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Decision No. 83962

**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of  
HOLIDAY AIRLINES, INC., a California  
corporation, for authority to  
transport local passengers between  
all airports on Holiday's system  
where flights can be operated  
subject to the condition that all  
flights shall originate or terminate  
at Lake Tahoe.

Application No. 53266

OPINION ON REHEARING

Holiday Airlines, Inc. (Holiday) is a passenger air carrier which at the time of the filing of this application held authority from the Commission to operate in either direction between the following airports:

Hollywood/Burbank Airport (BUR)  
Los Angeles International Airport (LAX)  
San Diego International Airport (SAN)  
Oakland International Airport (OAK)  
San Jose Municipal Airport (SJC)  
Tahoe Valley Airport (TVL)

subject to the following conditions:

1. No passenger shall be carried whose transportation does not originate or terminate at TVL.
2. Passengers between SAN and TVL may be transported nonstop or via LAX only.

In essence, applicant's certificate authorized it to transport passengers between TVL and any of the other named airports either nonstop or via any of the other airports except that passengers originating from or destined to SAN must be routed nonstop or via LAX.

By this application Holiday requested that Condition 1 of its certificate stated above be modified so as to provide: "All flights shall originate or terminate at TVL". That modification would permit it to transport passengers between all points on the route, OAK, SJC, BUR, LAX, and SAN, but only on flights originating or terminating at TVL. Protestants to this application are Pacific Southwest Airlines (PSA), Air California (Air Cal), Western Air Lines, Inc. (WAL), Hughes Airwest, and Valley Airlines. On September 14, 1973 the Commission entered its Decision No. 81893 in this proceeding containing certain separately stated findings of fact and conclusions of law. By that decision the Commission modified the certificate as requested but also imposed some additional limitations and conditions. The effective date of the order was the date of issuance. On September 24, 1973 protestants PSA and Air Cal filed petitions for rehearing contending that the Commission erred in that it granted the modification without making a finding that a public need exists for the additional local service in the California corridor as required by Section 2753 of the Public Utilities Code.<sup>1/</sup> By its Decision No. 82631 dated March 26, 1974 the Commission granted rehearing limited to the issue of the public need for local service in the northern California-southern California corridor. The effective

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1/ Section 2753, in part:

"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."

date of Decision No. 81893 was not automatically stayed by reason of the filings of the petitions for rehearing, and the order granting rehearing in Decision No. 82631 did not stay the effective date of the modification. On April 17, 1974 PSA filed a motion for the suspension of the operating authority granted in Decision No. 81893 pending proceedings on rehearing. On April 23, 1974 notice was given all parties that a prehearing conference on rehearing of Application No. 53266 would be held, and argument on the motion by PSA for suspension of the authority pending rehearing would be received, on May 17, 1974 at San Francisco before Examiner Thompson. At said time and place a prehearing conference was held and it became apparent that the matters of the evidence to be received at rehearing as well as the issue of the suspension of the authority granted in Decision No. 81893 revolved about the construction of Section 2753 with respect to the language of the Commission's order regarding public need for service in the corridor. It was determined, and it was agreed by the parties, that in lieu of offering argument at that time on the petition for suspension that considerable time, expense, and effort could be saved if the parties were to file briefs covering the matters involving the construction of Section 2753 and the Commission issue its decision on the motion prior to scheduling further hearings. Briefs were filed June 24, 1974.

Reduced to simple basics, the facts supporting the argument for the suspension of the authority granted in Decision No. 81893 are:

1. The decision grants to applicant in addition to authority held by it only the authority to engage in passenger air carrier operations in the transportation of passengers originating at and destined to OAK, SJC, BUR, LAX, and SAN except that no passengers shall be transported solely between OAK and SJC.

2. There is no finding in the decision, nor is there any evidence in the proceeding which would support any finding, that there is a need for additional passenger air carrier operations in the transportation of passengers originating at and destined to OAK, SJC, BUR, LAX, and SAN, and more particularly between OAK and SJC, on the one hand, and BUR and LAX, on the other hand.
3. The statute requires the Commission in the awarding of certificates of public convenience and necessity to consider the need for the service.

PSA and WAL contend that the conclusion to be made from those facts is that inasmuch as the award of the certificate to Holiday was defective by reason of the failure of the Commission to consider the need for the service between the points for which the certificate was issued, there is no lawful basis for the Commission to permit any operations by Holiday pursuant to that award and therefore the authority should be suspended until such time as the Commission can find that there is a public need for additional service by Holiday between points in the corridor. They also point out that the Commission in its Decision No. 82631 granting rehearing found as a fact that there was no showing of any need for service between points in the corridor and concluded that as a matter of law such showing was required prior to the award of the authority granted in Decision No. 81893.

Holiday and the Commission staff presented argument against the petition for suspension. In essence they contend that the need for the service is merely one element to be considered by the Commission in its determination of public convenience and necessity and that the weight to be accorded that element depends upon other facts in the case. It is argued that in this instance, which involves only the removal of a closed door restriction, other elements are entitled to greater weight if it is shown that opening

the closed door will not cause any significant financial loss to any other carrier and will result in the furtherance of an orderly, efficient, economical, and healthy intrastate passenger air network. They argue that no other airline is being significantly harmed by Holiday's operations pursuant to the authority granted in Decision No. 81893 and therefore the authority should not be suspended pending rehearing in this matter.

Air Cal in its brief asserts that because of the importance to it of the legal issues (1) of the extent to which Section 2753 applies to an application for removal of a closed door restriction and (2) of the degree of proof required for such an application if that section does apply, and because of the ramifications resulting from a decision on these issues to Air Cal, it addressed itself to the legal question of the application of Section 2753 to applications for the removal of closed door restrictions, route modifications, and combinations. It did not argue for or against the suspension of the authority, but its conclusions respecting the element of the need for the service are similar to those of applicant and the staff.

We commend the parties on their briefs. The issues respecting certain questions of law have been placed clearly in focus. They are:

1. Under the Passenger Air Carriers Act does a modification of a certificate by the Commission, such as the removal of a closed door restriction, require a finding by it that such modification is required by public convenience and necessity; and if the answer is in the negative what would constitute justification for such modification?
2. If the answer to the above question is in the affirmative, is the Commission required to make findings with respect to all of the elements specified in Section 2753, including need for the service, and if so what weight is to be

accorded each element and what are the standards for determining public convenience and necessity for such modification?

The questions are ones of law and not of fact so we look first to the provisions of the statute. Unless specifically stated otherwise, all references are to sections of the Public Utilities Code.

Section 2741 states:

"As used in this chapter, 'passenger air carrier' means a person or corporation owning, controlling, operating, or managing aircraft as a common carrier of passengers for compensation between points within this State."

Section 2750 states:

"No passenger air carrier shall operate aircraft except in accordance with the provisions of this chapter."

Section 2752 states:

"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."  
(Emphasis added.)

Applied to the instant case the foregoing means that any and every operation by Holiday of aircraft as a common carrier of passengers between points within this State must have authorization from the Commission in the form of a certificate of public convenience and necessity.

Section 2754 provides:

"Each application for a certificate of public convenience and necessity made under the provisions of this part shall be accompanied by a fee of one hundred fifty dollars (\$150).

"The commission shall, with or without hearing, issue a temporary or permanent certificate, except that a certificate may not be issued without a hearing over the formal objection

of a person or party possessing standing to object. The commission may deny the application for a temporary or permanent certificate in whole or in part, with or without hearing, except that such denial may not be ordered without a hearing over the formal objection of the applicant. The commission may attach to the exercise of the rights granted by the certificate such terms and conditions as, in its judgment, the public convenience and necessity require. Minimum schedules may be received and revised by the commission at intervals of not less than one year."

The provisions of the statute are clear that in awarding certificates of public convenience and necessity and in prescribing the terms and conditions thereof the Commission must make its judgment of the requirements of public convenience and necessity.

Section 2753 (see fn. 1, supra) sets forth certain specific matters the Commission is to consider in its determination of the requirements of public convenience and necessity. The statutory direction is "the commission shall take into consideration, among other things,". That direction means nothing more than the Commission, in making its judgment as to the requirements of public convenience and necessity, shall: (1) inquire into the matters specified in Section 2753, (2) set forth in its decision the facts regarding those matters, and (3) weigh those facts.

The factors listed in Section 2753 are not exclusive, nor is any one factor controlling. All factors must be considered and weighed along with any other factors that affect the public interest, including the effect upon competition, and any other relevant antitrust issues. (Application of Air California et al. (1972) 73 CPUC 671 at 679.)

Section 2753 does not prescribe any standard with respect to any of the criteria to be considered; in other words the statute does not prescribe how much business experience of the particular passenger air carrier in the field of air operations

is required before an applicant is qualified to be awarded a certificate, nor does it indicate how much need or what kind of need for service is necessary for a finding of public convenience and necessity. The legislature, however, set forth the purpose of regulation, including the regulation of entry into the field of passenger air carrier operations, in Section 2739:

"The purpose of this chapter is to provide regulation of the transportation of passengers by air in common carriage within the State of California in order that an orderly, efficient, economical, and healthy intrastate passenger air network may be established to the benefit of the people of this State, its communities, and the State itself."

The determination of whether a proposed passenger air carrier operation is required by public convenience and necessity involves the weighing of the criteria set forth in Section 2753 in the light of the establishment to the benefit of the people of this State, its communities, and the State itself of an orderly, efficient, economical, and healthy intrastate passenger air network.

The statute does not contemplate that the Commission should define and delineate a specific network or parcel segments of that network among carriers. The Commission does not have power under the Act to require the establishment of services unless a carrier makes application to establish such services (Section 2768). The Commission may not require the continuation of unprofitable operations between terminals (Section 2769.5). While it has the power to prevent the establishment of joint through routes by two or more carriers, it does not have the power to compel the establishment of joint through routes even though public convenience and necessity may so



require (Section 2761). It may prohibit the establishment of a through route by a single carrier between a point on one route of that carrier and a point on another route of that carrier only as a term or condition of that carrier's certificate (Section 2762) when public convenience and necessity so require (Section 2754). The thrust of the Passenger Air Carrier Act as a whole is that passenger air carriers should be free of compulsion and restraint except in connection with operations that would not contribute to the establishment of an orderly, efficient, economical, and healthy intrastate passenger air network or would not be to the benefit of the people of this State, its communities, and the State itself.

The Commission heretofore has taken this view and has based its judgment of public convenience and necessity on the benefits that would be derived by the public. In Applications of Air California and Pacific Southwest Airlines (1967) 67 CPUC 567, 572, it was stated:

"In granting authority to AC and precluding the service by PSA at this time, we find that the public is receiving the maximum benefit under the circumstances. It is the public interest with which we must be primarily concerned, despite the fact that applicant PSA may be denied an expansion of its service at this time."

In Investigation of Pacific Southwest Airlines (1969) 70 CPUC 89, 91, we stated:

"Since the advent of Air California into the California intrastate air passenger market there has been extensive competition between Air California and PSA for passengers and routes. From the beginning we have recognized the need to protect Air California from destructive competition, at least until it becomes a viable operation."

In Application of Swift Aire Lines (1973) Decision No. 82036 in Application No. 53861, after reciting the provisions of Section 2739, the Commission stated:

"Unless compelling reasons are set forth showing why it would not be in the interests of the people, the communities, or the state, the public should be entitled to be transported between any points on any route operated by an airline." (At p. 15.)

In Application of Air California (1974) Decision No. 82985 in Application No. 53410, which involved the removal of a "closed door" restriction from Air Cal's certificated Route 5 with respect to transportation between Ontario and Palm Springs, after citing the holding in Swift the Commission stated:

"Such conclusion is even more appropriate at this time because of the fuel shortages and fuel price increases. The granting of authority to applicant to transport passengers between Palm Springs and Ontario on its Route 5 will not impair the ability of Western to provide service and will benefit the community of Palm Springs, passengers desiring to make connections with other airlines at Ontario International Airport, passengers who live in the immediate environs of Ontario International Airport and the State itself." (At p. 11.)

In Applications of Air California and Pacific Southwest Airlines (1974) Decision No. 83476 in Applications Nos. 53289 and 54511, which involved the removal from applicants' certificates of "closed door" restrictions between Oakland and San Jose, after citing the holding in Swift the Commission stated:

"The usual compelling reason for prescribing a 'closed door' restriction on operations by an airline over a route is that there is a probability from the facts in the particular case that additional competitive airline service between the points would be detrimental to the people, the communities involved, or other communities, by reason of curtailment of services or increases in the cost of obtaining transportation." (At p. 4.)

In that decision the Commission found:

"It would appear to be doubtful that the airlines presently providing service between the points would lose traffic to applicants, but if traffic were to be diverted it would not significantly affect the ability of those carriers to continue to provide service between those points or to or from other points at existing fare levels. In the circumstances we find that the additional competitive airline service that will result from authorizing applicants to transport passengers between the points will not be detrimental to the people, the communities involved, or other communities, by reason of curtailment of existing services or increases in the cost of transportation. The additional services will contribute to the establishment of an orderly, efficient, economical, and healthy intrastate passenger air network to the benefit of the people of this State, its communities, and the State itself." (At pp. 4, 5.)

In summation, the statute requires the Commission to authorize only those passenger air carrier operations which in its judgment public convenience and necessity require. In the exercise of its judgment it must consider the factors listed in Section 2753 and any other factors which may affect the public interest. No single factor is controlling and in weighing them the Commission must be guided by the purpose of the statute, namely, the establishment of an orderly, efficient, economical, and healthy intrastate passenger air network to the benefit of the people of this State, its communities, and the State itself. In arriving at its judgment the Commission must set forth its findings of fact with respect to the criteria set forth in Section 2753 as well as other factors which may affect the public interest that it has considered, and then describe the reasoning it used in applying those considerations to the question of whether the proposed service would or would not promote the establishment of an orderly, efficient, economical, and healthy intrastate passenger network to the benefit of the people of this State, its communities, and the State itself.

The findings with respect to the criteria in Section 2753 should be separately stated (Section 1705). The Commission must separately state findings and conclusions on the material issues of fact and law that determine the ultimate issue of public convenience and necessity. (California Motor Transport Co. v Public Utilities Commission (1963) 59 C 2d 270.)

Facts concerning the business experience of applicant in the field of air operations are set forth in Finding 1 of Decision No. 81893 and at pages 2 and 3 of the decision.<sup>2/</sup> Facts concerning the financial stability of applicant are set forth in Finding 2 and at pages 3, 4, and 5. There is no finding regarding the insurance coverage of applicant; however, Finding 1 is that applicant is engaged in passenger air carrier operations. General Order No. 120-C prescribes the minimum amount of protection against liability imposed by law upon such operators for the payment of damages for personal bodily injuries and damage to or destruction of property and provides that no operation shall be conducted in this state unless a certificate of insurance or other evidence of such protection shall be in effect and on file with the Commission. We take official notice of said general order. The evidence, therefore, permits a finding that applicant possesses insurance coverage, or other adequate protection, in at least the minimum amounts specified in the general order. The type of aircraft operated by applicant is described in Finding 3 and at page 3. There is no numbered finding with respect to applicant's proposed routes; however, pages 1 through 4 describe applicant's present routings, including the multi-stop routing between southern California points (SAN/LAX/BUR) and TVL via the Bay Area points (SJC and OAK). This application seeks authority to transport passengers between all points on that routing. Finding 8 pertains to minimum schedules over the route and is predicated upon the

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<sup>2/</sup> Page numbers refer to the page numbers on the mimeograph copies of Decision No. 81893.

discussion at pages 19 and 20. Finding 4 is a determination that applicant could economically give daily service between TVL and the other points if permitted to carry local passengers in the California corridor.

With respect to "need for the service" there is no numbered finding. At page 13 there is stated:

"Insofar as Holiday is required to demonstrate public need for daily service to Lake Tahoe, we conclude that its showing, combined with the testimony of the Lake Tahoe witnesses as set forth above, is more than adequate. The restoration of year-round daily service to Lake Tahoe would certainly be convenient to the public and may reasonably be deemed necessary, particularly in the winter when the access roads may be closed on occasion by weather."

That is a finding by the Commission of the need for year-round daily service to Lake Tahoe.

There is no finding with respect to a need for service between OAK and SJC, on the one hand, and BUR and LAX, on the other hand. The only discussion regarding the need for additional service between those points appears at page 14:

"Nor are the protestants correct in maintaining that Holiday must show public need for additional flights in the corridor before removal of the closed door restriction is justified. As stated above, this is not an application to become a major competitor in the corridor, such as PSA, Air Cal, Western, or United Air Lines. At the most it represents an attempt to become a small, supplemental carrier in the corridor such as Air West, American, and Trans World Airlines."

In Finding 4 it is stated that if permitted to carry local passengers in the California corridor, Holiday may reasonably expect about 16,000 passengers per year.

Exhibit 19 shows the number of flights reportedly operated by airlines each week between OAK and SJC, on the one hand, and BUR and LAX, on the other hand. Exhibit 25 shows the flights operated by PSA between those points commencing February 18, 1972. Exhibit 28 shows the number of flights operated by WAL between LAX and OAK during June 1972. The number of weekly scheduled flights so shown is tabulated below:

<u>Between</u>	<u>Exh. 19</u>	<u>Exh. 25</u>	<u>Exh. 28</u>
LAX - OAK	204	152	35
LAX - SJC	252	144	-
BUR - OAK	106	103	-
BUR - SJC	124	102	-

When it is considered that flights in the corridor in almost every instance have departure times not earlier than 6:00 a.m. nor later than midnight and the peak periods for passenger travel between the points aggregate around seven hours during that time, it is apparent that there is a substantial amount of flight service between the points involved. It has also been established that there are unoccupied seats on many of the flights. Holiday's proposed schedules provide for departures in the corridor within 1 hour and 10 minutes of flights of its competitors (Exhibit 5). In projecting revenue under the proposed authority Holiday estimated 7,740 O&D passengers between the points set forth above, which amounts to less than 150 passengers per week. With one northbound and one southbound flight per day between the points that would average about 10.7 passengers per flight. If we disregard the facts that Holiday conducts flight operations between the points on its route serving TVL, and that there is a need for service to and from TVL on the route, and if we consider this application only as a proposal to initiate passenger air carrier operations solely between points in the corridor, the record in this proceeding will not support a finding of a need for

additional passenger air carrier service by Holiday between the corridor points. The Commission would have to find on this record that there is not a need for additional passenger air carrier service exclusively between points in the corridor.

Finding 7 concerns Holiday's proposal to provide service between OAK and SJC on its present route. The finding contains the conclusions that:

"The question whether the two major intrastate carriers and Holiday should be authorized to operate in this local market when there is a third level carrier presently operating in it should be decided in a consolidated proceeding. For this reason it is reasonable to deny Holiday's request to carry traffic in this market at this time."

We take notice of the Commission's Decision No. 83476 dated September 17, 1974 in Applications Nos. 53289 and 54511 in which PSA and Air Cal were authorized to transport local passengers between OAK and SJC on their existing authorized routes between those points. The conclusions reached therein would seem applicable also to Holiday; however, we take no action here to review Finding 7 because it was not made an issue in the petition for rehearing or in the order granting rehearing in Decision No. 82631.

Other factors considered by the Commission on which it made separately stated findings are the impact upon the environment (Finding 9), and the impact upon other airlines (Findings 5, 6, and 7). In addition the Commission considered the alternatives offered by protestants to the granting of the authority herein which assertedly would assist Holiday's financial condition, including initiation of service between San Francisco and Lake Tahoe (pages 16 and 17) and an increase in fares (page 17).

Decision No. 81893 does not set forth separately stated findings of fact with respect to all of the elements we are required to consider under the provisions of Section 2753. Our findings

regarding the elements of the business experience of applicant, its financial stability, minimum schedules, type of aircraft, whether it could economically give adequate service to the communities involved, impact upon the environment, and impact upon other carriers serving the points are separately stated. There are findings in the opinion, but not separately stated, with respect to applicant's proposed routes and schedules, a need for year-round daily service to Lake Tahoe, and with respect to the alternatives proposed by protestants for improving applicant's financial stability so that it could provide daily service to Lake Tahoe. There are no findings whatever in the opinion regarding applicant's insurance coverage nor is there any finding regarding an independent need for additional passenger air carrier service between OAK, SJC, BUR, and LAX. The discussion at page 14 referred to above could be construed as a ruling by the Commission that evidence on such element is immaterial to the issue of whether public convenience and necessity require modification of the terms and conditions of applicant's certificate so as to permit it to transport local passengers between those points even though protestants injected it as an issue in the proceeding. As stated above, the evidence of record and the taking of official notice of General Order No. 120-C permits findings of fact with respect to insurance coverage.

The decision also does not set forth the effect of the elements that were required to be considered in arriving at its judgment that the modifications the Commission made in applicant's certificate were required by public convenience and necessity. That the decision does not set forth separately stated findings of fact and conclusions of law on all material issues is a fact and therefore as a matter of law the order in Decision No. 81893 is defective (Section 1705 and California Motor Transport Co. v PUC, supra). At this point it would appear that PSA's motion for



suspension of the authority granted in that order has merit; however, findings of fact on all of the material issues can be made from the present record and the defect can be corrected. Although an order of the Public Utilities Commission granting a certificate of public convenience and necessity must be annulled where the Commission fails to state separately findings and conclusions on the material issues of fact and law that determine the ultimate issue of public convenience and necessity, it does not follow that all proceedings that led to the order must be repeated; it is within the Commission's discretion to make a decision containing findings as required by Public Utilities Code, Section 1705, on the basis of the proceedings already taken and to base a new order thereon. (Associated Freight Lines v Public Utilities Comm. (1963) 59 C 2d 583.)

Findings of fact can be made from the evidence of record with respect to all of the criteria specified in Section 2753, and we have hereinbefore set forth what those findings are, including the need, or the lack of need, for the proposed service. Those facts show the following circumstances. In 1965 Holiday commenced passenger air carrier operations between TVL and the Bay Area. In 1968 it commenced service between TVL and the southern California points. In 1969 it inaugurated year-round daily service on its routes. It found that it was sustaining losses on such operations and applied for, and was granted, a 25-percent fare increase in October 1970. Traffic decreased and Holiday reduced the frequency of service between southern California and TVL from two daily round-trip flights to one round-trip per day in December 1970. Because of further dramatic decreases in traffic during the early winter months, Holiday ceased daily operations in January 1971 and provided only weekend flights; however, daily service was reestablished for the summer season in May 1971. It still continued to sustain losses. In June 1971 it

revised its flight schedules to operate single-plane multi-stop flights between southern California and TVL via SJC and OAK in order to reduce operating costs. In the 1971-1972 winter season Holiday found it necessary to reduce operations to five days a week in order to curtail operating losses. There is a public demand and a need for year-round daily service to TVL. The traffic to and from TVL, which consists primarily of travel for recreational purposes as compared to business purposes, will not support economical year-round daily service by Holiday at its level of fares. In order for Holiday to provide year-round daily service it will be necessary for it to receive additional passenger revenues. Because Holiday relies for its survival primarily upon tourist and recreation oriented traffic, which involves discretionary spending, and in the light of the results following the aforementioned fare increase, a further increase in fares is not a reasonable solution to obtaining additional passenger revenues. The only other means of providing applicant with greater passenger revenues is to permit it to extend its operations so as to obtain additional passenger traffic.<sup>3/</sup>

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<sup>3/</sup> Holiday could provide year-round service between the southern California points and TVL, obtain additional traffic, and also reduce expenses by curtailing flight operations in the corridor if it and PSA established joint through routes and joint rates between the southern California points and TVL. It could obtain additional passenger traffic if it and Air Cal established joint through routes and fares between TVL and Santa Ana, Palm Springs, and other southern California points served by Air Cal. As previously noted herein the Commission does not have the power to compel the establishment of joint through routes and fares. The examiner has informed us that at the prehearing conference he inquired whether joint through routes had been considered by Holiday, PSA, and Air Cal and that he had been informed that such had been considered and overtures were made but the airlines affected believed that it was in their individual interests not to establish such joint through routes. That method, therefore, is not a solution that may be considered by the Commission here.

An extension of service to points not on its present route would require Holiday to undertake the burden of start-up expenses at new airport locations. Additionally, obtaining sufficient traffic to recover enough revenues to offset the additional station and flight operations expenses and contribute revenues necessary to sustain year-round daily service to TVL could result only after some time for route development. The only realistic answer is for Holiday to obtain additional passenger traffic on its route between TVL and southern California. If Holiday is permitted to carry local traffic between points it serves in the corridor on flights that it operates to and from TVL, it will not incur additional expenses, except possibly a small increase in ticketing expense, and the revenue that would be derived from even a few passengers would make a substantial contribution towards Holiday's meeting the cost burden of the operations between TVL and southern California. Holiday has the ability and the facilities to provide that local service. There is already a substantial number of flights between OAK and SJC, on the one hand, and BUR and LAX, on the other hand. All of those flights are operated with jet aircraft and most of them are nonstop. Holiday's multi-stop operations in the corridor with Electra turbo-prop aircraft will not pose much of a competitive threat to the existing carriers, but the fact that it provides a different, more recreation oriented service on its aircraft, as well as its providing an alternative to existing air service particularly between OAK and BUR, will attract some traffic. With 16,000 additional passengers between the corridor points, which is a reasonable estimate, Holiday should be able to economically provide year-round daily service between TVL and the southern California points.

The number of flights and the number of passenger seats provided by other carriers are adequate for passenger traffic between points in the corridor. A need for Holiday's proposed service does not stem from any great public demand for additional

passenger air carrier service between points in the corridor but only from a need for year-round daily service along that route to TVL. The order granting rehearing in this matter calls for Holiday to present additional evidence of a public need for service in the corridor. Viewing the situation realistically, what additional showing can Holiday present other than that stated above considering that PSA and the other airlines serving the points presently provide direct nonstop service and have the financial ability and equipment capacity to accommodate any increasing demands for service between those points? At most, Holiday could only present further evidence to bolster its estimate that 16,000 passengers would use its service between the points, which estimate we have already found to be reasonable. The identical question would present itself after rehearing as is presented on the record already made, and, that is, do public convenience and necessity require the providing of local service in the corridor by Holiday when the need therefor is only in connection with its being able to fulfill a demonstrated need for year-round daily transportation service over its route between TVL and southern California points via OAK and SJC? If the answer to that question is in the affirmative then there is no need for taking additional evidence and an order should be made on the existing record and the motion of PSA should be denied. On the other hand, if the answer is in the negative the present record would then not support a finding of public convenience and necessity; therefore, there would be no justification for Holiday's operations and the motion of PSA should be granted.

In considering all of those elements and circumstances against the purposes of regulation described in Section 2739, it is clear that the operations authorized by Decision No. 81893 will contribute to the establishment of an orderly, efficient, economical,

and healthy intrastate passenger air network to the benefit of the people, the State, and its communities in the following respects:

1. It would provide to the public additional transportation service between points in the corridor without adding any additional flight operations in the corridor and thereby promote the efficient and economical utilization of aircraft and other resources in providing transportation between those points.
2. It would improve the financial stability of Holiday thereby promoting a healthy intrastate passenger air network.
3. It would provide to the public a needed year-round daily air transportation service between TVL and southern California by the more economical means.

The authorized service will not in any way be detrimental to the people, the State, or any of its communities by reason of any adverse competitive circumstances that may result in a curtailment of any existing passenger air carrier service, a retarding of future development of an orderly, efficient, economical, and healthy intrastate passenger air network, or an increase in the cost to the public of obtaining passenger air transportation. On the whole, the authorized service redounds to the benefit of the public and in the judgment of the Commission is required by public convenience and necessity.

Because all of the contentions and arguments of the parties have been fully considered and because on reconsideration our judgment of the requirements of public convenience and necessity support the order in Decision No. 81893, no beneficial purpose would be served from having further proceedings herein. It would appear sufficient to amend Decision No. 81893 to include the required findings and conclusions and affirm the order; however, following the submission of this application the assets of applicant, including its certificates and operative rights, were

acquired by Holiday Airlines Corporation, a California corporation, pursuant to authority granted by Decisions Nos. 81169 and 81366 in Application No. 53565.<sup>4/</sup> In order to remove any confusion regarding the operative rights held by that company and the possibility of any contention of duplication of operative rights, we conclude that it is desirable that a new certificate of public convenience and necessity be issued to Holiday incorporating all of its existing certificated authority, including the operative rights conferred in Decision No. 81893, in lieu of the certificates it acquired under the authority of Decisions Nos. 81169 and 81366.

We also conclude that inasmuch as a new certificate is to be issued, it would be of assistance to any analysis or review of the decision of the Commission in this proceeding that all of its findings and conclusions leading to that decision be separately stated herein.

#### Findings of Fact

1. Following hearings and briefs in this application the Commission entered its Decision No. 81893 in which it granted to Holiday a modification of its certificate of public convenience and necessity thereby authorizing it to transport passengers between points located on its authorized routes to and from TVL which theretofore it was prohibited from doing. That order became effective September 14, 1973 and continues to remain in full force and effect.

2. Following petitions for rehearing filed by PSA and Air Cal the Commission by its Decision No. 82631 dated March 26, 1974 granted rehearing in this application limited to the issue of the public need for local service in the northern California-southern California corridor.

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<sup>4/</sup> That circumstance is noted in Fourth Revised Page 1 to Appendix A of Decision No. 77228, which revised page was attached to and incorporated in Decision No. 81893.

3. On April 17, 1974 PSA filed a motion for the suspension of the operating authority granted in Decision No. 81893 pending decision on rehearing. Briefs were filed in lieu of oral argument on the motion.

4. Decision No. 81893 does not contain separately stated findings of fact on the insurance coverage of applicant, its proposed routes or the need for the proposed service.

5. On July 1, 1973, pursuant to authority granted by Decisions Nos. 81169 and 81366 in Application No. 53565, Holiday Airlines Corporation acquired all of the operative rights of Holiday Airlines, Inc. to conduct passenger air carrier operations.

6. Holiday commenced passenger air carrier operations to TVL in 1965. It is authorized to transport passengers between TVL, on the one hand, and OAK, SJC, BUR, LAX, and SAN, on the other hand. Its basic schedule in the summer season is two daily multi-stop round-trip flights between southern California and Lake Tahoe via OAK and SJC and one nonstop daily round trip between TVL and LAX with service to SAN. The basic winter schedule consists of one daily multi-stop round-trip flight except no service is provided on Monday and Thursday, with additional multi-stop and nonstop flights scheduled for the winter weekends. Its service is a luxury-type service which is dependent upon discretionary spending because it involves the transportation of recreational traffic rather than business traffic.

7. Holiday has never attained profitable results since it commenced operations as a passenger air carrier. Between 1966 and September 1972 it sustained a total loss of \$4.16 million. During the fiscal year ended September 30, 1972 it suffered a net loss of \$295,000. It has not been able to secure any credit from financial institutions since 1970. Holiday's financial condition is weak, and it is in need of additional passenger revenues.

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8. In October 1970 Holiday increased its fares by 25 percent, following which its passenger traffic decreased dramatically so that on January 1, 1971 it discontinued daily service during the winter season in order to curtail operating expenses.

9. Holiday is the only intrastate carrier directly serving TVL, and Air West, which is the only interstate carrier providing flights to TVL, plans to transfer its operations to Minden, Nevada.

10. There is a need for year-round daily service to Lake Tahoe which Holiday cannot economically provide unless it receives additional passenger revenues. A fare increase will not provide the required additional passenger revenues because of the diminution of passenger traffic that would result, nor would the extension of operations to points not on its existing routes provide the needed additional revenues without delay because of the additional start-up costs and time for route development that would be required.

11. Holiday proposes to obtain the required additional passenger revenues to provide year-round daily service to TVL by providing transportation service between all points on its routes on flights operated to and from TVL. If permitted to carry local passengers in the California corridor, it reasonably can be expected that Holiday will carry 10,000 additional Lake Tahoe passengers as a result of providing year-round daily service to TVL, and about 16,000 local passengers between other points it serves exclusive of between OAK and SJC. That additional traffic at its proposed fares will aid Holiday in achieving a small operating profit or a breakeven result in the near future. Holiday could economically provide the proposed service.

12. Holiday's proposed minimum winter service consists of a flight in both directions along the route TVL-OAK-SJC-BUR-LAX and a flight in both directions along the route TVL-LAX-SAN on Monday



through Thursday. On Friday, Saturday, and Sunday the flight schedules and routes will be oriented to accommodate the heavier weekend traffic. The contemplated operations and schedules do not provide service between OAK, SJC, and BUR, on the one hand, and SAN, on the other hand.

13. Holiday conducts flight operations along the routes and to the points proposed to be served and the Electra aircraft that it operates, the station and ground facilities at the airports it serves, and the insurance coverage it holds are suitable and adequate for the service that it proposes.

14. Passenger air carrier service between OAK and SJC is being provided by Valley Airlines, a third level carrier which has averaged about 5 passengers per month on this route during 1972. PSA and Air Cal have filed applications for authority to carry passengers between OAK and SJC. OAK and SJC are only a short distance apart. The service proposed by Holiday, and those proposed by PSA and Air Cal possibly could impair the ability of Valley Airlines to maintain service between OAK and SJC and to other communities that it serves.

15. PSA operates 103 nonstop flights per week between OAK and BUR, and there are unoccupied available seats on many of its flights. PSA's service is adequate to meet reasonable public demands between the points. Holiday's proposed minimum service between the points, consisting of 10 flights per week, all via SJC, will not compete significantly with the faster and more frequent service provided by PSA; however, by providing an alternative to the service of the only carrier serving the points, and by providing a somewhat different luxury-type service that is recreation oriented, Holiday should be able to obtain the traffic that it forecasts between those points.

16. PSA and WAL provide 187 nonstop flights per week between OAK and LAX and there are unoccupied seats on many of those flights. That service is adequate to meet reasonable public demands for passenger air service between the points. Holiday's proposed minimum service of 14 flights per week, all of them routed via SJC and 10 of which would also stop at BUR, will not compete significantly with the faster and more frequent service provided by PSA and WAL. Such traffic that Holiday would obtain would be from passengers preferring its aircraft, aircraft configuration, or cabin service.

17. PSA and Continental Airlines provide approximately 124 flights with jet aircraft per week between SJC and BUR, all of which are nonstop, and there are unoccupied seats on many of those flights. That service is adequate to meet reasonable public demands for passenger air transportation between the points. Holiday's proposed minimum service of 10 weekly flights between the points would also be nonstop. Holiday's proposed service with turbo-prop aircraft between the points will not significantly affect the traffic carried in the more frequent service offered by PSA and Continental. Holiday's recreation oriented service will attract some traffic and its estimates in that regard are reasonable.

18. PSA provides 144 nonstop flights per week with jet aircraft between SJC and LAX and there are unoccupied seats on many of those flights. The service is adequate to meet reasonable public demands for passenger air transportation between the points. Holiday's proposed minimum service is 14 weekly flights, 10 of which will be via BUR. Holiday's proposed service with turbo-prop aircraft will not compete significantly with the faster and more frequent service provided by PSA; however, by providing an alternative service and by providing a somewhat different luxury-type service that is recreation oriented, Holiday should be able to obtain the traffic it forecasts between those points.

19. There is no passenger transportation by fixed-wing aircraft between LAX and BUR. Holiday will be providing a service that is not presently available between those points. It should be able to obtain the traffic that it forecasts.

20. Passenger air transportation service between LAX and SAN is provided by PSA, WAL, UAL, American, Delta, and National with something over 650 nonstop flights with jet aircraft per week. The traffic between SAN and LAX is substantial; however, many of the flights operated have unoccupied seats. Holiday's proposed minimum service of 14 flights per week would not have any significant effect upon the other airlines although its estimate of its participation in the traffic is reasonable.

21. Except possibly as to Valley Airlines, with whom Holiday's proposed service between OAK and SJC might compete, the proposed operation by Holiday will not have any significant adverse effect upon any other airlines and would not be detrimental to the people, the communities involved, or other communities by reason of curtailment of services by those other airlines or because of increases in the cost of obtaining transportation.

22. The minimum schedules proposed by the Commission staff of one daily round trip between Lake Tahoe and the San Francisco Bay Area, and between Lake Tahoe and Los Angeles, and of two round-trip flights per week between Lake Tahoe and San Diego are the minimum schedules necessary to meet the requirements of the need for Holiday's passenger air carrier service.

23. The operation proposed by Holiday will not have a significant effect upon the environment.

24. The proposed operation by Holiday will contribute to the establishment of an orderly, efficient, economical, and healthy intrastate passenger air network to the benefit of the people, the State, and its communities by providing additional transportation service between the points in the corridor without requiring any

additional flight operations therein or any ground facilities at the points to be served, by improving the financial stability of Holiday, and by providing to the public a needed year-round daily air transportation service to Lake Tahoe.

25. Except as to the proposed operations between OAK and SJC, public convenience and necessity require the operation by Holiday proposed in its application.

26. Public convenience and necessity do not require the operation by Holiday of any passenger air carrier service between the points except on flights originating or terminating at TVL.

#### Conclusions of Law

1. Under the Passenger Air Carriers Act a modification of a certificate of public convenience and necessity to remove a closed door restriction requires a finding by the Commission that such modification is required by public convenience and necessity.

2. In its determination of whether a proposed modification of a certificate is required by public convenience and necessity the Commission must 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 give adequate service to the communities involved, the need for the service, and any other factors which may affect the public interest; however, the factors listed are not exclusive nor is any one factor controlling.

3. The determination of whether a proposed modification of a certificate is required by public convenience and necessity involves the weighing of the factors considered and the effect thereof on the contribution of the proposed modification towards the establishment of an orderly, efficient, economical, and healthy intrastate

passenger air network to the benefit of the people of this State, its communities, and the State itself.

4. The Commission must separately state findings of fact and conclusions of law on all of the factors it considered in arriving at its judgment of the requirements of public convenience and necessity, and an order failing to set forth separately stated findings of fact and conclusions of law with respect to those factors is defective and subject to being annulled; however, it does not necessarily follow that all proceedings that led to the defective order must be repeated. It is within the Commission's discretion to make a decision containing the required findings and conclusions on the basis of proceedings already taken and to base a new order thereon.

5. An orderly, efficient, economical, and healthy intrastate passenger air network to the benefit of the people of this State, its communities, and the State itself is promoted by the transportation of passengers by airlines between all points on its route unless that transportation may cause such adverse conditions that could result in a diminishing of air transportation service to the public or an increase in the cost of transportation to the public.

6. In an application by a passenger air carrier for modification of its certificate of public convenience and necessity to remove a closed door restriction so as to authorize it to transport passengers between all points on a route authorized by the certificate when it is shown that such modification will enhance, rather than impair, the applicant's ability to provide transportation over the route, and that operations pursuant to the proposed modified certificate will not cause such adverse conditions that could result in a diminishing of air transportation service to the public or an increase in the cost of transportation to the public, such modification of the certificate is required by public convenience and necessity.

7. When in an application proceeding having a full and complete record taken at public hearings at which all interested parties were accorded full opportunity to be heard, the Commission enters an order modifying a certificate of public convenience and necessity which is defective solely by reason of not containing separately stated findings of fact and conclusions of law, there is no beneficial public interest served by having further proceedings and the Commission should enter a new order containing the required separately stated findings of fact and conclusions of law on the record already made.

8. The modifications of the certificate specified in Decision No. 81893 should be granted.

9. The motion by PSA for suspension of the authority granted in Decision No. 81893 should be denied.

10. After considering PSA's motion and the briefs filed by the parties we conclude that further evidentiary hearings are not necessary and that the matter should be decided by our review of the entire record and our new findings of fact set forth in this opinion.

11. Decision No. 81893 should be affirmed as modified by this decision.

12. In order to reflect the change in ownership of this airline since this application was filed, and in order to remove any confusion regarding the operating rights held as well as those conferred herein, a new certificate of public convenience and necessity should be issued to Holiday Airlines Corporation in lieu of all operative rights held by it, and all such operative rights should be revoked.

#### O R D E R

IT IS ORDERED that:

1. A certificate of public convenience and necessity is granted to Holiday Airlines Corporation, a California corporation,

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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 routes set forth in Appendix A, attached hereto and made a part hereof.

2. The authority granted herein is a restatement of the operative rights held by Holiday Airlines Corporation as of the date of this order and is not to be construed as authorizing any changes in operations or fares.

3. The authority granted shall become effective upon the filing by Holiday Airlines Corporation of an acceptance in writing of the certificate granted within thirty days after the effective date of this order.

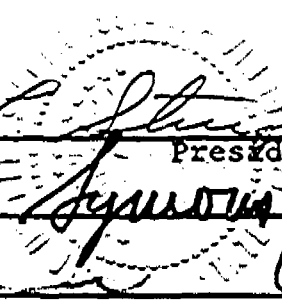
4. The operative rights to conduct passenger air carrier operations acquired by Holiday Airlines Corporation and held by it, and as more specifically set forth in Appendix A of Decision No. 77228, as amended, are revoked effective upon the acceptance by Holiday Airlines Corporation of the certificate as provided in the preceding paragraph or thirty days after the effective date of this order, whichever date is the earlier.

5. The order in Decision No. 81893 is affirmed as modified by this decision. ✓

6. The motion of Pacific Southwest Airlines is denied.

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

Dated at San Francisco, California, this 7th  
day of JANUARY, 1975.

  
William J. Synovis, Jr.  
President

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Commissioners



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Appendix A

HOLIDAY AIRLINES CORPORATION  
(Formerly Holiday Airlines, Inc.)

Original Page 1

Holiday Airlines Corporation is authorized to operate in either direction as a passenger air carrier between the following airports only:

OAK-TVL  
SJC-TVL  
BUR-TVL  
LAX-TVL  
SAN-TVL

OAK-SJC  
BUR-LAX  
LAX-SJC  
LAX-SAN

LAX-OAK  
BUR-OAK  
BUR-SJC

Conditions

1. No passenger whose transportation is solely between SJC and OAK shall be carried in either direction.
2. A minimum of one round-trip flight per day shall be operated between TVL and SJC/OAK.
3. A minimum of one round-trip flight per day shall be operated between TVL and LAX/BUR.
4. A minimum of two round-trip flights per week shall be operated between TVL and SAN.
5. No turnaround service shall be operated between LAX-SJC, LAX-SAN, LAX-OAK, LAX-BUR, BUR-OAK, BUR-SJC. Each flight operated between the airports set forth in this paragraph shall originate or terminate at TVL.
6. Passengers between SAN and TVL may be transported nonstop or via LAX only.
7. The following airports shall be used:

<u>Symbol</u>	<u>Location</u>	<u>Name</u>
BUR	Burbank	Hollywood/Burbank Airport
LAX	Los Angeles	Los Angeles International Airport
OAK	Oakland	Oakland International Airport
SJC	San Jose	San Jose Municipal Airport
TVL	South Lake Tahoe	Tahoe Valley Airport
SAN	San Diego	San Diego International Airport

Issued by California Public Utilities Commission.

Decision No. 83962, Application No. 53266.