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Garrett Freightlines, Inc., Lake Shore Motor Coach Lines, Inc., Continental Bus System, Inc., American Bus Lines, Inc., Denver Salt Lake Pacific Stages, Rio Grande Motorway, Inc., Milne Truck Lines, Inc., Palmer Bros Incorporated, Mt. Hood Stages, Dba Pacific Trailways : Brief of Plaintiffs

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# In the Supreme Court of the State of Utah

GARRETT FREIGHTLINES, INC.,  
LAKE SHORE MOTOR COACH  
LINES, INC., CONTINENTAL BUS  
SYSTEM, INC., AMERICAN BUS  
LINES, INC., DENVER - SALT  
LAKE - PACIFIC STAGES, RIO  
GRANDE MOTORWAY, I N C . ,  
MILNE TRUCK LINES, I N C . ,  
PALMER BROS. INCORPORATED,  
MT. HOOD STAGES, dba PACIFIC  
TRAILWAYS,

*Plaintiffs,*

vs.

PUBLIC SERVICE COMMISSION  
OF UTAH; HAL S. BENNETT,  
et al., its Members; and WYCOFF  
COMPANY, INCORPORATED,

*Defendants.*

Case No. 10360\*

## BRIEF OF PLAINTIFFS

Review of the Order  
of the Public Service Commission of Utah

UNIVERSITY OF UTAH

MAY 12 1966

LAW LIBRARY,

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\*Consolidated with Cases Nos. 10351 and 10357

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# In the Supreme Court of the State of Utah

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COMPANY, INCORPORATED,

*Defendants.*

Case No. 10360\*

## BRIEF OF PLAINTIFFS

### STATEMENT OF THE KIND OF CASE

This is an appeal from an order of the Public Service Commission of Utah granting to Wycoff Company, Incorporated, a Certificate of Convenience and Necessity to operate as a common carrier by motor vehicle in the transportation of specified commodities, as restricted, between all points and places in Utah.

## DISPOSITION OF CASE

This is a direct appeal to the Supreme Court from the order of the Public Service Commission granting authority, and is made subsequent to denial of petition for rehearing and reconsideration filed with the Commission.

## RELIEF SOUGHT ON APPEAL

This appeal seeks to set aside the order of the Public Service Commission granting the Certificate of Convenience and Necessity to Wycoff Company, Incorporated.

## STATEMENT OF FACTS

This appeal is filed by Garret Freight Lines, Inc. (herein "Garrett"), Lake Shore Motor Coach Lines, Inc. (herein "Lake Shore"), Rio Grande Motorway, Inc. (herein "Rio Grande"), Milne Truck Lines, Inc. (herein "Milne"), Palmer Bros., Incorporated (herein "Palmer"), and Continental Bus System, Inc., American Bus Lines, Inc., Denver-Salt Lake-Pacific Stages, and Mt. Hood Stages, dba Pacific Trailways (herein collectively "Continental Trailways").

The amended application of Wycoff Company, Incorporated (herein "Wycoff") sought authority to operate as a common carrier for the transportation of con-

tractors' equipment, equipment parts and supplies in a scheduled service, excluding, however, commodities in bulk, commodities which because of size or weight require special equipment and any shipment weighing in excess of 1,000 pounds, state-wide over all highways within Utah.

After hearings in May 1964, the Commission order was issued January 14, 1965. The grant of authority was less than that requested. It granted a certificate of convenience and necessity authorizing operations as a common carrier transporting emergency shipments of contractor's supplies, contractor's equipment, or parts thereof, in a scheduled service, excluding commodities in bulk, or commodities which because of size or weight require special equipment, and any shipment weighing in excess of 1,000 pounds, between all points and places in Utah. It prohibited separation of shipments for purposes of avoiding the restriction, and defined the commodities phrase as meaning supplies and equipment, and parts thereof, which a contractor utilizes in the performance of his work. The order stated that this does not include materials or supplies which the contractor might use or consume in the course of the work or which might become a part of any construction, and that at the time of any shipment the ultimate user must have been identified as a contractor, or the intended use of the commodities by a contractor fixed.

Petitions for rehearing filed by all plaintiffs herein were denied March 7, 1965. Appeals have been taken by these protestants, as well as other carriers in cases No. 10351 and No. 10357, all being consolidated for purposes of appeal.

Plaintiffs have filed an abstract of record and for this reason this statement of fact will be condensed.

Collectively plaintiffs represent the basic transportation industry of Utah, including both bus and truck lines. The services of plaintiffs in this appeal can be summarized as follows: (references are to abstract pages):

**GARRET (abs. 55-59)**

Garrett is a regular route general commodity carrier operating generally between Salt Lake City, Utah and points and places at and south of Crescent Junction through Monticello on U.S. Highway 160 to the Colorado line, serving intermediate points. It has off-route point authority as well. It maintains typical truck terminals at Salt Lake City, Moab and Monticello, with local delivery trucks at each and equipment pools at Salt Lake City and Moab. The Salt Lake City terminal is open 24 hours a day, seven days a week. Normal pickup service is available five days a week and on Saturday upon request.

Normally there is one schedule from Salt Lake City to Grand and San Juan County areas leaving in the evening and arriving at Moab at 6:00 a.m., Sunday through Thursday, for Monday through Friday deliveries. Freight is delivered at the terminal on Saturday upon special request. Double bottom trailers are normally used, and after the trucks arrive at Moab at 6:00 a.m., local deliveries commence at 8:00 a.m. and the Monticello and southern traffic moves south at this time. Until 1959, Garrett made routine Saturday deliveries, service being then discontinued as the result of meetings with Moab and Monticello chambers of commerce and other shippers.

Traffic for points below U. S. Highway 160 is interchanged at Monticello with Lyman Truck Lines on coordinated schedules and interline occurs without delay. Both inter and intrastate traffic are handled on the same vehicle, and the departure times from Salt Lake City and from Denver to Moab are coordinated, so as to expediate delivery of both types of traffic. Off-route points not directly served by Garrett are also interlined with Gould Truck Lines, normally at Moab, Gould having authority to all points and places in Grand and San Juan Counties.

The intrastate traffic, and the same is true of all Utah carriers, consists of small shipments. Exhibit 20 shows that of 619 shipments in a four week period, only 49 weighed over 1,000 pounds. Exhibit 21 is a traffic



study showing delivery times during the week of April 13, 1963, and shows that only five shipments were over 100 pounds out of a total of 163. On Exhibit 21, of 163 shipments, 84 were without question commodities of the type involved in this proceeding.

Garrett actively solicits the traffic, and maintains six solicitors at Salt Lake City that had contacted the shippers whose witnesses appeared at hearing.

#### LYMAN TRUCK LINE (abs. 52-55)

This carrier is authorized to transport general commodities in the southern portion of San Juan County. Its headquarters are at Monticello. It interlines with Garrett at Monticello, handles the Garrett traffic south of U. S. Highway 160, and its witness was called by Garrett counsel. It handles by interline most, if not all, of the Wycoff traffic in the same area, and the same is true as to traffic of Continental Trailways.

It maintains three schedules daily between Monticello and Blanding, which are designed to meet the schedule arrivals of Garrett, Wycoff and Continental Trailways. It operates seven days a week, and has the mail contract in the area also, extending into Arizona, which mail truck is coordinated with its other operations and transports general Utah freight.

In short, it is the carrier providing service in this sparsely populated area of southern Utah. It operates on a close basis, and its income and expense statement for the year 1963 (Ex. 10) shows a profit of \$5,996.79. This does not include a salary for Mr. Lyman, who spends full time with the freight operation. Mr. Lyman pointed out that traffic he originates would not exceed \$300 to \$400 per month, and the operation is basically dependent upon interline traffic. Its freight bills covering two weeks in April (Abs. 55) showed 50 shipments, 30 received from Wycoff, and of these, 15 were commodities here involved. In the same period, 64 shipments were received from Garrett, 30 of which were such commodities. Construction activity, particularly in the uranium and oil industries, has declined, reducing the volume of contractors' equipment and supplies transported. Lyman also handles the mail and newspapers received from Wycoff by interline at Monticello. The shipments are small. Of the Wycoff interline shipments, all but one were under 100 pounds, and of Garrett, all but three were under 100 pounds.

MILNE (abs. 46-50)

Milne is a common carrier of general commodities, and its principal route extends from Salt Lake City via U. S. Highway 91 through St. George to the Arizona line. It also has some authority in northeastern Utah, moving from Salt Lake City through Ogden towards

Evanston, Wyoming. Unlike Garrett, Milne has extensive county-wide authority and serves numerous off highway points.

It has substantial terminals at Salt Lake City, Fillmore, Beaver, Cedar City, and St. George at which points local pickup and delivery equipment is stationed. As is the case with other carriers, terminals are interconnected by telephone and in some instances teletype.

It operates 8 to 10 interstate schedules a day south from Salt Lake City, all of which can and do transport Utah freight, which move through Utah to Nevada, California and Arizona. In addition, it operates local Utah schedules. One departs Salt Lake City six days a week about 8:00 p.m. for Cedar City and intermediate points south of Levan, with an additional similar schedule to St. George. Delivery is effected early the following morning, transit time being six to seven hours to Cedar City and seven to eight to St. George. Local schedules are operated Monday through Friday. Local traffic also moves on the interstate schedules on Saturday, and there is a special local schedule which picks up traffic on Sunday, for Monday morning delivery in southern Utah. Comparable schedules move northbound.

In general, traffic is distributed in towns where terminals are maintained by local pickup and delivery equipment, but the line haul trailers, both inter and intra-

state, frequently make drops at all intermediate points, including roadside delivery for contractors. Milne has keys to various places of business for delivery when the businesses is closed and has used drop boxes for shipper convenience. All carriers, including Milne, have established interline at common service points. Milne is serving such shippers who appeared at hearing at W. W. Clyde, Arnold Machinery, Heiner Equipment, Utah Bit and Steel, Strong Construction Company and Tiago Construction Company.

Its traffic study (Ex. 81) shows that the commodities here involved constitute about 30 per cent of total intrastate traffic, also that shipments under 100 pounds form a substantial portion of the traffic. Again, as is the case generally, traffic is basically outbound from Salt Lake City and the return movement is extremely limited. Milne maintains solicitors and actively seeks the involved traffic.

#### RIO GRANDE (abs. 43-46)

Rio Grande is a general commodity common carrier operating between Salt Lake City through Provo, Price and Crescent Junction to the Colorado state line via U. S. Highway 50. It also operates between Price and the Sevier county line and points within 20 miles thereof via Utah 10. Terminals are located at Salt Lake City, Provo and Price, with an agency at Green River, Utah (Ex. 71).

The terminal at Salt Lake City is open from 6:00 a.m. until midnight five days a week, and the facilities are available on Saturday and Sunday for special shipments. The Provo and Price terminals are open Monday through Saturday noon but also provide service in emergencies Saturday afternoon and Sunday.

Two daily local schedules operate between Salt Lake City and Provo, one serving south to Payson. They depart from Salt Lake City at 1:00 p.m., for the same afternoon delivery, and at 5:00 p.m. for delivery early the following morning. Also, two schedules depart for Provo at 10:30 p.m. and 2:00 a.m. which schedules pick up traffic clearing the Salt Lake terminal up to midnight. Other schedules move east to Price, departing Salt Lake City at 10:30 p.m., 5:30 a.m. and 6:30 a.m. In addition, the interstate schedules through Price and east to Grand Junction, Colorado, depart at 8:30 p.m. and 7:00 p.m. These schedules are available for and frequently handle intrastate traffic. Balancing west and north bound schedules are operated.

Shippers who appeared are served. Deliveries to W. W. Clyde and Strong Construction and other Springville contractors are made twice a day, for example. There has been no complaint received as to the service.

Carbon shows the same traffic pattern as the other truck lines. Exhibit 72 shows that of total intrastate traf-

fic, 34% consists of the commodities here involved. During a typical month, April, 1964, of 44 shipments for Wheeler Machinery Company, 19, or 43%, were between 0 and 100 pounds, 16, or 37%, were from 100 to 500 pounds, 39, or 98%, were under 1,000 pounds. Rio Grande operating ratio for 1963 was 98.17, and for the first quarter of 1964, 101.71. It seeks the involved traffic, performs dropoffs or pick-ups at construction sites or closest highway points. Rio Grande interlines with Arrow Auto Lines at Price, which serve such points as Dragerton and Sunnyside, and a similar interline is performed by Wycoff for service to the same points. The service from Price to Emery County points is performed five days a week, and of this traffic approximately 25 to 30% would be under 1,000 pounds.

#### PALMER BROS. (abs. 67-69)

Palmer is also a common carrier of general commodities, whose operations extend from Salt Lake City through Provo via U. S. Highway 89 to Kanab, west through Fillmore and Eureka to Delta, with numerous routes in this general area and off-highway service points.

Terminals are at Salt Lake City, Provo, Mt. Pleasant, Manti, Richfield, Panguitch, Kanab, Delta, Fillmore and Nephi. Terminals are open six days a week from 7:00 A.M. to 10:00 P.M. and special shipments are handled on Sunday.

Schedules serve the Delta-Fillmore area Sunday through Friday, leaving Salt Lake City at 9:00 P.M., except Sunday which leaves at 2:00 P.M., and arriving at Delta and Fillmore during the night for deliveries the following morning. In general, this freight is delivered prior to noon. There are two schedules daily from Salt Lake City to Provo, one at noon for morning traffic and afternoon delivery, and the other at 9:00 P.M. for following morning delivery. Additional schedules are sometimes required. In addition, there is a daily schedule via U.S. Highway 89 to Richfield, leaving in the evening and another schedule on U. S. Highway 91 as far south as Nephi, departing the same time. A further schedule serves points south of Richfield to Kanab leaving Salt Lake City on Monday, Wednesday and Friday for delivery the following morning. Emergency service is available on days when this schedule is not run.

Dropoffs are made from the line haul units, and contractors served in the same manner as that of the other carriers. Again, small shipments constitute a substantial portion of total traffic, and outbound schedules from Salt Lake City, are generally half loaded. A large portion of Palmer's traffic consists of contractor's supplies and equipment. It is serving the supporting shippers here and few complaints have been received. It solicits the traffic here involved.

## LAKE SHORE (abs. 50-52)

Lake Shore is a bus line transporting passengers, baggage and express between Salt Lake City and Ogden over several routes, serving all intermediate points. It also has authority to pickup and deliver general commodities between points in Ogden and Salt Lake City and terminals at each point. It operates 25 schedules Monday through Friday between Salt Lake City and Ogden, plus 12 from Salt Lake City to intermediate points short of Ogden. Saturdays it operates 13 schedules and on Sunday 9, between Salt Lake City and Ogden. Its terminals are operated with Greyhound at Salt Lake City and Ogden.

The Salt Lake City terminal is open 24 hours a day seven days a week, and the Ogden terminal from 5:30 A.M. until 1:30 A.M., seven days a week. Lake Shore has intermediate agency stations at Bountiful, Kaysville, Clearfield and Farmington, which handle express. Express is delivered en route daily, and in general its handling is the same as Continental Trailways and Greyhound.

Contractor's supplies and parts comprise about 60 percent of the Lake Shore traffic, which is handled in express and baggage bays similar to those of Greyhound and Continental Trailways. It handles little if any baggage in its operation. The only construction company



as such operating in this area was Fife Construction working near Layton, which has been served daily without complaint. Over many years other construction companies have been similarly served and also without complaint.

Express is the life blood of this carrier. Exhibit 87, its profit and loss statement for three months of 1964, as projected, shows net income of \$5,688, with express revenues of \$8,315. Sixty percent of express revenue is derived from shipments of parts and supplies originating at either Salt Lake City or Ogden. It handles express of all types and its authority is not limited to 150 pounds on the express service as such, although its pickup authority at Salt Lake City and Ogden is so limited. It handles about 2,500 shipments a month of all commodities, with some exception such as wet batteries, unwrapped black tires or shipments of an unusually large size which its equipment cannot handle. It interlines express with other carriers, both truck and bus, at Salt Lake City and Ogden.

GREYHOUND (abs. 59-63)

Greyhound Lines, Inc., transports passengers, baggage and express over principal highways in Utah. Although a protestant, it is not a plaintiff. Its operations are over highways served by various plaintiffs, and therefore set forth. From Salt Lake City it operates north by three routes to the Idaho line, from Ogden and

Salt Lake City via Echo Junction to Wyoming, via U. S. Highway 40 through Grantsville and Wendover to Nevada, and via U. S. Highway 91 through Cedar City and St. George to the Arizona state line. It operates ten daily schedules north, five west, nine northeast, and five south. The schedules are spaced through a 24 hour period, seven days a week, and carry express. Balancing schedules move inbound.

Its base terminal at Salt Lake City, jointly occupied by Lake Shore, is open 24 hours a day, seven days a week. It has special procedures to handle express with facilities in the terminal exclusively devoted to such handling. Terminals are also located at Ogden and such cities at St. George, Cedar City, Fillmore, and Brigham City which are open 24 hours a day. It has commission agents in practically every town worthy of the name on its routes. These agency stations are generally open from 6:00 or 8:00 a.m. to 9:00 p.m. or midnight. Storage and deposit facilities are available at terminals and agency stations, and lock boxes are used. The busses make drop shipments en route as requested, and in emergency the shipments are taken directly to the agent's home for transfer to the local consignee if the agency station happens to be closed.

The importance of express is shown by large baggage and express bays, and progressive bus models over the years have consistently increased the size of these

bays. The size today is double that of ten years ago. In the event a bay is full, extra sections are put on. During the 1693 Christmas season, 47 such extra sections were operated in a 12-day period.

Its procedures for expeditious express handling are summarized at Abs. 61 and 62. It solicits by personnel, various types of advertising, and mass mailing. It specifically solicits and seeks the traffic involved here. Almost all of the equipment suppliers at Salt Lake are served and many have regular charge accounts. Of the shippers here, in April 1694, 82 shipment were handled for Wheeler Machinery, 286 for Ford Motor Company.

Maintenance of express traffic is vital. For nine or ten months of each year, passenger revenue on Utah intrastate traffic is not sufficient to cover costs of operation. Express revenue is about 7 percent of total revenue, and makes the difference between profit and loss.

Greyhound has a tariff limitation of 100 pounds on any package, which is to be distinguished from a shipment, which may be composed of numerous packages.

#### CONTINENTAL TRAILWAYS (abs. 63-66)

Continental Trailways is a group of independent companies whose operations are so integrated that as a practical matter here they constitute a single carrier.

Its operations are substantially the same as those of Greyhound. Its routes parallel generally the Greyhound routes, except that, in addition, it operates between Salt Lake City and the Colorado line via U. S. Highway 40 and via U. S. Highway 50 and 160 through Price, Moab, and Monticello and via U. S. Highway 89 through Kanab. It has terminals at Salt Lake City, Provo, Price and Vernal. Commission agents are along its routes as in the case of Greyhound, and similarly operated.

From and to Salt Lake City, it operates one daily schedule through Provo to Kanab, three through Spanish Fork, and through Price to the Colorado border, and an additional schedule that moves south from Crescent Junction through Moab and Monticello to New Mexico, also, two schedules through Roosevelt and Vernal, two west to Nevada or south via U. S. Highway 91 to Arizona, and three north to the Idaho line. While these schedules cover the same routes as Greyhound with noted additions, they generally depart at different times from those of Greyhound. Continental's tariff limits its package weight, not shipment, to 150 pounds, except as to the American Bus Line operation between Salt Lake City and Los Angeles, where the package limit is 100 pounds.

Exhibit 52 is an income and expense statement of Denver-Salt Lake-Pacific Stages, and indicates that if express revenues were deleted it would be in a loss operation, and that its present operating ratio is about 100.

## BUS EXPRESS PICKUP AND DELIVER SERVICE (abs. 66-67)

Testimony on this operation was introduced through Greyhound and Continental. Bus Express performs a pickup and delivery service between the bus terminals and the shippers' places of business at Salt Lake City, Utah. It operates a regular route pickup and delivery three times during the day, and in addition picks up on call at any time. It had plans for two-way radio installation on its Ford Econovan pickup trucks at time of hearing. Its operations are generally conducted from 8:00 a.m. to 8:00 p.m. but calls are taken as late as midnight. It serves many of the shippers who testified on a daily basis, such as Cate Equipment, Rocky Mountain Machinery, Arnold Machinery and Heiner Equipment (all three times a day). Since this carrier serves the bus lines, its weight limits are obviously the same. A charge is made for the pickup and delivery service, except as to interline shipments of Greyhound.

## WYCOFF COMPANY, INCORPORATED (abs. 48)

Wycoff operations have been before the court in numerous prior cases; for example, see *Lake Shore Motor Coach Lines, Inc. v. Bennett*, 8 Utah 2d 293, 333 P. 2d 1061 (1958). Its operations at time of hearing followed the same basic pattern of prior years, although it was apparent that the volumes had increased, and it was

transporting some additional commodities. It operates over most principal Utah highways, uses trucks with van type bodies which are smaller than the equipment of the general commodity regular route carriers.

Its operations are limited to specific major highways. The schedules are set forth in Exhibit 3. Its operation is based on newspapers and mail, but it also transports drugs, magazines, bull semen, ice cream, flowers, films and theater supplies, under Utah certificates. It also transports express, subject to the certificate limitations, including those of 100 pounds per shipment, 500 pounds per schedule, and on schedules otherwise transporting newspapers, all as noted in the *Bennett* case, supra. From May 31, 1961 to date of hearing it had transported contractors' and machinery dealers' repair parts, supplies and equipment. See *Continental Bus System vs. Public Service Comm.*, 16 Utah 2d 87, 396 P. 2d 404 (1964). It also handles air freight, express and most of the commodities above in interstate commerce. In addition to the commodities it is authorized to transport, it also, in the same vehicles, moves commodities of its supply division which buys and sells contractors' supplies and distributes explosives and other items.

Its schedules are tied to newspaper transportation, departing Salt Lake City at approximately noon and midnight for various Utah points it serves.

Exhibit 3 sets forth Wycoff's schedules, generally confirming midnight and noon departures. It clearly shows that although Wycoff does hold state-wide authority for limited express, contractors' supplies and other commodities, its operations are tied to principal routes and that it relies on interlines for shipper service to much of the areas involved. For example, Table 1, between Salt Lake City and Monticello, states there are daily connections for main points south of Monticello and San Juan County, that such points as Castle Dale, Huntington, Emery, Sunny Dale, Columbia, Hiawatha, Dragerton and Wellington are served by connections from Price. On the Salt Lake City to Kanab schedules it shows connections at Richfield for such points as Loa and Bicknell, and Panguitch for Tropic, Escalante and Bryce Canyon. (Table 2). Between Salt Lake and St. George, it shows connections for Enterprise, New Castle, and Manilla at Cedar City, for Minersville and Milford at Beaver, and for Springdale at Hurricane. In other words, it shows service on main highways only, relying on non-certified mail carriers and other arrangements to transport to points off its routes, with some exceptions such as Arrow Auto Lines at Price, Utah. This, notwithstanding that much of its authority, such as express, is state-wide in scope. In addition, the schedules from a time standpoint are such that there is no leeway for any delay en route, except for tail drop deliveries of a limited number. The operation is consistent with the needs of the newspaper transportation, and limited by such requirements.

Wycoff proposes to conduct its operations under the involved application, without change, on existing routes and schedules.

Wycoff has terminal or storage facilities at Salt Lake City, Brigham City, Ogden, Green River, Price and Richfield (abs. 6), and has other stations or agents. Some are agents possessing equipment for local delivery with others the freight is interlined with individuals along the routes. There are no written lease agreements between Wycoff and these individuals, nor any check made to determine whether they hold authority from the Commission. Wycoff operates drop boxes which have been used in the traffic here involved.

The testimony of the supporting shippers has been summarized in the abstract of record.

The shippers are of two general types. Some are engaged in general construction work involving airports, roads, dams, bridges, and power and telephone line construction, with specialties in particular fields. These include W. W. Clyde and Company (abs. 8), Strong Company (abs. 18), Tiago Construction Company (abs. 18), Fife Construction Company (abs.) 20), Wasatch Electric Company (abs. 25), Interstate Electric Company (abs. 28). It was stipulated that the testimony of Whiting and Hammond and Thorne Construction Company would be similar to that of W. W. Clyde and Company.

The other shippers are companies handling various types of industrial machinery and contractors' equip-



ment, parts and supplies, and automotive accessories. These include Cate Equipment Company (abs. 11), Wheeler Machinery Company (abs. 15), Rocky Mountain Machinery Company (Abs. 16), Arnold Machinery Company (Abs. 22), Heiner Equipment and Supply Company (Abs. 24), Armeo Equipment Company, Ross Cowan Equipment Company, and Utah Bit and Steel (Abs. 27), and Bailey, Inc. (Abs. 30). It was stipulated that witnesses of Foulger Equipment Company and Atlas Corporation would testify similarly to those of Arnold Machinery, Heiner Equipment, and that the testimony of Larcher Tire would be similar to that of Bailey, Inc.

All of the above shippers have their principal offices at Salt Lake City, except a few, such as Strong and Clyde who have their principal offices at Springville.

With minor exceptions, the testimony indicates defined patterns. All are using the services of Wycoff and find them satisfactory, and in some instances excellent. They are also currently using existing carriers, truck and bus, and find them satisfactory. (Abs. 10, W. W. Clyde: 11, Cate Construction; 14, Strong Construction; 16, Wheeler Equipment; 17, Rocky Mountain Machinery; 19, Tiago Construction; 22, Arnold Machinery Company; 26, Wasatch Electric; 27, Armeo Equipment; 29, Interstate Electric; 31, Bailey, Inc.)

Generally, Wycoff is transporting about one half or a little more of the smaller shipments of the involved

traffic, bus and other truck lines the balance. For example, Arnold Machinery (Abs. 24) ships 5 percent of its small emergency shipments by Wycoff, and 5 percent by bus lines; Cate Equipment (Abs. 12) shipped in a month of 1963, 186 shipments by Wycoff, 59 by Continental Trailways, and 59 by Greyhound; Rocky Mountain (Abs. 17) ships 50 percent of its machinery parts by Wycoff and the balance all other carriers. The Wycoff shipments are primarily small shipments under 100 pounds which it currently has authority to handle under express authority.

There is no indication of any transportation requirement in Salt Lake City, particularly since the companies operate their own trucks (see Abs: 9, Clyde; 15, Cate Equipment; 15, Strong Construction). Clyde, for example, operates 150 company trucks, not all of which are committed to Salt Lake City, which are used throughout the state. The construction companies use their own trucks for basic transportation, and the carrier systems for the smaller LTL and emergency shipments (Abs. 9, Clyde). All carriers are used, a few shippers have a preference for Wycoff service, but basically the selection of the carriers as between Wycoff and a bus or truck line is based upon the schedule departures from origin point, and most shipments originate at Salt Lake City. The shippers select the first schedule which departs after they determine that the shipment is to be made. While a few shippers complained as to some protestant carriers,

at the same time they use such carriers frequently and almost to the same extent as they use Wycoff.

## ARGUMENT

### POINT I.

#### THE EVIDENCE DOES NOT SUPPORT A FINDING OF CONVENIENCE AND NECESSITY WHICH WOULD JUSTIFY A GRANT OF AUTHORITY.

In 1958 this court reviewed the application of Wycoff for express service to all points in Utah in *Lake Shore Motor Coach Lines, Inc. vs. Bennett*, supra. The testimony in that case was strikingly similar to that of the instant proceedings, although review was limited to the area served by appellants Lake Shore Motor Coach Lines, Inc., Lewis Brothers Stages and Bingham Stage Lines. It is difficult to conceive of a more accurate and adequate summation of the issues confronting the Commission in hearings of this type, than that contained in such decision. At page 1063 the court stated:

“When a carrier applies to institute a new carrying service, the Commission must take into account, not only the immediate advantage to some members of the public in increased service, and to the applying carrier in permitting him to enlarge the scope of his business, but must plan

long-range for the protection and conservation of carrier service so that there will be economic stability and continuity of service. This obviously cannot be done unless existing carrier have a reasonable degree of protection in the operations they are maintaining.”

\* \* \* \* \*

“Proving that public convenience and necessity would be served by granting additional carrier authority means something more than showing the mere generality that some members of the public would like and on occasion use such type of transportation service. In any populous area it is easy enough to procure witnesses who will say that they would like to see more frequent and cheaper service. That alone does not prove that public convenience and necessity so require. Our understanding of the statute is that there should be a showing that existing services are in some measure inadequate, or that public need as to the potential of business is such that there is some reasonable basis in the evidence to believe that public convenience and necessity justify the additional proposed service. For the rule to be otherwise would ignore the provisions of the statute; and also would make meaningless the holding of formal hearings to make such determinations and render futile efforts of existing carriers to defend their operating rights.”

The shippers are either contractors or companies supplying equipment, equipment parts and supplies for them. The contractors, with the exception of a few located at Springville, Utah, are based in Salt Lake City, as are all of the supply houses. The nature of the construction

is such that jobs are sporadically located in various parts of Utah and in many instances appear to be at points removed from principal highways. They own and operate a considerable amount of transportation equipment, Clyde, for example, having almost 150 units. The basic movement of equipment, supplies and materials to or from the job sites is handled by their own equipment.

The facilities of all certificated carriers are clearly supplemental in nature and consist primarily of small shipments of various machinery and equipment parts. To an extent replacement and repair parts are maintained at the job sites, but there still remains a fairly substantial volume of movement which is handled by the common carrier industry. One thing is crystal clear from the testimony, the shipper, feeling that the more carriers the merrier, upon the premise that greater frequency in schedules will assist. This is undoubtedly true, from a narrow short-range standpoint. How much of the involved traffic involves "emergency" shipments is highly conjectural, but undoubtedly a very limited amount. As to this, existing carriers provide an abundance of service including Wycoff, as it already holds authority to transport shipments up to 100 pounds.

In traffic routing, the shippers simply select the carrier whose schedule leaves the point of origin first. This fact is proven not only by statements of the witnesses, but by the the continuing use of both bus and

truck lines, as well as Wycoff operations under temporary authority. The Wycoff operation basically represents nothing more than the addition of another schedule or two to those which are already provided by existing carriers. At the same time, the traffic transported by Wycoff represents a diversion from existing carriers, to their detriment as will be pointed out in a later exception.

The term "convenience and necessity" is elastic. The meaning of the statutes and the one which must necessarily be adopted by the Public Service Commission in its regulation of the industry is *public* convenience and necessity, not the need of a single shipper or limited group of shippers. This viewpoint is well expressed in *Lake Shore Motor Coach Lines v. Bennett, supra*. What the Commission has done in this case is to take the narrower and somewhat different point of view of these shippers. If a tractor at a construction job near St. George breaks down as the result of a generator failure, that piece of equipment and its operator are idle until a replacement part can be secured. From the purely selfish standpoint of the shipper, there is a need, a need to have that part replaced within the hour. In the shipper's view, that need would support the grant of authority to Wycoff because it may provide a schedule departing Salt Lake City sooner than that of an existing carrier. The same line of reasoning would support a grant of authority for twenty new carriers, because the ship-

per has a need and twenty more schedules per day would help to fill that need.

The question, therefore, is whether existing carrier facilities can reasonably fulfill the shipper requirements, taking into consideration that apart from these shippers, there is a great body of shippers whose interests are involved in the question of excess carrier authority. The existing carrier service fulfills such reasonable need as is contemplated by our statutes, a distinct from the peculiar individual need of a shipper, or a handful of shippers. This all relates to a small portion of the traffic, and the Wycoff traffic is moving upon the basis of shipper convenience.

The truck lines alone operate a substantial number of schedules over all of the principal highways. Some smaller carriers, like Palmer, operate more over the weekend. Other carriers such as Milne, Rio Grande and Garrett operate not only local Utah schedules but a substantial number of interstate schedules along the same highways to other states. All protestants emphasized the fact that in addition to the local Utah schedules the interstate schedules are available and are used in emergency.

Consider U.S. Highway 91 to St. George. Milne operates a daily schedule to Cedar City, another to St. George. It has a special perishable schedule on Sunday

evening. It also has eight or ten interstate schedules spread throughout the 24-hour day which are available and are used as required. Add to that the bus line schedules which are subject to weight limitations, but they can handle the overwhelming bulk of emergency shipments. Greyhound operates five daily schedules seven days a week over the Milne route. Continental Trailways has two schedules in addition. The same situation applies to all other routes here, with the exception of the Palmer operation south from Richfield to the Utah-Arizona line. There the traffic cannot support more than three Palmer schedules per week. In this one segment there may well be justification for a grant of authority, and this is the only route in this entire proceeding as to which such statement can be made.

From the standpoint of the shipper transportation requirements, there is not a great deal of difference between the operations of Wycoff today and those of other carriers. Such operations have been compared in the statement of facts. The Commission itself has recognized this, and its grant does not correspond to the request of authority.

It has limited the authority to "emergency" shipments, and has restricted the commodity description. Unfortunately, from the standpoint of practical day to day operations, the word "emergency" has little, if any, meaning. It is agreed that an occasional emergency may



arise. The problem, however, is as to who is to make the determination. It obviously is difficult if not impossible for the carrier to do so, and as a practical matter from a shipper's viewpoint every shipment that it desires on a particular schedule is an emergency shipment. The problem is particularly acute when a carrier has the attitude towards compliance with restrictions of Wycoff. See *Wycoff v. Public Service Commission*, 13 Utah 2nd 123, 39 P. 2nd 283 (1962), wherein this court upheld a Commission fine for repeated violations of express certificate restrictions.

The Commission has attempted further to restrict the traffic involved by limiting it to that which "a contractor utilizes in the performance of his work". With reasonable enforcement, this phrase would have a regulatory meaning. The point is, however, that as restricted this description authorizes a broad range of commodities. Here, again, the Commission has taken an improper and narrow viewpoint. It has tried to serve emergency requirements of a small segment of shippers, without accepting the practical aspect of the attempted limitation, and the fact that the detriment to the carrier industry as a whole far outweighs any possible benefits to the contractors.

## POINT II.

THE GRANT OF STATEWIDE AUTHORITY IS NOT SUPPORTED BY EVIDENCE

OF CONVENIENCE AND NECESSITY AND  
INCLUDES SUBSTANTIAL AREAS NOT  
SERVED OR PROPOSED TO BE SERVED  
BY WYCOFF.

If the authority is granted, Wycoff proposes to conduct operations to the same extent and in the same manner as at present. Exhibit 3 is a summary of such operations and shows limited and principal route operations only. The fact that its operations are clearly geared to the transportation of newspapers imposes this operating requirement. There is no conceivable basis upon which the Commission could grant authority, except along the highways where the applicant is and proposes to operate under the certificate. Moreover, the Commission appears to countenance a clear violation of the Motor Vehicle Transportation Act. Wycoff interlines and will continue to interline at points suiting its convenience with non-certificated carriers or persons to transport LTL traffic from its line operation to other points.

The Milne operations at Beaver, Utah, are in point. From its Beaver terminal, it provides service to Minersville and Milford. Wycoff trucks would not serve directly, but exchange traffic at Beaver for Minersville and Milford. This same situation applies to other areas, which has been noted in the abstract and statement of fact. Whether this were so or not, it is still inconceivable that a carrier be granted authority to serve points that it will not and does not propose to serve.

A somewhat different type of excess grant is found south of Monticello in San Juan County. Exhibit 3, Table 1, as well as the testimony, shows that the Wycoff service will not move south of Monticello. The exhibit shows that Wycoff, in the Price areas, is not serving and does not propose to serve (unless on truckload lots) Castle Dale, Huntington, Emery, Sunny Dale, Columbia, Hiawatha, Dragerton, Wellington, and others in the area. he is content to have this transportation moved from Price to these points by Arrow Auto Lines. Other instances are cited in the statement of facts.

Wycoff, in theory at least, does not serve between Salt Lake City and Ogden or Salt Lake City and Tooele and Wendover in express, a direct result of the *Lake Shore Motor Coach Lines vs. Bennett, supra*. This is not precisely the same situation, but is mentioned since there literally is not a scintilla of real evidence in this record to support a grant of authority in Salt Lake County, or to these points in Tooele, or between Salt Lake City and Ogden.

### POINT III

IN GRANTING AUTHORITY, THE COMMISSION IGNORED THE ADVERSE EFFECT ON EXISTING TRANSPORTATION SERVICE.

One of the most disturbing aspects of the proceeding is that the Commission in its grant of authority has ignored the effect on existing carriers.

It granted authority without any justification to points in San Juan County south of Monticello. So long as Wycoff continues its present operation and turns all traffic to Lyman at Monticello, it will have little effect on this carrier. The Commission has, however, placed in Wycoff the power to destroy Lyman if it chooses to do so. Lyman Exhibit 11 is a traffic study, which shows that this carrier is almost totally dependent on interline traffic. The Lyman freight bills (Abs. 55) which were produced by Mr. Lyman showed some 50 shipments during a two week period in April. Of these, 30 were received from Wycoff, and of these, 15 included commodities of the type involved in the application. Exhibit 9, the Lyman profit and loss statement, shows a profit for the year 1963 of \$5,996.79, but this includes no salary for Mr. Lyman. He devotes full time to the business, and had, in fact, been forced to withdraw \$6,811.16. Moreover, Lyman stated that traffic he originates would not exceed three to four hundred dollars per month. If Wycoff diverts the interline traffic, the Lyman service will either deteriorate, or simply cease.

Garrett, Milne or Rio Grande are large interstate carriers, and will still be in business irrespective of what happens here. They cannot, however, continue the

Utah intrastate service if there is to be a continuing diversion of traffic. The Garrett trailers outbound from Salt Lake City are moving at a small part of capacity, and, following the general traffic pattern in Utah, the inbound schedules are moving empty much of the time. Its series of exhibits show that not only does the traffic handled consist of small shipments, most of which are under 100 pounds, but that much of this traffic is composed of the commodities involved in this application. Diversion will not only compel the reduction of service on intrastate traffic, the shipping public in the area will similarly suffer in their service available on interstate traffic. The two types of traffic move in the same vehicles and mutually support each other, and the Commission has failed to recognize that although intrastate traffic is involved here only, the effect on the carriers and the public may extend to the interstate operations. The same situation exists in the case of other common carriers such as Rio Grande, Milne and Palmer.

So far as the bus lines are concerned, the continuing expansion of Wycoff is affecting them directly and adversely. As the witnesses from both Greyhound and Continental Trailways stated, express makes the difference between a profit or loss operation in Utah. Here again, diversion of the traffic involved in this case does not threaten total destruction of these interstate carriers. It does mean that they may well be compelled to reduce their schedules and facilities simply because no carrier can or is required to maintain schedules and facilities

which do not justify their cost. Also involved is the question of passenger transportation, because the same schedules transport both passengers, baggage and express. Here again, the Commission has failed to analyze the results of its grant from the standpoint of the shipping public taken as a whole.

Lake Shore is a case study in itself. There is no real evidence of construction shipping requirements between Salt Lake City and Ogden. The one contractor who had been engaged in this area has used Lake Shore to its satisfaction. Most of the contractors use their own vehicles to affect their transportation in the area. Lake Shore is operating an abundance of service, 25 schedules Monday through Friday between Salt Lake and Ogden, plus 12 from Salt Lake City to intermediate points short of Ogden. It operates 13 on Saturday and on Sunday nine between Salt Lake and Ogden. It operates pickup and delivery service at both Ogden and Salt Lake City from the shipper's place of business to its terminals, and this is supplemented at Salt Lake City by Bus Express. To this service must be added facilities of other plaintiff carriers. It has managed to maintain this service because of the express which is available to it. Even so, as its profit and loss statement (Exhibit 87) shows, in 1964 it managed a net income of \$5,688, and the express revenues totaled \$8,315. There is no doubt but that express makes the difference between its profit and loss, and that if there is diversion, it can only meet a loss by cutting schedules.

## CONCLUSION

The Commission, on the grounds of expediency and for the benefit of an occasional emergency shipment by a limited number of shippers, has posed a threat generally to the motor carrier and bus industry of Utah. It has failed to apply to the facts of this case the considerations required by applicable statutes and the decisions of this court. The order of the Commission should be set aside, and the Commission directed to enter its order denying the application.

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Respectfully submitted,

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