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Decision No. 81749

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  
(Filed May 22, 1968)

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  
(Filed July 8, 1968)

ORDER DENYING PETITION TO REOPEN  
AND GRANTING REQUEST TO FILE  
SUPPLEMENTAL CLOSING BRIEF

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. Western Airlines, Inc. (Western) intervened in opposition to all three applications.

By Decision No. 76110 dated September 3, 1969 the Commission concluded after an extensive consolidated hearing 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.<sup>1/</sup> Pacific Air Transport's application was denied in its entirety. The effective date of these certificates was temporarily postponed by Decision No. 76110 until on or before July 1, 1970,<sup>2/</sup> 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 Municipal Airport 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 from the city of Long Beach 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.

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

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- 1/ Air Cal also received authority to provide non-stop 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.

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. On May 5, 1971 it filed a petition for an extension of time in which to commence such operations.

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. Subsequently, Air Cal reversed its position and accepted the lease as originally offered, but then the city refused to act on Air Cal's acceptance.

Commencing in December 1970 the parties filed a series of pleadings with the Commission. Air Cal requested that the Commission reopen the proceeding, revoke or cancel the authority of PSA to serve Oakland, and grant Air Cal this authority so that it could combine service to San Jose and Oakland, with the former serving as either a terminal or intermediate point. This relief was sought by means of an ex parte order. PSA also requested that the Commission reopen the proceeding and grant it a certificate to serve San Jose from Long Beach on the ground that Air Cal could not institute such service because it lacked a terminal lease from the city of Long Beach. PSA further asserted that Air Cal had abandoned any operating rights it held to serve San Jose by its failure to request an extension of time in which to commence that service. PSA requested that this relief be granted by means of an ex parte order. The Commission staff opposed any ex parte relief and urged that a further hearing be held.

By Decision No. 78848 dated June 22, 1971 the Commission reopened the proceeding to determine whether one or both carriers should be certificated to operate between Long Beach and San Jose/Oakland. In addition to reopening the matter, 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.

In July 1972 before the date for filing concurrent closing briefs, Air Cal and PSA signed an agreement under which the latter carrier would acquire the former. The two carriers filed an application for approval of the acquisition by the Commission, Application No. 53442 dated July 1972, and also requested that priority be given to hearing the matter because of its complexity. Shortly thereafter the two carriers requested that the closing briefs in the reopened Long Beach proceeding be postponed pending the resolution of Application No. 53442.

After a public hearing the Commission determined that the acquisition did not violate Section 2758 of the Public Utilities Code and approved the transaction. (Decision No. 81080 dated February 23, 1973.) However, this agreement was terminated in July 1973 after the commencement of proceedings in federal court to determine if it failed to conform with federal antitrust laws.

Because both carriers expected that the acquisition would be consummated, they requested and obtained extensions of time to file closing briefs in the Long Beach proceeding. The latest extension called for briefs to be mailed on or before July 6, 1973. A request by Air Cal for an additional extension of time after this date was denied. The briefs were submitted by the parties with the exception of Air Cal. It filed a short closing brief and also requested permission to file a supplemental brief. At the same time it filed a petition to reopen the proceeding. Western, in its closing brief, likewise maintains that the matter should be reheard. PSA opposes reopening the matter, but does not object to Air California's submission of a supplemental closing brief.

Air Cal argues that the matter should be reopened because circumstances have changed. It maintains that it can present a far better case for being awarded Long Beach-San Jose/Oakland authority because its financial position has changed for the better since 1972; because there is supposedly available space at the Long Beach Airport; and because traffic experience has changed.

The Commission concludes that Air Cal's petition to reopen this proceeding should be denied. We do not agree that circumstances have changed so greatly that another reopening of this proceeding is required. A reopening to introduce more current traffic studies would essentially require a complete new hearing in the matter, including a prehearing conference, data requests, data responses, and time to prepare and mail exhibits before commencing the hearing. This would result in a substantial delay, amounting to perhaps a year, in resolving this matter.

With respect to Air Cal's financial condition, the Commission has the benefit of the record developed in Application No. 53442 and Decision No. 81080 issued this year. Official notice can be taken of more recent reports filed with the Commission.

Air Cal's argument that space is available at the Long Beach Airport, including its inference that the city of Long Beach may now be willing to grant access to Air Cal, does not appear to be correct in light of the city's reply dated July 24, 1973 which disavows any change in its position taken during the hearings.

The Commission will, however, allow Air Cal to file a supplemental brief to its abbreviated, initial closing brief.

Therefore, IT IS ORDERED that:

1. The petition by Air California to reopen Applications Nos. 50261 and 50381 is denied.

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2. Air California may file a supplemental brief to its closing brief on or before August 28, 1973.

The effective date of this order is the date hereof.

Dated at San Francisco, California, this 14<sup>th</sup>  
day of AUGUST, 1973.

Vernon L. Sturges  
President

[Signature]  
[Signature]

Commissioners

Commissioner William Symons, Jr., being necessarily absent, did not participate in the disposition of this proceeding.

Commissioner D. W. Holmes, being necessarily absent, did not participate in the disposition of this proceeding.