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Decision No. SS134 NOV 22 1977

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own motion into the operations, service and practices of MARIN AVIATION, INC., a California corporation.

Case No. 10287  
(Filed March 15, 1977)

Application of NOR-CAL AVIATION, INC. to acquire routes and related assets of MARIN AVIATION, INC.

Application No. 57048  
(Filed February 2, 1977;  
amended March 29, 1977)

Jack Robertson, Attorney at Law, for Nor-Cal Aviation, Inc. and Marin Aviation, Inc., applicants and respondent.

Richard A. Duste, for Nor-Cal Aviation, Inc., applicant.

William J. Connolly and Neil A. Grosman, for Stol Air Commuter, protestant.

Stephen Larson, for Swift Aire Lines; John J. Flynn, for Eureka Aero Industries; Donald F. Morrissey, for Loomis Courier Service; and Dennis Howard Marks, for himself; interested parties.

Thomas F. Grant, Attorney at Law, Richard Brozosky, and Anna E. Webster, for the Commission staff.

### O P I N I O N

Public hearings were held in these consolidated matters before J. E. Thompson, ALJ, at San Francisco on April 11, 12, 13, and 14, 1977. The matters were submitted April 25, 1977.

Case No. 10287 is an investigation on the Commission's own motion into the operations, service, and practices of Marin Aviation, Inc., for the purpose of determining:

1. Whether respondent has merged with another passenger air carrier without Commission authorization.

2. Whether respondent has provided any passenger air service prohibited by its certificate.
3. Whether respondent has failed to adequately observe the tariff regulations of General Order No. 105-A, or any other rules or regulations of this Commission.

By this application Nor-Cal Aviation, Inc. (Nor-Cal Aviation) seeks authority to acquire the certificates of public convenience and necessity and related assets, subject to related liabilities, owned by Marin Aviation, Inc. (Marin). The consideration to be paid by applicant is the issue of shares of stock to Marin or its designees.

On March 29, 1977 applicant filed an amendment to its application requesting: (1) that upon approval of the authority to transfer the certificates, the Commission issue a new certificate to applicant in lieu of all others which would also remove an existing restriction in the certificate of Marin and (2) that the Commission authorize an increase in fares for transportation between certain points on Marin's Route 1. By Examiner's Ruling dated April 5, 1977, it was held that the requested relief sought in the amendment would unduly broaden the scope of the issues in the application, that the amendment to the application did not meet the requirements of the Commission's Rules of Practice and Procedure, and that the matters presented in the amendment should be dismissed.<sup>1/</sup>

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<sup>1/</sup> Subsequently, Marin filed Application No. 57249 requesting the fare relief that had been sought in the amendment to this application. That application was granted by Decision No. 87441 on June 7, 1977.

Findings

1. Marin is a corporation of which Richard T. Duste owns 95 percent and John Cartwright owns 5 percent of the capital stock. As of January 1, 1977, the officers are Richard T. Duste, Robert S. Duste, and Helen M. Duste. Marin conducts fixed base operations at Gness Field, Novato and also engages in the transportation of property as a courier service between points in northern California. On and before December 31, 1976, Jack Robertson was a director and was secretary of Marin. Marin has registered the fictitious name of California Air Commuter with the Secretary of State.

2. By Decision No. 84488 dated June 3, 1975 in Application No. 54604, Marin was awarded a temporary certificate of public convenience and necessity authorizing operations as a passenger air carrier over a route serving airports at the following points: Fort Bragg, Ukiah, Clear Lake, Santa Rosa, Novato, San Francisco, Palo Alto, San Jose, and Livermore; provided, however, that service between Santa Rosa and San Francisco shall be only on flights via the intermediate point of Novato that originate or terminate at Fort Bragg or Ukiah. The temporary certificate was conditioned that Fort Bragg, Ukiah, San Francisco, and Livermore shall have at least 12 scheduled incoming flights and 12 scheduled departing flights each week, and that Clear Lake and Palo Alto shall have at least flag-stop service on five scheduled incoming flights and five departing flights each week.

3. By Decision No. 86351 dated September 1, 1976 in Application No. 54604, Marin was awarded a temporary certificate authorizing it to conduct passenger air carrier operations over a route serving airports at South Lake Tahoe, Truckee, Novato, Sacramento, San Jose, San Francisco, Placerville, Palo Alto, and Livermore; and authorizing operations between an airport on that route and an airport on the route authorized by Decision No. 84488 through an airport common to

both routes except that no passenger shall be accepted for transportation solely between Sacramento and Santa Rosa. This temporary certificate was conditioned that San Francisco and Livermore shall have at least 12 scheduled incoming flights and 12 scheduled departing flights each week, that Palo Alto and Placerville shall have at least flag-stop service on five scheduled incoming flights and five scheduled departing flights each week, and that each of the other airports on the route shall have at least five scheduled incoming flights and five scheduled departing flights each week.

4. By Decision No. 86504 dated October 13, 1976 in Application No. 56095, Marin was granted a temporary certificate authorizing it to conduct passenger air carrier operations between Monterey and San Jose subject to the condition that there be scheduled at least five incoming flights and five departing flights each week at Monterey and San Jose.

5. By Decision No. 87110 dated March 15, 1977 submission of proceedings in Applications Nos. 54604 and 56095 were set aside.

6. A limited partnership under the name of California Air Commuter Service (CACS Ltd.) was formed on September 1, 1975 with Marin as general partner and a number of parties as limited partners. The purpose of CACS Ltd. was to finance the operations of the passenger air carrier operations over the routes awarded to Marin. At various times, up to and including September 30, 1976, the following entities were included in CACS Ltd.: California Air Commuter, Inc., Richard T. Duste, Rufus Colquhoun, Robert Hubbert, John Bonds, Earl Lupton, Helen Eike, Mark Savage, Pernie McMahon, and W. Kempe. As of January 1, 1977, the limited partners included: California Air Commuter, Inc., Richard T. Duste, Arthur Barter, Graden Sheen, Robert Soper, Joseph Soper, Aldo Alessio, James Abercrombie, C. J. Gillooly, Paul M. Bonds, and Lloyd Watson.

7. California Air Commuter, Inc.. is a corporation formed at the behest of Richard T. Duste. Its only function has been to act as a shield for certain investors in CACS Ltd. who desire the additional protection against liability that a corporation provides. The shareholders include Richard T. Duste, Edgar Meakin, Robert Soper, Norman Weilly.

8. California Air Courier, Inc. is a corporation formed at the behest of Richard T. Duste. It has not conducted any business since its incorporation. It holds a permit from the Commission authorizing operations as a radial highway common carrier. Richard A. Duste, the son of Richard T. Duste, is a vice president of this corporation.

9. Operations on the route awarded to Marin by Decision No. 84488 were inaugurated in October 1975. Operations on the route awarded by Decision No. 86351 commenced in November 1976. Operations between Monterey and San Jose pursuant to the award in Decision No. 86504 were inaugurated in January 1977. At all times during the conduct of those operations, the revenues from passenger fares were collected by CACS Ltd. and entered upon the books of account of CACS Ltd., and at all times the expenses for the operation of the passenger carrier operations were entered upon the books of account of CACS Ltd. CACS Ltd. entered into what is known in the trade as a wet lease under which it rented aircraft from Marin under which the latter is responsible for the fuel and maintenance of the aircraft. It also pays Marin a management fee. CACS Ltd. has its own pilots and employees. During the calendar year 1976, CACS Ltd.'s flight operations expenses amounted to \$702,677 of which plane rental to Marin amounted to \$439,570 and \$263,107 represented payroll costs. Other expenses amounted to \$285,589 of which \$70,268 consisted of management fees to Marin. Since October 1976 CACS Ltd. has been engaged in operations as a passenger air carrier between points and over routes which have been awarded by the Commission to

Marin; Marin's only participation in the operations over the route it has been awarded has been limited to renting aircraft to CACS Ltd., the performance of administrative functions for which it received a fee from CACS Ltd., and its participation as a general partner in CACS Ltd.

10. Nor-Cal Aviation is a passenger air carrier holding a certificate authorizing operations over a route serving airports at Redding, Chico, and Sacramento. During 1976 the stock of the corporation was held by Eugene and Karen Calanchini. Eugene Calanchini was president of the corporation.

11. Around September 1976 Eugene Calanchini let it be known that he no longer desired to conduct the passenger air carrier operation of Nor-Cal Aviation and that he desired to devote his time to the fixed base operation he conducts at Redding. In September Richard T. Duste of Marin and John J. Flynn of Eureka Aero Industries separately entered into negotiations with Calanchini to acquire the passenger air carrier rights. During the period late October to mid-November 1976, Calanchini entered into an agreement with Richard T. Duste under which the latter or his designates would acquire the passenger air carrier rights of Nor-Cal Aviation.

12. On December 10, 1976, there was formed a limited partnership with Nor-Cal Aviation as general partner with the following limited partners: Rufus Colquhoun, Robert Hubbert, John Bonds, Earl Lupton, Helen Eike, Mark Savage, Pernie McMahon, W. Kempe, and Leonard Gross, all of whom had previously been associated as limited partners in CACS Ltd. The limited partnership is known as Nor-Cal Associates.

13. On December 30, 1976, there was filed with the Department of Corporations a preliminary application By Eugene Calanchini and Karen Calanchini to transfer the stock of Nor-Cal Aviation to Nor-Cal Associates, a limited partnership. Statement of Transferee was executed on January 12, 1977 on behalf of Nor-Cal Associates, by

Nor-Cal Aviation, general partner, Richard A. Duste, president. The business address of Nor-Cal Associates shown on the application was c/o Marin Aviation, Inc., 315 Airport Road, Novato, California 94947.

14. On January 31, 1977, the Department of Corporations issued its order consenting to the transfer of stock from the Calanchinis to Nor-Cal Associates. Actual transfer of the stock was accomplished early in February 1977.

15. It was and is the intent of Richard T. Duste (the father) to acquire control of the passenger air carrier operative rights held by Nor-Cal Aviation, and to that end he arranged for the formation of Nor-Cal Associates as his nominee to acquire the ownership of Nor-Cal Aviation.

16. In December 1976 Richard A. Duste (the son), then sales manager for CACS Ltd., prepared schedules of flights to be operated on routes of Marin and on routes of Nor-Cal Aviation to become effective January 15, 1977. On or before December 22, 1976, Richard A. Duste caused the prepared schedules of CACS Ltd. and Nor-Cal Aviation to be teletyped to Donnelley Publishing Company for publication in the Official Airline Guide. The schedules are published in the February 1, 1977 edition of the Official Airline Guide and show, among other things, the establishment of through routes between points on routes authorized Marin (e.g., Monterey, Novato, Lake Tahoe, and Placerville) and Chico by CACS Ltd. and Nor-Cal Aviation. That same edition of the Official Airline Guide shows schedules for transportation of passengers by CACS Ltd. between Sacramento and Santa Rosa.

17. In December 1976 Richard A. Duste, then sales manager for CACS Ltd., caused the schedules he had prepared for CACS Ltd. and for Nor-Cal Aviation to be printed in the form of timetables for distribution at ticket counters and for travel agents. The printed timetables were distributed at ticket counters of CACS Ltd. and Nor-Cal Aviation. The timetable of CACS Ltd., effective January 1, 1977, shows schedules for through transportation between Chico and Redding

and all points on routes Marin is authorized to serve. It also shows fares for such through transportation between the points which are different from and less than the applicable fares; the latter being the sum of the local fares maintained by Marin between Sacramento and the points on its routes and the local fares maintained by Nor-Cal Aviation between Sacramento and points on its routes. This timetable states that CACS Ltd. service to Chico and to Redding is operated on an interchange agreement with Nor-Cal Airlines.

18. On January 11, 1977 Marin filed a joint fares tariff, to become effective January 15, 1977, under which the through fare for transportation between a point on routes awarded to Marin and a point on the route awarded to Nor-Cal Aviation would be the sum of the applicable fare from the Marin point to Sacramento and 50 percent of the applicable fare from the Nor-Cal Aviation point to Sacramento. The tariff was rejected by the Commission staff because the tariff was technically deficient. On February 1, 1977 Marin again filed the joint fares tariff and corrected the technical deficiencies. On February 4, 1977 notice of the suspension of that tariff was issued by the staff. There is uncertainty of the date that notice was received by Marin; however, Marin did have knowledge of the suspension of that tariff on February 11, 1977.

19. On April 5, 1977 Arthur Nettles, an employee of the Commission's Transportation Division, purchased at CACS Ltd.'s, ticket counter at San Jose Municipal Airport round-trip transportation from San Jose to Redding and return for the sum of \$72.80. He was issued one California Air Commuter ticket covering transportation from San Jose to Redding on Cal Air Flights 21 and 81 and Nor-Cal Flight 41 showing a fare of \$33.70 plus \$2.70 tax for a total of \$36.40; and one California Air Commuter ticket covering transportation from Redding to San Jose on Nor-Cal Flight 34 and Cal Air Flight 73 showing a fare of \$33.70 plus \$2.70 tax for a total of \$36.40. On that date Mr. Nettles presented the tickets and was provided through transportation from San Jose to Redding and from Redding to San Jose on the flights designated on the tickets.



20. On the timetable published effective January 15, 1977, there is provided schedules for only 10 incoming flights and 10 departing flights per week at Livermore.

21. On January 5, 1977 there was executed by John Cartwright on behalf of CACS Ltd. and by Richard A. Duste on behalf of Nor-Cal Aviation an interchange agreement under which it was agreed that either would furnish an aircraft with pilot to operate the routes of the other for the compensation set forth in the agreement.

22. Since January 5, 1977 there have been numerous occasions, at least once each week, when aircraft rented by CACS Ltd. from Marin have operated over Nor-Cal Aviation routes and when aircraft owned by Nor-Cal Aviation have operated between points on routes awarded to Marin.

23. During 1977 Marin operated a Beechcraft 18 aircraft, No. N300W, owned by Nor-Cal Aviation in the conduct of its courier service.

24. In its published timetable effective November 1, 1976 CACS Ltd. did not include any schedules to or from Palo Alto. The Official Airline Guide in its December 1, 1976 edition describing the schedules provided by California Air Commuter does not show any schedules to or from Palo Alto.

25. On December 2, 1976, through its attorney, Marin filed a notice of discontinuance of operations at Palo Alto to become effective 60 days thereafter.

26. On June 23, 1976 and on February 18, 1977 while operating in scheduled passenger air carrier service, CACS Ltd. provided direct nonstop flight service from Santa Rosa to San Francisco not serving Novato as an intermediate point.

27. Since January 15, 1977 CACS Ltd. and Nor-Cal Aviation have held out a joint through route for transportation between Santa Rosa and Chico and between Santa Rosa and Redding via the common point Sacramento and have issued tickets for such transportation.

28. For the year ended December 31, 1976, Nor-Cal Aviation had a net profit before income taxes from passenger air carrier operations of \$6,439 on airline revenues of \$464,197. On January 1, 1976 it had retained earnings of \$21,036 with a stockholders' equity of \$32,741.

29. In January 1977 Nor-Cal Aviation had an operating loss of \$7,166, in February 1977 an operating loss of \$10,163, and in March 1977 an operating loss of \$1,451.

30. For the year ended December 31, 1976, CACS Ltd. had a net loss of \$415,971 from passenger air carrier operations on airline revenues of \$571,323. On January 1, 1976 the equity of the limited partnership was \$110,505. The partnership obtained contributions of capital from the partners during 1976 amounting to \$390,350 so that on December 31, 1976 the equity in the partnership amounted to \$84,884.

31. In January 1977 CACS Ltd. had a net loss of \$75,390 from passenger air carrier operations, in February 1977 a net loss of \$54,408, and in March 1977 a net loss of \$46,412.

32. The capital stock of Nor-Cal Aviation is now held by Nor-Cal Associates and is in the custody of the general partner, Nor-Cal Aviation. If Nor-Cal Aviation is authorized to acquire the certificates held by Marin, it is contemplated that shares of the stock will be issued to the limited partners of Nor-Cal Associates and that limited partnership would be discontinued, and that other shares would be issued to Richard T. Duste and to other partners in CACS Ltd. who may desire to invest in the corporation. It is contemplated that the routes held by Marin would be merged with the routes of Nor-Cal Aviation and that Marin would provide the same services for Nor-Cal Aviation as it now provides for CACS Ltd., namely, the rental of planes under a wet lease and managerial services.

#### Discussion

Staff presented evidence regarding a number of other circumstances when the management of CACS Ltd., which is the management

of Marin, failed to comply with tariff filing requirements prescribed in General Order No. 105 and other circumstances when operations were not conducted as prescribed in the temporary certificates which have been awarded to Marin; but enough is enough. Our findings show that almost every rule and regulation in the book has been broken by Marin's management. Marin never exercised the rights granted in the temporary certificates awarded to it; instead, Richard T. Duste the chief stockholder and president of Marin in effect transferred those rights to CACS Ltd., of which he is a limited partner and of which Marin is a general partner without prior authorization from the Commission in violation of Section 2758 of the Public Utilities Code. The facts also show that Richard T. Duste the chief stockholder and president of Marin and limited partner of CACS Ltd. did through his nominees and representatives acquire the control of Nor-Cal without prior authorization from the Commission in violation of Section 2758.

The operation of through nonstop flights between Santa Rosa and San Francisco was in direct contravention of the authority awarded Marin in Decision No. 84488 and was in violation of Section 2752 of the Public Utilities Code. The discontinuance of providing flag-stop service on five scheduled incoming flights and five departing flights each week at Palo Alto was in violation of Section 2769.5 of the Public Utilities Code. The failure to schedule at least 12 incoming flights and 12 departing flights each week at Livermore was in contravention of the terms of conditions in the award of the temporary certificate in Decision No. 84488. The offering of transportation, and the ticketing of passengers between Santa Rosa and Sacramento was in contravention of the terms of conditions in the award of the temporary certificate awarded in Decision No. 86351.

The offering and performance of transportation between a point on routes awarded to Marin and points on routes awarded to

Nor-Cal constituted the combining of authorities of those carriers so as to permit through service between any point or points served by one carrier, on the one hand, and any point or points served by another carrier, on the other hand, without the express authorization of the Commission in violation of Section 2761 of the Public Utilities Code. The offering and collecting of a joint through fare for transportation between a point on the Marin routes and a point on the Nor-Cal route when such fare was not specified in a tariff in effect at the time was a violation of Rule 6 of General Order No. 105-A.

What does respondent have to say about all of this? It asserts that by reason of the failure of the staff to provide adequate notice, the rejection of the joint tariff filing of January 11, 1977 was deficient and the tariff became effective. That is sheer nonsense. The filing was one for short notice. Under the provisions of General Order No. 105-A, a tariff filed to become effective on less than thirty days' notice may become effective only upon specific authority granted by the Commission except: (1) to publish tariffs of newly established air transportation companies, (2) to publish rates governing a new type of service not involving an increase, and (3) to publish rates for service to new points. Certainly (1) does not apply in this case. In the cases of (2) and (3) Marin and Nor-Cal were prohibited by Section 2761 from establishing the through routes contemplated by the joint fares so as to permit through service between the points served by Marin and the points served by Nor-Cal. The argument that the carriers' tariff filing must stand in direct conflict with the provisions of the governing regulatory statute is without merit.

With respect to the other matters, respondent declares that the fault lies with the bureaucratic red tape the Commission imposes upon passenger air carriers, and respondent in particular. It asserts first of all that respondent would not have found itself in

a difficult financial condition if the Commission had acted upon its Application No. 54604 with dispatch and had awarded it all of the routes that it sought to provide an economically viable operation. First, we remind respondent that the "bureaucratic red tape" was imposed by the people of the State of California through its legislature. Secondly, respondent's application was protested by other airlines and under the law they have the same rights as respondent for opportunity to be heard. Thirdly, while the temporary certificate awarded to respondent did not grant all of the routes sought, respondent accepted that certificate. Had it believed that the routes awarded would not prove to be economically viable it need not have done so; it certainly had no reason to assume from the findings and conclusions in Decision No. 84488 that it would ever be awarded any additional routes. In its brief Stol Air, Inc. argues that the evidence in this proceeding shows that Richard T. Duste does not have the qualifications to operate a passenger air carrier. The record here provides some support for that argument.

We must untangle this web. The order instituting this investigation provides for the determination of whether respondent Marin's current certificated authority should be modified, suspended, or revoked. Certainly the willful disregard of the statutes by respondent would merit revocation. The staff recommends that Marin and Nor-Cal Aviation be ordered to cease and desist offering through service and fares without Commission authority. A cease and desist order covering all of the violations is required by statute (Section 2763). It also recommends that Marin be given six months to improve its service and adhere to the Commission's rules and regulations before any permanent authority is granted. The submissions of Applications Nos. 54604 and 56095 have already been set aside.

We come now to the application of Nor-Cal Aviation to acquire the temporary certificates of Marin. The principal reasons

advanced for denying this authority are: (1) the present management of Marin will operate the merged airlines which will result in the taking over of an airline that has been able to economically provide adequate service to the communities that it serves by management that has not been as successful and which has not conformed to regulations, and (2) the takeover will seriously endanger the service which has been provided by Nor-Cal Aviation. While there were numerous individual arguments against the sought authority they fall into those two categories. We have given considerable thought to this matter. There is substantial support for the opinion testified to by a financial examiner of the Commission's Finance Division that the financial condition of Marin (CACS Ltd.) is such that failure seems inevitable, and the granting of the authority to merge would merely cause Nor-Cal Aviation to fall with it. That has to be recognized. The problem, is, however, that the denial of the authority would not remove that circumstance.

Nor-Cal Aviation is now owned and operated by Nor-Cal Associates, a creation of Richard T. Duste. Mr. Calanchini is out of Nor-Cal Aviation, as he desired, and there is no indication whatever that he wants to resume operating the airline. The Commission could institute proceedings looking toward voiding the sale of stock by Mr. Calanchini to Nor-Cal Associates. That, however, would no doubt lead to extensive litigation which would leave the public at Redding and Chico no better off. We could deny the authority to merge and order that Richard T. Duste shall not participate in the management and operation of Nor-Cal Aviation. That would not help the public at Chico and Redding insofar as service by Nor-Cal Aviation is concerned. Nor-Cal Associates is no better qualified to provide adequate service economically to the communities involved than Marin, and most assuredly would fail sooner than would be the case if the airlines were merged. As we see it, the public is more apt to retain the services of Nor-Cal Aviation longer than would be the case with the other options. Our task, after all, is to consider the effect upon the public and the communities involved.

In essence we are confronted with a problem for which there is no satisfactory solution. The situation is that Nor-Cal Aviation is now owned by Richard T. Duste's nominees. Mr. Richard T. Duste controls Marin which holds temporary certificates from the Commission and which has demonstrated an inability to conform to the law and to the rules and regulations of the Commission, and one whose financial stability is in doubt. These circumstances certainly will have some influence in our determination in further proceedings in Applications Nos. 54604 and 56095 regarding the permanence or modification of the temporary operative rights of Marin proposed to be transferred to Nor-Cal Aviation. The staff suggests that we wait six months before considering those issues, presumably on the assumption that management may be able to rehabilitate itself even though the opinion of the staff's expert witness is that the financial losses the management has incurred and is continually incurring portend disaster. There appears to be little assurance of a continuation of Nor-Cal Aviation's service between Redding, Chico, and Sacramento if we do grant this application. On the other hand, it is reasonably certain that the service will cease if we do not.

There is some solace that at least two other passenger air carriers have indicated interest in providing service between Redding and Sacramento. Eureka Aero Industries, Inc., which now provides service between Red Bluff, Chico, and Sacramento, among other points, has indicated its interest; and we take official notice of Application No. 57264 of Swift Aire Lines, Inc. for such authority. We also note that Hughes Air West currently provides air service to Redding and to Chico.

Although we can find no benefit to the public resulting from the management of Marin operating the passenger air carrier service on Nor-Cal Aviation's routes, we are of the opinion that the public would be less adversely affected by granting this application than would be the case if we were to deny it.

In the granting of this application, we place Nor-Cal Aviation on notice that what it is authorized to acquire is nothing more than Marin presently has, namely, temporary certificates, together with their limitations and conditions, which were awarded in proceedings not yet completed and which are still in issue. The granting of this authority does not, and should not, provide any expectations with regard to the awarding of routes in permanent certificates. We also place Nor-Cal Aviation on notice that the authority granted to it to acquire the temporary certificates of Marin does not constitute any authorization for any deviation from the prohibitions set forth in Sections 2757 and 2759 of the Public Utilities Code.

We also take note that after it has acquired the temporary certificates of Marin, Nor-Cal Aviation may desire to combine them with its permanent certificate so as to provide through service between points on both. Marin's proposed service between Santa Rosa and Sacramento was vigorously protested by Eureka Aero Industries. In recognition of that protest and the fact that the protestant has not yet been given opportunity to be heard with respect to it, the Commission, without hearing, awarded a temporary certificate to Marin authorizing it to provide service between Santa Rosa and points on the Lake Tahoe route except that no passenger shall be accepted for transportation solely between Sacramento and Santa Rosa. A similar situation obtains with respect to service between Santa Rosa and other points on Nor-Cal Aviation's route. Eureka Aero Industries should have opportunity to be heard in Application No. 54604 before Nor-Cal Aviation offers service between those points. We will condition the authority herein to provide that in the exercise of authority conferred by Section 2762 in the establishment of through routes between a point served by Nor-Cal Aviation under its permanent certificate and a point served by it under the temporary certificates it has acquired from Marin, any such through route shall be via Sacramento as an intermediate point, and no passenger shall be



accepted for transportation between Santa Rosa and a point served by it under its permanent certificate. With that condition the proposed acquisition will not result in creating a monopoly or monopolies thereby restraining competition nor will it jeopardize another passenger air carrier not a party to the acquisition, as set forth in Section 2758 of the Public Utilities Code.

Inasmuch as Nor-Cal Aviation has been a participant in these consolidated proceedings, and is being authorized to acquire Marin, and further that it is contemplated that Nor-Cal Aviation will be managed by the current management of Marin, orders with respect to issues in Case No. 10287 should be directed to both Marin and Nor-Cal Aviation.

We conclude that:

1. Marin and Nor-Cal Aviation should be directed to cease and desist and thereafter abstain from the violations described in this opinion and as set forth in the ensuing order.
2. Application No. 57048 should be granted subject to the conditions and limitations prescribed in the ensuing order.

#### O R D E R

IT IS ORDERED that:

1. On or before January 1, 1978, Marin Aviation, Inc. may transfer the temporary certificates of public convenience and necessity referred to in the application to Nor-Cal Aviation, Inc.
2. Within thirty days after the transfer the purchaser shall file with the Commission written acceptance of the certificate and a true copy of the bill of sale or other instrument of transfer.
3. Purchaser shall amend or reissue the tariffs and timetables on file with the Commission, naming rates and rules governing the common carrier operations transferred to show that it has adopted or established, as its own, the rates and rules. The

tariff and timetable filings shall be made effective not earlier than ten days after the effective date of this order on not less than ten days' notice to the Commission and the public, and the effective date of the tariff and timetable filings shall be concurrent with the transfer. The tariff and timetable filings made pursuant to this order shall comply in all respects with the regulations governing the construction and filing of tariffs and timetables set forth in the Commission's General Order No. 105. Failure to comply with the provisions of General Order No. 105 may result in a cancellation of the operating authority granted by this decision.

4. On or before the end of the third month after the transfer, the purchaser shall cause to be filed with the Commission, in such form as the Commission may prescribe, an annual report, or reports, related to the operations of the seller for the period commencing with the first day of the current year to and including the effective date of the transfer.

5. In the establishment of through routes between a point served under Nor-Cal Aviation, Inc.'s permanent certificate and a point served under the temporary certificates acquired from Marin Aviation, Inc., any such route shall be via the intermediate point of Sacramento Metropolitan Airport; and no passenger shall be transported between Santa Rosa, on the one hand, and any point served under the permanent certificate of Nor-Cal Aviation, Inc.

6. In all other respects Application No. 57048, as amended, is denied.

7. Marin Aviation, Inc. and Nor-Cal Aviation, Inc., and each of them, shall cease and desist from:

- (a) Controlling a passenger air carrier or any other common carrier in any manner whatsoever unless authorized by order of the Commission.
- (b) Transferring its certificates or the operating control thereof unless authorized by the Commission.

- (c) Conducting any passenger air carrier operations in contravention of the conditions and limitations set forth in its certificates.
- (d) Establishing through service between a point served under its certificate and a point served by another passenger air carrier without first having obtained express authorization of the Commission.
- (e) Discontinuing operations between any two or more terminals without authority from the Commission or without the sixty days' notice provided in Section 2769.5 of the Public Utilities Code.
- (f) Charging or collecting a fare different from the fare published and maintained in its tariff lawfully on file with the Commission and in effect at the time.

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

Dated at San Francisco, California, this 22nd day of NOVEMBER, 1977.

*I dissent and join  
in Commission Delucchi's  
written comments.*

*Richard D. Chavala*

*I will file  
a dissent  
Clair J. Delucchi*

*Robert Batimnich*  
President  
*William Lyons Jr.*  
*Vernon A. Stulgen*

Commissioners

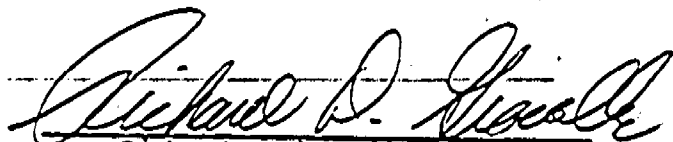
*I concur, but do not  
enjoy supporting rule  
breakers. There should  
be NO next time.  
Robert Batimnich*

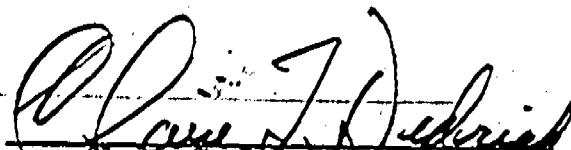
C-10287, A.57048  
Decision No. 88134

COMMISSIONER RICHARD D. GRAVELLE, DISSENTING

COMMISSIONER CLAIRE T. DEDRICK, DISSENTING

This decision recites repeated willful, flagrant violations of statutes, decisions and orders. Still the Commission approves the transfer, relying on some vague reference to public interest. 'We are concerned about the consequences of this decision, not only as it applies to these airlines and the cities they serve, but also as it will be received by the regulated industries with respect to future Commission orders. Does the majority really mean to sanction the contention that the statutory scheme is too burdensome? How do we regulate the airlines that have struggled to conform to the law?

  
Richard D. Gravelle  
Commissioner

  
Claire T. Dedrick  
Commissioner

San Francisco, California  
November 22, 1977