

ORIGINAL

Decision No. 87550 July 6, 1977

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application )  
of SWIFT AIRE LINES, INC., a )  
California corporation, for a )  
certificate of public convenience )  
and necessity to operate as a )  
passenger air carrier between San )  
Jose and Fresno, or in the )  
alternative, for an order, )  
pursuant to §2767 exempting SWIFT )  
AIRE LINES, INC. from the )  
certificate provisions of the )  
Public Utilities Code. )

Application No. 54327  
(Filed September 17, 1973)

(Appearances are listed in Appendix B.)

O P I N I O N

This is an application by Swift Aire Lines, Inc. (Swift) for a certificate of public convenience and necessity authorizing it to conduct passenger air carrier operations between San Jose and Fresno. This proceeding has a somewhat long and involved history. In August 1973 Valley Airlines, Inc. (Valley) was the only airline operating between San Jose and Fresno. On September 5, 1973 the Federal Aviation Administration (FAA) grounded Valley's aircraft by recalling airworthiness certificates, and Valley ceased all operations. Swift filed the instant application on September 17, 1973 at the suggestion of the Commission staff. By interim order in Decision No. 81968 dated October 2, 1973 the Commission exempted Swift from the certificate requirements of the Passenger Air Carriers' Act with respect to operations over the route San Jose-Fresno for a period of 90 days. On October 5, 1973 Valley petitioned for rehearing. By Decision No. 82037 dated October 24, 1973 the Commission determined that Valley had reinstated service with one aircraft and granted rehearing to determine,

"...whether or not Swift Aire Lines, Inc. should be issued a certificate of public convenience and necessity to operate as a passenger air carrier between San Jose and Fresno in competition with Valley Airlines, Inc., and to determine whether exemption from the certificate provisions of the Public Utilities Code granted to Swift Aire Lines, Inc., should be cancelled, permitted to expire, or be renewed for the same or a lesser period pursuant to the provisions of Section 2767 of the Public Utilities Code."

Swift had been conducting operations under the exemption because the authority granted in Decision No. 81968 had not been stayed. Rehearing was scheduled for December 10, 1973 before Examiner Daly. On December 3, 1973 Swift filed for a 90-day extension of its exemption authority so that it would not lapse pending the proceedings. On December 5, 1973 Swift withdrew its petition having just then been informed by the Federal Energy Office that its fuel allotment for the month of December would be 50 percent of the amount of fuel that Swift had anticipated. It also requested that hearings on its application for a certificate be deferred to a date to be determined because of the fuel shortage. That was at the height of the fuel crisis. The Commission granted those requests in Decision No. 82380 dated January 22, 1974.

On January 7, 1975 the Commission instituted an investigation on its own motion (Case No. 9852) to determine the ability of Valley to provide passenger air carrier service and to determine whether an unlawful merger had been negotiated between Valley and Ram Airlines. On February 13, 1975 Valley's sole operational aircraft was damaged at which time it discontinued service to all points. Public hearings were held in Case No. 9852 on July 10 and 11, 1975. After evidence was taken and at the close

of the hearing, Valley and the staff entered into what might be termed, a stipulated judgment, one of the terms of which was that Valley reinstitute service by November 10, 1975. Valley did not reinstitute service. On November 28, 1975 Marin Aviation, Inc. (Marin) filed Application No. 56095 requesting authority to operate between San Jose and Fresno and between San Jose and Monterey, routes that had been served by Valley. On January 12, 1976 the staff moved in Case No. 9852 that Valley's certificates be revoked by reason of its failure to reinstitute service and because of failure to maintain on file evidence of insurance against liability as required by General Order No. 120-C and Public Utilities Code Section 2764.

On March 2, 1976 the Commission entered an interim order, Decision No. 85517, in this application granting Swift a temporary certificate authorizing operations between San Jose and Fresno. On March 19, 1976 Marin filed petition for rehearing. On May 4, 1976 by Decision No. 85787 the Commission ordered a partial stay of Decision No. 85517, granted rehearing to be held on a consolidated record with hearing in Application No. 56095 before Examiner Daly on July 15, 1976. That same day the Commission entered Decision No. 85779 in Case No. 9852 in which the certificates of Valley were revoked.

On June 17, 1976 Air California filed Application No. 56566 requesting authority to provide air passenger service between Oakland, San Jose, Fresno, Santa Ana, Ontario, and South Lake Tahoe. On June 21, 1976 it filed a motion to consolidate its application with those of Swift and Marin scheduled for hearing on July 15, 1976. On July 1, 1976 the Commission temporarily removed the scheduled hearings from the calendar and ordered that argument on Air California's motion be heard on July 16, 1976. Following argument, Examiner Daly granted Air California's motion for hearing on a consolidated record subject to the limitation that evidence be restricted solely to the issue of service between San Jose and Fresno.

Proceedings in the consolidated matters were referred to Examiner Thompson who presided over hearings at San Francisco on December 15, 16, and 17, 1976. Briefs were received January 17, 1977. Thereafter, events have occurred which have an effect upon these consolidated matters. On February 17, 1977 an adjourned hearing was held in Application No. 56566 at which Air California announced that the earliest it could initiate service over its proposed routes, including the San Jose-Fresno segment, would be in September 1977. On February 2, 1977 Application No. 57048 was filed under which Nor-Cal Aviation, Inc. seeks authority to acquire Marin. On March 15, 1977 the Commission instituted an investigation on its own motion (Case No. 10287) into the operations, services, and practices of Marin for the purpose, among other things, of determining whether its current certificated authority should be modified, suspended, or revoked. The Commission ordered that proceedings in that investigation be consolidated with Application No. 57048. That same day the Commission entered Decision No. 87110 in which the submission of Application No. 56095 and Application No. 54604 of Marin was set aside for the purpose of considering the findings made on the evidence received at the hearing on the investigation as it may relate to the issues under submission in those applications.

As matters now stand with respect to the issues considered at the hearings held in December 1976, the submission of Marin's application (Application No. 56095) has been set aside. At the hearing held in February Air California stated that it does not consider the San Jose-Fresno segment to be a viable one for it to operate except as a part of a longer route as proposed in its application. In view of the fact that the evidence at the hearing

on the consolidated matters was restricted to service over the San Jose-Fresno route and possible combining of that route with other routes applicants are currently authorized to serve,<sup>1/</sup> the only proposed service which may be certificated at this time is that involved in the application of Swift.

We have carefully considered whether to decide Swift's application now or to await decision until proceedings in Application No. 56095 (Marin) and Application No. 56566 (Air California) are completed. We have concluded that the evidence in this record requires that we make such determination now and that in so doing neither Marin nor Air California would be prejudiced thereby regardless of any presentations which may be made in the other matters now pending. The principal reason for that conclusion is that although every applicant herein is a passenger air carrier as defined in the Public Utilities Code, each is a different type of carrier with distinguishing operating characteristics.

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<sup>1/</sup> At the hearings in December Air California stated that if it were granted the San Jose-Fresno route, it would tack that authority onto its authority to operate between San Jose and Oakland so as to provide flights between Fresno and Oakland via San Jose. It asserted that it believed that flights over that route would be economically viable, and it would undertake such service while the routes proposed in Application No. 56566 were being considered by the Commission. It emphasized, however, that its principal interest in providing service between Oakland, San Jose, and Fresno would be as a segment of a longer route to a point or points in southern California, particularly Santa Ana. As was pointed out in staff's brief, Decision No. 83476 specifically prohibits the tacking of operations between San Jose and Oakland to any other operating authority issued to or possessed by Air California.

In Application of Marin Aviation, Inc., (Decision No. 84488 dated June 3, 1975 in Application No. 54604) unreported, the Commission described the various types of air carriers and their particular functions in the California intrastate passenger air carrier network. One type is the jet aircraft carrier operating equipment with 100 or more passenger seats. Its primary function is the transportation of passengers between metropolitan airports at relatively low fares. This type operates most efficiently over the relatively longer routes, such as between northern California and southern California. Generally the operation of a short hop by that type of aircraft is not economically viable unless it is a segment of a longer route. The short hop is very often necessary for the positioning of aircraft in order to provide adequate scheduling for a profitable segment of traffic. Air California is in this category of carrier.

Because of federal regulations exempting from certificate requirements of the Civil Aeronautics Board those air carriers engaged in operations with aircraft of capacities not exceeding 30-passenger seating capacity or 7,500-pound payload, the carriers who do not operate large aircraft ordinarily utilize airplanes within that exemption. Those carriers are commonly known as third level carriers.

As pointed out in Marin Aviation, Inc., the third level carriers generally serve three functions within the passenger air network: (1) provide local commuter service to a major air terminal from smaller airports in the surrounding area, (2) provide supplemental air service to points that are served by major airlines as intermediate points on routings between major terminal areas, and (3) provide service to the more distant points in rural areas not served by the major airlines. To a large extent, an

economically viable operation in each category requires the utilization of particular aircraft. A temporary certificate was granted to Marin in the aforementioned decision predicated upon finding that it would operate with aircraft requiring only one pilot.

There were a number of estimates of potential passenger traffic between Fresno and San Jose. Fresno is the largest city in the San Joaquin Valley. It ranks ninth in population of cities in California. Fresno functions as the retail, wholesale, financial, commercial, and cultural center within a 50-mile radius thereof which includes six counties in central California. It is in the center of a large agricultural area. Fresno County alone has ranked first in the nation in total value of agricultural production since 1950. Fresno Air Terminal (FAT) is owned by the city of Fresno and is the airport serving that six-county area. It is presently served by United Air Lines, Hughes Airwest, Pacific Southwest Airlines, Sierra Pacific Airlines, and Swift. United Air Lines provides nonstop service between Fresno and San Francisco, Los Angeles, and Denver. One-stop single plane service is provided to Portland and Chicago. Two-stop single plane service is provided to Seattle. Air transportation from Fresno to most points in the United States and abroad may be made via connections with United Air Lines at San Francisco, Los Angeles, Denver, and Chicago. Hughes Airwest provides nonstop service to Sacramento and Las Vegas, and one-stop single plane service to San Francisco and Phoenix. Pacific Southwest Airlines has nonstop flights to Los Angeles and to Stockton and one-stop service to San Francisco and San Diego. Sierra Pacific Airlines serves Reno, Mammoth Mountain, and Bishop. Swift offers nonstop service to Sacramento, San Luis Obispo, and Bakersfield (Visalia is a flag stop) and one-stop single plane service to Santa Maria and to Los Angeles. Each of the above-named carriers except Pacific Southwest Airlines may interline with other carriers at common air terminals.

San Jose Municipal Airport (SJC) is the convenient entry to the passenger air network for Santa Clara County and Santa Cruz County. Although there has been a very substantial industrial and commercial growth in Santa Clara County in the past several decades, there are substantial agricultural interests in the two counties. There is identity of business interests in the areas served by SJC and FAT, particularly with respect to the production of agricultural products and the implements and machinery involved therein, the processing of agricultural products, and the marketing and financing of agriculture.

Seven large trunk line carriers provide service at SJC. Aside from their intrastate service, Western Airlines provides nonstop service to Honolulu out of SJC. Continental Airlines offers nonstop service to Portland and one-stop service to Seattle. American Airlines provides nonstop service to Dallas and one-stop to New York, and Delta Airlines also flies nonstop to Dallas with service on those flights to New Orleans, Atlanta, and Washington D. C. National Airlines and Trans World Airlines operate flights to Atlanta, Chicago, Washington D. C., New York, and other points in eastern United States; however, all of their flights are routed via San Francisco. United Air Lines and Hughes Airwest provide service at SJC; however, the flights operated would not provide any service



that could not be obtained from routings from Fresno via San Francisco, Denver, Los Angeles, Las Vegas, or Phoenix. All of the applicants herein and Pacific Southwest Airlines provide service at SJC.

The distance between the civic centers of Fresno and San Jose is approximately 150 highway miles and requires approximately three hours of driving by automobile. FAT is several miles from downtown Fresno; however, there is ready access by major streets and roads to the terminal from points in the Fresno-Clovis area. SJC is centrally located in the industrial area of San Jose and Santa Clara and is virtually adjacent to Highways 17 and 101 which are principal freeways in Santa Clara and Santa Cruz Counties. On a round-trip basis, the use of air transportation between FAT and SJC and rental car, taxi, or public transportation to and from the airports would reduce travel time between the communities served by those airports by three to four hours as against travelling round-trip by private automobile. A comparison of costs depends upon the air fare per person, the number of passengers that would be in the party in the private automobile, and the duration of stay at destination. We are of the opinion that the service offered by each of the applicants would be attractive to the individual businessman, travelling alone, who wishes to leave home, transact business at destination, and return the same day. The attractiveness of the respective services is weighted by Air California's proposed fare of \$18, Swift's proposed fare of \$25.50, and Marin's proposed fare of \$27. It is also weighted by the size of aircraft (Air California's 115 seats, Swift's 15 to 29 seats, and Marin's 9 seats), and the block times between airports (Air California's 30 minutes, Swift's 45 minutes, and Marin's 45 minutes).

With respect to travel by businessmen whose stay at destination would exceed one or possibly two days, it is more likely that the use of private automobile would be more convenient. It would also appear that the use of the private automobile would be substantially less costly for families travelling between the Fresno and San Jose areas.

Air travel between FAT and SJC for the purpose of making connections with other flights to other destinations has very limited appeal. There would be no purpose at all for a passenger to fly from SJC to FAT to connect with a United Air Lines flight or a Hughes Airwest flight because there are either direct flights or connections via San Francisco from SJC to all points served by those airlines. The same is true regarding travel from FAT to SJC for the purpose of connecting with flights of United Air Lines or Hughes Airwest. Although in most instances the passenger would find more connections available at San Francisco and Denver for transportation to other points, in a number of cases interlining with carriers other than United Air Lines or Hughes Airwest at SJC could be more convenient to the passenger. At SJC, the passenger does not have to walk as far to get from the gate of one airline to the gate of another. Other problems encountered at large airports in boarding and debarking aircraft are diminished at SJC. It must also be recognized that arrivals at destinations on flights from San Francisco are not always identical with flights from SJC. We believe that there could be interline traffic via SJC; the amount, however, would depend upon scheduling and marketing.

Our analysis of the potential traffic between the points indicates a heavy demand for air transportation on morning and evening schedules in each direction each weekday. Air California proposes a schedule which would offer one morning flight and one late afternoon or evening flight in each direction each day. Based upon that schedule it estimates that the first year of operation would provide about 53,000 passengers. The evidence shows that this forecast is a reasonable one. Fresno and the Commission staff argue that the SJC-FAT market is one which can best be served by a large carrier under a proposal such as presented by Air California. We agree. For the purpose of this proceeding, we will make an initial assumption that Air California is authorized and does undertake to operate its proposed service. The first question to be resolved under that assumption is whether the SJC-FAT market would support additional service by one or more third level carriers. We are of the opinion that it will for two principal reasons. The nature of the traffic is such that an economical operation by Air California would permit probably only one morning and evening flight in each direction each day because of the inclusion of the SJC-FAT segment as a portion of a longer flight. We are of the opinion that there would be some passengers who would prefer, and who would be willing to pay a higher fare, to take an earlier or later flight if it were available. While the demand for interlining at San Jose appears to be somewhat limited, to the extent that there is such traffic Air California could not reasonably accommodate it.

The next question under the aforementioned assumption is whether the entry of a third level carrier in the FAT-SJC market would jeopardize Air California's ability to effectively serve the market. The answer to that question is emphatically no. In fact, supplementary service by another carrier would tend to increase the market potential for Air California's flights. On short hops where the market is dominantly travel for business reasons, the

availability of flights is a principal factor influencing favoring air transportation in preference to the private automobile.

In our opinion the granting of Swift's application could not, and would not, have any adverse effect upon the position of Air California regardless of any action which might be taken in Application No. 56566.

We now determine the effect upon Marin of our considering Swift's application at this time. For this purpose we will make the assumption that all issues in Case No. 10287 will be resolved in favor of Marin, and we will also make the assumption that public convenience and necessity require the operation between SJC and FAT by Air California and one or more third-level carriers.

If it is ultimately determined in these proceedings that more than one third-level carrier is required to provide supplemental service to this market, Marin's position is not prejudiced by our consideration of Swift's proposal at this time. If it is determined that only one third-level carrier service is required, the question is presented of which carrier can better serve the available market and provide the better contribution to 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. We consider that now.

As we have stated, the SJC-FAT market is dominated by O & D passengers desiring morning and evening flights in each direction each weekday, and there is sufficient traffic to support major airline operations. The function of the third-level carrier in such a market is to provide service supplemental to the primary major airline. We have already pointed out that Swift is presently

engaged in that function in the California intrastate passenger network and that the type of aircraft that it operates, and the in-flight cabin service it provides are necessary adjuncts of performing that kind of service efficiently and economically.<sup>2/</sup> On the other hand, Marin's operations are intended to provide local service between the smaller airports and the nearest major air terminals for entry into the air network, and its aircraft which permit the use of only one pilot enable economical operation of frequent schedules which is necessary for that kind of service. Swift's proposed fare is lower than the fare proposed by Marin. Swift presently operates at FAT and SJC and therefore has the ground and terminal facilities at both airports; Marin operates at SJC but does not presently have facilities at FAT. Swift proposes to operate the FAT-SJC flights on a route pattern of SFO-SJC-FAT-VIS (Visalia)-BFL (Bakersfield); Marin proposes to operate the segments on routings of SFO-SJC-FAT or SFO-LIV (Livermore)-SJC-FAT. Neither could expect any SFO-FAT traffic because of the operation by United Air Lines and Pacific Southwest Airlines with frequent schedules and lower fares between those points. It has not been shown whether there is any traffic between LIV and FAT nor has Marin indicated what its fare would be between those points, but it appears doubtful that Marin's proposed service would be more attractive than either interlining via SFO or the use of the private automobile. Swift's proposed flight routing would provide a direct service between SJC and BFL and VIS where there is presently no direct or convenient interline service. There is nothing of record showing the traffic potential between those points; however, we take notice that flight service between SJC and BFL had been offered by Valley.

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<sup>2/</sup> The manner in which Swift conducts operations to supplement major airline service over an identical route is described in Decision No. 87157 dated March 29, 1977 in Application No. 56813.

The financial statements of each carrier disclose that Swift's financial stability is more assured than is Marin's.

We turn now to the matter of the improvement of the operating efficiencies within the existing route structures of each carrier by reason of operating the FAT-SJC segment. Marin's contention is that the operation of its schedules over its routes results in times when its planes are on the ground at SJC. It could utilize those planes during those times to operate the FAT-SJC segment and the revenues it would receive would assist in defraying the fixed costs of its airline operations. Exhibit 13 is an aircraft routing diagram of Marin's operations showing that it could provide five round trips on the FAT-SJC segment with existing aircraft. We note, however, that the routing diagram does not provide for the two daily round trips between Monterey and SJC proposed by Marin in Application No. 56095, nor the minimum one daily round trip required under the service requirements of its temporary certificate granted in Decision No. 86504.<sup>3/</sup> Fresno is the hub of Swift's valley corridor routes which extend from Los Angeles to Sacramento as well as the hub of its connections to its coastal routes which extend from Los Angeles to San Francisco. The present connecting routes are FAT-SBP (San Luis Obispo) and FAT-MOD (Modesto)-SFO. The addition of another connection between the valley and coastal routes via FAT will permit Swift operating economies in the positioning of aircraft and flexibility of scheduling over its routes.

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<sup>3/</sup> In its application, Marin proposed three daily round trips between SJC and FAT, and two daily round trips between SJC and MRY (Monterey).

After consideration of all the circumstances, if it were to be ultimately determined in these proceedings that the operation between SJC and FAT required not more than one third-level carrier, the evidence in this record shows that the operation by Swift between SJC and FAT would contribute more to an orderly, efficient, economical, and healthy intrastate passenger air network than would the proposed operation by Marin. Even if all of the issues in Case No. 10287 were to be resolved in favor of Marin, our choice of which third-level carrier is better able to provide the service between SJC And FAT would have to be Swift.

The evidence in this proceeding shows a substantial need for air transportation service between FAT and SJC, and there has not been any reliable service between those points since Swift operated for two months in 1973 under an exemption order and for about four weeks in 1976 under a temporary certificate which was partially stayed by Decision No. 85787. Swift is ready, willing, and able to resume that service. In view of the fact that no prejudice to Air California nor to Marin will result, it is in the public interest for us to consider Swift's application now.

We have already discussed much of Swift's proposal. One portion, not mentioned, is the matter of minimum schedules. Swift asserted that its schedules would depend in large measures upon the service of any other airline that may operate in that market. If it were the only carrier, it would offer five daily round trips except on weekends. We have found that the SJC-FAT market is one which can be served by carriers operating large aircraft as a segment of a longer flight. There is little doubt in our mind that if the segment is not operated by Air California, it will soon be flown by some other large carrier. In the circumstances, we are of the

opinion that the minimum service of Swift required by public convenience and necessity is two daily round trips, except on Saturdays, Sundays, and holidays, with Nord 262 aircraft, or three daily round trips, except Saturdays, Sundays, and holidays, with other than Nord 262 aircraft. Swift should not be required to file minimum schedules for approval with respect to service between SJC and FAT because of the probability that Swift will be providing that service as supplemental to schedules operated by carriers using large aircraft.

Findings

1. Except for a period of about four weeks in 1976 when Swift operated pursuant to a temporary certificate since stayed, there has been no reliable direct air transportation service between SJC and FAT since December 1973.

2. On September 17, 1973 Swift filed its Application No. 54327 for a certificate authorizing passenger air carrier transportation between SJC and FAT; on November 28, 1975 Marin filed its Application No. 56095 for a certificate authorizing passenger air carrier transportation between SJC and FAT and between SJC and MTY; on June 17, 1976 Air California filed its Application No. 56566 for a certificate authorizing passenger air carrier transportation between Oakland, SJC, FAT, Ontario, Santa Ana, and South Lake Tahoe.

3. Upon motion, the three applications were consolidated for hearing for the limited purpose of receiving evidence regarding operations between SJC and FAT. That hearing was held at San Francisco before Examiner Thompson on December 15, 16, and 17, 1976, and briefs on the matters considered at those hearings were received January 17, 1977.



4. By Decision No. 87110 dated March 15, 1977, submission of Application No. 56095 of Marin was ordered set aside. On February 17, 1977 an adjourned hearing was held in Application No. 56566 of Air California, and the application was submitted on briefs received April 18, 1977.

5. A reasonable estimate of current potential O & D intrastate passenger air traffic between SJC and FAT is between 60,000 and 65,000 annual passengers, the substantial portion requiring early morning and evening departures. The communities served by SJC and FAT have been, and are, experiencing growth in industry, commerce, and population, and it is reasonable to forecast that the O & D intrastate traffic between those points will experience growth proportionately.

6. Under present circumstances and current airline routings, the only on-line or connecting intrastate traffic originating at SJC that would move by these applicants on the SJC-FAT route would be destined to Bakersfield, Visalia, Mammoth Mountain, or Bishop, and the only on-line or connecting intrastate traffic originating at FAT that would move on the FAT-SJC route would be destined to Ontario, Santa Ana, Palm Springs, or Lake Tahoe.

7. The SJC-FAT route would attract no interstate traffic for interlining at FAT and only a small amount for interlining at SJC.

8. The operation by Air California of the SJC-FAT route with two daily round trips would provide it with at least 50,000 O & D passengers and between 5,000 and 10,000 on-line passengers for connecting flights at SJC for the first year of operation. The operation would not be a viable one unless Air California included the route as a segment on a longer route as it has proposed in Application No. 56566.

9. Swift proposes to fly between SJC and FAT over the route SFO-SJC-FAT-VIS-BFL with 29-passenger Nord 262 aircraft or with 15-passenger DeHavilland 114 aircraft.

10. Whether or not the SJC-FAT segment is flown by Air California, the operation by Swift over its proposed route of 15 round trips per week with DH-114 aircraft or 10 round trips per week with Nord aircraft will provide it with at least 13,000 annual O & D passengers together with 1,000 on-line or interline passengers on the SJC-FAT segment, and such operation would be an economically viable one.

11. Since March 1969 Swift continuously has operated a scheduled air service as a passenger air carrier within California. In 1973 and in 1976 it operated the SJC-FAT under temporary authorities issued by the Commission. It maintains insurance coverage as required by General Order No. 120.

12. Swift's financial condition is very stable. It has the financial ability to initiate and maintain service over the SJC-FAT route.

13. Swift currently operates DH-114 aircraft and intends to substitute Nord 262 aircraft. Both are propellor-driven aircraft which are well within the noise standards prescribed by the federal government.

14. Swift presently maintains scheduled air service at SJC and at FAT. These airports are also served by trunk carriers with jet aircraft. It can be seen with certainty that there is no possibility that the activity in question will have a significant effect on the environment.

15. Public convenience and necessity require the operation by Swift as a passenger air carrier between SJC and FAT a minimum of two round trip flights daily, except Saturdays, Sundays, and holidays, with aircraft having a seating capacity of not less than 25 nor more than 30 passengers, or three round trip flights daily, except Saturdays, Sundays, and holidays with aircraft having a seating capacity of less than 25 passengers.

Conclusions

1. Application No. 54327 should be granted as provided in the ensuing order.
2. Appendix A of Decision No. 77794, as amended, should be further amended to incorporate the authority granted herein.
3. Swift is 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. 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 Swift Aire Lines, Inc., a corporation, authorizing it to operate as a passenger air carrier, as defined in Section 2741 of the Public Utilities Code, in both directions over the route: San Jose-Fresno.

2. In conducting operations over the route authorized in Ordering Paragraph 1, applicant shall schedule and operate no fewer than two flights in each direction each day, excepting Saturdays, Sundays, and holidays, with aircraft having a seating capacity of not less than 25 nor more than 30 passengers; when aircraft having a seating capacity of less than 25 passengers is scheduled, applicant shall operate no fewer than three flights in each direction each day, excepting Saturdays, Sundays, and holidays.

3. Appendix A of Decision No. 77794, as heretofore amended, is further amended by incorporating Eighth Revised Page 2 in revision of Seventh Revised Page 2 and Original Page 3, attached hereto.

4. In providing service pursuant to the authority granted by this order, applicant shall comply with the following service regulations. Failure so to do may result in a cancellation of the authority.

- (a) Within thirty days after the effective date of this order, applicant shall file a written acceptance of the certificate granted. By accepting the certificate applicant is placed on notice that it will be required, among other things, to file annual reports of its operations and to comply with the requirements of the Commission's General Orders Nos. 120-Series and 129-Series.
- (b) Within one hundred twenty days after the effective date of this order, applicant shall establish the authorized service and file tariffs, in triplicate, in the Commission's Office.
- (c) The tariff 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 filings shall be concurrent with the establishment of the authorized service.

- (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-Series.

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

Dated at San Francisco, California, this 16th day of July, 1977.

Robert Butman  
President  
William S. Szymanski  
Vernon L. Stibger  
Richard P. Hoyle  
Commissioners

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Appendix A  
(Dec. 77794)

SWIFT AIRE LINES, INC.

Eighth Revised Page 2  
Cancels  
Seventh Revised Page 2

\*Route 8 - SAN JOSE-FRESNO  
SJC-FAT

Conditions

1. Authority granted herein is limited to passenger air carrier operations over the specific routes and between the airport pairs listed thereunder as described above.
2. Operation between an airport on one route and an airport on any other route shall not be provided except via authorized routes through airports that are common to the connecting routes.
- \*3. Each airport shall be served with a minimum of one flight in each direction on each of seven days a week, except:
  - a. On Route 2 PRB shall be served with a minimum of one flight in each direction on each of five days a week.
  - b. Airports on Route 3, Route 4, Route 5 and Route 6 shall be served with a minimum of one flight in each direction on each of five days a week.
  - c. Route 7 shall be served with a minimum of two flights in each direction each day except Saturday, Sunday and holidays.
  - #d. Route 8 shall be served with a minimum of two flights in each direction each day except Saturdays, Sundays and holidays when aircraft having a seating capacity of not less than 25 nor more than 30 passengers are used. Whenever aircraft having a seating capacity of fewer than 25 passengers are scheduled, no fewer than three flights in each direction shall be operated on each day except Saturdays, Sundays and holidays.

Issued by California Public Utilities Commission.

#Added and \*Revised by 87550, Application No. 54327.  
Decision No. 87550

conditions (Cont.)

- #4. Providing operations comply with Condition 3, carrier may serve the following airports on a "flag stop" basis:

Route 1 - SJC, PRB

Route 2 - SBP

- #5. Passengers shall be carried whose transportation is solely between the respective airports of SFO and SJC. No turn-around service will be provided between SFO and SJC.
- #6. No aircraft having more than 30 revenue passenger seats or a payload more than 7,500 pounds shall be operated.
- #7. Passengers shall not be carried who have both origin and destination between the following pairs of points:

SBP - SMX, SBP - PRB, SMX - PRB, LAX - SMF.

- #8. The following airports shall be used:

<u>Symbol</u>	<u>Location</u>	<u>Name</u>
SFO	San Francisco	San Francisco International Airport
SJC	San Jose	San Jose Municipal Airport
PRB	Paso Robles	Paso Robles Airport
SBP	San Luis Obispo	San Luis Obispo County Airport
LAX	Los Angeles	Los Angeles International Airport
SMX	Santa Maria	Santa Maria Airport
SMF	Sacramento	Sacramento Municipal Airport
FAT	Fresno	Fresno Municipal Airport
BFL	Bakersfield	Bakersfield (Meadows Field)
VIS	Visalia	Visalia Municipal Airport
MOD	Modesto	Harry Sham Field

Issued by California Public Utilities Commission.

#Transferred from 87550 to Page 3 by  
Decision No.                     , Application No. 54327.

APPENDIX B

LIST OF APPEARANCES

Consolidated Proceedings in:

A.54327 (Swift)  
A.56095 (Marin)  
A.56566 (Air California)

Applicants: Graham & James, by Boris H. Lakusta and David J. Marchant, Attorneys at Law, for Air California, applicant in A.56566; Stephen C. Larson and Charles G. Wiswell, for Swift Aire Lines, Inc., applicant in A.54327; and Jack Robertson, Attorney at Law, for Marin Aviation, Inc., applicant in A.56095.

Protestant: Brownell Merrell, Jr., Attorney at Law, for Pacific Southwest Airlines.

Interested Parties: Wilmer J. Garrett and Paul L. Regalado, for City of Fresno; J. Kerwin Rooney and John E. Nolan, Attorneys at Law, for Port of Oakland; Donald F. Morrissey, for Loomis Courier Service, Inc.; Terrance E. Cedar, for Apollo Airways, Inc.; and Dennis Howard Marks, for himself.

Commission Staff: Thomas F. Grant, Attorney at Law, Richard Brozosky, and James R. Panella.