

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D. C.

ORDER NO. 1363

IN THE MATTER OF:

|                           |   |                          |
|---------------------------|---|--------------------------|
| Application of CENTRAL    | ) | Served: October 18, 1974 |
| DELIVERY SERVICE, INC.,   | ) |                          |
| for Temporary Authority   | ) | Application No. 814      |
|                           | ) |                          |
| Application of CENTRAL    | ) | Application No. 815      |
| DELIVERY SERVICE, INC.,   | ) |                          |
| for Certificate of Public | ) | Docket No. 271           |
| Convenience and Necessity | ) |                          |

By applications, filed August 29, 1973, Central Delivery Service, Inc. (Central) seeks temporary authority pursuant to Title II, Article XII, Section 4(d)(3) of the Compact and a certificate of public convenience and necessity pursuant to Title II, Article XII, Section 4(b) of the Compact, to transport aircraft crews having a prior or subsequent movement by air, between Dulles International Airport (Dulles) or Washington National Airport (National), on the one hand, and on the other, points located within the District of Columbia. Central filed as part of the applications a proposed tariff and letters from American Airlines (American) and United Air Lines (United) supporting the proposed transportation service. Central also filed a motion to dismiss its temporary authority application.

The pervading issue presented for the Commission's determination by Central's motion to dismiss is whether the proposed service is subject to the regulatory provisions of the Compact. Central has made two separate arguments against the Commission's regulation of the proposed service.

First, Central states that Section 203(b)(7)(a) of the Interstate Commerce Act exempted from regulation the transportation of persons by motor vehicle when incidental to transportation by aircraft. According to Central, at the time of the enactment of the Compact, the Interstate Commerce

Commission had not eliminated the applicability of this exemption to the movement of persons in the Metropolitan District incidental to transportation by aircraft. Central contends that when the Compact was amended to include jurisdiction of Dulles, Congress was not advised that the provisions of Section 203(b)(7)(a) were being repealed with respect to the Metropolitan District. It argues that to hold that Section 203(b)(7)(a) is inapplicable would create an area of regulation completely different from that accorded the remainder of the United States, and that the intent and purpose of the Compact was to bring forward the regulatory philosophy of the Interstate Commerce Act.

The Commission does not believe that the exemption from regulation set forth in Section 203(b)(7)(a) of the Interstate Commerce Act is applicable to transportation of passengers by motor vehicle between Dulles or National and points within the Metropolitan District located in the District of Columbia or Maryland. See Compact, Title II, Article XII, Section 20. The Compact applies "to the transportation for hire by any carrier of persons between any points in the Metropolitan District and to the persons engaged in rendering or performing such transportation service". See Title II, Article XII, Section 1(a). The Compact lists five exceptions to the grant of jurisdiction. None are applicable to the transportation of passengers by motor vehicle when such transportation for hire is preceded or followed by transportation by aircraft.

Second, Central submits that the authority sought herein is clearly limited to common carrier service restricted to only a segment of the general public, namely, aircraft crews. Central indicates that operation of the proposed service would not entail a holding out to the general public. Central concedes there is uncertainty whether the Compact embraces the type of operation here involved.

The transportation service to be performed by Central would be rendered for aircraft crew of either American or United. The service would be provided pursuant to a contract between Central and American or a contract between Central and United. The proposed tariff anticipates that American or United would pay for the passenger carrier

service to be performed by Central. The air line crews of American or United which travel in the vehicle would not be looked to for payment for the transportation service. The following rate schedule has been submitted by Central:

(a) For a seven-passenger vehicle operating between National and the District of Columbia, \$4.00 per trip; and (b) for a twelve-passenger vehicle operating between Dulles and the District of Columbia, \$15.50 per trip.

The Commission is of the opinion that the proposed service is subject to the provisions of the Compact and properly within the regulatory jurisdiction of this Commission. The proposed service would involve transportation of passengers for hire under a continuing written contract for the furnishing of transportation services through the provision of a vehicle or vehicles to meet the distinct need and for the exclusive and periodically recurrent use of the contracting party.

Under Title II, Article XII, Section 4(d)(3) of the Compact, the Commission must base any decision to grant temporary authority to provide a specific service upon the finding that there is an immediate and urgent need to a point or points within a territory having no carrier service capable of meeting such need. So finding, the Commission may, in its discretion and without hearings or other proceedings, grant temporary authority.

Central submits that the immediate and urgent need for the proposed service is occasioned by the daily operations of the air lines at the several airports. Central alleges that the existing transportation services between the airports and the District of Columbia cannot and do not meet the transportation needs of American and United. It declares that the air lines are not able to utilize transportation services which are held out to the general public, and which depart at the discretion of the dispatchers. Central contends that Greyhound Airport Service, Inc., the carrier holding permanent certificate authority to provide transportation services similar to the proposed service, has not elected to render such transportation.

In support of its applications, Central filed letters from American and United. The letters contain essentially the

same statements. Both letters opine that there is an immediate and urgent need for dependable, reliable and personalized transportation of air line crews, including pilots, engineers, stewardesses and stewards, between National and Dulles, on the one hand, and on the other, Washington, D. C. According to the air lines, it is essential that specialized transportation, coordinated exactly with flight requirements, be provided to insure compliance with Federal Aviation Administration (FAA) requirements for off-duty hours and "on time" departures. The air lines contend that there currently is no comparable service available. The usual common carrier bus services operating between the several airports and Washington, D. C., are not considered suitable because the arrivals and departures of the carriers are not sufficiently coordinated with the flights to assure that their utilization would result in the crews complying with FAA regulations.

American indicates that its crews currently move to and from the Hotel Washington located in the District of Columbia. United indicates that the crews currently move to and from the Mayflower Hotel located in the District of Columbia. Each air line states that it has no objection to the Commission's imposition of a restriction which would limit the transportation services to such hotel or hotels as may be selected by the air line.

The pleadings and statements in support of the temporary authority application do not fully satisfy the criteria for granting temporary authority, particularly, as they fail to show that no carrier service is capable of meeting the alleged immediate and urgent need. Accordingly, a hearing should be scheduled to develop a record upon which the Commission could properly dispose of Central's application for temporary authority. In view of the directive hereinafter setting a hearing on the application for a certificate of public convenience and necessity, the Commission shall dismiss without prejudice the temporary authority application, and proceed directly to a determination of the application for permanent authority.

Title II, Article XII, Section 4(b) of the Compact provides as follows:

When an application is made under this section for a certificate, . . . ., the Commission shall issue a certificate to any qualified applicant therefore, . . . ., if it finds, after hearing held upon reasonable notice, that the applicant is fit, willing and able to perform such transportation properly and to conform to the provisions of this Act and the rules, regulations, and requirements of the Commission thereunder, and that such transportation is or will be required by the public convenience and necessity; otherwise such application shall be denied. (Emphasis added.)

Pursuant to this mandate, the Commission shall schedule a hearing to develop an appropriate record.

The Commission necessarily desires to fully develop the basis for any finding as to Central's fitness to perform the proposed transportation service and the existing requirements of the public convenience and necessity for the proposed transportation service. Therefore, the Commission shall require Central to submit and be prepared to support with competent witnesses the following exhibits:

- (A) A detailed balance sheet of applicant as of September 30, 1974,
- (B) A detailed income statement of applicant for the 12-month period ending September 30, 1974;
- (C) A projected statement of revenues and expenses, including taxes, allocated between the contract with American and the contract with United, for a one-year period, together with supporting details, including operating ratio;
- (D) A copy of the contract between Central and American and a copy of the contract between Central and United which forms the basis for the proposed service, and

- (E) A list of equipment, including specifications, which will be used to provide the proposed service.

The Commission shall direct Central to submit six (6) copies of the statements and exhibits required hereinbefore to the Commission and serve one copy on each party of record on or before Thursday, November 14, 1974. Central shall be prepared to present representatives of American and United who are able to support the claims that public convenience and necessity require such service.

The Commission believes that an additional matter should be considered. Central's application for a certificate of public convenience and necessity is for general authority to transport air line crews having a prior or subsequent movement by air, to or from Dulles or National and points within the District of Columbia. However, the exhibits and letters of support filed with the application indicate that the transportation service to be performed would be pursuant to separate contracts between Central and American or United. Operations pursuant to these contracts would constitute charter operations pursuant to contract. As such, the authority to be granted, if any, would necessarily involve only operations pursuant to the separate contracts. As a result, the authority applied for is broader than the operations proposed to be performed. Of course, the Commission has the power to grant only the authority found to be required by the public convenience and necessity.

THEREFORE, IT IS ORDERED:

1. That the motion to dismiss filed by Central Delivery Service, Inc., be, and it is hereby, denied.
2. That Application No. 814 of Central Delivery Service, Inc., for temporary authority to transport aircraft crews having a prior or subsequent movement by air, between Dulles International Airport or Washington National Airport, on the one hand, and on the other, points located within the District of Columbia be, and it is hereby, dismissed without prejudice.

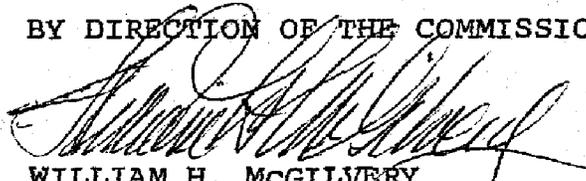
3. That Application No. 815 of Central Delivery Services, Inc., be, and it is hereby, scheduled for public hearing to commence Friday, November 22, 1974, at 10:00 a.m., in the Hearing Room of the Commission, Room 314, 1625 Eye Street, N. W., Washington, D. C. 20006.

4. That Central Delivery Service, Inc., publish notice in the form prescribed by the staff of the Commission of such application and hearing in a newspaper of general circulation in the Metropolitan District no later than Sunday, October 27, 1974, and present at the hearing a certificate of publication from the selected newspaper.

5. That six (6) copies, the original to be submitted at the hearing, of the statements and exhibits required hereinbefore be submitted by Central Delivery Service, Inc., to the Commission and one copy served on each party of record on or before Thursday, November 14, 1974.

6. That any person desiring to protest or otherwise to be heard on this matter shall notify the Commission, in writing, on or before Tuesday, November 12, 1974, and mail a copy of such notification to counsel of record for Central Delivery Service, Inc., S. Harrison Kahn, Esquire, Suite 733 Investment Building, Washington, D. C. 20005.

BY DIRECTION OF THE COMMISSION:



WILLIAM H. MCGILVERY  
Acting Executive Director