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ORIGINAL

Decision No. 78619

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

AIR CALIFORNIA, a California corporation,

Complainant,

vs.

PACIFIC SOUTHWEST AIRLINES, a California corporation,

Defendant.

Case No. 9160
(Filed December 10, 1970)

Graham & James, by Boris H. Lakusta, Attorney at Law, for Air California, complainant.
John W. Malinnis, Attorney at Law, for Pacific Southwest Airlines, defendant.
B. A. Peeters, Attorney at Law, for the Commission staff.

O P I N I O N

Air California (Air Cal) complains that Pacific Southwest Airlines (PSA) is violating Section 2752 of the Public Utilities Code by providing nonstop passenger air carrier service between San Diego and San Jose without a certificate of public convenience and necessity. Air Cal sought an ex parte cease and desist order to prevent continuation of this alleged violation. The Commission denied such relief in Decision No. 78099, dated December 15, 1970. A public hearing was held on January 6, 1971 in San Francisco before Examiner Foley. The matter was heard and submitted subject to the filing of briefs.

The facts involved in this proceeding are not in dispute. By Decision No. 76110, dated September 3, 1969, in Application No. 50381 Air Cal was granted authority to conduct nonstop passenger air

carrier service between San Diego and San Jose and between San Diego and Oakland. At that time there was no such service between San Diego and San Jose and only one such flight, which was operated by PSA, between San Diego and Oakland each week. Commencement of the service was postponed, however, at Air Cal's request until November, 1970.

As a consequence of poor business conditions Air Cal filed a petition to modify its authority to permit it to operate both nonstop and also one-stop service via Santa Ana (Orange County Airport). By Decision No. 77768, dated September 22, 1970, in Application No. 52165, the Commission granted Air Cal temporary modification of its San Diego authority so that it could operate between San Diego and San Jose/Oakland via Santa Ana. The day before, on September 21, 1970, after one or two months of preparation, PSA commenced nonstop operations between San Diego and San Jose with one flight daily in each direction. Air Cal commenced its modified service on November 1, 1970 with two nonstop round-trip flights each week in addition to one-stop service via Santa Ana.

Air Cal asserts that PSA's service is illegal because it does not have a certificate which authorizes operations on this route; that it was instituted to compete directly with Air Cal's new service, and that as a result Air Cal is suffering serious economic detriment. The Commission staff supports Air Cal's position that PSA does not have a certificate for the operations in question.

Air Cal contends that PSA's operation has a harmful effect on its new service. Its director of market services and planning presented a summary of traffic results for November, 1970. It shows

that on the nine days that both Air Cal and PSA operated nonstop flights from San Diego to San Jose PSA carried 790 passengers and Air Cal carried 118 (Exhibit No. 6). The summary also shows that PSA's flights on the route Oakland-San Jose-San Diego and return, which includes nonstop operation between San Jose and San Diego, have carried 2721 passengers while the two Air Cal flights with competitive departure times carried only 134 passengers on the route Oakland-San Jose-Santa Ana-San Diego and return.

This witness explained that Air Cal initially planned to institute six daily one-stop round-trip flights between San Diego and San Jose via Orange County in order to compete with PSA's one-stop service via Los Angeles or Burbank. He stated that PSA's nonstop round-trip flight caused very poor load factors for Air Cal.

PSA's response to this claim of economic detriment is that Air Cal's showing is inaccurate because an unknown number of PSA's passengers originated from or were destined for Oakland, and therefore they were not enticed away by PSA's new operations. Although PSA's response is accurate to some unknown degree, it is undoubtedly true that Air Cal's operations have been hurt somewhat during its first month by PSA's nonstop flights. More important, however, is the question whether PSA has certificate authority for these operations.

PSA defends its action on the ground that it has such authority; or that its operation is permitted under Section 2762 of the Public Utilities Code.^{1/} Therefore, the question is whether or

^{1/} This section reads as follows: "Unless prohibited by the terms and conditions of any certificate that may be involved, any one passenger air carrier may establish through routes and rates, charges, and classifications between any and all points served by it under any and all certificates or operative rights issued to or possessed by it."

not PSA has certificate authority to conduct the nonstop service and, if not, whether it may do so under Section 2762. For the reasons set forth below, the Commission concludes that PSA cannot provide such service without first acquiring a certificate to do so.

PSA's current operating authority, which was set forth in the certificate attached to Decision No. 77937, dated November 10, 1970 in Application No. 57329, is published herein as Appendix A. The specific routes involved in this controversy are stated as follows:

1. Between San Diego and Los Angeles, Burbank, San Francisco and Oakland.
2. Between Los Angeles and San Francisco and Oakland.
3. Between Burbank and San Francisco.
4. Between Los Angeles and San Jose.

There are no express restrictions or conditions relating to these routes except with regard to type of equipment.

Routes 1, 2, and 3 were granted by a temporary certificate issued in Interim Decision No. 69686, dated September 14, 1965 in Application No. 47828; and this certificate was made permanent by Decision No. 71393, dated October 11, 1966. These decisions recognized PSA's grandfather rights in that it had served these points prior to the enactment of the Passenger Air Carrier Act, which became effective September 17, 1965. Route 4 was authorized by Decision No. 70657, dated May 3, 1966, in Application No. 47921. This decision was issued after a hearing and it awarded PSA a new route; it did not recognize a grandfather right.

PSA argues that since routes 1 and 4 do not contain any express restrictions regarding points which may be served it may lawfully operate nonstop service between San Diego, an authorized point stated in route 1, and San Jose, an authorized point in route 4. In other words, the absence of any restriction confers authority to serve all authorized points designated in the four routes, or in all unrestricted routes, in any manner PSA deems desirable. Apparently this argument is based on the fact that in operating under its route 1 authority PSA overflies Los Angeles and Burbank with its nonstop flights between San Diego and San Francisco or Oakland. PSA concludes that since it can overfly Los Angeles or Burbank under its route 1 authority, it can do the same in providing San Diego to San Jose service.

This argument is erroneous. Even though PSA was the only intrastate passenger air carrier operating in California in 1965, it is reasonable to conclude that when the Commission stated PSA's operating rights in the form of specific routes it was limiting those routes. Route 1 gives PSA authority to operate nonstop between the various points set forth in it, as well as one-stop or multi-stop service since the route is unrestricted and contains five different points. Therefore, PSA may lawfully operate, for instance, nonstop service between San Diego and Oakland, or one-stop service from San Diego to San Francisco or Oakland via Burbank or Los Angeles. But PSA's right to overfly a point in route 1 while serving other points in that route does not mean that routes 1 and 4 can be combined so that it can overfly Los Angeles in operating between San Diego and San Jose. The routes are separate and different. They can be combined only under the authority provided in Section 2762.

Since receiving its grandfather rights PSA has applied for and received authority to operate over various specific routes, and the Commission has stated PSA's authority in terms of specific routes. Acceptance of its argument would render meaningless the past practice by PSA of applying for specific routes and the Commission's practice of stating separate routes in its certificate. This past practice indicates that neither PSA nor the Commission concluded that authority to serve San Diego in route 1 and authority to serve San Jose in route 4 translated into authority to operate nonstop between San Diego and San Jose. This conclusion is supported by the fact that PSA has filed Application No. 51059, dated May 6, 1969, in which it requests authority for a nonstop route between these same two points.

Furthermore, under PSA's view there is no need for tacking authority. If a point in one route may be freely connected with a point in another route, the authority to tack one route with another, as granted by Section 2762, is unnecessary since all authorized points may be combined in any manner unless they are expressly restricted. It is reasonable, therefore, to conclude that the Legislature enacted Section 2762 in order to prescribe the one method for combining authorized routes without requesting a new certificate. Otherwise the section is meaningless.

Finally, acceptance of PSA's position results in substantial deregulation of air carrier service in California. PSA's position means that once service is authorized to a particular point any service to and from it is authorized. This situation would permit the carrier to engage in operations which were not considered or even mentioned to the Commission at the time the original application was heard. The staff points out that under PSA's present

authority it could provide flights between its nine authorized points in 362,880 different patterns. Such extreme flexibility could create confusion and uncertainty as to exactly what service is certificated. It also means that a carrier need only apply for a certificate authorizing a new operation when it proposes to serve a new, unauthorized point, such as Fresno or Redding. Such a casual form of regulation is inconsistent with the Legislature's stated purpose in enacting the Passenger Air Carriers' Act, which is to provide "an orderly, efficient, economical and healthy intrastate passenger air network...."^{2/}

PSA's second argument is that Section 2762 provides authority for its nonstop service. This section permits tacking one route to another in order to establish "through routes". The Commission has described tacking, insofar as air carriers are concerned, as permitting a carrier to give "through service from point A to point C when it has two routes, one to serve point A to point B, and the other to serve point B to point C". (Air California v. Pacific Southwest Airlines, Decision No. 76104, dated August 26, 1969, in Case No. 8937, p.4, note 1.)

PSA contends that since there are no restrictions placed on routes 1 and 4 it may tack them together, and that its San Diego-San Jose nonstop service qualifies as through service. Air Cal and the Commission staff, on the other hand, assert that through service requires a physical stop at point B, in this case Los Angeles International Airport (LAX). PSA responds that if there is such a requirement it is satisfied because PSA's flights overfly LAX.

^{2/} Section 2739, Public Utilities Code.

We agree with PSA that in the absence of express restrictions on its routes 1 and 4 it may tack them together to provide through service in accordance with Section 2762. Therefore, it may operate between San Diego and San Jose via Los Angeles, which is the common point in the two routes. This conclusion is consistent with the Passenger Air Carriers' Act because the operation over each segment has been authorized as required by Section 2752, and the proposed route and fare for each segment has been considered as required by Section 2753.^{3/}

We disagree, however, that the term "through service" includes nonstop flights which merely pass over the common point in the routes. It is a myth to say that an overflight of the common point "passes through" it. The obvious conclusion is that a new and different route results under PSA's position, which has not been reviewed or authorized by the Commission. This situation results in a violation of Sections 2752 and 2753.

3/ These sections state:

"2752. No passenger air carrier shall engage in any operation in this state without first having obtained from the commission a certificate of public convenience and necessity authorizing such operation.

"2753. An applicant shall submit his written verified application to the commission. The application shall be in such form and contain such information and be accompanied by proof of service upon all passenger air carriers with which the proposed service is likely to compete and such other interested parties as the commission requires.

"In awarding certificates of public convenience and necessity pursuant to Section 2752, the commission shall take into consideration, among other things, the business experience of the particular passenger air carrier in the field of air operations, the financial stability of the carrier, the insurance coverage of the carrier, the type of aircraft which the carrier would employ, proposed routes and minimum schedules to be established, whether the carrier could economically give adequate service to the communities involved, the need for the service, and any other factors which may affect the public interest."

Section 2762 was derived from Section 1066, relating to highway common carriers. The Supreme Court has interpreted Section 1066 to permit a highway carrier to combine two routes via their common point, but not to allow a change of routes by permitting operation over a shortcut between the extreme points of the two routes. (California Motor Transport Co. v. Railroad Commission (1947) 30 Cal. 2d 184, 190.) We adhere to this reasoning. We conclude that the establishment of "through routes...between any and all points" means service through the common point in the two routes being tacked. Therefore, PSA lacks authorization for its nonstop service between San Diego and San Jose, and it will be ordered to cease and desist from providing such service.

Air Cal and the staff request that the Commission restrict PSA's routes so that it cannot tack any of them. The purpose of the restrictions would be to prevent further litigation such as involved herein and in Case No. 8937, supra; and to clarify PSA's operating authority.

By our decision herein it is clear that a passenger air carrier cannot tack two routes by overflying the common point. However, both Air Cal and PSA have several applications on file for additional route authority. After these applications are decided it is possible that unrestricted tacking authority could again result in litigation. Therefore we will restrict route 1 of PSA to provide for service among only its designated five points, except that we shall permit PSA to continue tacking route 1 and route 4 to operate between San Diego and San Jose via LAX, and routes 1 and 5 to operate between San Diego and Sacramento via LAX. We will also restrict

PSA's routes 2, 3, 4, and 5 to their specific segments except for the tacking permitted under the restriction in route 1. PSA's certificate as revised by our decision herein is set forth in Appendix B.

Findings of Fact

1. Air California is a passenger air carrier as defined in Section 2741 of the Public Utilities Code.
2. PSA is a passenger air carrier as defined in Section 2741 of the Public Utilities Code.
3. PSA has been authorized by this Commission to provide passenger air service between the points San Diego and Los Angeles, on the one hand (Route 1), and between Los Angeles and San Jose, on the other hand (Route 4), among others.
4. Air California has been authorized by this Commission to provide nonstop passenger air service between the points San Diego, on the one hand, and San Jose, on the other hand, and it has been temporarily authorized to provide service between these two points via Santa Ana.
5. Under the tacking authority provided in Section 2762, PSA has tacked routes 1 and 4 to provide passenger air service between San Diego and San Jose via Los Angeles. This combination of routes 1 and 4 is proper under Section 2762.
6. On or about September 21, 1970 PSA commenced nonstop passenger air service between San Diego and San Jose with one daily flight northbound during the week and one daily flight southbound during the week. PSA does not have a certificate of public convenience and necessity which expressly provides for nonstop service between San Diego and San Jose.

7. On or about November 1, 1970 Air California commenced passenger air service between San Diego and San Jose with two nonstop round-trip flights each week in addition to one-stop service via Santa Ana.

8. Route 1 in PSA's certificate does not designate San Jose as an authorized point of service. Route 4 does not designate San Diego as an authorized point of service. Since each route is designated as a specific and separate route it is reasonable to conclude that these two routes do not authorize any service between San Diego and San Jose unless they are combined pursuant to the tacking authority provided in Section 2762.

9. Litigation such as involved herein and in Case No. 8937 relating to through service between San Diego and San Jose via Burbank requires considerable time and expense. It confuses the public in that service is initiated which is later ordered to be discontinued. Such actions are not convenient to the public. They do not contribute to an orderly, efficient, economical and healthy intrastate passenger air carrier network. Therefore, it is reasonable to place restrictions on the unrestricted routes of Pacific Southwest Airlines so as to insure that future initiation of new service will first be submitted to this Commission.

The Commission makes the following conclusions of law:

1. The combining of two routes by a passenger air carrier pursuant to Public Utilities Code Section 2762 requires that service be provided via the common point in each route. Therefore, in combining routes 1 and 4 to operate between San Diego and San Jose, PSA must conduct this operation as one-stop service via Los Angeles.

2. PSA is operating nonstop service between San Diego and San Jose in violation of its certificate of public convenience and necessity.

3. Pursuant to Public Utilities Code Section 2763 PSA should be ordered to cease and desist from operating nonstop between San Diego and San Jose.

4. Pursuant to Public Utilities Code Section 2739 PSA's routes 1, 2, 3, 4 and 5 should be restricted to allow only the service presently being operated.

O R D E R

IT IS ORDERED that:

1. Pacific Southwest Airlines shall, within ten days after the effective date of this order, cease and desist from carrying passengers by air nonstop between San Diego and San Jose.

2. Routes 1, 2, 3, 4 and 5 in Pacific Southwest Airline's certificate of public convenience and necessity are restricted as set forth in Appendix B attached hereto. This revised certificate set forth in Appendix B supersedes all previously granted certificates of public convenience and necessity which have been granted by the Commission.

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

Dated at Los Angeles, California, this 27th day of APRIL, 1971.

William J. ... Chairman
[Signature]
[Signature] Commissioners

Commissioner J. P. Vukasin, Jr., being necessarily absent, did not participate in the disposition of this proceeding.

-12- Commissioner Vernon L. Sturgeon, being necessarily absent, did not participate in the disposition of this proceeding.

APPENDIX A
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(a corporation)Second Revised Page 1
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Pacific Southwest Airlines, by the certificate of public convenience and necessity granted in the decision noted in the margin, is authorized to transport passengers by air over numbered routes in either direction.

Routes

1. Between San Diego and Los Angeles, Burbank, San Francisco and Oakland.
2. Between Los Angeles and San Francisco and Oakland.
3. Between Burbank and San Francisco.
4. Between Los Angeles and San Jose.
5. Between Los Angeles and Sacramento.
6. Between Ontario International Airport and San Francisco International Airport.
7. Between San Jose Municipal Airport and Oakland International Airport, on the one hand, and Hollywood-Burbank Airport, on the other hand.
8. Between San Diego and Ontario.
9. Between San Francisco International Airport and Sacramento Metropolitan Airport.
10. Nonstop between Long Beach Airport and San Diego International Airport.
11. Nonstop between Long Beach Airport and Oakland International Airport.
12. Nonstop between Long Beach Airport and San Francisco International Airport.

Issued by California Public Utilities Commission.

Decision No. 77937, Application No. 51329.

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APPENDIX A
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PACIFIC SOUTHWEST AIRLINES
(a corporation)

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Routes (Continued)

13. Between Long Beach Airport and Sacramento Metropolitan Airport via intermediate point of San Francisco International Airport.
- #14. Between San Jose Municipal Airport and San Diego International Airport via intermediate point of Hollywood-Burbank Airport.

Issued by California Public Utilities Commission.

#Added by Decision No. 77937, Application No. 51329.

APPENDIX A
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(Dec. 76110)PACIFIC SOUTHWEST AIRLINES
(a corporation)First Revised Page 3
Cancels
Original Page 3RestrictionsRoutes 1 through 5, Inclusive

Passengers shall be transported by air in either direction in Lockheed Electra, Boeing 727, Boeing 737, or Douglas DC-9 Aircraft.

Route 6

1. Passengers shall be transported by air in either direction in nonstop service at a minimum of four scheduled round trip flights daily.
2. No nonstop service may be operated between Ontario International Airport (ONT) and any other points served by Pacific Southwest Airlines under other authorization with the exception of San Diego.

Route 7

1. Passengers shall be transported in either direction in Lockheed L-38 (Electra) Aircraft, Douglas DC-9, Boeing 727-100, Boeing 727-200 and Boeing 737 Aircraft with a minimum of four round trips daily.
2. This route authorization is limited to the specific segments of Route 7.

Route 8

Passengers shall be transported in either direction in nonstop service at a minimum of two scheduled round trips daily.

Route 9

Passengers shall be transported in either direction in nonstop service at a minimum of four scheduled round trips daily. All service to Sacramento Metropolitan Airport from any other points already served by Pacific Southwest Airlines must be provided via San Francisco International Airport, except for the nonstop service authorized between Los Angeles International Airport and Sacramento Metropolitan Airport.

Issued by California Public Utilities Commission.

Decision No. 77937, Application No. 51329.

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Routes 10, 11, 12 and 13

Service between the points authorized on these routes shall not be connected, combined or operated in combination with points or routes previously authorized, or with each other except as herein provided. Route 10 may be connected with Routes 11, 12 or 13 at Long Beach to provide through service to passengers as follows:

San Diego - Long Beach - Oakland
San Diego - Long Beach - San Francisco
San Diego - Long Beach - San Francisco (intermediate
point per Route 13) - Sacramento

The points herein authorized must be operated as specified, no over flights of points authorized shall be permitted.

#Route 14

Service between the points authorized on this route shall not be connected, combined or operated in combination with points or routes previously authorized. The points herein authorized must be operated as specified, no over flights of points authorized shall be permitted.

Issued by California Public Utilities Commission.

#Added by Decision No. 77937, Application No. 51329.

Pacific Southwest Airlines, by the certificate of public convenience and necessity granted in the decision noted in the margin, is authorized to transport passengers by air over numbered routes in either direction. The authority granted herein supersedes all certificates previously granted to Pacific Southwest Airlines.

Routes

1. Between San Diego and Los Angeles, Burbank, San Francisco and Oakland.
2. Between Los Angeles and San Francisco and Oakland.
3. Between Burbank and San Francisco.
4. Between Los Angeles and San Jose.
5. Between Los Angeles and Sacramento.
6. Between Ontario International Airport and San Francisco International Airport.
7. Between San Jose Municipal Airport and Oakland International Airport, on the one hand, and Hollywood-Burbank Airport, on the other hand.
8. Between San Diego and Ontario.
9. Between San Francisco International Airport and Sacramento Metropolitan Airport.
10. Nonstop between Long Beach Airport and San Diego International Airport.
11. Nonstop between Long Beach Airport and Oakland International Airport.
12. Nonstop between Long Beach Airport and San Francisco International Airport.

Issued by California Public Utilities Commission.

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APPENDIX B

PACIFIC SOUTHWEST AIRLINES
(a corporation)

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Routes (Continued)

13. Between Long Beach Airport and Sacramento Metropolitan Airport via intermediate point of San Francisco International Airport.
14. Between San Jose Municipal Airport and San Diego International Airport via intermediate point of Hollywood-Burbank Airport.

Issued by California Public Utilities Commission.

Decision No. 78519, Case No. 9160.

Restrictions#Route 1

No service of any type shall be operated between any of these five points and any other points authorized in other routes by the Commission except through service between San Diego and San Jose via Los Angeles; and through service between San Diego and Sacramento via Los Angeles.

#Routes 2 and 3

These route authorizations are limited to the specific segments of each route, except for the tacking of Route 3 and Route 9 to provide direct service between Burbank and Sacramento via San Francisco as provided in the Restriction on Route 9.

#Route 4

This route authorization is limited to the specific segment of route 4, except for through service from San Jose to San Diego via Los Angeles.

#Route 5

This route authorization is limited to the specific segment of route 5, except for through service from Sacramento to San Diego via Los Angeles.

Routes 1 through 5, Inclusive

Passengers shall be transported by air in either direction in Lockheed Electra, Boeing 727, Boeing 737, or Douglas DC-9 Aircraft.

Route 6

1. Passengers shall be transported by air in either direction in nonstop service at a minimum of four scheduled round trip flights daily.
2. No nonstop service may be operated between Ontario International Airport (ONT) and any other points served by Pacific Southwest Airlines under other authorization with the exception of San Diego.

Issued by California Public Utilities Commission.

#Added by Decision No. 78619, Case No. 9160.

Route 7

1. Passengers shall be transported in either direction in Lockheed L-88 (Electra) Aircraft, Douglas DC-9, Boeing 727-100, Boeing 727-200 and Boeing 737 Aircraft with a minimum of four round trips daily.
2. This route authorization is limited to the specific segments of Route 7.

Route 8

Passengers shall be transported in either direction in nonstop service at a minimum of two scheduled round trips daily.

Route 9

Passengers shall be transported in either direction in nonstop service at a minimum of four scheduled round trips daily. All service to Sacramento Metropolitan Airport from any other points already served by Pacific Southwest Airlines must be provided via San Francisco International Airport, except for the nonstop service authorized between Los Angeles International Airport and Sacramento Metropolitan Airport.

Routes 10, 11, 12 and 13

Service between the points authorized on these routes shall not be connected, combined or operated in combination with points or routes previously authorized, or with each other except as herein provided. Route 10 may be connected with Routes 11, 12 or 13 at Long Beach to provide through service to passengers as follows:

San Diego - Long Beach - Oakland
San Diego - Long Beach - San Francisco
San Diego - Long Beach - San Francisco (intermediate
point per Route 13) - Sacramento

The points herein authorized must be operated as specified, no over flights of points authorized shall be permitted.

Route 14

Service between the points authorized on this route shall not be connected, combined or operated in combination with points or routes previously authorized. The points herein authorized must be operated as specified, no over flights of points authorized shall be permitted.

Issued by California Public Utilities Commission.

Decision No. 78619, Case No. 9160.