

1959

# Lake Shore Motor Coach Lines, Inc. v. Public Service Comm. Of Utah et al : Petition for Rehearing and Brief in Support

Utah Supreme Court

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E. R. Callister; G. L. Theurer; Harry D. Pugsley; Attorneys for Defendants;

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DEC 19 1958

IN THE SUPREME COURT  
of the

STATE OF UTAH

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FILED

LAKE SHORE MOTOR COACH  
LINES, INC., a Utah corporation,

*Plaintiff,*

vs.

Clerk, Supreme Court, Utah

PUBLIC SERVICE COMMISSION OF  
UTAH; HAL S. BENNETT, DON-  
ALD HACKING, and JESSE R. S.  
BUDGE, Its Commissioners; WY-  
COFF COMPANY, INCORPORAT-  
ED, a corporation,

*Defendants.*

Case No. 8861

ORSON LEWIS, doing business as  
Lewis Bros. Stages, and BINGHAM  
STAGE LINES, a corporation,

*Plaintiffs,*

vs.

THE PUBLIC SERVICE COMMIS-  
SION OF UTAH; HAL S. BEN-  
NETT, DONALD HACKING, and  
JESSE R. S. BUDGE, its members;  
and WYCOFF COMPANY, INCOR-  
PORATED, a corporation,

*Defendants.*

Case No. 8863

PETITION FOR REHEARING  
AND  
BRIEF IN SUPPORT OF PETITION  
FOR REHEARING

E. R. CALLISTER

Attorney General of the State of Utah

G. L. THEURER, Deputy

HARRY D. PUGSLEY,

Attorneys for Defendants

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and WYCOFF COMPANY, INCOR-  
PORATED, a corporation,

*Defendants.*

Case No. 8863

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PETITION FOR REHEARING

COME NOW the defendants and petition the  
court for a Rehearing and Reconsideration of its  
decision in the above designated cases issued October  
14, 1958 upon the following grounds:

POINT I.

THE OPINION IS IN DIRECT OPPOSITION

TO THE LONG ESTABLISHED RULE OF STATUTE (SECTION 54-7-16, U.C.A. 1953) AND OF CASE LAW THAT, "THE FINDINGS AND CONCLUSIONS OF THE COMMISSION ON QUESTIONS OF FACT SHALL BE FINAL AND SHALL NOT BE SUBJECT TO REVIEW."

#### POINT II.

THE COURT ERRED IN ITS CONCLUSION THAT THERE WAS NO EVIDENCE BY WITNESSES FOR DEFENDANT WYCOFF THAT THEY WERE AWARE OF THE PRESENT SERVICE AVAILABLE, HAD USED THE SAME, AND THAT THEY WERE DISSATISFIED THEREWITH.

#### POINT III.

THE OPINION MISTAKENLY ASSERTS THAT WYCOFF COMPANY IS BOUND TO SHOW THE INADEQUACY OF EXISTING SERVICE. SUCH REQUIREMENT APPLIES ONLY TO *CONTRACT* CARRIER APPLICATIONS (SECTION 54-6-8, U.C.A., 1953) AND NOT *COMMON* CARRIER APPLICATIONS AS IN THE PRESENT CASE (SECTION 54-6-5, U.C.A. 1953).

#### POINT IV.

THE COURT ERRED IN FINDING THAT THE COMMISSION ACTED IN AN ARBITRARY AND CAPRICIOUS MANNER, HENCE IT SHOULD NOT ATTEMPT TO REVERSE THE FINDINGS OF THE COMMISSION ON THE FACTS AND THE NEED FOR THE EXPRESS SERVICE WITHIN THE STATE OF UTAH, AS THE FINDINGS OF THE COMMISSION SHOW THAT IT CAREFULLY CONSIDERED THE OPERATIONS OF THE OTHER CARRIERS AND PARTICULARLY THE LIMITATIONS ON AVAILABLE BUS SERVICE. (ASHWORTH TRANSFER CO. v. PUBLIC SERVICE COMMISSION, 2 UT. (2) 23; 268 P. (2) 990).

POINT V.

THE COURT EXPRESSLY LIMITED ITS CONCERN TO AREAS SERVED BY APPELLANTS (SHEET 1) BUT ITS DECISION ERRONEOUSLY SETS ASIDE THE *ENTIRE* ORDER OF THE COMMISSION THEREBY STRIKING THE GRANT OF AUTHORITY AS TO POINTS AND PLACES IN UTAH BEYOND OR OUTSIDE OF THE LIMITED ROUTES SERVED BY THE THREE NAMED PLAINTIFFS.

POINT VI.

THE DECISION OF THE COURT ERRONEOUSLY INCLUDED WALLY'S MOTOR LINE AS A "PLAINTIFF" WHEN IN TRUTH AND IN FACT SAID WALLY'S MOTOR LINE DID NOT FILE A PETITION FOR REHEARING BEFORE THE COMMISSION, NOR FILE ANY APPEAL BEFORE THE SUPREME COURT OR A BRIEF IN THE CASE.

POINT VII.

THE COURT HAS ERRONEOUSLY UNDERTAKEN TO PERFORM THE FUNCTIONS OF AN ADMINISTRATIVE TRIBUNAL TO WHOM THE LEGISLATURE HAS DELEGATED SPECIAL FACT FINDING FUNCTIONS, THEREBY USURPING THE STATUTORY DUTIES OF THE PUBLIC SERVICE COMMISSION OF UTAH.

POINT VIII.

THE CERTIFICATE IS NOT AN "UNIDENTIFIABLE HYBRID" AS STATED IN THE OPINION BUT IS SIMILAR TO THE EXPRESS RIGHTS HELD BY THE THREE COMPLAINING BUS LINES AND MERELY CONTAINS SUCH "TERMS AND CONDITIONS" WHICH SECTION 54-6-5 U.C.A. 1953 PROVIDES MAY BE IMPOSED UPON A CERTIFICATE BY THE COMMISSION.

E. R. CALLISTER

Attorney General of the State of Utah  
G. L. THEURER, Deputy  
HARRY D. PUGSLEY,  
Attorneys for Defendants



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## BRIEF IN SUPPORT OF PETITION FOR REHEARING

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### POINT I.

THE OPINION IS IN DIRECT OPPOSITION TO THE LONG ESTABLISHED RULE OF STATUTE (SECTION 54-7-16, U.C.A. 1953) AND OF CASE LAW THAT, "THE FINDINGS AND CONCLUSIONS OF THE COMMISSION ON QUESTIONS OF FACT SHALL BE FINAL AND SHALL NOT BE SUBJECT TO REVIEW."

### POINT II.

THE COURT ERRED IN ITS CONCLUSION THAT THERE WAS NO EVIDENCE BY WITNESSES FOR DEFENDANT WYCOFF THAT THEY WERE AWARE OF THE PRESENT SERVICE AVAILABLE, HAD USED THE SAME, AND THAT THEY WERE DISSATISFIED THEREWITH.

We have quoted the statute in the heading of Point I for rehearing. In the following cases your Court has consistently held that the findings of the Commission are binding upon the Court "where there is a conflict in evidence relative to any material fact or where conflicting inferences may be drawn from evidence with respect to such fact".

*Bamberger Electric R. Co. v. Public Utilities Commission*, 59 Ut. 351, 204 Pac. 314.

The Supreme Court is bound by findings of the Commission when there is evidence to support them, notwithstanding the wisdom of the decision or whether the Court's conclusions on evidence would

have been the same as the Commission's:

*Jeremy Fuel & Grain v. Public Utilities Commission*, 63 Ut. 392, 226 Pac. 456.

*Fuller-Toponce v. Public Service Commission*, 99 Ut. 28, 96 Pac. 2d 722.

"Under this section Supreme Court cannot review mere errors of judgment by public utilities commission. *Jeremy Fuel & Grain Co. v. Public Utilities Comm.*, 63 U. 392, 226 P. 456.

Where orders of public utilities commission are within its jurisdiction and within reason, and are not capricious or arbitrary, Supreme Court cannot interfere. *Gilmer v. Public Utilities Comm.*, 67 U. 222, 247 P. 284.

The Supreme Court's power of review goes to the extent of determining whether there was any substantial evidence to support the decision of the commission. That court cannot substitute its judgment for the judgment of the commission. *Los Angeles & S.L.R. Co. v. Public Utilities Comm.* 80 U. 455, 471, 15 P. 2d 358."

The power of review of the Supreme Court is limited to whether the commission could reasonably find as it did from the evidence adduced. *Los Angeles & Salt Lake R. Co. v. Public Service Comm.*, 121 U. 209, 240 P. 2d 493.

On review of an order of the public service commission granting a certificate of convenience and necessity, it is not required that facts found by the commission be conclusively established or shown by a preponderance of the evidence. The scope of review is limited

to an ascertainment of whether the commission had before it competent evidence upon which to base its decision. *Ashworth Transfer Co. v. Public Service Comm.*, 2 U. (2d) 23, 268 P. 2d 990, 994.

Relating these cases to your record, we shall outline later in this brief tangible evidence which was before the Commission. The findings pertaining to the inadequacy of the bus service were made by the Commission reading in part:

“7. As to the bus lines the evidence shows that there are numerous commodities weighing 100 pounds or less which the bus lines, having operating general-commodities authority, will not accept for shipment. Such items as car batteries, unwrapped black tires, unwrapped axles, paints, ammunition or other explosives, articles likely to mar or damage compartment contents, inflammable articles and articles which are fragile and likely to be broken in shipment . . .

8. The evidence also shows that where bus service is available it is a frequent occurrence that there are delays in handling especially in Ogden and Salt Lake City due to lack of parking facilities and the necessity for shippers to wait in line to be served during a period prior to the departure of the bus, all of which results in considerable expense to shippers and that the necessity for shippers, where there is no pickup service, to use their own equipment to transport items to and from bus terminals results in considerable expense and loss of time of employees. Many shippers would prefer to dispense with

their own equipment if a service such as proposed by applicant can be made available.

9. Shippers of supplies in the Ogden area complain that in shipping by bus, the transfer of articles at the bus terminals in Salt Lake of articles consigned to points south of Payson, are prejudiced in attempting to compete with Salt Lake supply houses.

10. There can, of course, be no valid objection to applicant's proposed service with respect to express items the bus lines decline to transport; or with respect to the transportation of express items to and from points which the protestants' lines do not serve; or to Wycoff's proposed service on week-ends or other days to and from places not then served by protestants; . . .

13. . . . However, in view of the fact that the record discloses that there are so many communities which the bus lines do not serve and so many to which no week-end service is available, and furthermore that there are so many commodities which the bus lines may not or will not accept for shipment, can it be said that the protestants have shown a lack of necessity for the particular and special service which the applicant proposes to render?

14. In support of the application the following substantial business concerns regard the proposed service as a necessity because it is a new and better method of expediting transportation which is so vital under present highly competitive conditions, and it will fill a gap which the bus lines thought it necessary

to fill only after the present application was filed.”

We note that the names and addresses of 38 public witnesses follow the last quotation (R. 1872, 1873, 1874, 1875 and 1876). In the Appendix of testimony which is made a part hereof and by this reference incorporated herein, we have quoted portions of the testimony of many of the witnesses who appeared for the firms referred to in the Findings of the Commission at pages 1875-76.

These witnesses testified of their familiarity with bus services and the numerous restrictions as found by the Commission. We shall let their testimony speak for itself. Reference generally was made to these in our original brief, pages 3 to 19, but we did not quote as fully as perhaps the Court would prefer.

### POINT III.

THE OPINION MISTAKENLY ASSERTS THAT WYCOFF COMPANY IS BOUND TO SHOW THE INADEQUACY OF EXISTING SERVICE. SUCH REQUIREMENT APPLIES ONLY TO *CONTRACT* CARRIER APPLICATIONS (SECTION 54-6-8, U.C.A., 1953) AND NOT *COMMON* CARRIER APPLICATIONS AS IN THE PRESENT CASE (SECTION 54-6-5, U.C.A. 1953).

In the establishment of the Motor Carrier Act in Utah our Legislature dealt separately with Contract Carriers (Section 54-6-8, U.C.A. 1953) and in a different section with Common Carriers (Sec-

tion 54-6-5, U.C.A. 1953) Wycoff's application was for *common carrier* authority. He is and has been a common carrier of other commodities and sought merely an extension of his certificated rights.

The contract carrier statute specifies in part 54-6-8:

“If, from all the testimony offered at said hearing, the commission shall determine that the highways over which the applicant desires to operate are not unduly burdened; that the granting of the application will not unduly interfere with the traveling public; and that the granting of the application will not be detrimental to the best interests of the people of the state of Utah and/or to the localities to be served, and if the existing transportation facilities do not provide adequate or reasonable service, the commission shall grant such permit.”

The phrase, “and if the existing transportation facilities do not provide adequate or reasonable service” has been underlined by us. Such proof is part of the affirmative burden of an applicant seeking a *permit* as a *contract* carrier.

The common carrier statute reads: 54-6-5

“If the commission finds from the evidence that the public convenience and necessity require the proposed service or any part thereof it may issue the certificate as prayed for, or issue it for the partial exercise only of the privilege sought, and may attach to the exercise of the right granted by such cer-

tificate such terms and conditions as in its judgment the public convenience and necessity may require, otherwise such certificates shall be denied. Before granting a certificate to a common motor carrier, the commission shall take into consideration the financial ability of the applicant to properly perform the service sought under the certificate and also the character of the highway over which said common motor carrier proposes to operate and the effect thereon, and upon the traveling public using the same, and also the existing transportation facilities in the territory proposed to be served."

Thus we see that as to a *common* carrier the Commission is granted rather broad latitude and discretion and is required to "take into consideration . . . the existing transportation facilities in the territory proposed to be served." In the *Ashworth Transfer Co. v. Public Service Commission* opinion, 2 Ut. (2d) 23, 268 Pac. (2d) 990 at 994-995 the Court expressed this matter of considering other carriers (existing transportation facilities) as follows:

"On review of an order of the Public Service Commission of Utah granting a certificate of convenience and necessity, it is not required that facts found by the Commission be conclusively established or shown by a preponderance of the evidence. The scope of review is limited to an ascertainment of whether the Commission had before it competent evidence upon which to base its decision. U.C.A.

1953, 54-7-16; *Wycoff Co., Inc. v. Public Service Commission*, Utah, 227 P. 2d 323; *Uintah Freight Lines v. Public Service Commission*, Utah, 229 P. 2d 675.”

“The ‘convenience’ and ‘necessity’ to be considered is that of the public, *Mulcahy v. Public Service Commission*, 101 Utah 245, 117 P. 2d 298, and the statute does not require that the Commission find that the present facilities are entirely inadequate. It merely requires that the Commission ‘shall take into consideration \* \* \* the existing transportation facilities’; it is obvious from the language of the order granting the application and the order denying the petition for rehearing, as well as the evidence, that the Commission did take these matters into consideration.”

The findings of the Commission quoted supra amply demonstrate that the Commission carefully took into consideration the facilities of the existing bus lines. As we mention in our original brief (p. 31) the Commission not only heard the evidence, saw the witnesses and considered the exhibits, but received and considered briefs from the bus lines and weighed the entire matter from June of 1957 to January 21, of 1958. Such reflects careful consideration of the existing transportation facilities. And as your Court said supra, convenience and necessity “does not require that the Commission find that the present facilities are entirely inadequate” so applicant had no burden of proof thereon.



As the Legislature imposed a different degree of proof in the *contract* carrier cases, such should not now be grafted into the *common* carrier statute by judicial decree, particularly when you so recently (1954) declared the contrary rule in the Ashworth case.

#### POINT IV.

THE COURT ERRED IN FINDING THAT THE COMMISSION ACTED IN AN ARBITRARY AND CAPRICIOUS MANNER, HENCE IT SHOULD NOT ATTEMPT TO REVERSE THE FINDINGS OF THE COMMISSION ON THE FACTS AND THE NEED FOR THE EXPRESS SERVICE WITHIN THE STATE OF UTAH, AS THE FINDINGS OF THE COMMISSION SHOW THAT IT CAREFULLY CONSIDERED THE OPERATIONS OF THE OTHER CARRIERS AND PARTICULARLY THE LIMITATIONS ON AVAILABLE BUS SERVICE. (ASHWORTH TRANSFER CO. v. PUBLIC SERVICE COMMISSION, 2 UT. (2) 23; 268 P. (2) 990).

In light of the matters recited above we feel it is self evident that the Commission did not act improperly in finding that there was a need for applicant's service. The Court on sheet 3 of its opinion said:

“Nevertheless, upon a survey of the record, we find no witness or witnesses that made showing for the defendant; that he was aware of the extent of the services presently available; that he had attempted to make use of them and found the services wanting; nor did any witness express actual dissatisfaction with the services presently offered. There be-

ing no such evidence, we see no basis for a finding that public convenience and necessity require additional service. The finding to that effect was therefore capricious and arbitrary.”

Counsel regrets that the details of each witnesses’ testimony were omitted in the original brief. Such was in the interest of space (a summary of testimony plus the page notation only was given in many instances, pages 3 to 19) and upon a belief that the statutes referred to above and the Ashworth case made it unnecessary when the Commission’s Findings demonstrated the inadequacies of the bus service and the careful consideration given by the Commission to their position.

However, we have detailed more testimony in the attached Appendix to which we invite the Court’s attention. This will show from the record that numerous witnesses expressed actual dissatisfaction with the service presently offered by the busses. Pro-tanto it will appear that the Commission having seen and heard the witnesses and considered the briefs of counsel did not act in a manner “capricious and arbitrary”.

#### POINT V.

THE COURT EXPRESSLY LIMITED ITS CONCERN TO AREAS SERVED BY APPELLANTS (SHEET 1) BUT ITS DECISION ERRONEOUSLY SETS ASIDE THE ENTIRE ORDER OF THE COMMISSION THERE-

BY STRIKING THE GRANT OF AUTHORITY AS TO POINTS AND PLACES IN UTAH BEYOND OR OUTSIDE OF THE LIMITED ROUTES SERVED BY THE THREE NAMED PLAINTIFFS.

#### POINT VI.

THE DECISION OF THE COURT ERRONEOUSLY INCLUDED WALLY'S MOTOR LINE AS A "PLAINTIFF" WHEN IN TRUTH AND IN FACT SAID WALLY'S MOTOR LINE DID NOT FILE A PETITION FOR REHEARING BEFORE THE COMMISSION, NOR FILE ANY APPEAL BEFORE THE SUPREME COURT OR A BRIEF IN THE CASE.

These matters have been considered separately by the Court. Apparently by inadvertance the Court's opinion read finally, "The order is set aside." The opinion on sheet one limited your concern to the areas of the three plaintiffs. Words limiting the setting aside of the order to only the areas served by the three plaintiffs, Lake Shore, Lewis Bros. and Bingham Stage Lines should be added to your final phrases in the present decision.

The name "Wally's Motor Line" was added into the title and referred to in the body of the decision. We respectfully submit that such should be deleted as a plaintiff for the following reasons:

(a) No witness appeared to testify on behalf of said carrier and no exhibits were introduced to show the scope or nature of his operations or authority; (See 11 pages of index of witnesses and exhibits preceding p. 3 of the record).

(b) No petition for rehearing was filed before the Commission;

(c) No appeal was taken before this Court in the time or manner prescribed by your rules.

In requesting the correction of the Order at the end of the decision and the deletion of Wally's Motor Line, we are not waiving any other grounds set forth for complete reversal of the decision and for affirmation of the entire Certificate issued by the Commission. We feel that these two points are obvious and need no argument or further statement.

Mr. Wallace A. Peterson d/b/a Wally's Motor line did appear at the hearing and state his intention to oppose the application, but he did not remain there or perfect the necessary steps essential for consideration by your Court as required by statute and by your rules.

#### POINT VII.

THE COURT HAS ERRONEOUSLY UNDERTAKEN TO PERFORM THE FUNCTIONS OF AN ADMINISTRATIVE TRIBUNAL TO WHOM THE LEGISLATURE HAS DELEGATED SPECIAL FACT FINDING FUNCTIONS, THEREBY USURPING THE STATUTORY DUTIES OF THE PUBLIC SERVICE COMMISSION OF UTAH.

#### POINT VIII.

THE CERTIFICATE IS NOT AN "UNIDENTIFIABLE HYBRID" AS STATED IN THE OPINION BUT IS SIMILAR TO THE EXPRESS RIGHTS HELD BY THE THREE COMPLAINING BUS LINES AND

MERELY CONTAINS SUCH "TERMS AND CONDITIONS" WHICH SECTION 54-6-5 U.C.A. 1953 PROVIDES MAY BE IMPOSED UPON A CERTIFICATE BY THE COMMISSION.

The aforesated grounds are respectfully asserted because of what appears to be a sudden and direct reversal of the Court's prior attitude on appeals from the Public Service Commission. We are in whole hearted concurrence that the Court must not be a mere "rubber stamp" on the actions of the Commission. Within the permissive limits of the statutes, the Court should afford to each matter presented a careful review.

The Legislature has set some limits to this permissive review. For reasons deemed sufficient to it, the Utah Legislature has created the Public Service Commission and vested in it certain fact finding duties of a quasi-judicial nature.

The three bus companies which have appealed here have not attempted to impugn the jurisdiction of the Commission or the constitutionality of its creation. All parties accede to that. We must then turn to the statutes which created the Commission to ascertain the powers vested in it and any material restrictions upon the review of such powers by this Court.

The general statement of powers is stated in Section 54-1-2 U.C.A. 1953. The powers and duties of commission as to motor vehicle transportation are cited in Chapter 6 of Title 54, U.C.A. 1953. Those

relating particularly to common motor carriers are specified in Sections 54-6-4 and 54-6-5, the latter dealing with the applications for, hearings on and the grant of Certificates of convenience and necessity to common carriers.

As quoted in conjunction with an earlier point, this last section provides in part:

“If the commission finds from the evidence that the public convenience and necessity require the proposed service or any part thereof it may issue the certificate as prayed for, or issue it for the partial exercise only of the privilege sought, and may attach to the exercise of the right granted by such certificate such terms and conditions as in its judgment the public convenience and necessity may require, otherwise such certificate shall be denied.”

The discretion as to the issuance of a Certificate is lodged in the Commission. That discretion shall be exercised “as in its judgment the public convenience and necessity may require”. Of course that discretion must be exercised in good faith and not in an arbitrary or capricious manner. The Report & Order of the Commission is 11 pages long showing careful and conscientious exercise of the Commission’s functions and has been duly signed by all three Commissioners.

Once this fact finding function has been performed by the Commission and a Certificate issued

“as in its judgment the public convenience and necessity require” a protestant disagreeing therewith may file a petition for rehearing (54-7-15 U.C.A. 1953) as was done here and then appeal by certiorari to this Court (54-7-16 U.C.A. 1953). The sole and exclusive right of review is vested in your Court, *but* is subject to certain restrictions stated in the very same Section:

“The review shall not be extended further than to determine whether the commission has regularly pursued its authority, including a determination of whether the order or decision under review violates any right of the petitioner under the Constitution of the United States or of the state of Utah. The findings and conclusions of the commission on questions of fact shall be final and shall not be subject to review. Such questions of fact shall include ultimate facts and the findings and conclusions of the commission on reasonableness and discrimination.”

Supra we have quoted cases wherein you have repeatedly recognized the Commission’s fact finding responsibility (See Point I). We urge that the Court should not now undertake the duties of the Commission in this respect. To do so, you will set a precedent of detailed consideration and review of all factual findings of the Commission which will impose an intolerable burden upon your Court in the future.

These matters on Certiorari under the restric-

tive language of Section 54-7-16 are somewhat like the review of a law matter by your Court. You have traditionally accorded to the trial court the prerogative of finding the facts and then such have been sustained if competent evidence is in the record. This deference has been given because of the opportunity such trial judge or jury has had of personally seeing and hearing the witnesses. So too, the members of the Public Service Commission have seen and heard the witnesses and have found the facts of inadequacy of the bus service and determined that public convenience and necessity required the proposed express service. Your Court need go no further than to determine that there was such evidence in the record and that the Commission considered the existing transportation service.

True, certain restrictions were imposed upon the exercise of such common carrier express service "as in its judgment the public convenience and necessity may require" (Section 54-6-5). We shall not repeat the summary of "express" language set forth in our original brief pages 23-29 but invite the Court to review thereof. Let us only re emphasize that protestant-plaintiff Lewis Bros. Stages has in its common carrier certificate (R. 2228) for transportation of "express" the following restriction:

"The express service hereby authorized shall be limited to shipments carried in the passenger carrying equipment of applicant



and shall also be limited to shipments of 100 pounds or less, and the volume of express handled on any bus shall be such as will not interfere with the comfort and safety of passengers."

Can the Court or any one else determine what volume of express shipments "of 100 pounds or less" may be accepted by that carrier on any date as the number of passengers and their baggage varies each day and at each station. If any uncertainty exists as to Wycoff's express certificate, the Court might direct the Commission to rephrase and clarify the same.

## CONCLUSION

Defendants Wycoff and the Public Service Commission respectfully request that the Court carefully review the Petition for Reconsideration and the matters set forth in this Brief and the Appendix and thereupon reverse its former decision herein and affirm the Report & Order of the Commission dated January 21, 1958.

Respectfully submitted,

E. R. CALLISTER,

Attorney General of the State of Utah

G. L. THEURER, Deputy

HARRY D. PUGSLEY,

Attorneys for Defendants

## A APPENDIX OF EVIDENCE

Defendants hereafter will set forth excerpts from the transcript of several of the public, shipper witnesses who appeared in support of applicant Wycoff. All witnesses and all testimony is not presented as our purpose is limited on this rehearing to the following items:

(a) shippers who have express shipments moving into all or some parts of the areas served by the three plaintiffs: (Lake Shore—Salt Lake City to Ogden; S. L. Bingham—Salt Lake City to Bingham; Lewis Bros.—Salt Lake To Wendover)

(b) sufficient evidence to negative the statement of the Court in its decision that it could not find in the record any witnesses who:

1—were aware of the services presently available;

2—had attempted to use such services; and

3—found the services wanting; or

4—expressed actual dissatisfaction with services presently offered:

(c) competent evidence in the record to support the finding by the Commission relating to public convenience and necessity; that there are numerous commodities weighing 100 pounds or less that the bus lines will not accept for shipment, that shippers have had

to use their own equipment and employees to transport items to and from the bus depots and that Wycoff's service is needed "because it is a new and better method of expediting transportation which is so vital under present highly competitive conditions."

Mr. Joseph Madsen, operations manager of McKesson & Robbins Wholesale Drug at Ogden, Utah (R. 22). They ship all drug and sundry items from Ogden to "All points in the state of Utah."

"Q Now, this application refers to proposed express shipments within the state of Utah, if we could direct our attention to that primarily.

Could you state what truck or rail facilities you now use in transporting your commodities.

A Well, we use in the state of Utah, Fuller-Toponce, Salt Lake—Kanab, Milne, Delta — practically all of the little lines that run down southern Utah.

Q Do you have occasion to use the buses also?

A Yes. (R. 23)

Q And is there any need so far as your business is concerned or an expedited service to transport those commodities?

A A very particular need, particularly on drug items, the need for prescriptions, emergency prescriptions.

Q Could you state what needs if any or

what use if any you could use the proposed Wycoff service for your business?

A If the information I have as to the type of service that would be available if this were granted, it would save me sending one truck to Salt Lake every morning — that is one item only. (R. 24)

Q Let me ask you if your operations are competitive with any other drug supply business in Utah?

A We have three main competitors in Salt Lake City.

Q Is the matter of service of any concern to you from a competitive standpoint?

A Absolutely; they can call the truck lines to pick their merchandise up at their docks and deliver them, whereas we have to haul it to their docks from Ogden in order to meet the same delivery schedule.

Q Would you state whether or not you have occasions for shipment of emergency prescriptions or drugs to points in the state of Utah.

A Everyday. (R. 26)

Q As a matter of fact, you have a very substantial number of bus line movements in and out of Ogden each day, do you not?

A Yes, sir.

Q How long have you been using the buses for these transportation movements?

A As long as I can remember.

Q And have their schedules been a convenience to you?

A Very much.

Q Has their service been satisfactory?

A Well, with the exception that we have to deliver to the bus line and the customer has to go to the bus line to pick it up. (R. 32)"

Mr. Raymond C. Buck of Marquard Aircraft at Ogden, Utah has shipments from Salt Lake to Ogden about 3 times per day of small packages from specialized plating metalurgical foundries (R. 61). They were then using their own vehicles and would like to discontinue use of their own units if possible (R. 62). When asked about the Lake Shore bus service he answered:

"A Possibly. They will not carry a perishable item though, will they?

Q What kind of a perishable item?

A On dry ice?

Q What is it you ship which requires dry ice?

A Metal parts or rivets that have been heat treated and have to be kept on dry ice until they are ready for use.

Q How frequently would you have a shipment of that type?

A Oh, three times a week maybe, maybe more.

Q That is still moving between Salt Lake City and Ogden?

A Yes.

Q Have you utilized the services of the Fuller-Toponce in that area?

A Not on those items.

Q If the bus company were able to use dry ice as you have described and were willing to do so in proper packaging —

A Yes.

Q — that then would take care of that shipping problem.

A Possibly.

Q Why wouldn't it? I mean, I would like to know your clear statement.

A My statement was that the applicant's pickup would be on the same piece of equipment that he delivers in Ogden.

I personally feel that if the bus company had a pick up however in Salt Lake that picked up that dry ice container of ours or any other item, and he were a contractor or a drayman and brought it to the bus depot up on South Temple, there would be a delay there in transferring the material, getting the express bill written up, and it — to us, minutes count, actually they do.” (R. 67-68)

Mr. U. J. Kuhre, Vice President of Strevell Paterson Hardware Company at Salt Lake City, Utah testified. They are wholesale distributors of many lines of merchandise “from general hardware to appliances, to automotive and automotive supplies equipment.” They operate from Salt Lake City “throughout the state.” (R. 222)

“Q Would you state if your company has any use or need for shipment of commodities in terms of less than 100 pounds.

A We have a lot of shipments of that type.

Q And what type of service have you used in past years for transporting those?

A We have had to depend on Railway Express Service, and basically bus service, passenger bus service schedules. (R. 222)

Q Now, the applicant is applying for authority to transport these express shipments under 100 pounds throughout the state of Utah.

Would that type of service be of any convenience to you in your business?

A Well, it would be quite a convenience. We feel — in fact, we have a lot of shipments of an emergency nature, small shipments, and that is why we are supporting this application on small shipments. We have no quarrel with our common carrier freight lines, but we do need available to us basically better express service.

Q And if authorized by the Commission, would your company use this service?

A We definitely would.

Q Could you tell us for the record generally the volume of your company's operation in Utah, so that the record will show the type.

A Let's put it, it is several million dollars a year. (R. 223)

Q Now, are you aware of the transportation by these bus carriers of the small express shipments?

A I think so; we use them quite a bit.

Q And you have used them over many years, have you not?

A That's right.

Q As a matter of fact have you ever been correctly informed the use of the bus lines by the Strevell-Paterson Company has actually sustantially increased, has it not?

A Yes.

Q — over the last few years.

A Yes, it has. We have to move a lot of small shipments, emergency shipments of say automobile parts and supplies by bus in order to expedite.

Q That's right, and their service has been essentially satisfactory, has it not?

A Well, to a degree. I would like to qualify that.

Q Well, I would like — you just go ahead and tell us. I would like to know.

A Well, in the first place, we have no pickup and delivery service, at least from Greyhound, it is my understanding. We may have, in the course of shipments going out to various areas, three or four bus lines represented. You have to contact all of them; you have got to find parking place, which most of the bus stations are in the heart of town. It is difficult for that purpose. They won't handle C.O.D. shipments, all of them.

Q Now, let me ask you —

A There are certain commodities that,



due to I.C.C. they can't handle, we have to ship.

Q What commodities?

A Such as ammunition. We ship a lot of ammunition, particularly in season.

Q Do you ship small quantities of that?

A That's right.

Q And under I.C.C. regulations they can't handle it, I agree with you.

That is about the only commodity, however, you can't ship?

A You have certain commodities that by bulk they particularly don't accept. (R. 238-9)

Q And as a matter of fact, with the equipment they are using now, which is relatively new, there has been no problem of that nature.

A Well, I can't say. All I can say is the traffic department informed me this morning that was one objection they had.

Q Did they also inform you that they had been generally quite satisfied with the bus service?

A We do have this problem, and that is at the other end of delivery you have no delivery service, the person has to go to the bus station and meet schedules or he never knows when his merchandise gets in. You also have the problem that they won't handle C.O.D. shipments. (R. 240)

Q Notwithstanding the availability of

these other services, does your company still have a need for this proposed express service?

A Well, I still want to go back to my original premise, that we have no quarrel with the common carrier freight lines. We are not discussing, so far as I am concerned, any problems on freight shipments! We are simply discussing the necessity, so far as I am concerned, of the availability of better expedited express service on small shipments." (R. 245)

Mr. Paul Hansen Beckstrom appeared for Walgreen Drug Company at Salt Lake City. They distribute drugs, sundries, ice cream, linen and photo finishing to Price, Provo and Ogden.

"Q Now, the application before the Commission is an application of Wycoff Company, Incorporated to provide an express service to all points in the state of Utah.

I ask you whether or not that type of service would be of any advantage to you in moving these emergency or special orders?

A Well, it would be quite an advantage to us because the way it is now, anything we have for an emergency like that we have to pack and then we have to haul it to one of the bus stations to get it out, so they would get it the same day.

Now usually for Ogden we have to use the Lakeshore lines. We take it over there, and then when it gets to Ogden he has to go down and pick it up.

So that it would definitely be to our ad-

vantage if we could have them pickup at the warehouse and then deliver it right to the store — it would convenience us quite a bit more. (R. 362-63)

Q You indicated as one example the lack of pickup and delivery service on the buses.

Would it be of any advantage to your company to have a pickup and delivery service provided on these express shipments?

A Yes, very definitely.

Q I take it you are here supporting the application?

A Yes, we are.

Q And if authorized, would you use this type of service?

A Yes, we could use it very often, now, especially with Ogden. He seems to have trouble knowing how to order just what he needs. He calls in sometimes two or three times a day. Of course, with the Lakeshore lines, if we get an order once and send it over, then we have got to send another one over and he has got to send down twice to pick it up.

Q And is it inconvenient for you to send your equipment over to the bus stations in order to have the commodities moved?

A Well, it is. We have to pack it, and then you have — it is easier to wheel it over on a two wheeler than it is to run a truck over there, so we have to send a man over there with a two wheeler to take it over to the bus

station, and then the Ogden store has to go down in his car and pick it up." (R. 364-65)

Q Have you ever asked any of these bus lines to come to your place of business and pick up your merchandise — I am staying now with the Ogden territory.

A Yes.

Q Well, I take it the frequency of the bus schedules into Ogden is about all you could possibly require — that is to say, the number of schedules a day running back and forth fill every need you have on these emergencies that we —

A They get it there for us.

Q Yes.

A I mean, the inconvenience has been taking it over and getting it from there." (R. 369)

Mr. Ed Stevenson of Salt Lake City, Utah is the President and General Manager of Rocky Mountain Wholesale Drug.

Q Now, can you tell us to what points in Utah you have occasion to ship your commodities?

A Well, to St. George, to Vernal, Ogden, Logan, Brigham City, Tremonton.

Q And could you tell us the general procedure that your company has in the way of taking orders and filling them?

A Most of our orders come in on the phone, because of the service aspect of our business.

Q Will you explain that last.

A Well, the service aspect is immediate delivery, the fastest possible delivery. Often times a druggist will have a prescription, and his problem is to get that merchandise as fast as possible. Therefore, the phones are used, and within a matter of minutes the product is wrapped and packaged and it is on a means of transportation, either bus lines or parcel post. We seldom if ever use the truck lines, because of the small weight involved. (R. 380)

Q Now you have indicated you have used the bus lines primarily for those in the past?

A That's right.

Q Could you state what problems if any your company has experienced in using the bus service?

A Well, in the summertime when vacation travel is at its peak and it is heaviest, you can't be sure that the package is going to go on the next bus departing for whatever area you are sending the shipment. (R. 381)

Q Could you tell us what percentage of your company's business is prescriptions and drugs, as distinguished from various sundry items used in drug stores.

A Rocky Mountain Wholesale Distributors have no sundries; we carry prescription products exclusively.

Q So, all of the shipments you make would be of the prescriptions variety?

A That is correct.

Q Now, does the bus companies provide for you at the present time pickup and delivery service on the commodities you ship?

A Not as such — there is — I received an announcement a few days ago that there was a connection with the Jiffy people, their fee being in addition to the fee of the bus lines, and the irregularity of — the possible irregularity of that type of service, the double handling of a shipment, opens the possibility for the loss of that merchandise. (R. 382-83)

### CROSS-EXAMINATION

BY MR. ANDERSON:

Q Mr. Stevenson, you named the points of St. George, Vernal, Ogden, Logan, Brigham City and Tremonton.

A Well, and points in between.

Q And points in between?

A Yes.

Q The service between Salt Lake City and those points and some intermediate points are the only service that your company is interested in so far as this application is concerned; is that correct?

A I would include Wendover. I am going in four directions from Salt Lake.

Q Well, my question is this: You are not interested in service to other parts of the state other than the ones you have mentioned; is that correct?

A No, that is not correct. I have included the furthest distant point, or tried to, because we ship merchandise wherever there

is a drug store located, and there are drug stores in some out of the way places in the state of Utah. (R. 383-84)

Mr. Jack Wilson testified for Lauren Burt, Inc. of Salt Lake City. They contract acoustical work and other interior finish work operating from a warehouse at Salt Lake City.

“Q The application before the Commission is for Wycoff Company, Incorporated, to provide an express service between various points in the state of Utah.

I ask you whether or not in your business you have need for that type of service.

A Yes, definitely.

Q Could you state the situations under which you would need or use that type of service?

A It is usually used where we put men on to a job and in the initial commencing of the job something has been forgotten, a pound of nails, some adhesive, some material which is going to be used, which necessitates our getting that material to a job in a hurry.

The next place that we use it quite a lot is at the end of a job where we will find that we are short of one or more items to make the completion, and we have again to get it into a job in a hurry.

Now, the reason for this being, since we have crews out of town which are on a per diem basis and which we are paying daily whether they are working or not, if we don't have the material there when they can use

it we are held over a day, which runs into a substantial cost for us.

Q Have you used the bus service in the past for these type of emergency shipments?

A Yes.

Q And what problems, if any, have you encountered in using the bus service?

A We are limited as to weight, of course, size of objects shipped. Inflammable objects we are not allowed to ship, and in size and weight I would like to emphasize too that even though they will take an amount per item we are quite frequently limited, because we will have maybe eight or ten items, say 12 by 15 by 25, on which they can't take — in other words, they can only take one or two of them.

Q Is it convenient in your business to have part of your shipment held over for the next bus schedule?

A No, generally no." (R. 396-97)

Mr. Werner Larsen is Manager of Diamond Electric Co. in Salt Lake City. They operate throughout the state on electric motor repair services. Many occasions for rush repairs on breakdowns. (R. 420)

"Q Now, Mr. Larson, what transportation facilities have you used in the past?

A We used Carbon Motorways and Garrett and Interstate, and also the bus lines.

Q And on the regular shipment of large commodities by the truck lines, has their service been satisfactory on those large items?

A Yes.



Q On emergency shipments have you found that their service has or has not been satisfactory?

A It has been unsatisfactory.

Q You have used the buses, you stated, and what type of service have you received from them, and is it satisfactory for your business?

A Well, we have motors that are brought into us through the bus line, and then they call us and we have to go up and pick them up, and the costs there for us paying a man per hour is the time we are trying to get out of. (R. 421-22)

Mr. J. Arthur Knudsen, president and manager of Knudsen Builders Supply Company of Salt Lake City testified in part as to shipments of small lots of building supplies, tiles, etc. throughout the state. He related numerous emergency shipments of small items to aid a contractor in completing and stated: (R. 468)

“Q What has been your experience in moving these small emergency shipments in the past?

A Well, the bus is the one that we have tried to use. It costs us too much at this end to make the shipment.

Q Would you explain that please.

A We have to pay our men their wages while they go to the bus depot and wait in line while other people are checking their baggage, and it just takes too much man hours of our operation to ship by bus.”

Mr. Ted R. Brown operates the Refrigeration Distributors Corporation which handles parts, repair parts and supplies for heating, ventilating and refrigeration units. They supply dealers throughout the state. 65% of their shipments are under 100 pounds (R. 482)

“Q What trucking facilities have you used or bus facilities in the small shipments in the past?

A I would say we have probably used practically all facilities existing in the state.

Q And what problems, if any, have you experienced?

A Well, a matter of assured rapid delivery is one thing, and a matter of Salt Lake pickup is another. I think those two are the major ones.

There is the matter of inconvenience and cost to us in getting shipments out, and, of course, the subsequent cost to us when the shipment does not arrive on time or when we were led to believe it would be delivered.

Q Now, take first this matter of pick-up, you are on Thirteenth South between Second and Third West, is it?

A Between First and Second West.

Q First and Second West, and is it convenient for you to bring your units to the bus depots for them to deliver it?

A No, it isn't convenient, definitely not.

Q Have the bus lines ever tendered to you to a pick up service at your place of business?

A Not to my knowledge.

Q Now, what do you have to do when you have to take your shipments to the bus lines?

A Well, we have to have someone leave the place of business and take the shipment to the bus line and wait until it is accepted and get a receipt for it, and so on, so that we can at least claim for the shipment when it doesn't arrive.

Q Do you have any commodities that you ship under 100 pounds that are not handled by the bus lines?

A Well, now, I don't know of any specific instances — yes I do too — that would be compressed gases in cylinders.

Q They will not transport those for you?

A I am sure that that is one of the items that they won't carry." (R. 483-84)

Mr. Richard Frank Ream of Automotive Service Co. of Salt Lake City testified that they ship automotive parts, generators, filters, batteries, etc. "All throughout the state of Utah." (R. 507)

"Q Would you state what transportation facilities you now use on your smaller shipments.

A Well, generally on the small shipments we use generally parcel post or the bus lines.

Q And is there any urgency on your shipments normally?

A Quite a number. We do have emer-

gency shipments where a unit is tied up, a passenger car or a piece of industrial equipment or a truck.

Q What has been your experience, say with the bus lines, as to the handling of these emergency shipments?

A Of course, the inconvenient thing with us; is the fact that we have to deliver the item to the bus line and the customer has to pick it up on the other end, plus it takes our driver away from the necessary deliveries in the city, which ties him up, and affects our service to our city customers.

Q Have you had any problems in getting parking and so forth at the bus depot?

A Yes, particularly — quite often a lot of our shipments have to go to the bus line between 4:00 and 5:00 o'clock, where we have to send the truck over to the bus line, and, of course, we have to buck the traffic conditions and congestion at that time. (R. 508)

Q Now, your bus lines for handling the emergencies, I take it, basically are satisfactory except for your problem at Salt Lake is getting it over to the bus terminal — am I correct in that?

A Or delivery on the other end is another one. We have got one other emergency that crops up I would say a couple of times a week. We also ship batteries.

Q Do they go by bus?

A The bus line won't take lead acid storage battery.

Q They won't take it?

A And that is another thing we could use on that particular one, for instance, on some of these big Kenworth trucks. Some of these big trucks, they have a break down, and they have to have a battery, and we have to find out some way of getting them out there.”  
(R. 516)

Mr. L. W. Cracroft of Hemingway & Moser Company in Salt Lake City ships wholesale cigars, cigarettes, candy and sundries to “All of Utah”.

“Q And could you describe the type of commodities that you ship and the occasions when you have such shipments that you use express service on.

A Specifically express service?

Q That you could use this type of express service on.

A I would say that we have occasion for express shipments of this kind about twenty-five or thirty times a week.

Q And what transportation do you now use on them, Mr. Cracroft?

A We use bus lines, we use some parcel post, sometimes we use our own transportation if we are in a bad enough fix.

Q I take it from your expression that you would probably prefer not to use your own transportation.

A We would.

Q Now, have you had any problems in connection with the bus service you have had to use?

A Our particular problem is the diffi-

culty of delivering goods to the bus lines.

Shipments of this type for us generally should go to the bus lines between 10:00 in the morning and noon and between perhaps 3:00 o'clock and 5:00 or 5:30 in the afternoon, and those are the times when our delivery men themselves are out on their routes.

Q Would it then be of convenience to your company to have a carrier providing pickup and delivery service in connection with the express shipments?

A It would.

Q And are you here supporting the application of Wycoff Company to provide that service?

A Yes." (R. 519-520)

Mr. Merrill B. Murdock of the American Red Cross Blood Center appeared in support of the application for an additional service in the movement of perishable blood in and out of the center of Salt Lake City to and from all parts of the state (R. 554-555)

Q Could you state to the Commission how the services of Wycoff was when it was serving you?

A Very satisfactory.

Q And are you here requesting that that service be renewed?

A We would like to see it renewed, yes.

Q Now, do you need a direct single-line service between the blood center and these points of gathering the blood or distribution at the hospitals?

A Well, we have weekly shipments, see, that go out every week to all these points. It goes out and then the blood is returned at the same time. (R. 557)

Q Do the bus lines provide any pickup for you at the blood center?

A No; we deliver all blood to their depot.

Q And when the blood comes back in by a bus line, do they bring it to your blood center, or must you pick it up?

A We pick it up at the Greyhound Bus Depot.

Q Are you here supporting the application of Wycoff Company to render this transportation of your blood?

A Yes; for blood shipments that are emergencies why we should like to have all the transportation we can get, and these emergencies come anytime, and sometimes transportation isn't available it is another, and we can get that shipment out.

Q I take it you don't intend to divert all of your shipments to Wycoff, but you want it for emergency service.

A Well, we have quite a lot of emergency shipments, see, as well as weekly, and we use the earlier —

MR. WORSLEY: Mr. Murdock, I hate to break in again —

A We try to use the fastest transportation we can get, that is, the quickest, when the emergency call comes in." (R. 559)

Mr. W. N. Allen of Physicians Supply Company

of Salt Lake City testified that they ship sutures and general supplies (other than drugs) to physicians and hospitals, "to any place where there is a doctor or a hospital." (R. 567)

“Q Could you state what problems if any you are now encountering in the public transportation?

A Well, we use the mails for a lot of our small shipments, and in the regular course of our business they are adequate, except that a lot of the commodities we ship we can't ship by mail.

Q Could you enumerate some of these items that the mail will not take?

A Well, we have a lot of items that are anesthetics, like ether, chloroform, ethyl chloride, cyclo-propane — that is just to mention a few of them — that are inflammable, and, of course, we can't ship those by mail.

We have a lot of chemicals that are used in diagnosis of various diseases and that are very important to a laboratory that contain very caustic acid and chemicals that are not allowed in the mail.

Q Now, have you had occasion to use the bus service between the points in the state of Utah?

A Yes, we do. We have emergencies where we use the bus service, and there again, they won't carry any of these items that are inflammable or explosive.

Q Will they handle the corrosive items, such as the acid?



A No; we are not allowed to ship that on the bus, because that goes in with other baggage, and I presume peoples personal baggage, and if one of these bottles broke there would be a terrific amount of damage done. (R. 568)

Q Mr. Allen, I take it from what you say that the mails and the bus lines give you the service you require except for some items which you have described, which they are unable to carry; is that correct?

A Yes. They definitely can't handle these items that I have described, but, on the other hand, there are times where an emergency occurs and you have to go down to the store after hours or on a Sunday or a Saturday, and then you have to chase all over town trying to find a bus line or to drive it down in your own car to a bus depot or other point of pickup, where if we had a service that picked up seven days a week it would certainly be an advantage to us.

Q Were you aware of the fact, for example, that Lakeshore Motor Coach Lines, for a shipment to Ogden, does render pickup service?

A Well, I don't know whether they do or not. Last week I shipped an electrocardiograph from Ogden to Salt Lake, and I had to go over to the Lakeshore line to get it on the coach or bus or whatever you want to call it, and it was an emergency — it was a heart testing machine — and I put on the package to please call the firm when it arrived in Salt Lake, because I wanted it fixed that day and back the next day, so we went over to the

Lakeshore lines and picked it up, and when we shipped it back we shipped it by Lakeshore lines, and we took it to the bus, and I presume — now I can't tell you this— that my Ogden medical lab had to go over to the bus line to pick it up on the other end. (R. 571-72)

Mr. Paul F. Potter of Skaggs Drug Center, Inc. testified that they ship from Salt Lake City to Ogden and Provo, general drugs, film, developing and sundries for their stores there. He was asked about their needs for services and said,

“A Well, there are times when we have emergency shipments from these various communities, transfers from one store to another and purchases of merchandise from McKesson and Robbins in Ogden, and the local units from one location to the other. Photographing and development would be particularly beneficial to us — if we had daily pick-up service, it would be essential and important to us — we would expand our operations tremendously if we could get shipments into these communities quickly and into other communities in the state of Utah, without limitation, or other communities so far as film developing and that sort of thing.

Q Now, as between your stores on emergency shipments, what type of service do you need for that?

A Well, we need quick service. I mean, we maintain large pharmacies, and we supply other drug stores in the community. I would think normally our pharmacy is better inventoried than the small drug stores in the com-

munities, and many times we would buy for others.

Q Have you attempted to use other means of public transportation to supplement your own trucks?

A Yes, I can't give you any specific times, but in discussing the things with the managers of our stores, they sometimes use the buses.

Q Has that bus service been satisfactory for your company?

A No, there is always the matter of time of carrying it to the bus stations and seeing that it is delivered or picked up when it is received at the other end.

Q Have the bus lines, so far as you know, tendered to your company pickup and delivery service?

A Well, we have never seen any bus companies soliciting our business, we have never had any soliciting on business I know of." (R. 595-96)

Mr. George Brundage of Smith-Faus Wholesale Drugs in Salt Lake City has charge of all traffic and shipments. They serve "around five hundred" drug stores and on shipments under 100 pounds they use, "Any available mode that we can find. We use truck lines, busses, airlines, our own trucks and so forth." (R. 616) On cross examination he said in part:

"Q Mr. Brundage, what percentage

would you say at the present time of your shipping is done by common motor carriers, bus lines, and, if any, parcel post?

A Well, I would say that probably 35 % to 40 % will go by the truck lines, and the rest of it would be divided between parcel post, buses, etc.

Q Well it is about a third each, in a very rough sense?

A In a very rough sense, yes.

Q Now, I take it from what you say that your problem with the bus lines has been one of taking the merchandise to the bus depot?

A That is correct.

Q Now, is the problem there the fact of taking it, or has it been actually one of congestion at the depot when you get there?

A Well, it is congestion at the depot when we get there trying to get up to the bus parking facilities, and so forth. (R. 620)

On redirect he stated:

“Q You were asked concerning the situation of the bus service. Does Lewis Brothers Stages provide pickup and delivery service.

A No, they do not.

Q And are there certain commodities you send out that the buses will not handle?

A Yes, the large bulky items.

Q Do you have any contaminating items of any type to sell that the bus will not handle?

A Yes, we do.

Q And what variety would they be?

A Oh, acids and things that are inflammable, chloroform and ether.

Q And none of the bus lines, I take it, will handle those?

A That's right.

Q And is that another reason for supporting this application?

A That is another reason for it." (R. 632-33)

Mr. John C. Smith, owner of Service Station Supplies in Salt Lake City testified that they have "a bad need" for the express service proposed by Wycoff (R. 663).

"Q Have you had occasion to use the bus service on any of your commodities?

A Yes.

Q Are there any of your commodities you handle the bus will not take?

A Yes.

Q Will you tell us what those are.

A Computers, gas pumps, items with liquid in they won't accept, and those have had liquid in. We drain it all we can, but we can't get it all out. We send them parcel post." (R. 665)

Later on cross examination he said:

"Q Your problem with the bus lines is, for example, — it is the fact that you don't want to take it from your place of business over to the bus terminal?

A No, it isn't only that, friend.

Q What is your other problem?

A We have stuff that the bus line won't receive on account of the length and size of it. There is only certain movements the bus lines will take for us, the small packages.

Q Let's assume there are certain items the bus lines won't take — we will exclude those for a moment — other than those items then your bus service is satisfactory?

A Our bus service?

Q The bus service, and I am trying to pin it to 91.

A You take our little stuff, friend — I will explain that more thoroughly to you. We have a pile of little stuff as high as this table at night to get out. We have to trail down to the post office and send it parcel post. Then, if it is a little too long or too wide, they won't take it." (R. 672)

The parts manager of General Motors Truck & Coach Division at Salt Lake City, Mr. Gordon Haycock, testified as to their use of all of the truck and bus lines to all parts of Utah.

"Q What type of transportation do you use at the present time?

A About every type there is available.

Q Would the availability of the applicant's express service, leaving at the time that the Deseret News and the Tribune are published to all points in the state of Utah, be of any assistance to you?

A For some of the merchandise, yes.

Q Could you tell us what problems, if any, you have had say with the bus service in Utah?

A In my opinion there are two opportunities I can say have been a problem. One is size, and another is the type of parts we ship.

If we ship an axle shaft, it has to be wrapped. Anything, I believe over 65 pounds why we have difficulty in getting them to take it.

COM. BUDGE: He is referring to buses?

A Buses, yes.

Q Is it convenient for you to have to wrap say an axle shaft before you are permitted to ship it on a bus?

A That is one of our main objectives to the bus schedules." (R. 683-84)

Mr. Roy Winter of California Ink in Salt Lake City ships printing ink, graphic arts supplies, acids, film, metal, etc. to all points of Utah. (R. 700)

"Q Could you state what circumstances you use the buses or would use this express service?

A Well, in the case of a customer calling for a rush order, either ink, maybe a pound or two. But, occasionally — you know, we make many specials, and these fellows will order them, and it is sometimes rather difficult to know just how much ink a job will take, and they will run out maybe 5:00 or 6:00 o'clock in the evening, or 10:00 o'clock,

and we have to throw it through the mail and meet it, and usually we get it on the bus.

Q When you say specials, do you mean special colors you compound there?

A Yes, I might bring this up for you gentlemen, you may think of ink in relation to writing fluids. We do not call writing fluids ink in our business. Printing ink is a complex chemical compound. Many of you have probably seen it made from pigments, varnishes, adjusters and dryers, and when I speak of milling a compound, you will know what I mean.

Q You have facilities here at Salt Lake for the milling and compounding, do you?

A Yes, we do.

Q Do you have any of your products that you are unable to ship on these buses in these emergencies?

A Now, we get into the graphic arts end — yes, we do. We ship corrosive acids, not many but a few; we ship liquid developers containing analine dyes which would, of course, ruin merchandise if the buckles were broken. I would say that that covers them pretty well.

Q Would this proposed express service be of any advantage to you in shipping that type of commodity in shipments under 100 pounds?

A I think it would.” (R. 702-03)

Mr. R. T. Randolph of Flinco, Inc. in Salt Lake City testified as to the following on (R. 761).



“Q Do you have occasion to ship packages under 100 pounds to various points in the state of Utah?

A Yes, we do.

Q Could you state what commodities they would be?

A Tires, tubes, batteries, filters — automotive, chemicals, anti-freeze.

Q Now, perhaps I can go down some of these. Are you able to use the bus service in the state of Utah in the shipment of tires?

A Yes, we use the bus service.

Q Do you have to take special steps in preparing the tires for transportation when you use the bus service?

A Yes, we have to wrap all black tires.

Q The buses will not accept your black tires without you specially wrap them?

A That's right.

Q Is it convenient for your company to wrap the tires prior to shipment on the buses?

A No; it is expensive.

Q Do the buses provide a pickup and delivery service for you on your transportation?

A That I don't know. We have never used them, we have taken them directly to the bus terminal.

Q How about the batteries, will the buses accept the batteries for transportation?

A No.

Q How about automotive chemicals, will they accept the chemicals for transportation?

A No, I think not. It would be hazardous, to take those on." (R. 761-62)

Later he stated that they market "in almost every town in Utah" (R. 762).

On re-direct he stated:

"Q I notice that in your testimony on cross-examination you referred to automotive chemicals, and I believe some other type of chemicals?

A Power chemicals.

Q Power chemicals?

A Yes.

Q May either of those chemicals be shipped by buses?

A No.

Q And those chemicals, along with the batteries and the acid containers and the black tires unwrapped will not be accepted by the buses?

A That's right." (R. 775)

The Salt Lake Hardware at Salt Lake City does some ten millions of dollars business each year in Utah and was represented by Mr. Walter Koplin, its traffic manager. After stating a need for Wycoff's express service, he testified in part:

"Q And with what frequency do you have shipments under 100 pounds, if you know?

A Every day.

Q What transportation facilities do you use at the present time?

A We use parcel post, motor carrier, railroads. Included in the motor carriers would be bus lines.

Q And do you use bus lines to all points in the state of Utah where they are operating?

A When they can handle the commodity, yes.

Q Have you had any problem in having these small shipments that your company handles move on the buses?

A Yes; there are certain restrictions for safety, and under the regulations they don't find it possible to handle all the types of merchandise in small quantities we want to ship.

Q Perhaps you could explain to the Commission the nature of the commodities you handle, and including those which might be prohibited from movement on the buses.

A First, there is quite a variety of synthetic paints and thinners and related products of that kind, and additionally, ammunition, which often moves in smaller quantities. Both of them are restricted in bus service." (R. 793.)

In this appendix we have not attempted to outline all of the testimony but only to show items in the record which apparently were not called directly to the attention of the Court originally but only by general references in the brief of defendants (pages 3 to 19 inclusive). The record has many other similar references to problems encountered by shippers in the uses of bus service.