

Decision No. 79311**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 certifi-
cate 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

ORDER GRANTING MOTION TO DISMISS
AMENDMENT FILED BY AIR CALIFORNIA
IN APPLICATION NO. 50381

Application No. 50261, filed May 22, 1968 by Pacific Southwest Airlines (PSA), sought a certificate to operate between Long Beach and San Francisco, Oakland, and San Jose. On July 8, 1968 Air California (Air Cal) filed Application No. 50381 by which it sought similar authority between Long Beach and only San Jose/Oakland. Pacific Air Transport, Inc., a new passenger air carrier applicant, filed Application No. 50438 on July 29, 1968 by which it sought the same authority as PSA.

By Decision No. 76110, dated September 3, 1969, the Commission concluded that PSA should be granted a certificate of public convenience and necessity to operate between Long Beach and San Francisco, Oakland, San Diego, and Sacramento via San Francisco and that Air Cal should be granted a certificate of public

convenience and necessity to operate between Long Beach and San Jose.¹ Pacific Air Transport's application was denied in its entirety. These certificates were temporarily denied by Decision No. 76110 until on or before July 1, 1970,² because the City of Long Beach had changed its position from support for, to opposition against, any new air passenger service at LGB. The City of Long Beach indicated that it would not make counter and gate space in the Long Beach terminal available to any new air carrier.

Decision No. 76110 provided that this proceeding would remain open for the receipt of additional evidence in order that PSA and Air Cal could proceed to acquire access rights for adequate terminal facilities. The decision further provided that upon receipt of notice that such access rights were granted, or denied, the Commission would give further consideration to the matter and would issue an appropriate final order.

After notification from the parties that leases, with restrictions on the daily number of flights, had been offered to both Air Cal and PSA, the Commission issued Decision No. 77874 on October 27, 1970. Decision No. 77874 granted operating authority to PSA and Air Cal as described above.

PSA commenced service between Long Beach and San Francisco, and between Long Beach and San Diego on December 23, 1970. It did not, and has not, commenced service to Oakland. Air Cal did not commence service between Long Beach and San Jose apparently because the City of Long Beach withdrew its offer of a lease for terminal facilities after Air Cal first refused to execute the lease without an upward revision in the number of daily authorized flights.

1 Air Cal also received authority to provide nonstop service between San Diego and San Jose, and between San Diego and Oakland.

2 By Decision No. 77447, dated June 30, 1970, this date was extended to January 1, 1971, at the request of PSA and Air Cal.

Commencing December 1970 both Air Cal and PSA filed petitions to reopen the matter. In these petitions each carrier sought exclusive authority to operate between Long Beach - San Jose/Oakland. In Decision No. 78848, dated June 22, 1971, the Commission refused to grant such authority to either carrier, and it granted the petitions to reopen the matter with regard to which carrier should be certificated on this route. Furthermore, the Commission suspended the authority of each insofar as service between Long Beach - San Jose/Oakland was concerned.

A prehearing conference was held on August 19, 1971. At this conference Air Cal announced for the first time that it would seek to amend its original application so that it could apply for authority to operate between Long Beach and San Francisco, and have this request included as an issue in the reopened hearing. This amendment was duly filed on August 31, 1971. PSA filed a motion to dismiss this amendment on September 22, 1971. Air Cal filed a reply on October 12, 1971.

Air Cal seeks, for the first time, to apply for authority to operate between Long Beach and San Francisco in this reopened proceeding. It maintains that the Commission determined, in Decision No 76110, that these points should receive a minimum of eight daily round-trip flights; and that PSA and Western are providing less than that number of flights. Air Cal also states that its flexibility will be increased if it is awarded authority to serve San Francisco.

The Commission concludes that pursuant to Rule 8 of the Commission's Rules of Procedure PSA's motion to dismiss this amendment, which has been filed long past the original hearing in these proceedings, should be granted. We reopened this proceeding insofar as service to San Jose/Oakland is concerned because no such service has been commenced and each carrier apparently wants the exclusive right to serve both points. Furthermore, the factual situation has changed in that Western Airlines (Western) has suspended its Long

Beach-Oakland flights with the result that there is now no carrier operating on this route.


As far as the Long Beach-San Francisco route is concerned, PSA and Western are currently providing at least six daily round-trip flights. PSA has been operating its flights less than one year. More important, when Air Cal filed its original application in 1968 it did not seek San Francisco authority. PSA sought and was granted this authority, and it has commenced operations pursuant to it. We agree with PSA that to permit the interjection by amendment of the issue whether a third carrier should be certificated on this route will only disrupt the orderly process we have attempted to establish in Decision No. 78848. If Air Cal believes that the Long Beach-San Francisco route justifies a third carrier, it should file a new application for this authority which can be resolved in a separate proceeding after a reasonable period of time has passed with two-carrier service in this market.

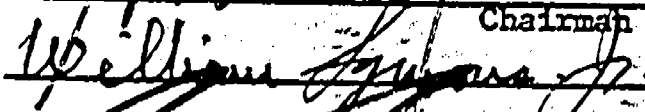
IT IS ORDERED that:


1. Air California's amendment filed on August 31, 1971 in Application No. 50381 is hereby rejected and dismissed.
2. If Air California wishes to seek authority to operate between Long Beach and San Francisco, it is directed to file a new application for such authority.


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

Dated at San Francisco, California, this 9th day
of NOVEMBER, 1971.



Chairman






Commissioners