

1981

David R. Williams D/B/A Industrial
Communications v. Public Service Commission of
Utah, Milly O. Bernard, Brent H. Cameron and
David R. Irvine, Commissioners of the Public
Service Commission of Utah : Brief of Defendants-
Respondents Department of Business Resolution
Division of Public Utilities

Utah Supreme Court

Follow this and additional works at: https://digitalcommons.law.byu.edu/uofu_sc2

 Part of the [Law Commons](#)

Original Brief submitted to the Utah Supreme Court; funding for digitization provided by the Institute of Museum and Library Services through the Library Services and Technology Act, administered by the Utah State Library, and sponsored by the S.J. Quinney Law Library; machine-generated OCR, may contain errors Kay M. Lewis and Attorney General; Attorney for Defendants-Respondents MICHAEL A. NEIDER; Attorney for Plaintiff-Appellant

Recommended Citation

Brief of Respondent, *Williams v. Public Service Comm. Of Utah*, No. 17355 (Utah Supreme Court, 1981).
https://digitalcommons.law.byu.edu/uofu_sc2/2513

This Brief of Respondent is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Supreme Court Briefs (1965 -) by an authorized administrator of BYU Law Digital Commons. For more information, please contact hunterlawlibrary@byu.edu.

IN THE SUPREME COURT OF THE STATE OF UTAH

DAVID R. WILLIAMS d/b/a :
INDUSTRIAL COMMUNICATIONS, :

Plaintiff-Appellant, :

-vs- :

Case No. 17355

PUBLIC SERVICE COMMISSION OF :
UTAH, MILLY O. BERNARD, BRENT :
H. CAMERON and DAVID R. :
IRVINE, COMMISSIONERS OF THE :
PUBLIC SERVICE COMMISSION OF :
UTAH, :

Defendants-Respondents.:

BRIEF OF DEFENDANTS-RESPONDENTS
DEPARTMENT OF BUSINESS REGULATION
DIVISION OF PUBLIC UTILITIES

MICHAEL A. NEIDER
Watkins & Faber
606 Newhouse Building
Salt Lake City, Utah 84111
Attorney for Plaintiff-
Appellant

KAY M. LEWIS
320 South 300 East
Salt Lake City, Utah 84111
Attorney for Mobile
Telephone, Inc.

DAVID R. WILLIAMS
Attorney

INDUSTRIAL COMMUNICATIONS
ASSOCIATION

FRANK A. BERNARD
Attorney

230 South 300 East
Salt Lake City, Utah

Attorney
Respondent

TABLE OF CONTENTS

Page

NATURE OF CASE.	1
DISPOSITION OF CASE BY PUBLIC SERVICE COMMISSION.	1
REQUESTED DISPOSITION BY THIS COURT	2
STATEMENT OF FACTS.	2
LEGAL ARGUMENT.	3
CONCLUSION.	6

TABLE OF AUTHORITIES

Statutes

54-4-2 Utah Code Annotated 1953	4
---	---

Cases

<u>PBI Freight Service, et al. v. Public Service Commission et al.</u>	5
<u>Lake Shore Motor Lines v. Welling</u> , 9 Ut. 2d 114, 339 P.2d 1011	5

IN THE SUPREME COURT OF THE STATE OF UTAH

DAVID R. WILLIAMS d/b/a :
INDUSTRIAL COMMUNICATIONS, :
Plaintiff-Appellant, :

-vs-

Case No. 17355

PUBLIC SERVICE COMMISSION OF :
UTAH, MILLY O. BERNARD, BRENT :
H. CAMERON and DAVID R. IRVINE :
Commissioners of the Public :
Service Commission of Utah :
Defendants-Respondents. :

NATURE OF CASE

The statement of the Plaintiff-Appellant called "Statement of Kind of Case" accurately sets forth the matters about which the Appellant complained in the pleading filed with the Public Service Commission.

DISPOSITION OF THE CASE BEFORE
THE PUBLIC SERVICE COMMISSION

Upon reviewing the proceedings and order in P.S.C. Docket No. 6969 issued November 25, 1974, by which Mobile Telephone Service of Southern Utah was granted authority to "acquire, maintain and operate facilities for a radio-telephone utility and to engage in the business of a common carrier with authority to provide one-way voice and tone paging and related telephone services within an effective range of 55 miles from St. George, Utah, including the "Cedar City area" the Commission dismissed the Complaint of the appellant. (R. 23)

REQUESTED DISPOSITION BY THIS COURT

The Respondents ask that this Court affirm the Order of the Commission dismissing the appellant's complaint.

STATEMENT OF FACTS

In order to put this case in proper perspective a reference to the manner in which the appellant's complaint was first presented to the Commission is necessary. This must be done by reference to the Transcript in a separate proceeding entitled

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

IN THE MATTER OF THE :
APPLICATION OF MOBILE :
TELEPHONE, INC., D.B.A. :
MOBILE RADIO TELEPHONE : Case No. 80-047-02
SERVICE, INC., TO AMEND :
AND EXTEND ITS CERTIFICATE :
OF CONVENIENCE AND :
NECESSITY. :

-----:-----

Since this transcript is not a part of the record certified to this Court by the Commission, a portion of it as it relates to the Appellant's Complaint is attached as an appendix to this brief.

The case referred to in the appendix was entirely separate from the subject of this appeal. In that case the appellant appeared as a protestant and raised the same issues by oral argument, that were presented in the formal Complaint made by Appellant, dismissed by the Commission, and appealed from in the case.

The appellant in the application of Mobile Telephone to expand its service argued that the applicant was not fit to

offer service, and questioned the veracity of the officers of the applicant, as a purported reason to defeat the application because of something Mobile Telephone of Southern Utah had failed to do in the operation of its business, a Corporation wholly separate from Mobile Telephone Inc. (appendix 5 & 6)

The appellant filed a motion for discovery in the case of the application of Mobile Telephone Inc. to investigate whether Mobile Telephone of Southern Utah had dissembled with prospective customers and the Federal Communications Commission.

That motion was denied by Commissioner Irvine (appendix 12-14) for the reason that the conduct of the business of Mobile Telephone of Southern Utah had nothing to do with the operation of Mobile Tel. Inc; and that if appellant had a complaint it should have been filed with the F.C.C.

LEGAL ARGUMENT

The essentials of the appellant's Complaint against Mobile Tel. Inc. (hereinafter Mobile) and Mobile Telephone Service of Southern Utah (hereinafter Southern) were presented to the Commission in argument form and rejected by the Commission before the Complaint in written form was ever filed.

As the appendix clearly shows this was an attempt by Appellant to lump Mobile and Southern together in an effort to block the application of Mobile to expand its service area.

The Commission did not dismiss the appellant's complaint out of hand without giving it consideration. Even if all the contentions made by appellant's counsel were true they did not warrant the relief sought by the complaint.

The Commission in its order granting authority in docket 6969 to Southern did not differentiate between U.H.F. and V.H.F. In the recitations in the order of dismissal it was concluded that Southern could comply with the requirements of the Certificate by using either U.H.F. or V.H.F. channels.

The Commission, in what amounts to Findings of Fact and Conclusions of Law (although they are not called such), found and concluded the following: (R 23)

1. That the use of either UHF or VHF channels was in compliance with the certificate.
2. The complaint fails to allege any violation of the terms of the Certificate of Convenience and Necessity or any other order of the Commission.
3. The allegation of misrepresentation does not go to conduct for which this Commission might reasonably impose a sanction.
4. The conduct complained of involved a question of compliance with a requirement of the Federal Communications Commission and should have been made to that agency.

With respect to investigations by the Public Service Commission the provisions of 54-4-2 U.C.A. should be examined. For the convenience of the court it is here quoted:

Investigations--Hearings and notice--
Findings.--Whenever the commission believes
that in order to secure a compliance with
the provisions of this title or with the
orders of the commission, or that it will
be otherwise in the interest of the public
an investigation should be made of any act
or omission to act, or of anything

accomplished or proposed, or of any schedule classification, rate, price, charge, fare, toll, rental, rule, regulation, service or facility of any public utility, it shall investigate the same upon its own motion, and may fix a time and place for a hearing thereof with notice to the public utility concerning which such investigation shall be made, and upon such hearing shall make such findings and orders as shall be just and reasonable with respect to any such matter. (emphasis added)

There is nothing in that section which makes it mandatory for the Commission to conduct an investigation or hold a hearing, but only when the Commission believes that a hearing is necessary to secure compliance with the law or an order of the Commission.

In this instance the Commission did not believe a hearing on appellant's complaint was necessary and it had the legal statutory authority to dismiss the appellant's complaint without taking evidence or holding a hearing.

This Court repeatedly held that its review of actions of the Public Service Commission is limited to determining whether the Commission acted outside its jurisdiction; in excess of its powers or arbitrarily, or capriciously.

This Court has reiterated this doctrine as recently as February 2, 1981, in Case No. 6455, PBI Freight Service, et al. v. Public Service Commission, et al. This unanimous opinion by Judge Leary cited with approval the following language from Lake Shore Motor Lines v. Welling. (9 Ut. 2d 114, 339 P. 2d 1011)

The purpose of the review is to determine whether the Commission has acted outside

of its jurisdiction or in excess of its powers, or in a manner which would properly be regarded as capricious, arbitrary or wholly unreasonable in view of the record before it. . . .

CONCLUSION

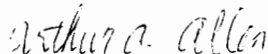
Upon the record certified to this court from the Public Service Commission and the appendix to this brief it is respectfully submitted that the Public Service Commission acted within the parameters of its discretion and power in dismissing Appellant's complaint and not in a capricious or arbitrary manner.

The order dismissing appellants complaint was in all respects proper and should be affirmed by this court.

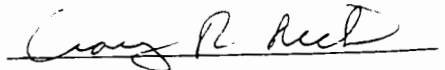
DATED this ____ day of February, 1981

Respectfully submitted

DAVID L. WILKINSON
Attorney General



ARTHUR A. ALLEN
Assistant Attorney General



CRAIG R. RICH
Assistant Attorney General

P R O C E E D I N G S

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

COM. IRVINE: THIS IS A HEARING IN CASE NO. 80-047-02 IN THE MATTER OF THE APPLICATION OF MOBILE TELEPHONE, INCORPORATED TO AMEND AND EXTEND ITS CERTIFICATE OF CONVENIENCE AND NECESSITY. AND THIS HEARING HAS BEEN ARRANGED AT THE REQUEST OF THE PROTESTANTS, INDUSTRIAL COMMUNICATIONS, PURSUANT TO A MOTION FILED BY THE PROTESTANT TO INSPECT CERTAIN REAL PROPERTY. LET ME JUST ASK COUNSEL TO IDENTIFY THEMSELVES FOR THE RECORD IF YOU WOULD.

MR. NEIDER: MICHAEL NEIDER. I'M REPRESENTING THE PROTESTANT, INDUSTRIAL COMMUNICATIONS.

MR. LEWIS: KAY M. LEWIS FOR THE APPLICANT, MOBILE TELEPHONE SERVICE, INC.

COM. IRVINE: MR. NEIDER, WHY DON'T YOU PRESENT YOUR MOTION AND WE'LL GO FROM THERE.

MR. NEIDER: MR. COMMISSIONER, I ACTUALLY HAVE TWO MOTIONS. LAST THURSDAY WE HELD DEPOSITIONS IN THIS CASE. DEPOSITIONS OF MR. BANGERTER AND MR. WILLIAMS WERE TAKEN. AND IT WAS BECAUSE OF THOSE DEPOSITIONS, AND BECAUSE OF THIS PHONE CALL THAT WAS MADE ON INDUSTRIAL COMMUNICATION'S BEHALF, THAT WE RECEIVED INFORMATION THAT WE WOULD LIKE-- THAT HAS PROMPTED US TO SEEK THIS DISCOVERY MOTION.

I CALLED MR. LEWIS AT THE TIME AND INFORMALLY REQUESTED THE OPPORTUNITY TO INSPECT THE TRANSMITTING FACILITIES. AND THAT REQUEST WAS DENIED. AND I TOLD HIM AT

1 THAT TIME THAT WE'D BE APPLYING FOR AN ORDER OF DISCOVERY
2 WHICH I LATER SUBMITTED TO THE COMMISSION.

3 THE BASIS FOR OUR REQUEST FOR DISCOVERY IS THAT
4 SHOWN BY THE AFFIDAVIT AND THE ATTACHMENT TO THE MEMORANDUM.
5 IT APPEARS THAT THERE MAY HAVE BEEN--AND IT IS SOMETHING
6 THAT WE DON'T KNOW, THERE MAY HAVE BEEN SOME SORT OF A
7 MISREPRESENTATION AS TO THE FACILITIES THAT WERE INSTALLED
8 IN SOUTHERN UTAH BY MOBILE TELEPHONE SERVICE OF SOUTHERN
9 UTAH. THE ATTACHMENT TO THE MEMORANDUM IS AN APPLICATION FOR
10 LICENSE, AND THAT WAS FILED AT THE TIME THAT THE FACILITIES--
11 CONSTRUCTION FACILITIES, TRANSMITTING FACILITIES HAVE BEEN
12 INSTALLED. AND IT IS THEIR REPRESENTATION THAT THOSE
13 ITEMS THAT ARE SET FORTH IN THE CONSTRUCTION PERMIT HAVE
14 BEEN INSTALLED. NOW IN THAT CONSTRUCTION PERMIT MOBILE
15 TELEPHONE SERVICE OF SOUTHERN UTAH HAD INDICATED THAT THEY
16 HAD INSTALLED A UHF AND VHF TRANSMITTING--SEPARATE
17 TRANSMITTING FACILITIES IN ST. GEORGE. AND THEN WE LEARNED
18 BY A TELEPHONE CALL THURSDAY THAT IN ACTUALITY THOSE
19 TRANSMITTING FACILITIES MAY NOT EXIST AT ALL AS TO VHF.

20 NOW INDUSTRIAL COMMUNICATIONS HAS BEEN AWARE FOR
21 SOME TIME THAT THERE WAS A PERIOD OF TIME WHEN NO MOBILE
22 TELEPHONE SERVICE WAS OFFERED IN THE AREA, BUT WE HAD NO
23 DISCUSSION AS CONCRETE AS OUR TELEPHONE CALL ON THURSDAY
24 THAT THERE MAY NOT EVEN BE THE FACILITIES FOR THE VHF CHANNEL.
25 NOW IF THAT BE THE CASE, AND THAT'S A SERIOUS ALLEGATION,

1 THEN WE'D LIKE TO KNOW WHETHER THAT BE THE CASE SO THAT WE
2 CAN EITHER DROP IT NOW OR BRING IT BEFORE THE CASE. IF THAT
3 BE THE CASE, THE MATERIALITY OF IT TO THOSE PROCEEDINGS
4 IS THAT EITHER THE APPLICANT--WELL, I SHOULD BACK UP JUST A
5 MOMENT AND EXPLAIN THE RELATIONSHIP.

6 WE BELIEVE IT'S MATERIAL THAT MOBILE TELEPHONE
7 SERVICE OF SOUTHERN UTAH GIVE OPPORTUNITY FOR DISCOVERY
8 BECAUSE IT WAS MR. BANGERTER THAT SIGNED THE APPLICATION THAT
9 YOU SEE THERE, THAT IS ATTACHED, AS THE PRESIDENT OF THE
10 MOBILE TELEPHONE SERVICE OF SOUTHERN UTAH. ON THE LAST PAGE
11 IT SAYS SIGNATURE. HE IS ALSO THE PRESIDENT OF THE
12 APPLICANT WHO HAS BROUGHT THESE PROCEEDINGS.

13 IN THEIR ADVERTISEMENTS THEY OFFER SERVICE FROM
14 IDAHO TO ST. GEORGE. THEY ADVERTISE THEMSELVES AS ONE
15 COMPANY. IF YOU CALL THEIR COMPANY THEY OFFER SERVICE
16 WITHOUT DIFFERENTIATING BETWEEN THE COMPANIES. AND WE
17 BELIEVE THAT THEY ARE EITHER OWNED DIRECTLY OR INDIRECTLY BY
18 MAX BANGERTER, OR THROUGH ONE COMPANY, OR IS CO-OWNED.
19 SO THERE IS A SUFFICIENT AFFILIATION IN WORKING TOGETHER
20 THAT THEY ARE ESSENTIALLY ONE COMPANY. AND I GUESS THE
21 PRIMARY REASON IS THAT THE SAME OFFICERS WHO SIGNED THE
22 APPLICATION FOR LICENSE IS THE PRESIDENT OF THE APPLICANT.

23 NOW THE MATERIALITY OF THESE PROCEEDINGS ARE,
24 NO. 1, THAT IF INDEED THE TRANSMITTING EQUIPMENT HAS NOT
25 BEEN INSTALLED, THAT WOULD SUGGEST PERHAPS AN INABILITY OF

1 THE COMPANIES TO INSTALL THE PUBLIC SERVICE THAT THEY ARE,
2 BY THIS APPLICATION, SUGGESTING TO THE COMMISSION THAT THEY
3 CAN INSTALL. IT ALSO BEARS ON THE FITNESS OF THE APPLICANT
4 THROUGH ITS OFFICERS IN THAT THERE MAY BE A LACK OF
5 VERACITY BY THE OFFICERS OF THE APPLICANT TO HOLD THE
6 PUBLIC TRUST THAT IS REQUIRED OF THE PUBLIC UTILITY IN
7 HOLDING A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY.

8 NOW I'D LIKE TO REAFFIRM THAT THESE ITEMS ONLY
9 APPEAR THIS WAY AND THAT'S WHY WE'RE APPLYING FOR AN ORDER
10 OF DISCOVERY, SO THAT WE CAN CHECK THEM OUT, SO THAT WE
11 HAVE SOME DIRECT EVIDENCE AND DON'T HAVE TO BURDEN THE
12 COMMISSION WITH HOURS OR CIRCUMSTANTIAL EVIDENCE THAT MAY NOT
13 PROVE THE POINT. THANK YOU.

14 COM. IRVINE: DO YOU HAVE ANY RESPONSE, MR.
15 LEWIS?

16 MR. LEWIS: YES, I DO. IF IT PLEASE THE
17 COMMISSIONER WITH RESPECT TO THE MOTION, IT RELATES TO A
18 TOTAL SEPARATE CORPORATE ENTITY THAT IS SEPARATELY
19 CERTIFICATED BY THIS COMMISSION. THE MOTION, WE THINK,
20 DEMONSTRATES ONCE AGAIN THE TYPICAL HARASSMENT THAT'S
21 BEEN GOING ON FROM INDUSTRIAL COMMUNICATIONS.

22 INDUSTRIAL COMMUNICATIONS IS NOT THE INVESTIGATIVE
23 ARM OF THIS COMMISSION. THEY HAVE TRIED THIS BEFORE BEFORE
24 THIS COMMISSION AND THIS COMMISSION HAS STATED TO THEM THAT
25 THEY ARE NOT THE INVESTIGATIVE ARM. AND THAT IF THEY HAVE A

1 FORMAL COMPLAINT TO MAKE, THEY FILE THEIR FORMAL COMPLAINT,
2 AND THEN THIS COMMISSION DOES ITS OWN INVESTIGATION TO MAKE
3 THE DETERMINATION OF THAT FORMAL COMPLAINT. WHAT THEY ARE
4 TRYING TO DO IS MUDDY THE ENTIRE WATER OF THE APPLICATION
5 THAT'S GOING TO BE HEARD TOMORROW.

6 THE MOTION IS UNSUBSTANTIATED AND WE HAVE NO
7 PROBLEM WHATSOEVER IF THIS COMMISSION WANTS TO INVESTIGATE
8 THEIR ALLEGATIONS AS LONG AS THEY ARE READY TO STAND BEHIND
9 THE RESPONSIBILITY THAT'S GOING TO FALL ON THEM WHEN THE
10 COMMISSIONER FINDS THAT THERE'S NO PROBLEM. BUT TO BRING
11 A MOTION OF THIS TYPE OF A TOTALLY SEPARATE ENTITY--I
12 DON'T CARE WHETHER MR. BANGERTER OWNS THE STOCK OR NOT.
13 HE CAN OWN THE STOCK IN SEVERAL ENTITIES. BUT UNDER THIS
14 LAW CORPORATE ENTITIES ARE SEPARATE AND DISTINCT. IT IS NOT
15 A SUBSIDIARY OF MOBILE TELEPHONE. IT IS A TOTALLY SEPARATE
16 COMPANY. AND FOR THEM TO BRING A MOTION IN THIS PROCEEDING
17 IS TOTALLY INAPPROPRIATE.

18 AND WE SUBMIT TO THE COMMISSION THE MOTION SHOULD
19 BE DENIED, AND THEY SHOULD BE INSTRUCTED TO CEASE THE TYPE
20 OF ACTIVITY THAT'S BEEN GOING ON BETWEEN THESE TWO COMPANIES.

21 A CLASSIC EXAMPLE IS THIS PAST WEEKEND. IT JUST
22 SO HAPPENED THAT MR. BANGERTER FLEW TO SOUTHERN UTAH
23 BECAUSE HE WAS HAVING TROUBLE WITH HIS CUSTOMER ON A MOBILE
24 UNIT. HE WAS HAVING JAMMING PROBLEMS. AND IN DISCUSSING
25 THE MATTER WITH AN EMPLOYEE, THEY'RE MONITORING THEIR SYSTEM.

1 AND SO THEIR MOBILE CUSTOMERS DOWN THERE ARE HAVING TROUBLE.
2 THIS IS THE CLASSIC TYPE OF PROBLEM WE'RE HAVING.

3 IF YOU ARE TALKING ABOUT THE FITNESS OF THE
4 APPLICANT I THINK THAT MAYBE THEY'D BETTER LOOK AT THEIR OWN
5 FITNESS. BUT TO BRING THIS MOTION IN A PROCEEDING TO BE
6 HEARD TOMORROW BY A SALT LAKE BUSINESS COMPANY ON A TOTALLY
7 SEPARATE COMPANY WE THINK IS TOTALLY INAPPROPRIATE.

8 COM. IRVINE: ANYTHING ELSE?

9 MR. LEWIS: NO.

10 MR. BANGERTER, IF IT PLEASE THE COMMISSION, DID
11 JUST INFORM ME TWO OF THE EMPLOYEES WERE IN SOUTHERN UTAH.
12 AND AFTER SOME DISCUSSION WITH THEM HE SAID YOU CAN GO IN AND
13 COUNT THE BOXES IF YOU WANT TO GO IN AND COUNT THE BOXES.
14 WHICH THEY DID. AND THIS WAS SATURDAY?

15 MR. BANGERTER: YES.

16 MR. LEWIS: BUT THAT'S A SEPARATE COMPANY DOWN
17 THERE. IT HAS NOTHING TO DO WITH THIS COMPANY. IF THEY WANT
18 TO FILE A FORMAL COMPLAINT, LET 'EM FILE IT. THEN WE HAVE
19 SOME REGRESS TO CHECK WITH 'EM AFTER IT'S BEEN CHECKED OUT.

20 COM. IRVINE: MR. NEIDER, IF SUCH AN INSPECTION
21 WERE TO TAKE PLACE, AND IF IT COULD BE DEMONSTRATED THAT THE
22 EQUIPMENT THAT WAS DESCRIBED TO THE FEDERAL COMMUNICATIONS
23 COMMISSION WAS NOT IN PLACE, I WOULD APPRECIATE IT IF YOU
24 WOULD EXPLAIN AGAIN HOW YOU BELIEVE THAT HAS SOME RELEVANCE
25 ON THE APPLICATION BEFORE THE COMMISSION WHICH DOES NOT INVOLVE

1 THAT SERVICE AREA OR THAT COMPANY AT ALL.

2 MR. NEIDER: BE HAPPY TO. MR. COMMISSIONER,
3 PRIMARILY WE HAVE THE PRESIDENT OF THE APPLICANT, ALSO THE
4 PRESIDENT OF THAT COMPANY, DOWN THERE OPERATING THE COMPANIES
5 ESSENTIALLY AS ONE. IT'S ALL WELL AND FINE FOR THEM NOW
6 TO SAY THEY ARE SEPARATE COMPANIES FOR PURPOSES OF THIS
7 MOTION. BUT, IN FACT, THEY ARE NOT OPERATING AS SEPARATE
8 COMPANIES.

9 COM. IRVINE: BUT IF THEY ARE DEALING WITH A
10 SEPARATE CERTIFICATE, ISN'T THAT A PRETTY CLEAR DIVISION?

11 MR. NEIDER: MR. WILLIAMS IS ALSO OPERATING ON
12 SEPARATE CERTIFICATES, FOUR SEPARATE CERTIFICATES, IN UTAH.
13 I THINK WHAT MR. LEWIS IS GETTING AT IS THEY ARE INDEED
14 SEPARATE CORPORATIONS. BUT WHAT WE HAVE HERE--WE HAVE
15 EVIDENCE BEFORE THIS COMMISSION THAT THE PRESIDENT OF THE
16 APPLICANT LACKS THE SUFFICIENT VERACITY WHICH MAY
17 SUFFICIENTLY HINDER THE PRESENT APPLICANT IN REPRESENTING
18 THE FACTS, CIRCUMSTANCES, TO THIS COMMISSION IN A PUBLIC
19 TRUST SITUATION WHERE IT IS A PUBLIC UTILITY.

20 NOW THERE IS NO DIVISION OF MR. BANGERTER. HE
21 WAS THE ONE WHO SIGNED THE APPLICATION. HE IS THE PRESIDENT
22 OF THE APPLICANT. AND THE APPLICANT IF SHOWN THROUGH ITS
23 OFFICERS TO LACK THE SUFFICIENT FITNESS AND VERACITY TO
24 PROPERLY REPRESENT THE FACTS AND CIRCUMSTANCES AS THEY EXIST
25 IS ENTIRELY IMPROPER THAN AT THAT TIME FOR HIM TO HOLD THE

1 CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY. IN ADDITION,
2 WHERE THIS COMMISSION HAS FOUND AND GRANTED IN THESE SORTS
3 OF QUASAR UTILITY CASES WHERE THE UTILITIES CAN COMPETE
4 IN THE SAME AREA, THEY ARE OBLIGATED TO DO SO HONESTLY AND
5 PROPERLY. AND FOR ONE TO MISREPRESENT AND TO LACK THE
6 VERACITY SUFFICIENT SO THAT THIS COMPETITION MAY BE DONE
7 IN A PROPER FASHION LEAVES THE OTHERS IN SERIOUS DISABILITY
8 IN BEING ABLE TO COMPETE AND PROVIDE THE SERVICE AND KEEP UP.

9 BUT I THINK IT COMES DOWN TO THE VERY BASIS OF
10 THE FITNESS OF THE APPLICANT. IF IT IS SHOWN THAT THEIR
11 OFFICERS LACK THE VERACITY TO SHOW THE TRUTH BEFORE A PUBLIC
12 AGENCY THEN THEY ARE NOT ENTITLED TO A TITLE OF PUBLIC
13 CONVENIENCE AND NECESSITY. IT DOESN'T MATTER THAT THE
14 COMPANY IS ANOTHER ONE. HE IS THE PRESIDENT. HE CAN ALLOW
15 US TO INSPECT. IT'S A SIMPLE DISCOVERY ORDER. THERE IS
16 NO SUBSTANTIVE RIGHT BEING LOST BY OUR INSPECTING THOSE
17 FACILITIES. HE IS THE PRESIDENT. IF HE HAS, IN FACT,
18 MISREPRESENTED SOMETHING THIS COMMISSION OUGHT TO KNOW IT.

19 MR. LEWIS: MAY I RESPOND TO THAT? FIRST OF
20 ALL THERE IS NO EVIDENCE BEFORE THIS COMMISSION. THERE'S
21 NOTHING BUT INNUENDO.

22 SECONDLY, THIS COMMISSION, TO MY KNOWLEDGE, HAS
23 NO COMPLAINTS BY THE CUSTOMERS OF THE UTILITIES BEFORE IT.

24 FOR ANOTHER UTILITY TO COME IN AND PRESUME THAT
25 THEY CAN FILE THEIR COMPLAINT, THAT THEY CAN, IN FACT, BE

1 THE INVESTIGATIVE ARM OF THIS COMMISSION, WE THINK IS NOT
2 ONLY UNLAWFUL BUT IT'S CONTRARY TO THE RULES OF THIS
3 COMMISSION. IF, IN FACT, THEY WANT TO FILE THEIR FORMAL
4 COMPLAINT AND THEIR FORMAL PROTESTS THEN THAT'S GREAT,
5 BECAUSE THEN WE'VE GOT SOMETHING TO COME BACK AT. BUT TO
6 COME IN BY WAY OF A MOTION ON A NON-RELATED COMPANY, ALBEIT
7 WHETHER MR. BANGERTER OWNS THE STOCK OR NOT, WE THINK IS
8 HIGHLY IMPROPER. IF THE INVESTIGATORS OF THIS COMMISSION
9 WANT TO GO DOWN AND REVIEW IT MR. BANGERTER IS MORE THAN
10 WILLING TO LET THEM GO IN. BUT LET THEM FILE THE COMPLAINT
11 BECAUSE I WANT AN ACTION BACK AGAINST THEM FOR THAT
12 COMPLAINT--NOT BY WAY OF MOTION, BUT LET 'EM FILE THEIR
13 FORMAL COMPLAINT. AND THEN WE'LL FIND OUT WHAT THE EVIDENCE
14 REALLY IS.

15 MR. NEIDER: MR. COMMISSIONER, WE HAVEN'T DONE
16 ANYTHING IMPROPER. IF THERE'S AN ACTION HE HAS IT NO MATTER
17 WHAT THE PROCEEDINGS ARE. HE SAYS THAT THERE ARE ONLY
18 INNUENDO.

19 WE HAVE PROVIDED THE APPLICATION FOR LICENSE AND
20 IT HAS BEEN SIGNED. WE HAVE PROVIDED THE AFFIDAVIT OF THE
21 FELLOW WHO MADE THE PHONE CALL TO THE BUSINESS OFFICES OF
22 MOBILE TELEPHONE SERVICE.

23 FOR US TO OBTAIN DISCOVERY MUCH LESS IS NECESSARY
24 UNDER THE RULES. WE DON'T EVEN HAVE TO SHOW THAT IT'S
25 ADMISSIBLE LATER AT THE HEARING UNDER THE UTAH RULES OF

1 CIVIL PROCEDURE. DISCOVERY IN THIS STATE IS NOT A STRICT
2 FORMALITY LIKE WE'RE MAKING IT TO BE.

3 WE JUST GIVE--DISCOVERY ORDINARILY IS JUST AN
4 INFORMAL NOTICE TO THE OTHER SIDE. ORDINARILY THEY
5 COOPERATE. NOW FOR THEM TO COME IN AND OPPOSE THE MOTION
6 BASED ON THINGS THEY SAID THIS MORNING IS ENTIRELY
7 IMPROPER.

8 DISCOVERY IS INFORMAL. WE OUGHT TO BE ABLE TO
9 PRESENT THE COMMISSION WITH THE FACTS AND CIRCUMSTANCES OF
10 THE APPLICANT. IT'S ENTITLED TO KNOW. WE OFFERED TO THE
11 STAFF THAT THEY COULD GO DOWN WITH US. WE SUGGESTED THAT
12 THEY EVEN DO IT THROUGH THE SECRETARY, DAVID STOTT, AND
13 THEY DECLINED. NOW SOMEONE OUGHT TO BE ABLE TO PRESENT
14 THE FACTS IF THEY DO, INDEED, EXIST.

15 MR. WILLIAMS IS WILLING TO BEAR THE EXPENSE OF
16 ANYBODY THAT GOES DOWN. IT WON'T COST ANYBODY ANYTHING.
17 BUT HE WANTS TO KNOW WHETHER THE FACTS DO EXIST AS THEY
18 APPEAR TO EXIST.

19 MR. LEWIS: LET ME JUST ASK WHAT RIGHT THEY HAVE
20 TO GO INTO MOBILE SERVICE IN SOUTHERN UTAH, A SEPARATE
21 ENTITY BEFORE THIS COMMISSION, FOR THIS HEARING THAT'S
22 GOING TO BE HELD TOMORROW? THEY HAVE NO RIGHTS.

23 MR. NEIDER: I THINK I'VE STATED IT TWICE.
24 I'LL STATE IT AGAIN.

25 THE PRESIDENT OF THE APPLICANT AS IT APPEARS MAY

1 BE MISREPRESENTED, AND THE FACTS, AND CIRCUMSTANCES TO A
2 PUBLIC AGENCY. AND THAT'S SUFFICIENT.

3 COM. IRVINE: WELL, TAKING THIS ONE STEP
4 FURTHER, MR. NEIDER, IF YOU WERE TO GO DOWN THERE HOW WOULD
5 YOU PROPOSE SUCH AN INSPECTION BE ACCOMPLISHED?

6 MR. NEIDER: WELL, MR. WILLIAMS WOULD CHARTER AN
7 AIRPLANE AND SUGGEST THAT A REPRESENTATIVE OF MOBILE TELE-
8 PHONE, INC., AND MOBILE TELEPHONE OF SOUTHERN UTAH
9 ACCOMPANY, AND OF COURSE A MEMBER OF THE STAFF
10 OF THE PUBLIC SERVICE COMMISSION--MR. FOLEY OR ANYBODY
11 ELSE WHO WOULD CARE TO GO TO SEE THAT THINGS WERE DONE
12 PROPERLY. THAT COULD BE ACCOMPLISHED THIS AFTERNOON BY
13 AIRPLANE AND BE BACK THIS EVENING.

14 COM. IRVINE: IT SEEMS TO ME THAT IF YOU'RE
15 TELLING US THAT THERE IS AN INPROPRIETARY IN THE METHOD OF
16 OPERATING THE MOBILE TELEPHONE OF SOUTHERN UTAH UNDER F.C.C.
17 AUTHORITY WOULD NOT THE FEDERAL COMMUNICATIONS COMMISSION
18 ITSELF BE THE MORE APPROPRIATE ENTITY FROM WHICH TO SEEK
19 REDRESS?

20 MR. NEIDER: FIRST OF ALL WE'RE NOT SUGGESTING
21 THAT. WE'RE SUGGESTING THAT THE MATERIAL BASIS FOR THIS
22 EXAMINATION ARE THE FITNESS AND ABILITY OF THE APPLICANT
23 TO IMPLEMENT SERVICE. IT HAS NOTHING TO DO WITH THE F.C.C.
24 AND THOSE ARE CLEARLY GERMANE TO THE HEARING TOMORROW.

25 NOW SECONDLY, THE F.C.C. WOULD PROBABLY TAKE A

1 HALF A YEAR TO GET TO THE JOB.

2 NOW IT'S QUITE CLEAR UNDER THE RULES THAT THE
3 COMMISSION DOES NOT NEED TO RELY ON THE INVESTIGATIVE ARM
4 OF THE PUBLIC SERVICE COMMISSION. IT MAY PROPERLY AND
5 APPROPRIATELY RELY ON PROTESTANTS AND INTERVENERS TO
6 SUPPLY EVIDENCE AND PROPERLY DO THAT. IN FACT, THAT'S WHY
7 THE DISCOVERY RULES ARE AVAILABLE.

8 COM. IRVINE: WELL, I'M GOING TO RULE AGAINST
9 THE MOTION FOR THESE REASONS. IT WOULD APPEAR TO ME THAT
10 EVEN IF IT COULD BE DEMONSTRATED THAT THERE HAD BEEN A
11 MISREPRESENTATION BEFORE THE FEDERAL COMMUNICATIONS
12 COMMISSION IN BEHALF OF A SEPARATE COMPANY THAT THAT MIGHT
13 GO TO THE WEIGHT TO BE GIVEN ON STATEMENTS MADE BY MR.
14 BANGERTER IN THIS PROCEEDING BEFORE THIS COMMISSION. SINCE
15 IT APPEARS FROM THE APPLICATION THAT THE PROPOSAL IS
16 ENTIRELY SEPARATE FROM WHATEVER IS OCCURRING IN SOUTHERN
17 UTAH THE BEARING WOULD BE VERY SLIGHT IF ANY.

18 IF THERE IS AN INPROPRIETY IN THE MEANS OF
19 OPERATING THE FEDERAL COMMUNICATIONS COMMISSION HAS
20 AUTHORITY TO INVESTIGATE VIOLATIONS OF ITS ACCOUNTS AND
21 REGULATIONS. AND THAT IF YOU FEEL THERE IS A BASIS FOR
22 MAKING A COMPLAINT TO THEM THAT WOULD BE THE APPROPRIATE
23 REMEDY YOU OUGHT TO SEEK. AND I WILL SO RULE AT THIS POINT
24 THAT THE MOTION IS DENIED. AND WE'LL SEE YOU ALL IN THE
25 MORNING.