

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D. C.

ORDER NO. 1432

IN THE MATTER OF:

Application of CENTRAL DELIVERY	)	Served May 27, 1975
SERVICE, INC., for Temporary	)	
Authority	)	Application No. 814
	)	
Application of CENTRAL DELIVERY	)	Application No. 815
SERVICE, INC., for Certificate of	)	
Public Convenience and Necessity	)	Docket No. 271

By Application No. 815, dated August 29, 1973, Central Delivery Service, Inc. (Central) seeks a certificate of public convenience and necessity pursuant to Title II, Article XII, Section 4(b) of the Compact, to provide transportation of aircraft crews together with baggage, having a prior or subsequent movement by air, over irregular routes, between Dulles International Airport (Dulles), Herndon, Virginia, or Washington National Airport (National), Gravelly Point, Virginia, on the one hand, and on the other, points located within the District of Columbia. The transportation would be provided pursuant to contract. Central filed as part of the application a proposed tariff.

A petition to amend the scope of Application No. 815 was filed November 8, 1974, and was granted in Order No. 1372, served November 14, 1974. Central proposes to transport aircraft crews to and from Dulles or National under separate contracts with Air France, American Airlines (American), Eastern Air Lines (Eastern), Iberia Air Lines of Spain (Iberia), and United Airlines (United).

The contemporaneously filed Application No. 814 for temporary authority was dismissed without prejudice by Order No. 1363, served October 18, 1974. That order also denied a motion by Central to dismiss the temporary authority application. The basis for the motion was the contention that the proposed service was not embraced by the provisions of the Compact. The Commission concluded therein that "the proposed service is subject to the provisions of the Compact and properly within the regulatory jurisdiction of this Commission." Order No. 1363 at page 3.

By Order Nos. 1363 and 1372, Application No. 815 was assigned for public hearing on December 10, 1974. The purpose of the public hearing was 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. Greyhound Airport Service, Inc. (Greyhound) filed on October 23, 1974, a notice of intent to be heard at the hearing. Greyhound did not appear at the hearing.

As preliminary matters at the hearing, Central presented three separate contentions. First, it asserts that the Compact does not embrace or encompass the type of transportation to be performed. Second, it asserts if the Commission has jurisdiction over the proposed transportation, then the authority granted should provide for a service responsive to any airlines. Third, it asserts that any authority granted by this Commission should include transportation between either Dulles or National and any place or point in that portion of Virginia within the Metropolitan District.

This Commission has previously concluded that it has jurisdiction over the proposed transportation. See Order No. 1363. Central herein contends that the proposed service is a contract service and that the Compact does not bestow upon this Commission jurisdiction over contract service. The contentions are similar to those raised by Central's prior motion to dismiss the temporary authority application. The Commission does not believe that the contentions by Central herein warrant further consideration of the prior conclusion in Order No. 1363.

Central requests that any certificate of public convenience and necessity authorize a class of service. Such authority would eliminate any need for Central to request certification by this Commission of the institution of any new service in the future. The justifications offered by Central in support of its request are that the service to be performed would be pursuant to a contract with each airline and that the service would be responsive to the separate needs of each airline. The Commission does not believe that a grant of authority should certificate Central to provide service for any airline which desires the transportation of its crews between either airport and a point or place in the District of Columbia. Rather, the proposed service is a specialized and unique service and is designed for the particular airline being served. As a result, the Commission believes that applications for authority to perform charter operations pursuant to contract require separate consideration.

Central further requests that any certificate of public convenience and necessity authorize transportation between Dulles and National. Such transportation would be between two points located within the Commonwealth

of Virginia. Central contends that the service would be interstate because the passenger transported would be moving in interstate or foreign commerce as a result of the limitation in the application that there be a prior or subsequent movement by air. The Commission shall not authorize transportation between Dulles and National. The prohibition in the Compact is clear. See Title II, Article XII, Section 1(b). Furthermore, the legislative history surrounding the enactment of the Compact indicates that "The exclusion of the intrastate transportation in Virginia is necessitated by provisions in the Virginia constitution which, it is represented, precludes the Virginia Legislature from delegating to the compact commission jurisdiction over common carriers and public service corporation." See S.Rep. No. 1906, 86th Cong., 2d Sess. at 8 (1960).

Central is headquartered in Silver Spring, Maryland, and operates as a for-hire carrier engaging in several forms of regulated transportation of passengers within the Metropolitan District. It is a wholly-owned subsidiary of Central Courier Service, Inc. Central would use station wagons for the movement of the aircraft crews. These vehicles would be equipped with two-way radios. Central's list of equipment to be utilized in this service includes 16 station wagons of six-passenger seating capacity and one station wagon seating ten passengers. A pool of approximately 25 to 30 specially trained drivers would render the proposed transportation service. Central provides a safety program and maintains the vehicles in its own garages.

Central would provide the proposed service as required. Generally, the crews to be transported would be stationed at points other than the Metropolitan District. Arriving and departing area airports, they require transportation to and from hotels located within the District of Columbia. This transportation requirement is the result of agreements between the airline and organizations of crew members and flight attendants.

The contract between Central and an airline would provide that persons other than crew members may not be accommodated in the same vehicle. Special points of boarding and debarking the vehicle are provided at the airports. At Dulles, the vehicle would be authorized by the Federal Aviation Administration to operate directly to and from the airplane parked on airfield loading ramps.

The compensation to be paid Central by the airline is usually determined by negotiation. The rate per-vehicle trip is dependent upon the frequency of the service, the days of the week, time of travel, and the distance involved in the transportation. Of course, the competition by other carriers must be considered by Central in negotiating the rate. The rate would be paid by the airline without cost to the crew member being transported.

Several financial statements portraying Central's position on September 30, 1974, were submitted. A balance sheet statement indicates total assets of \$1,122,426, including current assets of \$951,058 and net fixed assets of \$162,349, total liabilities of \$313,750 and total equity of \$808,675. Central's income statement for the 12 month period ended September 30, 1974, shows total revenues of \$4,430,545 and total cost of sales and administrative expenses of \$3,556,962. The operations generated a profit of \$873,583 before taxes and miscellaneous items.

#### DISCUSSION AND CONCLUSIONS

The findings to be made by the Commission with respect to applications for certificates of public convenience and necessity are set forth in Title II, Article XII, Section 4(b) of the Compact. The Commission must make two separate findings. First, the applicant must be "fit, willing and able" to perform the proposed transportation properly and to conform to the provisions of the Compact and the rules, regulations and requirements of the Commission thereunder. Second, the proposed transportation "must be or will be required" by the public convenience and necessity.

The Commission believes that the record supports a finding that Central is fit, willing and able to perform the proposed transportation properly and to conform to the provisions of the Compact and the rules, regulations and requirements of the Commission thereunder.

With respect to the nature of the proposed service, the Commission is of the opinion that Central would be a contract charter carrier.

"A contract charter carrier is any person which engages in 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." Investigation of Authority to Perform CONTRACT OPERATIONS, Order No. 1361, served October 16, 1974, at page 5.

Central would enter a "continuing written contract" with each airline. The contract would require Central to transport a defined class of persons. Central would be required to provide a vehicle for the purpose of transporting the aircraft crews and their baggage. The contract would restrict the vehicle occupancy to only members of the aircraft crews. The transportation would be required on a recurring basis over a period of time.

The manager of crew scheduling for American supported Central's application. American is a domestic and international air carrier with frequent flights to and from Dulles and National. As a result of the air operations at Dulles, American's crews move to and from planeside directly to and from accommodations in the District of Columbia. At National the crew move to and from the American loading space. American would require transportation in each direction for approximately four flights per day at National and two flights per day at Dulles. The usual crew complement would be a captain, co-pilot, flight engineer, and either three or four flight attendants.

The witness for American stated that the service must be tailored to meet the needs of the crew. The airline is required to have transportation available within fifteen minutes after arrival of the aircraft and the crew is required to be at the airport one hour before departure of the aircraft. The use of the usual common carrier bus service which operates between either airport and the District of Columbia does not sufficiently coordinate with the arrival and departure of flights. Moreover, the time of arrival or departure of flights is irregular as a result of weather conditions, flight operations, and the diversion of flights.

The Commission believes that the record supports a finding that the public convenience and necessity requires the transportation of American's aircraft crews together with their baggage between either Dulles or National and the District of Columbia. The Commission further finds that approval of this portion of Central's application is required by the public convenience and necessity. The authority to be granted shall be limited to charter operations pursuant to a specific contract between American and Central.

The manager of crew scheduling for United supported Central's application. United is a domestic and international air carrier with frequent flights to and from Dulles and National. As a result of the air operations at Dulles, United's crews move to and from planeside directly to and from accommodations in the District of Columbia. At National the crews move to and from United's loading area. United would require transportation in each direction for approximately 16 flights per day at National and approximately five flights per day at Dulles. The normal crew complement would be a captain, co-pilot, flight engineer, and either ten or twelve flight attendants.

The witness for United stated that the service must be tailored to meet the needs of the crew. The airline is required to have transportation available within fifteen minutes after arrival of the aircraft and the crew is required to be at the airport one hour before departure of the

aircraft. The use of the usual common carrier bus service which operates between either airport and the District of Columbia does not sufficiently coordinate with the arrival and departure of flights. Moreover, the time of arrival or departure of flights is irregular as a result of weather conditions, flight operations, and the diversion of flights.

The Commission believes that the record supports a finding that the public convenience and necessity requires the transportation of United's aircraft crews together with their baggage between either Dulles or National and the District of Columbia. The Commission further finds that approval of this portion of Central's application is required by the public convenience and necessity. The authority to be granted shall be limited to charter operations pursuant to a specific contract between Central and United.

The record contains no basis for a finding that the public convenience and necessity requires the transportation of aircraft crews together with their baggage of either Air France, Eastern, or Iberia between either Dulles or National and the District of Columbia. Central submitted no testimony with respect to this portion of its application. No statement by a representative of any of these airlines was submitted. Accordingly, the Commission shall deny this portion of Central's amended Application No. 815.

The Compact requires each carrier to "file with the Commission, and keep open to public inspection, tariffs, showing (1) all fares it charges for transportation subject to this Act, . . . , and (2) to the extent required by regulations of the Commission, the regulations and practices of such carrier affecting such fares." See Compact, Title II, Article XII, Section 5(a).

At the hearing, Central requested that its rates not be publicly disclosed because Central bids for these contracts in competition with other carriers. Central believes that disclosure of the rates would put it at a competitive disadvantage.

The Commission must, of course, be aware of the rates in accordance with the provisions of the Compact, Title II, Article XII, Sections 5 and 6. However, the question here presented is whether, at the request of the carrier, the Commission should treat rate information as confidential. In the case of contract operations, the Commission believes that such a request may be granted if the carrier shows good cause and if such confidentiality is not inconsistent with the public interest.

The Commission believes that good cause for the request exists in the possibility that the rate information, if publicly available, could conceivably be used against Central competitively. The Commission further believes that confidentiality of contract rates is not inconsistent with the public interest in that the rate payer, being party to the contract, is already aware of the rates and would gain no further information through a tariff. Besides rate information, a tariff bears other information of a technical and administrative nature. A tariff also contains information of interest and importance to the users of the service (in this case the riders, as opposed to the rate payer) such as rules, regulations and practices applicable to the actual transportation service. The Commission shall require Central to file, in accordance with Title II, Article XII, Section 5 of the Compact and WMATC Regulation 55, a tariff for each contract for which authority is granted herein. These tariffs will be public documents. However, with respect to the rates, these tariffs may state that the rates are confidential pursuant to this Order. Central will be required to file copies of its contracts and full detail of the rates, either as part of its contracts or separately. These rates will be treated as confidential, except as part of a formal proceeding where the Commission considers disclosure to be in the public interest.

The Commission has considered the other matters pressed by the parties but finds they do not warrant action contrary to that which is now directed.

**THEREFORE, IT IS ORDERED:**

1. That Application No. 815 of Central Delivery Service, Inc., as amended, be, and it is hereby, granted in part and denied in part, as discussed hereinbefore.

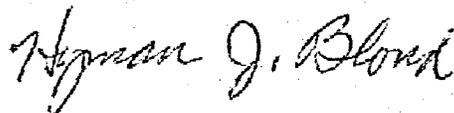
2. That Certificate of Public Convenience and Necessity No. 23, issued to Central Delivery Service, Inc., pursuant to Order No. 1413, served March 26, 1975, be, and it is hereby, modified as attached hereto and made a part hereof.

3. That Central Delivery Service, Inc., be, and it is hereby, directed to file WMATC Tariff Nos. 2 and 3 in accordance with the authorities granted herein, such tariffs to be effective upon acceptance by the Executive Director.

4. That Central Delivery Service, Inc., be, and it is hereby, directed to file with the Commission, within ten days of service of this

order, a copy of the contract between Central Delivery Service, Inc., and American Airlines and a copy of the contract between Central Delivery Service, Inc., and United Airlines.

BY DIRECTION OF THE COMMISSION:

A handwritten signature in cursive script that reads "Hyman J. Blond". The signature is written in dark ink and is positioned centrally on the page.

HYMAN J. BLOND  
Executive Director

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION  
CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

NO. 23

CENTRAL DELIVERY SERVICE, INC.  
SILVER SPRING, MARYLAND

AFTER DUE INVESTIGATION, it appearing that the above named carrier has complied with all applicable provisions of the Washington Metropolitan Area Transit Regulation Compact, and the requirements, rules and regulations prescribed thereunder and therefore is entitled to receive authority from this Commission to engage in the transportation of passengers within the Washington Metropolitan Area Transit District, as a carrier and the Commission so finding;

THEREFORE, IT IS ORDERED, that the said carrier be, and it is hereby, granted this certificate of public convenience and necessity as evidence of the authority of the holder to engage in transportation as a carrier by motor vehicle; subject, however, to such terms, conditions and limitations as are now, or may hereafter, be attached to the exercise of the privilege herein granted to the said carrier.

IT IS FURTHER ORDERED that the transportation service to be performed by the said carrier shall be as specified below:

IRREGULAR ROUTES:

SPECIAL OPERATIONS:

Between the Atlantic Terminal, located between Martin Luther King, Jr., Avenue and South Capitol Street, in the District of Columbia, on the one hand, and on the other, points in that part of the District of Columbia, east of Interstate Highway 295, south of Portland Street, and west of 13th Street, S. E.

RESTRICTED: to the performance of such transportation in 8 to 15 passenger vehicles only, including the driver.

CHARTER OPERATIONS PURSUANT TO CONTRACT to transport American Airlines aircraft crews having a prior or subsequent movement by air, together with their baggage, between Dulles International

Airport, Herndon, Virginia, or Washington National Airport, Gravelly Point, Virginia, on the one hand, and on the other, the District of Columbia.

CHARTER OPERATIONS PURSUANT TO CONTRACT to transport United Airlines aircraft crews having a prior or subsequent movement by air, together with their baggage, between Dulles International Airport, Herndon, Virginia, or Washington National Airport, Gravelly Point, Virginia, on the one hand, and on the other, the District of Columbia.

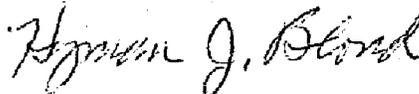
IT IS FURTHER ORDERED that the special operations authorized by this certificate of public convenience and necessity shall be conditioned to provide for revocation upon the termination of the subsidy agreement between Central Delivery Service, Inc., and the Metropolitan Washington Council of Governments dated September 18, 1974.

IT IS FURTHER ORDERED that the charter operations pursuant to contract authorized by this certificate of public convenience and necessity shall be limited to the performance of service pursuant to the agreement between Central Delivery Service, Inc., and American Airlines and the agreement between Central Delivery Service, Inc., and United Airlines provided, however, that written notice must be filed by the carrier with the Commission within five (5) days of any cancellation or termination of the aforementioned agreement, and further provided that any change in or amendment to the aforementioned agreement shall be filed with the Commission for approval at least fifteen (15) days prior to the proposed effective date of such change or amendment, and further provided that any change or amendment to the aforementioned agreement which would involve new authority shall be subject to the provisions of the Washington Metropolitan Area Transit Regulation Compact and the Rules and Regulations of the Commission.

AND IT IS FURTHER ORDERED and made a condition of this certificate that the holder thereof shall render reasonable, continuous and adequate service to the public in pursuance of the authority granted herein, and that failure so to do shall constitute sufficient grounds for suspension, change or revocation of the certificate.

The operating authority granted by this Certificate is granted pursuant to Order No. 1432, served May 27, 1975.

BY DIRECTION OF THE COMMISSION:



HYMAN J. BLOND  
Executive Director