

ORIGINAL

Decision No. 80241

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the application of
PACIFIC SOUTHWEST AIRLINES for a
certificate of public convenience
and necessity, in either direction,
between San Diego, 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 certificate 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 DENYING PETITION FOR AN EX PARTE ORDER
GRANTING TEMPORARY ROUTE AUTHORITY TO SERVE LONG BEACH
AND SAN JOSE/OAKLAND AIRPORTS

On April 25, 1972, Pacific Southwest Airlines (PSA) filed a petition requesting that the Commission issue an ex parte order granting it temporary route authority to operate as a passenger air carrier between Long Beach and San Jose/Oakland, with the latter two cities being designated as intermediate or terminal points. Objections to PSA's petition were filed by Air California (Air Cal) on May 3, 1972, and by Western Airlines, Inc. (Western) on May 4, 1972.

In its petition PSA relates various reasons in support of its request. Among these are that it has a lease with the City of Long Beach to operate from the Long Beach Airport and is able to institute operations immediately; that there is presently no passenger air carrier service between the cities involved in its request; that it expects heavy summer traffic between these points with the result that the requested authority will help reduce congestion at other California airports. On the other hand, it states that Air Cal does not have a lease to conduct such operations with the result that it cannot operate temporary service; and that the City of Long Beach

supports PSA's request. PSA also asserts that there is valid precedent for granting its petition in the Commission Decision No. 77768, dated September 22, 1970, and Decision No. 78299, dated February 9, 1971, in Application No. 52165, by which an ex parte order was granted to Air Cal to operate one and two-stop service between San Diego, on the one hand, and San Jose/Oakland, on the other hand, as well as to carry passengers between San Diego and Orange County.

Air Cal and Western object to PSA's petition on the grounds that public hearing has been held as to whether PSA or Air Cal should be certificated to operate on this route, and the matter is presently under submission to the Commission subject to the receipt of closing briefs. They also object on the ground that Public Utilities Code Section 2754 prohibits the issuance of an ex parte order for a temporary certificate without a hearing when an entity having standing to object makes a formal protest.

The Commission concludes that PSA's petition should be denied. The above-entitled proceedings were reopened at the request of both PSA and Air Cal to determine whether one or both carriers should be certificated to operate between Long Beach and San Jose/Oakland. (Decision No. 78848, dated June 22, 1971, in Applications Nos. 50261 and 50381.) In addition to reopening these proceedings, the Commission directed that PSA not commence service between Long Beach and Oakland, and it also ordered Air Cal not to commence service between Long Beach and San Jose. After a prehearing conference was held, public hearing was held in the reopened proceedings on January 24, 25, 26, 27, and 28, and on March 1, 1972. Opening briefs were to be filed on May 15, 1972, but by agreement of the parties, they were mailed on May 22, 1972.

PSA's request seeks an order granting it ex parte operating authority in proceedings presently under submission to the Commission. PSA does not present any valid reasons to support its request. None of the facts it recites justifies the conclusion that an emergency exists which calls for the granting of such authority. There appears to be plentiful passenger air carrier service available between the Long

Beach area and the Bay Area via Air Cal's service at Orange County Airport or PSA's service located at Los Angeles International Airport, in addition to the service of Western and United Air Lines.

Furthermore, it is not clear without a thorough review of the record and briefs whether PSA's present authority from the City of Long Beach of six daily operations (one landing and one take-off are one operation) for Monday - Thursday is adequate to support viable commuter service on three separate routes: Long Beach - San Diego, Long Beach - San Francisco, and Long Beach - San Jose/Oakland.

The Commission rejects PSA's contention that Decisions Nos. 77768 and 78299, supra, provide authority to support its request. These decisions granted Air Cal temporary operating authority which was a modification of route authority previously heard by the Commission and granted by its decisions. The primary reasons this authority was granted on an ex parte basis were that Air Cal is a financially weak carrier which was compelled to accept delivery of an additional aircraft; that PSA would not be adversely affected because it is a financially strong carrier; and that a prompt public hearing was not possible because of the unavailability of PSA's counsel. (See Decision No. 77768, dated September 22, 1970 in Application No. 52165.) In the proceedings involved herein no such factors are involved. The matter has been heard and is under submission. Moreover, the question of the effect of PSA's proposed operations at Long Beach on Air Cal's operations at Santa Ana requires careful consideration.

Therefore, IT IS ORDERED that the petition of Pacific Southwest Airlines for an ex parte order granting temporary route authority to serve Long Beach and San Jose/Oakland is denied.

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

Dated at Los Angeles, California, this 18th day of JULY, 1972.

President

President
William Lyndon J.

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Benedictine

Commissioners

I dissent
Vernon L. Sturges

I dissent, & will file a written dissent.
H. H. Kinsinger, Commissioner