

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D. C.

ORDER NO. 1850

IN THE MATTER OF:

Served May 23, 1978

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

Application No. 1022

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. 1023

Consolidated Docket No. 399

By Order No. 1822, served March 27, 1978, Application Nos. 1022 and 1023 were denied in their entirety. By application filed April 26, 1978, Central Delivery Service of Washington, Inc. (Central), seeks reconsideration of Order No. 1822.

Replies were due May 3, 1978. By letter (motion) dated May 2, 1978, and received May 4, 1978, Airport Limo Inc. (Airport Limo), a party protestant to these proceedings, requested a seven-day extension of time until May 10, 1978, to respond to the application for reconsideration. Pending disposition of the extension request, Airport Limo was advised promptly to submit its response to the application for reconsideration, but failed to do so until May 12, 1978. Inasmuch as the reply was received after expiration of the requested extension period, it will be rejected, and the motion for the extension is deemed to be moot and will not be acted upon.

Central asserts the following errors:

1. The Commission erred in its resolution of the jurisdictional issue by reaching a decision predicated on facts not of record.
2. The Commission erred by not treating the resolution of the jurisdiction issue in a rulemaking proceeding.

3. The Commission erred in considering these irregular-route applications as regular-route applications.
4. The Commission erred in its resolution of the public convenience and necessity issue by reaching a decision not based upon the facts of record.
5. The Commission erred in creating another "twilight zone" in regulation in addition to that which it had identified.
6. The Commission erred in failing to find Central fit, willing, and able to perform the proposed service.
7. The Commission erred in failing to find the proposed service is or will be required by the public convenience and necessity.
8. The Commission erred in failing to grant these applications.

Only those facts necessary for clarity of discussion will be repeated herein. For a more complete recitation of the facts in this proceeding, see Order No. 1822, incorporated by reference herein.

In Application No. 1022 Central seeks temporary authority and in Application No. 1023 it seeks a certificate of public convenience and necessity 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.

Central has been providing service for American Airlines between the airports, as sought herein, under its interpretation of Commission Order No. 1432, served May 27, 1975, which held that such transportation, when conducted solely between points located in the Commonwealth of Virginia was not within our jurisdiction. Central did not offer testimony from American Airlines at the public hearing concerning these applications.

Regarding applicant's first two contentions of Commission error, it asserts that the record in this proceeding does not include one iota of evidence or any reference to transportation over Columbia Island, Washington, D. C., which would clearly demand Commission authority. Central invokes the precedent of Order No. 1432, wherein we rejected its argument that the proposed operation was interstate in nature and therefore subject to our jurisdiction because the passengers to be transported would be limited to those having a prior or subsequent movement by air.

Our decision in Order No. 1822 regarding jurisdiction was predicated on the assumption that Central's operations between the airports normally traversed Columbia Island. In its motion to dismiss these applications filed November 7, 1977, applicant asserted ". . . that there

may be a question as to whether or not such authority [from the Commission] is required, due to the fact that operations, in many, if not most instances, are physically conducted along the George Washington Parkway, which traverses Columbia Island, an area located on the Virginia side of the Potomac River, but a part of the District of Columbia." (page 3, emphasis added). At page 4 of the motion, it was claimed that ". . . it is common practice for Central Delivery to alter the course of its radio-equipped vehicles enroute should traffic requirements so dictate. For example, if there are traffic delays along the George Washington Parkway, Central may well direct its vehicles to avoid such congestion, thereby by-passing Columbia Island."

Central buttressed the concept of trans-Columbia Island service in its post-hearing brief (filed in the form of a proposed order). At page 3 of the brief it stated, "[T]he proposed operations, though irregular route in nature, are as a matter [of] course, conducted over that portion of the George Washington Memorial Parkway which traverses Columbia Island, which, although on the Virginia side of the Potomac River, is nevertheless a part of the District of Columbia. There is precedent which suggests that this routing characterizes the service as interstate in nature because it traverses a portion of the District of Columbia." While we note that the above language from the brief is argument of counsel and not evidence per se, it is indicative of the type of service we believed to be conducted by Central when we issued Order No. 1822.

However, in Central's application for reconsideration we find contrary contentions by counsel. Applicant now informs us that "[i]t is evident that operations to or from National Airport are most realistically and feasibly conducted from Dulles to National, over the George Washington Memorial Parkway to its intersection with Virginia Highway 110 at the Pentagon, thereupon over Route 110 to U.S. Highway 1, and to the new overpass traversing the Potomac Railroad Yard and entering directly into the Washington National Airport. Such transportation would not be within this Commission's jurisdiction." At page 7 of its request for reconsideration it further declares that "Central has made no representation on this record that it will traverse Columbia island, transportation over Columbia Island is not the most feasible highway choice for the operation of the proposed service. . . ." A reading of the transcript from the hearing in these proceedings shows that no testimony was elicited concerning operations over Columbia Island.

The resultant confusion from the above statements leads us to conclude that we do not have jurisdiction over the proposed service. Inasmuch as there is insufficient evidence to establish operations other than those conducted solely between points located in the Commonwealth of Virginia. Applicant has an affirmative burden to establish that jurisdiction properly lies, and absent a definite showing by applicant that the inter-airport operations come within the purview of our jurisdiction, we are constrained to modify Order No. 1822 for the purpose of dismissing Application Nos. 1022 and 1023. Should applicant decide, in the

future, to conduct inter-airport operations via Columbia Island, filing of a new application for authority will be necessary.

THEREFORE, IT IS ORDERED:

1. That the late-tendered reply of Airport Limo, Inc., to the application for reconsideration by Central Delivery Service of Washington, Inc., is hereby rejected.

2. That the application for reconsideration of Order No. 1822 by Central Delivery Service of Washington, Inc., except to the extent granted herein, is hereby denied.

3. That Application Nos. 1022 and 1023 are hereby dismissed for lack of jurisdiction.

BY DIRECTION OF THE COMMISSION:

  
WILLIAM H. MCGILVERY  
Executive Director