

1978

# The Mountain States Telephone & Telegraph Co. v. Salt Lake City : Brief of Appellant

Utah Supreme Court

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David E. Salisbury; Gerald R. Miller; Chris Wangsgard; Attorneys for Appellant;  
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\* \* \* \* \*

Respondent.

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IN THE SUPREME COURT OF THE  
STATE OF UTAH

---

THE MOUNTAIN STATES TELEPHONE :  
& TELEGRAPH COMPANY, :  
Appellant, :  
vs. : Case No. 16000  
SALT LAKE CITY, :  
Respondent. :

---

CORRECTION OF CITATION IN BRIEF OF APPELLANT

Appellant hereby respectfully corrects the citation  
of Mountain States Telephone & Telegraph Company v. Ogden City;  
the correction being 26 U.2d 190, 487 P.2d 849 (1971). Said  
case is cited on pages 9 and 12 of Appellant's Brief.

Dated this 19th day of October, 1978.

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CERTIFICATE OF MAILING

This is to certify that a true and correct copy of the foregoing Correction of Citation in Brief of Appellant was mailed, postage prepaid, this 19th day of October, 1978, to:

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James C. Wilson

IN THE SUPREME COURT  
OF THE STATE OF UTAH

\* \* \* \* \*

THE MOUNTAIN STATES	)
TELEPHONE & TELEGRAPH	)
COMPANY,	)
	)
Appellant,	)
	)
vs.	)
	)
SALT LAKE CITY,	)
	)
Respondent.	)

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BRIEF OF APPELLANT

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CASE NO. 16000

---

ON APPEAL FROM THE THIRD JUDICIAL DISTRICT COURT  
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

THE HONORABLE DAVID K. WINDER, PRESIDING

---

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### Statutes Cited

Section 20-3-14.1, <u>Revised Ordinances of Salt Lake City, Utah</u> , 1965 . . . . .	3, 16
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IN THE SUPREME COURT  
OF THE STATE OF UTAH

\* \* \* \* \*

THE MOUNTAIN STATES  
TELEPHONE & TELEGRAPH  
COMPANY,

Appellant,

vs.

SALT LAKE CITY,

Respondent.

BRIEF OF APPELLANT

Case No. 16000

\* \* \* \* \*

I. NATURE OF THE CASE

This is a suit challenging the constitutionality and legality of those taxes which Salt Lake City imposes on the gross revenue derived from that part of Plaintiff's telephone business which is conducted within Salt Lake City. Plaintiff claims that other businesses are permitted to compete with Plaintiff within Salt Lake City without paying the same taxes required of Plaintiff. Plaintiff also claims that the most recent increase in the challenged taxes operates as an impermissible utility rate increase.

II. DISPOSITION IN LOWER COURT

The Law and Motion Division of the Third Judicial District Court, Honorable David K. Winder, granted Defendant Salt Lake City's motion for summary judgment and dismissed Plaintiff's complaint.



### III. NATURE OF RELIEF SOUGHT ON APPEAL

Appellant asks this Court to reverse the judgment of the District Court and to remand the case for trial.

### IV. STATEMENT OF FACTS

By its ordinance set out in Bill No. 110 of 1977, published July 1, 1977 (R. 172), Salt Lake City increased the utility revenue tax it imposes on that part of Plaintiff's business which is conducted within Salt Lake City to a total of eight percent, including the two percent component of the total revenue tax which has historically been known as the franchise fee.

During the period when the bill amending this section of the ordinance was being considered by the city's Board of Commissioners, various discussions and written communications took place between Plaintiff and Defendant with respect to the question of what competition Plaintiff was experiencing in the Salt Lake City market for telephone equipment. A summary of the information which Plaintiff provided Defendant with respect to this question is contained in that letter dated June 29, 1977, which, together with its attachments, appears as Exhibit "1" to that affidavit of Kenneth R. Madsen dated June 22, 1978 (R. 269-296). That letter informed Defendant of the existence of six companies active in the Salt Lake market whose principal business

consists of or includes direct competition with Plaintiff and who provide telephone terminal equipment on terms and conditions virtually identical to those of the Plaintiff telephone company (R. 272, 279-284). Defendant was also provided with the identities of some of Plaintiff's major accounts which had been lost to these companies during the prior year (R. 279-284). Defendant was further informed of the existence of an extensive number of retail outlets which were selling telephone equipment in competition with Plaintiff, but whose sales would not be subject to the eight percent tax which is challenged in this suit (R. 272-78).

On July 26, 1977, Defendant passed an ordinance purporting to impose a six percent tax on businesses in competition with Plaintiff. Section 20-3-14.1 Revised Ordinances of Salt Lake City, Utah, 1965 (R. 14; para. 10). The pleadings reflect a dispute as to whether Defendant has ever collected any tax from Plaintiff's competitors pursuant to this provision. Plaintiff's complaint alleges that no such tax has been collected (R. 6; para. 20). Defendant's answer denies this allegation (R. 14, para. 11), but Defendant has not presented by affidavit any evidence that it has collected this tax.

As part of the information received by Defendant with respect to this tax, Defendant was informed by the Washington, D. C. counsel for four of Plaintiff's competitors that these

four companies had sold \$270,000 worth of telephone equipment in Salt Lake City during 1976, and that these companies estimated that this sum represented 43% of the telephone equipment of this type sold in Salt Lake City during 1976 (R. 297-99).

Plaintiff alleges in its complaint that it is required by orders issued by the Utah Public Service Commission to collect taxes of the type at issue in this suit from those customers who use its services within the limits of Salt Lake City; and that under the facts of this case, the challenged amendment operated as a utility rate increase (R. 4, para. 11). Defendant denied, for lack of information and belief, the allegation that Plaintiff has complied with the applicable orders of the Public Service Commission (R. 13, para. 5), and denied that the challenged tax increase operated as a utility rate increase.

Defendant moved for summary judgment on several grounds. The District Court granted Defendant's motion, stating in its memorandum decision only that:

"It is the opinion of the Court that the franchise fee and the utility revenue tax in question in this case, and which have been imposed by the defendant upon the plaintiff are valid and constitutional and have not been disproportionately (as compared with other businesses similarly situated) taxed upon the plaintiff and so as to be violative of either the Constitution of Utah or the United States Constitution."  
(R. 447).

## V. ARGUMENT

### I. THE COURT FAILED TO RECOGNIZE THAT PLAINTIFF'S ALLEGATIONS THAT IT HAS COMPETITORS WHO ARE NOT REQUIRED TO PAY THE TAX AT ISSUE RAISE DISPUTED ISSUES OF MATERIAL FACT

#### 1. The Allegations and their Evidentiary Support.

The District Court was presented with an undisputed factual showing that a drastic change had occurred with respect to the extent to which Plaintiff is required to compete with other companies in the sale or lease of telephone equipment. In 1974, the Federal Communications Commission, in that series of cases which have come to be known in the telecommunications industry as "The Interconnect Cases," issued an order which had the effect of initiating nationwide competition in the sale of telephone equipment. This order, In the Matter of Telerant Leasing Corp., 45 F.C.C. 2d 204 (1974) was presented to the District Court by affidavit and is part of the Record on Appeal (R. 327-49).

An explanation of the background of this decision is necessary to show its impact on the case before this Court. In Carterfone v. AT&T, 13 F.C.C. 2d 420 (1968), the F.C.C. ruled that federal tariffs governing the conduct of telephone utility companies could not prohibit the connection of telephones and switchboards manufactured by other companies to telephone networks used in interstate commerce. The Carterfone decision, did not, however, prescribe any specific interconnection policy

for telephone utilities. The utilities responded to the Carterfone decision by filing tariffs which permitted connection to the interstate telephone system of telephones and switchboards manufactured by independent manufacturers so long as the installation included certain specified electronic protective devices which had to be provided by the utility companies.

In the early 1970's, some state utility commissions gave notice that they planned to issue tariffs prohibiting interconnection of telephones and switchboards manufactured by sources other than the utility companies to any telephone exchange except where the telephones and switchboards were used exclusively for interstate communication. In the 1974 Telerant decision, the Federal Communications Commission issued an order declaring that state regulatory commissions had no power to issue tariffs which were more restrictive with respect to interconnection than the then applicable F.C.C. tariffs unless it could be shown that such state tariffs would apply solely to communications within that state. The Fourth Circuit affirmed the F.C.C.'s Telerant ruling in the 1974 case of North Carolina Utilities Commission v. F.C.C. (hereinafter referred to as North Carolina I), 537 F.2d 787 (Fourth Cir. 1976), Cert. denied, 97 S. C.T. 651 (1976).

The Carterfone and Telerant rulings were further broadened by the F.C.C. in its case, Docket No. 19528, which was

also affirmed by the Fourth Circuit in North Carolina Utilities Commission v. F.C.C. (hereinafter referred to as North Carolina II), 552 F.2d 1026 (Fourth Cir. 1976). In that case, the F.C.C. ruled that telephone company tariffs governing interstate communication would be required to allow connection to the telephone lines of any terminal equipment which had been registered with the F.C.C. in accordance with a registration program established by the Docket 19528 Order. The effect of this ruling was to permit the attachment of any registered terminal equipment to the national telephone network without being forced to use intermediate electronic protective devices supplied by telephone utility companies. The history of the interconnect cases and the significance of their impact on the telecommunications industry is set forth in the Fourth Circuit ruling in the North Carolina II case, a copy of which was presented to the District Court by affidavit and which appears as Pages 301-326 of the Record on Appeal in this matter.

The Fourth Circuit's opinion in the North Carolina II case points out that the net legal effect of the interconnect cases was to deprive telephone utility companies of the "private lawmaking authority" they had previously enjoyed over independent manufacturers of telephone equipment. 552 F.2d 1035 at 1051. The practical effect of the interconnect cases was to stimulate companies other than telephone utility companies to

start manufacturing and selling telephone equipment. The success of some of these companies is dramatically illustrated by the letter from their counsel to Defendant, which appears at Pages 298-300 of the Record on Appeal. This letter indicates that by 1976, four of these companies had captured what they were willing to estimate was 43% of the market for telephone equipment in Salt Lake City. These companies further represented to Defendant that they had collectively sold some \$270,000 worth of telephone equipment within Salt Lake City in that year. The letter and attachments at Pages 272-278 of the Record shows that by June of 1977, more than 50 retail outlets, including most of the major department stores in Salt Lake, were selling telephone equipment in direct competition with Plaintiff. Salt Lake City has given all these businesses a competitive advantage over Plaintiff by requiring Plaintiff to add 8% to the cost of the telephone equipment it sells or leases, while not requiring that other businesses pay the same tax on the telephone equipment which they sell or lease.

## 2. The Materiality of the Allegations.

The facts set out above were presented to the District Court by affidavit, and were not disputed by Defendant. Although the Court did not discuss how it had dealt with these facts in reaching its decision on Defendant's Motion for Summary Judgment, the most reasonable inference appears to be that the

Court must have accepted the argument presented by Defendant in its memorandum in support of its motion to the effect that the holding of this Court in the case of Mountain States Telephone & Telegraph Company v. Ogden City, 26 U.2d 487 P.2d 849 (1971), stands for the proposition that Defendant has no legal obligation, regardless of what level of economic competition Plaintiff may be experiencing, other than to tax Plaintiff at the same rate at which it taxes the other two utility companies which operate within the city. The Ogden City case, however, was decided before the Federal Communication Commission's ruling in the Telerant case discussed above, and at a time when Plaintiff was not experiencing competition in the sale of telephone equipment as alleged and adduced by affidavit in this matter.

The existence of this competition brings the facts of this case within the holding of this Court's decision in Salt Lake City v. Utah Light & Railway Co., 45 U.50, 142 P. 1067 (1914). In that case, Salt Lake City passed an ordinance which prohibited engaging in the business of furnishing, distributing or selling electricity, where meters were used to gauge or measure the electricity, without procuring a license from the city so to do. The ordinance further provided for an annual license fee of \$1.00 for each electric meter used by the license holder. The opinion shows that although plaintiff was the only electric company which used meters to measure the



electricity which it sold to its customers, there were at the time other companies engaged in selling electricity within Salt Lake City. The plaintiff electric company alleged that Salt Lake City's ordinance was invalid because it excluded from taxation various companies which were in fact competing with plaintiff in the sale of electricity within Salt Lake City.

The opinion notes that then, as now, all of Salt Lake City's power to tax businesses operating within its limits was conferred on the city by a statute which includes the limitation that "all such license fees and taxes shall be uniform in respect to the class upon which they are imposed." 142 P. at 1070. This language is identical with the present language of §10-8-80, Utah Code Annotated.

In the Utah Light & Railway case, Salt Lake City argued that the Court needed only to determine that plaintiff was the only utility which used meters to measure the electricity it delivered to its customers from which the conclusion would follow that it could be taxed in a separate category. This Court rejected that method of analysis and examined the economic significance of the facts shown in the Record to determine whether plaintiff and the companies which were not subject to the ordinance were similarly situated. The Court then set out in these words the test which is to be applied in testing the

validity of a city's business revenue ordinances:

"Can the business specified in the ordinance be so classified that some of those who are engaged therein may be required to pay the tax, while others who are conducting the same business are not required to do so? Clearly not." 142 P. at 1071.

The opinion then explains in greater detail the reasoning upon which this test is based:

"A license tax might not be unjust, though laid upon a single occupation, provided that it was so laid that none who followed that occupation escaped it. Let it reach all of a class, either of persons or things; it matters not whether those included in it may be one or many, or whether they reside in any particular locality or are scattered all over the state. But when, for any reason, it becomes discriminative between individuals of the class taxed, and selects some for an exceptional burden, the tax is deprived of the necessary element of legal equality, and becomes inadmissible." (Emphasis added.) 142 P. at 1071.

It is significant that the foregoing language is inconsistent with the fundamental premise upon which Defendant's argument is based. In concluding its argument to the District on this issue, Defendant stated in its memorandum of points and authorities:

"It is respectfully submitted that the issue of classification has already been decided by the Utah Supreme Court; however, in any event, the case law is abundant and not subject to challenge at this date and the classification of the Plaintiff and the other utilities is lawful in all particulars and within the legislative prerogative of Salt Lake City Corporation." (R. 430).

Although this language is somewhat unclear, it seems, when read in the light of those issues raised by Plaintiff's complaint, to mean that Defendant contends that this Court's 1971 Ogden City case, supra, means that Plaintiff can never challenge any inequities in those taxes imposed on it by Salt Lake City unless such inequities should happen to exist between Plaintiff and the two other major utility companies. An adjudication that a tax is valid is not as static and permanent as Defendant apparently contends. The language quoted above from the Utah Light & Railway case shows that taxing authorities, such as Salt Lake City, are subject to the restriction that their taxes, even if once reasonable, may become discriminatory. When such discrimination occurs, the tax is stripped of whatever legality it may previously have enjoyed, and becomes unlawful and void. This Court then concluded its opinion by commenting on the duty of courts when they are presented with facts showing that some of those who are engaged in a business are required to pay the tax, while others who are conducting the same business are not so taxed:

"Equality, therefore, becomes a safeguard against, if not an absolute prevention of, excessive and oppressive taxation. Where, however, those who, for the time being, are intrusted with the power to pass laws or ordinances by which taxation may be imposed invade the rule of equality prescribed by the paramount law, it is the duty of the courts, when proper application is made, to declare such

law or ordinance void, and thus arrest the evil at its inception. In doing so the courts are not, as it is sometimes popularly assumed, interfering with the law-making power, but are merely compelling that power to observe and obey the paramount law. For the reasons last stated, we are required to declare the ordinance in question invalid." (142 P. at 1071-72.)

It is this duty which Plaintiff contends the District Court failed to adequately perform. The District Court's duty to diligently safeguard the rule of equality referred to in the foregoing quotation from the Utah Light & Railway case is augmented in this case by the fact that the question of equality of taxation was raised by means of a motion for summary judgment. Because summary judgment has the effect of denying the complaining party the right to try its claims, the District Court in ruling on such a motion should carefully scrutinize the allegations of the complaint and all facts submitted by the complaining party to discern the existence of any disputed fact. In the event any disputed issue of material fact is presented, the summary judgment motion should be denied. Rich v. McGovern, 551 P.2d 1266 (Utah 1976); Singleton v. Alexander, 19 U.2d 292, 431 P.2d 126 (1967).

Those facts adduced by Plaintiff which show the existence of at least fifty retail outlets in direct competition with Plaintiff in the sale of telephone equipment within Salt Lake City bring this case within the holding of this Court in the case of Orem City v. Pyne, 16 U.2d 355, 401 P.2d 181 (1965). In that case, this Court incorporated as its opinion the opinion

of Judge Maurice Harding in case No. 4039, District Court of Utah County, State of Utah, which opinion appears at Pages 263-66 of the Record on Appeal. In that case, the City had passed an ordinance which set a fixed annual tax rate for a number of businesses listed by type in the ordinance. Another section of the same ordinance imposed a tax, based on gross sales, on any business not specifically listed in other sections of the ordinance. This Court held that the taxation imposed under that ordinance was unconstitutional because the ordinance had the effect of taxing one business which sold tangible personal property at a rate which was in some cases as much as twelve times the amount of tax required of other businesses also selling tangible personal property. In this case, the facts alleged in Plaintiff's complaint, and put before the District Court by affidavit, show the existence of many retail sellers of tangible personal property which do not pay the eight percent tax which plaintiff is required to pay when it sells or leases the exact same item of telephone equipment.

In Slater v. Salt Lake City, 115 U. 476, 206 P.2d 153 (1949), a case in which one of Salt Lake City's ordinances was held unconstitutional for failing to regulate uniformly different businesses competing in the same type of sales, this Court commented on the judiciary's function when presented with the allegation that a municipal ordinance subjects the

complaining party to an unconstitutional tax burden:

"[The Court's function] is to determine whether an enactment operates equally upon all persons similarly situated. If it does then the discrimination is within permissible legislative limits. If it does not, then the differentiation would be without reasonable basis and the act does not meet the test of constitutionality." 206 P.2d 153 at 160.

In this case, Plaintiff had alleged and put before the District Court by affidavit facts showing that although Defendant Salt Lake City had been fully informed of the fact that Plaintiff was experiencing highly successful competition from other companies which had recently been permitted to enter the market for telephone equipment. Salt Lake City elected to tax only Plaintiff while failing or refusing to insure the Plaintiff's similarly situated competitors also paid taxes on some uniform basis. Plaintiff contends that the District Court erred in not recognizing that these facts were sufficient to raise a disputed question of material fact regarding the extent to which the legal and economic changes explained in the preceding sections of this brief required Salt Lake City to tax Plaintiff's competition uniformly in comparison with the taxes it required of Plaintiff. The failure of the District Court to recognize the need for equal taxation under these circumstances seems particularly obdurate in light of the fact that the pleadings show that Salt Lake City had apparently recognized the existence of

this obligation by enacting §20-3-14.1 of its ordinances which purported to tax Plaintiff's competition.

II. THE COURT ERRED IN APPARENTLY RULING THAT THERE EXISTS NO SET OF FACTS UNDER WHICH DEFENDANT'S TAX INCREASE COULD OPERATE AS A UTILITY RATE INCREASE.

It is less than clear that the District Court ruled on this issue, although the Court's statement that it finds the taxes in question to be valid and constitutional (R.447) seems to include, by necessary implication, some ruling on this issue. That such a ruling was apparently made, in turn necessarily implies that the District Court must have concluded that there was no way that a municipal ordinance could be legally tantamount to a utility rate increase. Plaintiff's complaint alleges that the increase imposed by the 1977 amendment operates as a utility rate increase (R. 4). The materiality of this allegation does not seem to be disputed by Defendant, for it conceded in its argument to the District Court that the power to set utility rates is vested solely in the Utah Public Service Commission. Plaintiff and Defendant apparently also agree that the Public Service Commission's power, delegated by the legislature under Section 54-7-1 et seq., Utah Code Annotated, to set utility rates is a separate power from that conveyed to the City under Section 10-8-80 permitting it to tax for revenue purposes. (R. 434).

Plaintiff's disagreement with Defendant with respect to this issue centers on the question of whether the two powers have been kept separate under the facts of this case. Defendant has presented, by its affidavits, no facts bearing on this question; and its argument on this issue is restricted to the conclusory assertion, by memorandum of counsel, that the City has not improperly set rate structures. Defendant has, accordingly, failed to traverse the allegation of Plaintiff's complaint to the effect that, given the pass through nature of the tax increase, the tax increase constitutes an impermissible utility tax increase.

The case law authority bearing on the question of what constitutes an impermissible utility rate increase uniformly supports the position of Plaintiff on this issue. The case law on this issue has defined setting a utility rate as the taking of some action which determines what rate will be charged in the future for utility services. In states such as Utah where the legislature has delegated the rate setting function to the Public Service Commission, any governmental agency which takes an action having the effect of requiring a new rate to be paid for utility service has unconstitutionally transgressed the limits of its power. This point can perhaps be best illustrated by examining those limitations which courts



have imposed on themselves in cases dealing with utility rate structures. Courts can determine whether existing rates are too high or too low, but they cannot prescribe what rate will be permissible in the future. Were a court to purport to include such a provision in its order with respect to utility rates, the court would commit error by usurping a function of the legislative branch of government. Southwestern Bell Telephone Company v. State of Texas, 526 S.W.2d 526 (Sup. Ct. Tex. 1975); Mississippi Public Service Commission v. Home Telephone Company, 110 S.2d 618. Similarly, a complaint challenging the phone company's practice of giving free service to its employees was dismissed because the relief sought would, by necessary implication, have required a rate adjustment. The Court noted that this relief could only be obtained from the State Public Service Commission; and held that it did not, therefore, have jurisdiction. Dworkin v. Illinois Bell, 340 N.E.2d 98 (Ill. App. 1975).

The imposition by Salt Lake City of the utility revenue tax at issue falls within the definition of imposing a utility rate increase. The City has determined that a change in rates will be required, the City has determined when the change will be effective, and the City has prescribed what the amount of the change will be. The City conceded in its argument to the District Court (R. 435-36) that it passed the revenue ordinance in question relying on the assumption that the tax thus imposed

would be passed through to Salt Lake City users of phone service in the form of rate increases. When the City, acting as a government entity, does those things, the City, no less than a court, exceeds the constitutional limits of its power and encroaches on the powers delegated to the Public Service Commission by the state legislature.

As was the case with respect to Plaintiff's allegations of discriminatory taxation, the District Court should have recognized the existence of disputed fact questions raised by Plaintiff's allegations with respect to the effect upon utility rates of Defendant's tax increase. This increase was only one of a series of such increases by Defendant, and appears to have been effected with the express intention of passing the tax through to users of telephone service within Salt Lake City. In order to rule as it did, the District Court must necessarily have ruled without trial that Plaintiff's evidence could never result in the conclusion that the City's actions, apparently carried out with the intention of causing an increase in utility rates within Salt Lake City, were the equivalent of a utility rate increase. The standard of review which has been set by this Court precluded the District Court, however, from declaring this sort of prejudgment on the merits of Plaintiff's evidence. Singleton v. Alexander, 19 U.2d at 292, 431 P.2d 126 (1967).

## VI. CONCLUSION

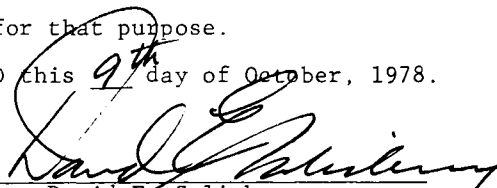
The real world in which Plaintiff must conduct its business has changed substantially since Plaintiff last challenged its taxation by Salt Lake City. That change was imposed by federal regulations and orders, affirmed by federal courts. As a result, Plaintiff now has a great deal of competition in areas where it has not had competition during most of this century. Defendant was fully informed of the existence of this competition, but to this date has chosen to tax Plaintiff as it has traditionally done, with the result that Salt Lake City is imposing a significant competitive economic disadvantage on Plaintiff. If the ruling of the District Court is permitted to stand, it is unclear how Plaintiff could challenge future tax increases by Defendant and other cities. It does not seem overly speculative to suggest that if Plaintiff is forced to compete indefinitely under an artificially imposed economic disadvantage, Plaintiff must expect to ultimately be forced out of a market in which it should have the right to compete. It seems unlikely that there will ever be a more appropriate time for Plaintiff to ask the judicial system to help prevent such a result.

In addition, the present suit would seem to have adequately raised the question of how far a municipality may go in raising, directly or indirectly, the utility rates of its

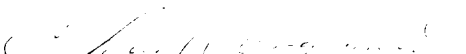
residents in order to obtain revenue. While this may initially appear to be a relatively painless way for the City to obtain continual tax increases, its prolonged and repeated use raises questions about the point where the City encroaches on those powers committed by law to other agencies and branches of government.

The record indicates that these important questions should not be resolved without benefit of a trial and a full record and, Plaintiff accordingly requests that this case be remanded to the District Court for that purpose.

RESPECTFULLY SUBMITTED this 9<sup>th</sup> day of October, 1978.

  
\_\_\_\_\_  
David E. Salisbury

  
\_\_\_\_\_  
Gerald R. Miller

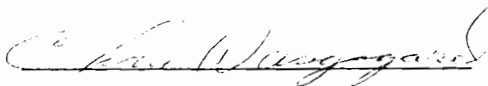
  
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Attorneys for Appellant

CERTIFICATE OF MAILING

I hereby declare that I caused to be mailed a true and correct copy of the foregoing Appeal Brief in Case No. 16000, postage prepaid, this 9<sup>th</sup> day of October, 1978, to Roger F. Cutler, City Attorney, Attorney for Respondent, at 101 City & County Building, Salt Lake City, Utah 84111.

A handwritten signature in dark ink, appearing to read "Paul H. Hinggard", is written over a horizontal line.