

2004

Young Electric Sign Company v. State of Utah, Utah Department of Transportation : Reply Brief

Utah Court of Appeals

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Mark E. Burns; Assistant Attorney General; Mark L. Shurtleff; Utah Attorney General; Attorneys for Defendant/Appellee.

Heidi E. C. Leithead; Parr Waddoups Brown Gee & Loveless; Attorneys for Plaintiff/Appellant.

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IN THE UTAH COURT OF APPEALS

YOUNG ELECTRIC SIGN)
COMPANY, a Utah corporation,)
)
Plaintiff and Appellant,)
)
s.)
)
STATE OF UTAH, by and through)
the UTAH DEPARTMENT OF)
TRANSPORTATION,)
)
Defendant and Appellee.)

Appellate Case No.
20040265-CA

REPLY BRIEF OF APPELLANT
YOUNG ELECTRIC SIGN COMPANY

APPEAL FROM THE SECOND JUDICIAL DISTRICT COURT
IN AND FOR DAVIS COUNTY, STATE OF UTAH

JUDGE DARWIN C. HANSEN, PRESIDING

Mark E. Burns
Assistant Attorney General
Mark L. Shurtleff
Utah Attorney General
60 East 300 South, 5th Floor
P.O. Box 140857
Salt Lake City, UT 84114
Telephone: 801/366-0353

Heidi E. C. Leithead
PARR WADDOUPS BROWN GEE & LOVELESS
185 South State Street, Suite 1300
Salt Lake City, UT 84111
Telephone: 801/532-7840

Attorneys for Plaintiff/Appellant

Attorneys for Defendant/Appellee

Oral Argument Requested

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Utah Attorney General
160 East 300 South, 5th Floor
P.O. Box 140857
Salt Lake City, UT 84114
Telephone: 801/366-0353

Heidi E. C. Leithead
PARR WADDUPS BROWN GEE & LOVELESS
185 South State Street, Suite 1300
Salt Lake City, UT 84111
Telephone: 801/532-7840

Attorneys for Plaintiff/Appellant

Attorneys for Defendant/Appellee

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Section 72-7-505(3)(c)(i)(A) of the Utah Outdoor Advertising Act provides that an outdoor advertising sign may not be located within 500 feet of an interchange (the “no-sign zone”). UTAH CODE ANN. § 72-7-505(3)(c)(i)(A) (LexisNexis Supp. 2003). Section 72-7-505(3)(c)(i)(A) has two parts: first, establishing the regulatory restriction (500 feet from the interchange) and, second, defining how the restriction is to be measured (from the sign to the nearest point of the beginning or ending of pavement widening at the exit from or entrance to the main-traveled way). Both in establishing the parameters of the interchange and then determining the point of widening, the Court must be guided by the definitions provided in the Act and relevant regulations.

UDOT would obfuscate the appropriate analytical framework by urging the Court to interpret the operative statute in reverse order. It urges the Court to determine the point of pavement widening in the context of the measurement clause and then use that point to define the parameters of the interchange. Under UDOT’s argument, the measuring mechanism not only effectively swallows the regulatory requirement but also allows UDOT to ignore the definitions of “point of widening” and “interchange” added to the Act in 1997. Rules of statutory construction do not allow such a result. UDOT’s position therefore should be rejected.

I. THE POINT OF WIDENING IDENTIFIED BY UDOT FAILS TO GIVE EFFECT TO THE 1997 AMENDMENTS TO THE OUTDOOR ADVERTISING ACT.

UDOT argues that “[t]he beginning or ending of pavement widening marks the boundary of the interchange,” and that the point of pavement widening does not occur until the Traffic Lane¹ fully merges into the northbound lanes of I-15. Brief of Appellee at pp. 8, 9. UDOT’s position can be sustained only by failing to give effect to the Utah Legislature’s 1997 amendments to the Outdoor Advertising Act.

A. THE COURT MUST GIVE EFFECT TO THE 1997 AMENDMENT.

Prior to 1997, the Act gave no guidance as to the meaning of the phrase “point of pavement widening.” In 1997, the Utah Legislature amended the Act, defining the term “point of widening” as,

the point of the gore or the point where the intersecting lane begins to parallel the other lanes of traffic, but the point of widening may never be greater than 2,640 feet from the center line of the intersecting highway of the interchange or intersection at grade.

UTAH CODE ANN. § 72-7-502(19) (LexisNexis Supp. 2003).

UDOT argues that reliance on the statutory definition is misplaced because it ignores the existence of the word “pavement” in section 72-7-505(3)(c)(i)(A),

¹ In its opening brief, YESCO defined “Traffic Lane” as the entirety of the traffic lane that allows traffic to transition from Antelope Drive to the northbound lanes of I-15. The Traffic Lane turns northward from Antelope Drive and ends when it fully merges into I-15, a distance of over 2,900 feet from the intersection of I-15 and Antelope Drive. The Traffic Lane includes both an on-ramp and an acceleration lane (under YESCO’s reading of the statute and regulations) or only an on-ramp (under UDOT’s interpretation). Brief of Appellant Young Electric Sign Company (“Brief of Appellant”) at pp. 13-14; Brief of Appellee at p. 8 & Addendum A.

which, according to UDOT, would render this seemingly all-important word superfluous. Brief of Appellee at pp. 9-10. UDOT's argument fails for two reasons.

First, the existence of pavement is inherent from the context of the statute. The statutory definition speaks in terms of intersecting lanes and interstates. Interstates, on-ramps, and acceleration lanes are never unpaved. For instance, the Traffic Lane from Antelope Drive and the three northbound lanes of I-15 initially are separated by unpaved ground. As the Traffic Lane turns north and begins to parallel the three northbound lanes of I-15, the pavement for I-15 widens to meet the pavement from the Traffic Lane, creating a solid field of pavement covering the three northbound lanes of I-15 and the Traffic Lane. This is the point of widening urged by YESCO. The point urged by UDOT is the point where, looking back from the sign location toward the center of the interchange, the pavement of the Traffic Lane fully merges into the northbound lanes of I-15. The existence of pavement is inherent from the statutory context and its practical application. UDOT's argument therefore is a distinction without a difference.

Second, the Court's obligation to give effect to the amendment outweighs any concern that arises because of the omission of the word pavement from the Act's new definition. When a court interprets an amendment, the legislature is presumed to know the prior construction of terms in the original act. An amendment substituting a new term or phrase for one previously construed indicates that the judicial or executive construction of the former term or phrase

did not correspond with the legislative intent and that a different interpretation should be given the new term or phrase. *State of Utah v. Westerman*, 945 P.2d 695, 698 (Utah Ct. App. 1997). Further, words and phrases used in a statute, if also defined by statute, must be construed according to that definition. *Utah State Bar v. Summerhayes & Hayden*, 905 P.2d 867, 871 (1995). See also *Grynberg v. Questar Pipeline Co.*, 2003 UT 8, ¶30, 70 P.3d 1 (when term defined within statute, court should look to definition for guidance to interpret statute). Finally,

In accordance with the general rule of construction that a statute should be read as a whole, as to future transactions the provisions introduced by the amendatory act should be read together with the provisions of the original section that were reenacted or left unchanged, in the amendatory act, as if they had been originally enacted as one section. Effect is to be given to each part, and they are to be interpreted so they do not conflict. . . . If the new provisions and the reenacted or unchanged portions of the original section cannot be harmonized, the new provisions should prevail as the latest declaration of the legislative will.

N.J. SINGER, SUTHERLAND STATUTES AND STATUTORY CONSTRUCTION § 22:34 (6th ed.)

“It is the duty of the court to give due effect to the evident purpose of the amendment.” *Utah Apex Mining Co. v. Industrial Comm’n of Utah*, 248 P. 490 (Utah 1926). It is evident that the Legislature intended for the term “point of widening” to have meaning. That term is used only in the more-wordy phrase “point of pavement widening” and nowhere else in the statute. The only way to comply with applicable rules of statutory construction, and avoid rendering the definition superfluous, is to interpret “point of widening” and “point of pavement

widening” as synonymous. The approach urged by UDOT would render the definition meaningless and should be rejected.

B. ONLY THE POINT OF WIDENING IDENTIFIED BY YESCO MEETS THE REQUIRED STATUTORY DEFINITIONS.

Each party has identified a point of pavement widening. The point of widening urged by YESCO is the point where the paving for the through lanes of I-15 first meets the paving for the on-ramp portion of the Traffic Lane. That point measures 1,164 feet from the intersection of Antelope Drive and I-15. *See* Brief of Appellant at p. 14; R54; *see also* Addendum, Tab C.

UDOT argues, and the district court concluded, that the point of pavement widening does not occur until the point at which the Traffic Lane completely merges into the three northbound lanes of I-15. *See* Brief of Appellee at 7-9 & Addendum A; R166. UDOT reaches its conclusion by ignoring the statutory definition added in 1997. As defined by the statute, “the point of pavement widening may never be greater than 2,640 feet from the center line of the intersecting highway of the interchange or intersection at grade.” UTAH CODE ANN. § 72-7-502(19). The district court recognized its obligation to utilize the definition but failed to acknowledge that the point it identified exceeded the maximum distance limitations imposed by that definition. In any event, it is undisputed that the point identified by both UDOT and the district court is located 2,900 feet beyond the intersection of Antelope Drive and I-15 and therefore beyond the maximum distance from the center of the interchange permitted by the

statute. *See* Brief of Appellant at Addendum, Tab C [R54] and Brief of Appellee at Addendum A.

This Court therefore is faced with determining which of two possible points of widening control the placement of YESCO's proposed sign. The definition added in 1997 makes the decision a clear one. The point urged by UDOT is more than 2,640 feet from the center of the interchange. Only the point of widening identified by YESCO meets the requirement of the statute.²

II. THE TRAFFIC LANE INCLUDES BOTH AN ON-RAMP AND AN ACCELERATION LANE.

From the point of widening identified by YESCO, the Traffic Lane continues on for another 1,738 feet – just short of 6 football fields – before it fully merges into the three northbound lanes of I-15. Using the definition of “acceleration or deceleration lanes” promulgated under the Outdoor Advertising Act, YESCO asserts that the Traffic Lane turns from an on-ramp to an acceleration lane, as defined by the regulations, 500 feet past the point of widening identified by YESCO. Because an interchange does not, by definition, include acceleration lanes, the point at which the on-ramp becomes an acceleration lane marks the end of the interchange. The no-sign zone continues for another 500 feet past that point. *See* Brief of Appellant at pp. 13-19; R54 (*see also* Addendum C).

² UDOT claims that YESCO's representative conceded that YESCO's proposed sign location fell within 500 feet of the point of pavement widening. *See* Brief of Appellee at 7-8. UDOT's argument is misleading. A review of the full deposition testimony establishes that YESCO's representative only agreed that the proposed sign location was located within 500 feet of a point of widening *as defined by UDOT*. He did not agree that UDOT's interpretation was accurate. *See* R134-35.

UDOT opines, without explanation or analysis, that no acceleration lane exists at the interchange of I-15 and Antelope Drive. *See* Brief of Appellee at 9. UDOT's position is inconsistent with the relevant regulations.

Regulations promulgated under the Outdoor Advertising Act define "acceleration and deceleration lanes" as "speed change lanes created for the purpose of enabling a vehicle to increase or decrease its speed to merge into, or out of, traffic on the main-traveled way." UTAH ADMIN. R. 933-2-3(2) (LexisNexis 2004). It is evident that a traffic lane that extends for such a great length past the point where the on-ramp meets and begins to parallel the interstate lanes before merging into the interstate traffic is designed for the purpose of allowing traffic to increase speed to merge into the interstate lanes. *Cf. Hathaway v. Marx*, 439 P.2d 850, 851 (Utah 1968) (highway that is widened 1/10th of a mile both before and after an intersecting road [for a total of 1,056 feet³] provides an extra lane for acceleration and deceleration in entering or leaving the highway).

UDOT wholly fails to articulate why a lane that extends for the length of six football fields, with the obvious purpose of allowing traffic to gain speed to merge into the interstate lanes, does not fit the express definition of an acceleration lane as articulated by Rule 933-2-3(2). Instead, UDOT argues the regulation does not mean what it says. According to UDOT, Rule 933-2-3(2) defines a single lane

³ A mile measures 5,280 feet. It therefore follows that 1/10th of a mile is 528 feet. If the highway is widened 1/10th of a mile both before and after the intersecting roadway, the total distance widened would be 1,056 feet.

that parallels the interstate lanes and runs from an on-ramp to the next available exit ramp. *See* Brief of Appellee at pp. 8-9 & Addendum C. UDOT's strained interpretation is inconsistent with the rule's language and internal structure. *See* Brief of Appellant at pp. 23-25.⁴ Nothing in the language of the rule or the statute prevents an acceleration lane from gradually merging into the through lanes of the interstate, and the Court may take judicial notice that this is a common highway configuration. UDOT's reading of the regulation does not "'sensibly conform[] to the wording and purpose' of the regulation" and should be rejected. *State of Utah v. Mooney*, 2004 UT 49, ¶ 24, 93 P.3d 420 (citation omitted).

UDOT also argues that YESCO treats the terms on-ramp and acceleration lane as synonymous, a reading that UDOT claims robs it of the ability to control the placement of outdoor advertising signs. *See* Brief of Appellee at 8-9. UDOT's characterization of YESCO's position is inaccurate. YESCO consistently has recognized that the Traffic Lane consists of two parts – the on-ramp and the acceleration lane. The on-ramp begins at the point where the Traffic Lane leaves

⁴ UDOT complains that YESCO did not raise below its argument that UDOT's interpretation of the statute is more properly classified as an auxillary lane, as defined by UTAH CODE ANN. § 41-6-53.5(1)(b) (LexisNexis Supp. 2003). UDOT fails to note, however, that it did not raise its interpretation of the regulation until its final reply brief filed with the district court and then only in a footnote. [R148, 150, 156] YESCO was not entitled to any further briefing at that point. Further, YESCO consistently has taken the position that the Traffic Lane becomes an acceleration lane 500 feet past the point of widening identified by YESCO. Interestingly, UDOT makes no effort at this point to distinguish its interpretation of Rule 933-2-3(2) from the definition of an auxillary lane found in section 41-5-63.5 (which also is excluded from the definition of an interchange). *See* UTAH CODE ANN. § 72-7-502(9) (LEXISNEXIS SUPP. 2003).

Antelope Drive and extends to a point 500 feet past the point of widening identified by YESCO. At that point, the Traffic Lane becomes an acceleration lane. See Brief of Appellant at 16-18. YESCO recognizes the on-ramp and the acceleration lane as separate parts of the Traffic Lane. It does not treat them as synonymous.

UDOT's claim that YESCO's position leaves it without adequate control over the placement of outdoor advertising signs is solved by recognizing that the Traffic Lane at issue includes an acceleration lane, as defined by the regulations. The Traffic Lane becomes an acceleration lane 500 feet past the point of widening. At that point, the interchange ends. The no-sign zone extends 500 feet past the interchange and into the area of the acceleration lane. Interpreting the statute in this manner does not effectively eliminate all control over billboard spacing around interchanges, as UDOT argues, but instead effectively implements it in accordance with the language of the statutes and rules.

By contrast, UDOT seeks to judicially extend the no-sign zone beyond this point, and to defeat the language employed by the Legislature and in the administrative rules, by imploring the Court to ignore rules of construction as they apply to the statute and the administrative rules and further to cast a blind eye to the statute's requirement that the point of widening fall no more than 2,640 feet from the intersection of Antelope Drive and I-15. It is unnecessary for the Court to disregard the will of the legislature to arrive at a sensible meaning of the statute

and rules, as UDOT urges. The interpretation offered by YESCO harmonizes all parts of the statutory and regulatory language.

Finally, UDOT argues that the “beginning or ending of pavement widening marks the boundary of the interchange.” Brief of Appellee at 8. Once again, UDOT fails to recognize the impact of the 1997 amendments, which defined the term “interchange” or “intersection” as

those areas and their approaches where traffic is channeled off or onto an interstate route, **excluding** the deceleration lanes, **acceleration lanes**, or feeder systems, from or to another federal, state, county, city, or other route.

UTAH CODE ANN. § 72-7-502(9) (emphasis added). The fallacy of UDOT’s position is evident when analyzing both potential fact patterns before this Court: first, those where an acceleration lane exists and allows traffic to increase speed to merge into the interstate lanes and, second, those where an acceleration (or auxiliary) lane begins at an on-ramp and continues as a parallel lane of traffic until the next available off-ramp.

First, in those instances where an acceleration lane exists for the purpose of allowing traffic to increase speed to merge into the through lanes of the interstate (as an acceleration lane is defined by Rule 933-2-3(2)), under UDOT’s argument, the point of widening would not occur until the acceleration lane fully merges with the interstate lanes. If the point of widening defines the end of the interchange, then the acceleration lane will necessarily be within the interchange, a result not allowed by the statute. Thus, unless UDOT intends categorically to deny the

existence of an acceleration lane in each and every instance, UDOT's approach ignores the definition of interchange, which specifically excludes acceleration lanes.

Second, if, as UDOT alleges, an acceleration lane does not merge into the freeway but instead continues as a parallel lane until the next interstate exit (an auxiliary lane as defined by Utah Code Ann. § 41-6-53.5(1)(b)), then the point of widening, under UDOT's scenario, will not occur until the acceleration lane drops off at the next off-ramp. In that event, the entirety of the acceleration lane, as UDOT reads the regulation, is part of the interchange (and, in fact, would be part of both the on-ramp and off-ramp interchanges). This interpretation clearly conflicts with the statutory language that excludes acceleration lanes from any interchange. UDOT's interpretation as applied to either acceleration lane scenario relies on a strained interpretation of the statute and regulations and wholly defies logic.

III. THERE IS NO CONFLICT BETWEEN THE OUTDOOR ADVERTISING ACT AND THE UTAH-FEDERAL AGREEMENT.

The Outdoor Advertising Act provides that,

72-7-515. Utah-Federal Agreement – Severability Clause.

(1) As used in this section, "Utah-Federal Agreement" means the agreement relating to outdoor advertising that is described in Section 72-7-501, and it includes any modifications to the agreement that are signed on behalf of both the state and the United States Secretary of Transportation.

(2) The provisions of this part are subject to and shall be superseded by **conflicting provisions** of the Utah-Federal Agreement.

(3) If any provision of this part or its application to any person or circumstance is found to be unconstitutional, or in conflict with or superseded by the Utah-Federal Agreement, the remainder of this part and the application of the provision to other persons or circumstances shall not be affected by it.

UTAH CODE ANN. § 72-7-515 (LexisNexis 2001) (emphasis added).

UDOT opines that the interpretation of the Outdoor Advertising Act advanced by YESCO conflicts with the measurement mechanism contained in the Utah-Federal Agreement. *See* Appellee's Brief at 11, 14-15. A comparison of the relevant provisions of the Utah-Federal Agreement and the Outdoor Advertising Act demonstrates no such conflict.

A. THE RELEVANT LANGUAGE OF THE OUTDOOR ADVERTISING ACT AND THE UTAH-FEDERAL AGREEMENT IS SUBSTANTIVELY IDENTICAL.

The Utah-Federal Agreement contains only a single provision that addresses the placement of outdoor advertising signs in relation to an intersection.

That single provision reads,

No sign may be located on an interstate highway or freeway within 500 feet of an interchange, or intersection at grade, or rest area (measured along the interstate highway or freeway from the sign to the nearest point of the beginning or ending of pavement widening at the exit from or entrance to the main-traveled way).

UTAH ADMIN. R. 933-5-2(III), Spacing of Signs 2(b) (LexisNexis 2004).

This provision of the Utah-Federal Agreement is substantively identical to section 72-7-505(3)(c)(i)(A) of the Outdoor Advertising Act. Because there is no conflict between the language of section 72-7-505(3)(c)(i)(A) and the Utah-

Federal Agreement, no “conflicting provision” exists, and the severability provision of section 72-7-515 does not come into play.

UDOT nonetheless suggests that, based on section 72-7-515, the Court should ignore the Outdoor Advertising Act’s statutory definition of “point of widening” and “intersection” because the Utah-Federal Agreement does not contain similar definitions. *See* Appellee’s Brief at 11. The language of section 72-7-515 should not be read so broadly.

The Utah-Federal Agreement contains several definitions. *See* UTAH ADMIN. R. 933-5-2(I)(A)-(I) (LexisNexis 2004). To show a “conflicting provision,” UDOT would have to point to definitions of “intersection” and “point of widening” in the Utah-Federal Agreement that conflict with those found in the Outdoor Advertising Act. The Utah-Federal Agreement defines neither term. Again, without those definitions, no “conflicting provision” exists that would be subject to the severability provision of section 75-7-515.

Further, UDOT has failed to provide any analysis or other basis for its bald assertion that the meaning ascribed to the terms “intersection” and “point of widening” by the Utah Legislature and the administrative rules varies from that of the Utah-Federal Agreement. Indeed, there is no basis for such a claim. There simply is nothing in the statute or the Utah-Federal Agreement that requires the Utah Legislature to refrain from providing greater clarity to its citizens and agencies.

B. UDOT CANNOT RELY ON THE SEVERABILITY CLAUSE TO AVOID THE DEFINITIONS SET OUT IN THE OUTDOOR ADVERTISING ACT.

Unable to point to any actual conflict between the Outdoor Advertising Act and the Utah-Federal Agreement, UDOT argues that YESCO's interpretation conflicts with the measurement standard set out in the Utah-Federal Agreement. The argument is, again, unsupported and without merit.

First, UDOT does not explain why YESCO's interpretation creates the conflict that UDOT claims. Its position is nothing more than a conclusory statement unsupported by any helpful analysis.

Second, any effort to discern a basis for UDOT's position fails. The regulatory requirement of both the Outdoor Advertising Act and the Utah-Federal Agreement provides that signs may not be located within 500 feet of an interchange. *Compare* UTAH CODE ANN. § 72-7-505(3)(c)(i)(A) and UTAH ADMIN. R. 933-5-2(III), Spacing of Signs (2)(b). Each then provides a measuring mechanism by which the 500 feet is measured. The measuring mechanism is nothing more or less than a mechanical exercise. It does nothing to define the parameters of the interchange and comes into play only after those parameters are first established. *See* Brief of Appellant at 26-27.

This reading is underscored by the structure of the Utah-Federal Agreement. There, the measuring mechanism is set out in a parenthetical that follows the regulatory requirement. Under UDOT's approach, the parenthetical clause would operate with little or no regard for the regulatory portion of the

regulation. The only thing that matters is whether UDOT can identify a point of pavement widening within 500 feet of the proposed sign. While UDOT may find that approach easier, and more to its liking, it is not the proper analysis. UDOT first must identify the boundaries of the interchange, using the definitions dictated by the Outdoor Advertising Act. Once those boundaries are determined, UDOT may then measure to determine whether the proposed sign falls within 500 feet of those boundaries. To hold otherwise allows a measuring mechanism set out in a parenthetical to swallow the relevant regulatory language.

IV. YESCO HAS NOT REQUESTED A NONCONFORMING SIGN LOCATION.

UDOT also argues that its regulations do not allow a nonconforming sign to be relocated or removed. UDOT's argument is a red herring. YESCO is not requesting a permit to move a sign from one non-conforming location to another. YESCO removed the original sign at the request of the landowner. YESCO then applied for a permit to erect a new sign on the north end of the landowner's property. Brief of Appellee at 3; R. 32, 39, 77, 82, 84-85; 2, 20, 62, 76, 82. The new sign site proposed by YESCO conforms with the requirements of the current statute. The sign will be located 800 feet past the no-sign zone for the Antelope Drive/Northbound I-15 Interchange. There is no violation of the statute.

UDOT makes the nonsensical argument that, because YESCO's original sign was "non-conforming," it did not have the right to request a permit to erect a new sign in a conforming location. *See* Brief of Appellee at 13. A review of Rule 933-2-5, on which UDOT relies, demonstrates that it has the ultimate goal of

removing, in a fair and reasonable manner, nonconforming signs as they become old, damaged, or unkept. UTAH ADMIN. R. 933-2-5 (LexisNexis 2004). YESCO removed a nonconforming sign, furthering this goal. It would thwart the purpose of that regulation if a company were punished for removing an old, nonconforming sign by thereby being prohibited from constructing a sign on a new site that fully conforms with the existing statute.

CONCLUSION

Two issues ultimately determine the appropriate application of the Outdoor Advertising Act – the parameters of the interchange and the point of pavement widening. UDOT's position on both issues must be rejected because (a) the point of widening on which it relies falls outside the 2,640 foot limitation set out in the Act's definition and (b) UDOT fails to recognize the existence of the acceleration lane, as defined by the relevant regulation. Only the parameters of the interchange and the point of widening identified by YESCO give effect to the 1997 amendments to the Act and thus satisfy both the controlling statutory and regulatory language. The decision of the district court therefore should be reversed, and UDOT should be directed to issue the sign permit requested by YESCO.

RESPECTFULLY SUBMITTED this 15th day of November, 2004.

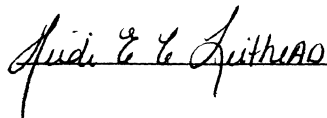
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By: Heidi E. C. Leithead
Heidi E. C. Leithead

CERTIFICATE OF SERVICE

I, Heidi E. C. Leithead, certify that on the 15th day of August, 2004, I served the attached Reply Brief of Appellant Young Electric Sign Company on counsel for appellee State of Utah, by and through the Utah Department of Transportation, by mailing two (2) correct and complete copies thereof by first class mail with sufficient postage prepaid to the following address:

Mark E. Burns
Assistant Attorney General
Mark L. Shurtleff
Utah Attorney General
160 East 300 South, 5th Floor
P.O. Box 140857
Salt Lake City, UT 84114

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