Commission at least 30 days prior to the effective date thereof unless otherwise specifically authorized by the Commission. Such tariffs shall comply with the requirements of General Order No. 105-A.
3. Schedules and changes in schedules setting forth routes shall be published on not less than 20 days' notice to the Commission and to the public unless otherwise specifically authorized by the Commission.

Issued by California Public Utilities Commission

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4. The following airports shall be used:

<u>Symbol</u>	<u>Location</u>	<u>Name</u>
BUR	Burbank	Hollywood/Burbank Airport
LAX	Los Angeles	Los Angeles International Airport
LGB	Long Beach	Long Beach Municipal Airport
OAK	Oakland	Oakland International Airport
SJC	San Jose	San Jose Municipal Airport
TVL	South Lake Tahoe	Tahoe Valley Airport

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