

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D. C.

ORDER NO. 1822

IN THE MATTER OF:

Served March 27, 1978

Application of CENTRAL DELIVERY)
SERVICE OF WASHINGTON, INC., for)
Temporary Authority to Perform)
Charter Operations Pursuant to)
Contract - American Airlines)
)
Application of CENTRAL DELIVERY)
SERVICE OF WASHINGTON, INC., for)
Certificate of Public Convenience)
and Necessity to Perform Charter)
Operations Pursuant to Contract -)
American Airlines)

Application No. 1022

Application No. 1023

Consolidated Docket No. 399

By Application Nos. 1022 and 1023, Central Delivery Service of Washington, Inc. (Central), seeks temporary authority and a certificate of public convenience and necessity pursuant to Title II, Article XII, Sections 4(d)(3) and 4(b), respectively, to perform charter operations pursuant to contract, transporting American Airlines aircraft crews having a prior or subsequent movement by air, together with their baggage, between Dulles International Airport, Herndon, Va., and Washington National Airport, Gravelly Point, Va. Pursuant to Order No. 1786, served December 23, 1977, and incorporated by reference herein, a public hearing on these applications was held on January 26, 1978. Airport Limo, Inc. (Airport Limo), an applicant for competing authority, appeared in opposition to both applications.

The sole witness for Central was its vice president in charge of administration, sales and operations. Central now holds Certificate of Public Convenience and Necessity No. 23 which, as pertinent, authorizes 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 and National airports, on the one hand, and, on the other, points in the District of Columbia. Central and its affiliates hold certain other authority from this Commission, the Interstate Commerce Commission and the Virginia State Corporation Commission. For its passenger operations, Central primarily uses 14 station wagons and three vans. An additional five vans are available as backup units. All

vehicles are maintained at Central's facility in Silver Spring, Md. Central maintains adequate insurance, has a regular maintenance and safety program, and submitted appropriate financial data.

Central holds Certificate No. 23 from this Commission which authorizes, as pertinent, charter operations pursuant to contract with American Airlines between Dulles and National, on the one hand, and, on the other, points in Washington, D. C. Pursuant to its interpretation of Order No. 1432, served May 27, 1975, Central has also been providing the service for which authority is sought herein. Central apparently relies on its past and present operations as evidence of the need for continuation of this service and contends that the service is being rendered in a satisfactory manner.

Airport Limo's basis for opposition is its competing Application Nos. 1018 and 1024 (in part). Certain evidence adduced in the hearings on those proceedings, held January 25 and 26, 1978, is pertinent here. We note that Captain Wendell S. Dobbs, the American Airlines representative responsible for ground transportation testified that he is not satisfied with the quality of service which Central has been providing. American Airlines desires to terminate its existing contract with Central and does not support the instant applications.

Turning first to a jurisdictional question, Central has filed motions to dismiss each application. Applicant relies on the following language in Order No. 1432 to support its suggestion that the instant application should be dismissed.

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.

We have carefully examined the evidence of record resulting in Order No. 1432 and observe an obvious distinction from the present situation. Here, it is clear that the transportation service will involve traversing Columbia Island, a point in the District of Columbia. The record upon which Order No. 1432 was issued contains no such suggestion. As quoted above, Central relied on the "prior or subsequent movement by air" of passengers to establish that its operation would be interstate commerce. The Compact, however, does not speak in terms of interstate commerce, but confers jurisdiction on the Commission coextensive with the Metropolitan District without regard to political boundaries. Compact, Title I, Article II. Excepted from the territorial scope of our jurisdiction

is transportation for hire by a carrier "solely within the Commonwealth of Virginia."

The Interstate Commerce Commission's jurisdiction is dependent upon the commerce being interstate or foreign in nature. U.S. CONST. art. I, §8, cl.3. The Virginia State Corporation Commission regulates only intrastate commerce. Central's position that the service discussed in the above-quoted language is interstate in nature and exempt from regulation by I.C.C. under section 203(b)7(a) of the Interstate Commerce Act [49 U.S.C. 303(b)7(a)] may well be correct. For our purposes, however, this consideration is irrelevant where the surface transportation in the Metropolitan District which would otherwise be subject to our regulation is solely between points in Virginia. While this anomaly creates a "twilight zone" where no regulation exists by virtue of 49 U.S.C. 303(b)7(a), the "twilight zone" ceases to exist when the transportation traverses the District of Columbia.

This question was specifically considered by the Commission in Order No. 1573, served June 23, 1976. There, the Commission stated that:

The Commission also shall approve a fare applicable to service over Lady Bird Johnson Park between specified motels in Virginia and National. Although the Compact excludes from this Commission's jurisdiction passenger transportation for hire solely within the Commonwealth of Virginia, the Commission has jurisdiction to prescribe a fare which would be applicable to operations involving a route both within the District of Columbia and the Commonwealth of Virginia even though both the origin point and terminus are solely within the Commonwealth of Virginia. See Compact, Title II, Article XII, Section 1(b). Greyhound has stated that each route between the specified motels and National would be operated by way of Lady Bird Johnson Park, an area beyond the Commonwealth of Virginia boundaries. Accordingly, the intent of the Compact would be fulfilled by this Commission approving or prescribing a fare applicable to such operations.

Commissioner Shannon of Virginia, in a concurring opinion, further elucidated the reasoning behind this conclusion.

"The Transit Commission prescribes by this order fares and charges applicable to passenger transportation for hire between three specified hotels in Virginia and Washington National Airport, a point within Virginia, by way of Lady Bird Johnson Park, an area within the District of Columbia. The proposed transportation service is properly within the jurisdiction of the Transit Commission and beyond the regulatory province of the Virginia State Corporation Commission.

"The Compact proscription referred to by the Transit Commission in this order is intended to preserve to the State Corporation Commission only jurisdiction with respect to passenger transportation for hire "solely within the Commonwealth of Virginia". Once the passenger transportation for hire involves an area within the Metropolitan District but beyond Virginia, albeit there is no service point beyond the Commonwealth, the Transit Commission should have jurisdiction over the entire transportation operation. Thus, no portion of the service would be beyond regulation or bifurcated between two Commissions. [Emphasis added.]

"By this order the Transit Commission fulfills and conforms to the intent of the framers of the Compact to improve transit services within the Metropolitan District on a coordinated basis, without regard to political boundaries. There would be no infringement upon the exercise of any power or the discharge of any duties conferred or imposed upon the State Corporation Commission by the Virginia Constitution."

The key distinction between the present situation and that considered in Order No. 1432 is that there now exists a suggestion that an area within the Metropolitan District other than Virginia would be involved by virtue of traversing Columbia Island. Accordingly, we conclude that Application Nos. 1022 and 1023 are properly within our jurisdiction. The motions to dismiss shall therefore be denied.

The Commission also finds that each application should be denied. Title II, Article XII, Section 4(b) provides that an applicant for a certificate of public convenience and necessity must establish that the proposed service is or will be required by the public convenience and necessity and that the carrier is fit, willing and able properly to perform said service and to conform to the requirements of the Compact and the Commission's rules, regulations and orders thereunder.

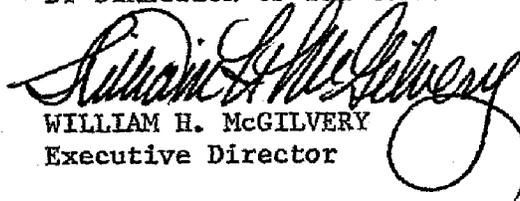
Central currently has a contract with American Airlines to provide the proposed service. The uncontroverted evidence of record, however, shows that American Airlines desires to terminate the contract and has not done so only because no other carrier holds the required authority. By Order No. 1823, served concurrently herewith, such authority has been granted to Airport Limo, Inc., the carrier with whom American Airlines desires to contract. Inasmuch as the existence of a continuing contract is both a preceding and concurrent condition to the existence of charter pursuant to contract authority, and because there is little likelihood that American Airlines' contract with Central will survive beyond the administrative finality of said Order No. 1823, we must conclude that Central will not be able to provide the proposed service on a continuous basis.

THEREFORE, IT IS ORDERED:

1. That the motions of Central Delivery Service of Washington, Inc., to dismiss Application Nos. 1022 and 1023 be, and they are hereby, denied.

2. That Application Nos. 1022 and 1023 of Central Delivery Service of Washington, Inc., be, and they are hereby, denied.

BY DIRECTION OF THE COMMISSION:



WILLIAM H. MCGILVERY
Executive Director