

Decision No. 79166**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the application of
 TRANS SIERRA AIRLINES, a corporation,
 for a Certificate of public convenience
 and necessity as a passenger air carrier
 between the airports of Los Angeles
 International; Bishop, California;
 Mammoth Lakes, California and
 San Francisco International, pursuant to
 Sections 2753-2756 of the California
 Public Utilities Code.

Application No. 52044
 (Filed July 16, 1970)

ORDER GRANTING PERMANENT CERTIFICATE
 OF PUBLIC CONVENIENCE AND NECESSITY

Trans Sierra Airlines (TSA), applicant herein, requests that the Commission issue it a permanent certificate of public convenience and necessity to operate as a passenger air carrier between Los Angeles and Bishop/Mammoth Lakes and San Jose.

By Decision No. 78230, dated January 26, 1971, TSA received a temporary certificate to provide this service after the Commission staff and Alpine Air Bus, an interested party in opposition to TSA's application, requested that a subsequent hearing be held in which they could present their evidence in opposition. Furthermore, in Decision No. 78230 the Commission directed TSA to provide additional information at the later hearing regarding its financial stability and its initial period of actual operations.

This hearing was held on August 3, 1971 in San Francisco before Examiner Foley. Alpine Air Bus failed to appear and present any case in opposition. The Commission staff's witness supported issuance of a permanent certificate to TSA. The matter was heard and submitted subject to the filing of three late-filed exhibits.

TSA presented three witnesses; its president, vice-president of operations, and a retained accountant. These witnesses

presented the results of its operations from commencement in February, 1971 through July, 1971; its projection for the future; its evidence relating to TSA's financial condition; and its request that the Commission delete the restriction in its certificate which limits the size of aircraft it may operate.

TSA commenced operations on February 11, 1971 with one eight-passenger, twin engine, turbo-charged Cessna 402A aircraft. This aircraft is owned by the applicant. It also owns a five-passenger twin-engine Piper Apache which functions as a back-up aircraft. On April 30, 1971 TSA added a second Cessna 402A aircraft, which it leases, and put it into service. TSA's schedule shows that it is operating two daily round trip flights between San Jose and Bishop/Mammoth Lakes, and approximately four daily round trips between Los Angeles and the east Sierra points.

TSA originally planned to operate with two Cessna aircraft for about three to six months and then place into service a larger Volpar aircraft. Under this assumption it forecast that it would carry about 30,000 passengers during the full year 1971. This forecast has been revised downward as a result of its decision not to acquire the Volpar aircraft and in the light of its commencement of service in February, 1971.

According to the Commission staff's study TSA carried 2,623 passengers during the first six months of 1971. For July, 1971 it forecast that it would carry 719 passengers. Actual traffic during this month was 864 passengers. The staff study estimates that total 1971 traffic will be about 8,600 passengers. (Exh. Nos. 7A and 8A)^{1/} This study projects that although TSA is expected to sustain a large operating loss for 1971 it will have reduced its monthly operating loss to about \$1,200 by December, 1971. The staff

^{1/} The eight exhibits admitted into evidence in the hearing for a permanent certificate are designated as Exh. Nos. 1A-8A.

estimates that break-even operations will be achieved in early 1972 during the winter ski season. (Exh. No. 7A, p. 3.) In recommending that TSA be issued a permanent certificate the staff study emphasizes that at the present time there is no other passenger air carrier service into this area, and that the present surface transportation to the area is very circuitous.

Financial Stability

TSA initially planned to secure the necessary funds for start-up operations with a \$100,000 loan from its president and a Mr. W. Guy Cobb, and with the purchase of TSA stock in the amount of \$50,000 by a Mr. Cobb. This financing arrangement did not materialize. In place of it eighty percent of TSA's stock has been acquired by Stereovision International, Inc., (Stereovision) a closely held California corporation. Stereovision's recent unaudited financial statements were introduced as a late filed exhibit. (Exh. No. 4A.)

TSA's financial statements as of June 30, 1971 show that it is primarily dependent upon debt capital in order to sustain operations. (Exh. No. 1A.) TSA has acquired funds through chattel mortgages on its aircraft and by means of loans from several individuals and/or shareholders. Apparently the only loans immediately due for repayment total about \$9,000. Repayment of a \$60,000 unsecured loan from a Mr. Allen Silliphant, the president of Stereovision, has been deferred until January 1, 1974. The primary source of TSA's funds is a \$250,000 non-interest bearing loan from Stereovision, of which \$59,000 has been received by TSA. This sum is to be advanced at the rate of \$5,000 per week for fifty weeks during the period April 1, 1971 through March 31, 1972. According to TSA's accountant the total monthly payment on all of TSA's loans is \$2,621.08. He and TSA's president also testified that TSA has met its current operating expenses within sixty days.

Because TSA has a limited amount of cash and total long term debt of \$194,000 as of June 30, 1971 the Commission staff requested that Stereovision present its recent financial statements in order to evaluate the overall financial resources which TSA may be able to rely upon. Stereovision has submitted its statement of assets and liabilities and an earnings report for the period April 1, 1971 to August 15, 1971. According to these statements and the testimony of TSA's president, who is a member of Stereovision's board of directors, Stereovision is in the business of renting a three-dimensional motion picture process. The statements relate that Stereovision has received \$1 million in rental fees from the proceeds of the first film shown with this process, and it will receive at least another \$1 million during the next year. It is also producing its own motion picture to be shown with this process.

The financial statement shows Stereovision's total income for this four month period to be about \$413,000, and net income as \$91,000 before taxes. Stereovision has current assets of about \$12,000; and it lists long term debt in the amount of about \$2,500. Two-thirds of the rental income from the proceeds of the first film being shown with the process are required to be paid to the three officers. Stereovision's president states, however, that it intends to aid TSA's development to whatever extent required.

Insofar as TSA's financial stability is concerned, it appears to have adequate funds for a reasonable period. Virtually all of its debt obligations are owed to its parent company and controlling shareholder. Accepting Stereovision's representations as to its expected income it appears capable of financing TSA's operations until they result in a break even situation. Moreover, there is no other prospective applicant willing to provide this service.

Aircraft Restriction

TSA requests that the Commission issue it a permanent certificate without any restriction as to the size of aircraft it may utilize. TSA's president testified that Stereovision has purchased a Convair 340 aircraft with a capacity for about 40 passengers. TSA plans to lease this aircraft from Stereovision at a monthly rental of \$1,800, and then commence scheduled operations with it after acquiring the necessary clearances from the federal government. Funds to cover the initial operating expenses are to be provided by a loan to TSA in the amount of \$100,000 from TSA's president and two officers of Stereovision, including Mr. Silliphant.

TSA's president stated that it desires to replace the two Cessna 402A aircraft because they cannot accomodate the peak-time demand, and because some members of the public refuse to fly in this small aircraft. He testified that a larger aircraft would allow TSA to operate more economically. The larger aircraft will be placed into service when the traffic carried with the Cessna aircraft reaches the level of from 2,000-3,000 passengers per month. This request is reasonable since approval from the federal government will be necessary before such operations can be commenced.

The Commission staff recommends that the issuance of a permanent certificate be conditioned with the requirement that TSA first file a plan to recapitalize so that it has more equity in its financial structure. TSA objects to this recommendation on the ground that it has conducted operations since receiving a temporary certificate and demonstrated that it is a viable organization. Its president and accountant recognized that it has very little equity at the present time. The Commission accepts TSA's position in this regard.

Findings of Fact

1. Trans Sierra Airlines has been operating as a passenger air carrier pursuant to the temporary certificate issued in Decision No. 78230, dated January 26, 1971.

2. It has demonstrated the ability to acquire the necessary funds to conduct the proposed service by securing debt capital in the amount of \$250,000 from its parent corporation, Stereovision International, Inc.

3. There is no opposition to granting Trans Sierra Airlines a permanent certificate of public convenience and necessity.

4. Trans Sierra Airlines has arranged to lease and operate a Convair 340 aircraft with a seating capacity of forty passengers when public demand justifies such operations, and provided that TSA receives the necessary authority from the federal government. Air carrier operations with a larger aircraft will permit better service at peak demand times, and a less turbulent ride in the Owens Valley area. It is reasonable, therefore, to remove the condition in its temporary certificate regarding the maximum size of aircraft to be operated by it.

Based upon the foregoing findings of fact, the Commission concludes that a permanent certificate of public convenience and necessity should be granted to TSA authorizing it to operate between San Jose and Bishop/Mammoth Lakes, and between Los Angeles and Bishop/Mammoth Lakes.

Trans Sierra 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 Trans Sierra 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 route more particularly set forth in Appendix A, attached hereto and hereby 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 insurance requirements of the Commission's General Order No. 120-A.
- 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.

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

Dated at San Francisco, California, this 21st
day of SEPTEMBER, 1971.

[Signature]
Chairman
[Signature]
[Signature]
[Signature]
Commissioners

Commissioner Thomas Moran, being necessarily absent, did not participate in the disposition of this proceeding.

Trans Sierra Airlines, 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 over the routes and between the points listed below:

ROUTE 1 - San Jose - Bishop Intermediate Point:
Mammoth Lakes

SJC-BIH
SJC-MMH
MMH-BIH

ROUTE 2 - Los Angeles - Mammoth Lakes Intermediate Point:
Bishop

LAX-MMH
LAX-BIH
MMH-BIH

Conditions:

1. Authority granted herein is limited to service over the specific routes described above. Direct service between a point on one route and a point on any other route shall not be provided except through junction points of two or more routes.
2. On each route each airport shall be served with a minimum of one flight in each direction on each of seven days a week.
3. No passenger shall be carried whose transportation is solely between the respective airports of MMH and BIH.
4. The following airports shall be used:

<u>Symbol</u>	<u>Location</u>	<u>Name</u>
SJC	San Jose	San Jose Municipal Airport
LAX	Los Angeles	Los Angeles International Airport
MMH	Mammoth Lakes	Mammoth Lakes Airport
BIH	Bishop	Bishop Airport

Issued by California Public Utilities Commission.

Decision No. 79166, Application No. 52044.