

1970

**Lake Shore Motor Coach Lines, Inc., Greyhound Lines, Inc.,
Continental Trailways Bus System, Inc., American Bus Lines, Inc.,
Denver-Salt Lake-Pacific Stages, Inc., and Armored Motors Service
v. Public Service Commission of Utah; Donald Hacking, Hal S.
Bennett And John T. Vernieu, Commissioners of the Public
Service Commission of Utah; And Wycoff Company Incorporated :
Brief of Defendants**

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

Original Brief submitted to the Utah Supreme Court; funding for digitization provided by the Institute of Museum and Library Services through the Library Services and Technology Act, administered by the Utah State Library, and sponsored by the S.J. Quinney Law Library; machine-generated OCR, may contain errors. Harry D. Pugsley and Vernon B. Romney; Attorneys for Defendant

Recommended Citation

Brief of Respondent, *Lake Shore v. Utah Public Service Comm'n*, No. 11945 (1970).
https://digitalcommons.law.byu.edu/uofu_sc2/5195

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

IN THE SUPREME COURT OF THE STATE OF UTAH

LAKE SHORE MOTOR COACH LINES, INC.,
GREYHOUND LINES, INC., CONTINENTAL
TRAILWAYS BUS SYSTEM, INC., AMERICAN
BUS LINES, INC., DENVER-SALT LAKE-
PACIFIC STAGES, INC., and ARMORED
MOTORS SERVICE,

Plaintiffs,

vs.

PUBLIC SERVICE COMMISSION OF UTAH;
DONALD HACKING, HAL S. BENNETT, and
JOHN T. VERNIEU, COMMISSIONERS OF
THE PUBLIC SERVICE COMMISSION OF
UTAH; and WYCOFF COMPANY, INCORPO-
RATED, a corporation,

Defendants.

Case No.
11945

BRIEF OF DEFENDANTS

REVIEW OF AN ORDER OF THE PUBLIC SERVICE COMMISSION OF UTAH

HARRY D. PUGSLEY
Attorney for Defendant
Wycoff Company, Incorporated

VERNON B. ROMNEY
Attorney General

Attorney for Defendant
Public Service Commission of Utah
and its Commissioners

WOOD R. WORSLEY and
STUART L. POELMAN
of WORSLEY, SNOW &
CHRISTENSEN

Attorneys for Plaintiff

FILED

JUN 22 1970

Clerk, Supreme Court, Utah

TABLE OF CONTENTS

	Page
STATEMENT OF KIND OF CASE	1
DISPOSITION OF CASE	2
RELIEF SOUGHT ON REVIEW	2
STATEMENT OF FACTS	2
ARGUMENT	14
POINT I.	
THE ONLY NEW AREA OF SERVICE BY THE ORDER ADDED WAS BETWEEN SALT LAKE CITY AND OGDEN.	14
POINT II.	
AN ABUNDANCE OF COMPETENT EVIDENCE ON CONVENIENCE AND NECESSITY SUSTAINED THE AWARD OF THE OGDEN-SALT LAKE SERVICE TO WY-COFF.	15
POINT III.	
THE ONLY PLAINTIFF AFFECTED BY THE OGDEN-SALT LAKE AUTHORIZATION IS LAKE SHORE.	15
POINT IV	
THE REMOVAL OF THE TEN-YEAR OLD 500-POUND PER SCHEDULE RESTRICTION AND THE TIE TO NEWSPAPER PUBLICATION TIMES WAS SUPPORTED BY ADEQUATE EVIDENCE AND IS CONSISTENT WITH SOUND PRINCIPLES OF REGULATION.	22

	Page
POINT V	
THE COMMISSION'S ORDER IS NOT ARBITRARY OR CAPRICIOUS AND WILL NOT RESULT IN DESTRUCTION OF ANY EXISTING CARRIER SERVICES.	26
POINT VI	
THE COMMISSION WEIGHED AND CONSIDERED THE SERVICE OF EXISTING CARRIERS, BOTH BUS AND TRUCK, AND THIS COURT'S DIRECTIVES BEFORE EXERCISING ITS STATUTORY RESPONSIBILITIES.	32
CONCLUSION	35
APPENDIX	A-1

STATUTES CITED

54-7-16 U.C.A. 1953	33
----------------------------------	----

CASES CITED

Prichard Transfer v. W. S. Hatch Co., 21 Utah 2d 106, 441 P.2d 135	30
Armored Motors Service v. Public Service Commission, 23 Utah 2d 418, 464 P. 2d 582 (January 28, 1970)	33
Lewis Bros. Stages, et al. v. Public Service Commission, 22 Utah 2d 287, 342 P. 2d 318	11
Wycoff Company, Incorporated, Extension - So. Idaho 1968, F.C.C. 36,250	21

IN THE SUPREME COURT OF THE STATE OF UTAH

LAKE SHORE MOTOR COACH LINES, INC.,
GREYHOUND LINES, INC., CONTINENTAL
TRAILWAYS BUS SYSTEM, INC., AMERICAN
BUS LINES, INC., DENVER-SALT LAKE-
PACIFIC STAGES, INC., and ARMORED
MOTORS SERVICE,

Plaintiffs,

vs.

PUBLIC SERVICE COMMISSION OF UTAH;
DONALD HACKING, HAL S. BENNETT, and
JOHN T. VERNIEU, COMMISSIONERS OF
THE PUBLIC SERVICE COMMISSION OF
UTAH; and WYCOFF COMPANY, INCORPO-
RATED, a corporation,

Defendants.

Case No.
11945

BRIEF OF DEFENDANTS

STATEMENT OF KIND OF CASE

This case involves an application to the Public Service Commission of Utah by the defendant Wycoff Company Incorporated for a Certificate of Public Convenience and Necessity which would eliminate certain specified restrictions imposed upon Wycoff's express authority in the State of Utah in 1958.

DISPOSITION OF CASE

By its Report and Order issued November 28, 1969, the Public Service Commission of Utah granted to Wycoff Company, Incorporated a certificate of public convenience and necessity number 1679 authorizing it to operate as a common carrier by motor vehicle for transportation of general commodities in express service between Salt Lake City and Ogden with 100 pound maximum weight per shipment and eliminating the prior statewide restriction of 500 pounds per schedule and concurrent newspaper scheduling.

RELIEF SOUGHT ON REVIEW

Plaintiffs, being 4 out of 15 protestants, seek to have the Order of the Public Service Commission issued November 28, 1969, set aside.

STATEMENT OF FACTS

By its order of February 3, 1959, the defendant Public Service Commission of Utah, hereinafter referred to as "Commission", issued Certificate of Convenience and Necessity No. 1162 Sub 2 to defendant Wycoff Company, Incorporated, hereinafter referred to as "Wycoff", authorizing Wycoff to operate as a common carrier by motor vehicle for the transportation of general commodities of 100 pounds or less in weight, in express service, between all points and places in the

state of Utah according to schedules filed, except between Salt Lake City and Ogden, between Salt Lake City and Park City, between Salt Lake City and Bingham Canyon, between Salt Lake City and Wendover, and between Salt Lake City and Tooele. This statewide authority was subject to two primary restrictions:

A. no more than 500 pounds of express items were to be transported on a single schedule, and

B. the schedules shall coincide with the movements of Deseret News and Salt Lake Tribune newspapers.

By this application, Wycoff sought to obtain the same 100-pound express authority between Salt Lake City and Ogden, between Salt Lake City and Tooele, and between Salt Lake City and Park City. Also, Wycoff sought to have the 500-pound per schedule and the newspaper schedule coinciding eliminated. It also asked permission on a statewide basis to transport up to 200 pounds per day in multiple packages between the same shipper and consignee.

The application was protested by all of the regular route trucklines and bus lines and went to hearing at Salt Lake City, Utah, starting in July 1969. Applicant and some 57 public shipper witnesses supported the application. After hearings were completed, oral arguments of counsel were presented to the Commissioners.

The Report and Order of the Commission (R. 1231) on November 28, 1969, granted the application

in part and denied it in part. The segments of the application *granted* were:

1. Authority between Salt Lake City and Ogden;

2. Elimination of the 500-pound per schedule restriction;

3. Elimination of the requirement that the schedules be tied to newspaper publication times.

The portions of the application *denied* by the Order were:

1. Request for up to 200 pounds per day statewide between the same shipper and consignee;

2. Requested authority between Salt Lake City and Park City; and

3. Requested authority between Salt Lake City and Tooele, Grantsville and Wendover.

The Order (R.1245) then restated all of the Wycoff outstanding authority and defined what a "shipment" is, required Wycoff to file its express schedules and modifications, to give not more than next-day service throughout the State, and to publish special express tariff rates to be approved by the Commission.

Though most common carriers in Utah opposed the application, they have not appealed this decision as the Commission has denied the service request between 100 and 200 pounds. The only motor carrier appealing

is Armored Motor Service which holds only authority to transport "messages and packages not exceeding 100 pounds per item" to and from all points in Salt Lake County, Utah. (R.1037). (Note: Wycoff already had 100-pound express authority between points in Salt Lake County since the 1959 Certificate. Hence, one wonders why Armored is in this case on appeal.) The other plaintiffs are the two transcontinental bus systems, Greyhound and Continental, and the local bus line, Lake Shore Motor Coach Line, which operates between Salt Lake City and Ogden.

Because of the direction of this Court in *Lake Shore v. Bennett*, 8 Utah 293, 333 P.2d 1061 (a similar type case), relative to "the impropriety of making blanket assertions and leaving the responsibility to the Court to ferret out evidence from the record to support it," we've detailed the evidence supporting the items granted by the Order of the Commission and which are attacked by the plaintiffs. We seriously question that the general assertions of the plaintiffs in their brief satisfies the Court's requirements in this respect. The appendix of shipper evidence is directed to the Salt Lake to Ogden area as that is the *only new authority* granted by the Commission to Wycoff.

The sole concern which the two major bus lines, Greyhound and Trailways, would have is the elimination of the 500-pound per schedule phase and the terminating of the newspaper publication time to the Wycoff schedules. The evidence on the elimination of the

500-pound per schedule phase and the newspaper schedules is as follows:

a. these two restrictions were imposed as a result of voluntary stipulations with the truck lines in the Sub 2 hearing in 1958:

b. substantial growth and development has occurred in the state since then;

c. traffic records kept by Wycoff and placed in exhibits and supported by testimony reflect:

1. Prior to September 1967, when the restriction was first removed by the Commission, Wycoff had to refuse many urgent shipments because the weight per schedule had already been reached (R.898).

2. A traffic study exhibit for a typical six days in 1968 (R.907-926) reflects the weights per schedule on all of the areas of service. Each page of the exhibit shows one or more schedules over 500 pounds. At R.910 on Schedule 4 to Ogden and Weber Counties the weights per schedule go from 565 pounds to 6158 pounds on varying days and Schedule 16 to Milford-Beaver-Cedar City, the weight varied from 507 pounds to 2357 pounds.

3. Exhibit 117 (R.1204) is the Directory of Utah Manufacturers and this was admitted to show the population growth to 1966 as com-

pared with 1960, by State, County and City increases. Utah grew in those 6 years from 890,627 to 1,053,000. Salt Lake County grew from 383,035 to 462,000; Davis County, from 64,760 to 95,000; Weber County from 110,744 to 131,000; and Utah County, from 106,991 to 127,000. But a few counties had minimal declines.

4. Exhibit 120 (R.1208) is an expanded traffic study covering 20 different route schedules of Wycoff for the representative days designated by the Commission and protestants in 1968 and 1969. These, too, show that the public requires more than 500 pounds per schedule on almost every day and schedule. Over 6000 freight bills were involved in the study.

5. Exhibit 119 (R.1207) is a published summary of departure and arrival schedules of Wycoff showing time of arrival at terminal and intermediate points.

6. Witnesses identified in the Appendix testified as to extended delays on interline service by protestants when shipments originate at Ogden or points north and are destined to points south of Salt Lake City.

7. Exhibit 118 (R.1205) is a study of freight bills submitted by protestant Barton

which reflect the interline delay when the commodities move by these truck lines through the Salt Lake City gateway.

8. In his verified statement and testimony Mr. Roger Andrus, President of Wycoff testified (R.896) :

The language of the old certificate relating the schedules to newspaper publication times is no longer desirable because of charges in some schedules which have been necessarily made by Wycoff to meet pickup and delivery requirements of United States mail contracts and major air lines schedules on air freight. Generally the company has a schedule at noon time and near midnight to meet publication times of the Deseret News and the Salt Lake Tribune. These radiate into many areas of Utah as well as in interstate commerce. Changing patterns of service have caused the establishment of additional schedules, particularly between Salt Lake City and Ogden, where there are five per day, and 21 per day to and from the Salt Lake City airport, and three per day to Tooele.

Efficiency of operation and better service to the public make possible the movement of express-type traffic for the shippers without waiting for a newspaper schedule. This has been done since the 1967 Certificate and it would be a hardship on the shippers and consignees for such to be discontinued.

Wycoff has over 420 employees. Drivers are trained in the expedited handling of these small packages. The average shipment handled is about 25 pounds, but frequently express-type traffic up to 100 pounds is tendered.

The Commission by its Order directed Wycoff to file and obtain the approval of the Commission on new express-type tariff rates. Plaintiffs in their brief admit that Wycoff has complied but infer that such is improper because such a 20 percent increase was sought and granted (P.21 of brief). Such express rates are under the supervision and approval of the Commission. No protests to the increase by Wycoff were made by any of the plaintiffs. Only one witness out of the 57 tied the formerly lower rates of Wycoff to his support of the application.

Inasmuch as Wycoff already had the up to 100-pound express authority through Salt Lake County, the protest and continued participation of Armored Motors Service is meaningless as it only holds up to 100-pound authority for messages and packages and serves solely in Salt Lake County. This leaves the 3 bus systems as the remaining plaintiffs and their authority and service as here involved are:

A. Greyhound is an interstate bus line with limited service intrastate in Utah. Its Utah authority is shown as Exhibit 18 (R.975) and is generally up and down U.S. 91 from Idaho to St. George but "No local service may be rendered between Salt Lake City and Ogden." Then it operates East and West from Evanston to Wendover. It transports express solely in busses and only if it does not interfere with the luggage of passengers. It does not provide either pickup or delivery service.

B. Continental Trailways system includes American Bus Lines and the Denver-Salt Lake-Pacific Stages as they operate as an entity. The passenger and baggage authority is similar to that of Greyhound and as to *express* there is a specific restriction in the certificate (R.930) "so long as there is no interference with the safety, comfort and convenience of the passengers". The authority North from Salt Lake excludes local service between Salt Lake City and Ogden (R.935) and between Salt Lake City and Provo (R.937). Otherwise, these operate all four directions out of Salt Lake City in their interstate service. The express is carried in the busses along with baggage if there is space. No pickup or delivery service is provided.

C. Lake Shore Motor Coach Lines operates solely between Salt Lake City and Ogden its passenger service. It has a number of schedules and does transport "passengers, express and baggage" (R.1009) with a 150-pound shipment limit in the terminal areas (R.1013). No direct pickup or delivery service is provided at Salt Lake City or any intermediate point. The ownership of this line was sold to new parties shortly before the hearing. Wycoff has been directly competing for the Ogden-Salt Lake express traffic since 1967 under the Sub 14 authorization so no change in status would occur as a result of the new certificate making this service to the public permanent.

Finally, we should point out in the statement of facts presented by the plaintiffs certain errors in their brief. At page 4 reference is made to the Sub 14 proceeding and its referral back to the Commission for further proceedings "until such time as the record is completed and reviewed by the Commission and returned to this court." *Lewis Bros. Stages et al v. Public Service Commission*, 22 Utah 2d 287, 342 P.2d 318. Plaintiffs in this proceeding at page 4 say that Wycoff moved to dismiss its case "instead of producing the transcript in Case No. 4252 Sub 14 as instructed by this court." This is a deliberate misstatement and we've quoted the actual order of this Court above. Counsel well knows that it has always been the responsibility in every appeal from the Public Service Commission for the appealing party to procure and provide the transcript, just as in this very case the plaintiffs have done so.

Reference is made to a grant of temporary authority to Wycoff, June 11, 1969 (P.5 of brief). No appeal was ever taken from that Order of the Commission by plaintiffs or any one else. Plaintiffs, at page 8, have attempted to characterize the service of all of the general commodity regular route truck lines by generalities and page references. Not a single one of these have appealed. The only truck line directly affected is Barton Truck Line which serves between Salt Lake City and Ogden and when the Commission limited Wycoff to 100-pound shipments, no appeal was taken

by it. Barton also serves between Salt Lake City and Tooele and Wendover as does Lewis Bros. Stages. This area of proposed service was denied to Wycoff because of inadequate proof of need.

The witnesses identified in the attached appendix relate primarily to the Ogden- Salt Lake and intermediate points. In addition, statewide shippers appeared in support. The Commission in its findings carefully reviewed the service of all protestants, busses, and trucklines (R.1234-1237). At 1238-7 we find the Commission reviewed and considered the prior decision of this Court in 1958 and acted with full awareness of the solemn duty imposed upon it. At R.1243 (P.13 of the Report and Order of November 28, 1969) we read:

The general commodity truck lines seem to satisfy their shippers' demands on heavier shipments of freight. The buses are so restricted in many phases of operations that their express service does not adequately meet the present and developing business requirements in the areas for which they hold authority. Particularly, lack of pickup and delivery service is a disadvantage to many shippers and receivers. The Commission concludes that to the extent above set forth and with respect to the areas above set forth the existing express service is inadequate.

There exists in Utah a need for an expanded efficient express service. Single line responsibility to serve the growing industrial and commercial areas of the state with radiating service to the other highway points in Utah is in the public interest and is needed on express ship-

ments not exceeding 100 pounds in weight. The granting of this express service limited to not over 100 pounds per shipment will not result in an unreasonable diversion of traffic from the bus or truck lines.

Wycoff has demonstrated its ability to maintain express-type service on dependable schedules with direct delivery to the consignee, utilizing a simplified-type billing. Shippers in Utah should be given an opportunity to utilize this efficient-type service on shipments not over 100 pounds in weight whenever their business judgment dictates a need for expediting delivery. The Commission should review and determine the proper premium-type rates which are offered for publication on this service. The existing 500 pounds per schedule limitation should be eliminated as such is contrary to good operating practice and results in discrimination in services rendered. Nor must the Wycoff express schedules necessarily be tied to the published schedules made available through the carrying of daily newspapers and the United States mail, as this, in our judgment unreasonably restricts the rapid transit of express and serves only to defeat the purpose for which the Wycoff authority is here granted.

We feel certain that the out-of-context, partial quotes from two unidentified shippers of purported "complete satisfaction" with protestants' services (P.19 of brief) will not be relied upon by the Court, no more than the assertion that the traffic studies and statistics presented by Wycoff "if not properly read" can mislead the Court into closing its eyes to the factual volume of traffic on the various schedules. The Commission read

the statistics, heard the evidence and cross examinations of witnesses, and understood the traffic studies.

In the course of the hearing, at the urging of protestants, 10 days (so-called typical service days) were selected and all freight bills of Wycoff were produced at the direction of the Commission. These were about 6000 and were turned to the protestants for audit and study and several of the exhibits resulted from these studies which extended over two months. Thus full and adequate opportunities were afforded to all parties at the hearing.

Some of the protestants produced their freight bills as ordered (but significantly, none of the present plaintiffs) and Exhibit 118 (R.1205) was developed from the Barton Truck Line bills reflecting delays on the movement of traffic through the Salt Lake gateway from points east and south of Salt Lake to points served by Barton the north. This reflects only 18 per cent next day and an average of 3 days' delay. The Commission has ordered Wycoff to give next-day service on this traffic.

ARGUMENT

POINT I

THE ONLY AREA OF SERVICE BY THE ORDER ADDED WAS BETWEEN SALT LAKE CITY AND OGDEN.

POINT II

AN ABUNDANCE OF COMPETENT EVIDENCE ON CONVENIENCE AND NECESSITY SUSTAINED THE AWARD OF THE OGDEN-SALT LAKE SERVICE TO WYCOFF.

POINT III

THE ONLY PLAINTIFF AFFECTED BY THE OGDEN-SALT LAKE AUTHORIZATION IS LAKE SHORE.

First, let us remove the plaintiff Armored Motor Services from considerations. That company has no authority between Salt Lake City and Ogden. Its rights are solely within Salt Lake County where it bought out what was known as Jiffy Messenger Service. At page 18 of their brief, plaintiffs say "The Commission has gone so far as to allow Wycoff to institute a new service between all points in Salt Lake County . . ." Such is completely erroneous as Wycoff already had up to 100 pounds per shipment authority throughout Salt Lake County and the Commission denied Wycoff's request for 200 pounds per day between the same consignor and consignee. Thus Armored Motor Service has no place in the proceeding nor has it been adversely affected by the Report and Order as Wycoff already had the 100 pound authority in Salt Lake County.

As noted in the statement of facts above, both Greyhound and the Continental Trailways System have re-

strictions against local service between Salt Lake City and Ogden. Therefore, they are not adversely affected by the new certificate to Wycoff to serve between Salt Lake City and Ogden and the intermediate points.

So properly in this appeal, Lake Shore stands alone as the carrier directly affected by the Salt Lake City-Ogden certificate now held by Wycoff. Had the common motor carrier between those cities, Barton Truck Line, joined in the appeal so they could claim some direct delivery service, the basis for argument might have been different. Barton has only 5 day per week service and handles predominantly larger shipments. The multiple times each shipment is processed by Barton and other similar truck lines results in slow service. Usually the shipment is moved through two terminals before being placed on a delivery truck. Wycoff has simplified the handling by providing direct store door delivery from its trucks in most instances. Business men testified as to the desirability of that direct and expedited service. They hate to take the time, expense, and personnel to go to bus terminals. See the attached Appendix.

In 1958 the Commission granted to Wycoff its first and only statewide 100-pound *express* authority. It already held statewide authority on some specific commodities such as newspapers, motion picture film, cut flowers, and magazines. By the appeal of Lake Shore and Lewis Bros. Stages, this Court reduced the area of service by deleting Salt Lake to Ogden and the

Salt Lake to Tooele, Park City and Wendover. Thus, from the time of that decision in October 1958, 8 Utah 2d 293, 333 P.2d 1061, Wycoff has served statewide, including Salt Lake County, except as noted, on express up to 100 pounds.

Ten years later Wycoff applied for and received a certificate from the Commission for an extension of this authority to all areas of the state and increased the 100 pounds to 250 pounds and deleted the per schedule restrictions. Protestants filed for review but because of their problem of procuring the transcript for the Commission, the Court first ordered it to be considered without a transcript and then on March 1969, 22 Utah 2d 287, 452 P.2d 318, set aside the Order and decided that the record must be completed by a review of the transcript by the Commission and a new Order. Because the reporter still had not started the transcription and hence another six months' delay would ensue and the public, particularly between Salt Lake City and Ogden, were desparate for service, that application was dismissed and the present one filed. The Commission granted temporary authority between Salt Lake City and Ogden pending the hearing and determination of this case.

In this new application the maximum weight requested per shipment was only 100 pounds as such was then consistent with the interstate express authorities recently granted to Wycoff (R.899). It also included a request that on multiple shipments between the same

consignor and consignee up to 200 pounds per day be allowed and further, that the old 500-pound per schedule and newspaper timing be deleted.

The hearings were extensive with 57 public shipper witnesses supporting the application. Most of these had experienced use of the protestant truck and bus lines as well as the Wycoff service and hence as businessmen could make an intelligent evaluation of their needs. The attached appendix is devoted to those businessmen who relate to the Salt Lake-Ogden area service requirement.

Much time was devoted to requests that all participants produce traffic studies so the Commission would be fully apprised of the impact on the protestants should the application be granted. Ten purportedly "typical" dates were selected. Wycoff and the major carriers produced such studies along with the freight bills. Lake Shore and Armored failed to produce any and the two transcontinental bus lines produced only a nominal number, pleading difficulties in gathering the bills.

The Commission then afforded all parties an opportunity for oral argument of their respective positions. Finally, four months after the date of the first hearing (July 28, 1969, to November 28, 1969), its Report and Order were issued. This consists of 17 pages and considers and weighs carefully the positions of all protestants as well as the needs of the public. Because the 200-pound level of total shipments per day

was denied and the only new authority granted was between Salt Lake City and Ogden, no appeal was taken by any of the regular route general commodity truck lines, including Barton, which holds a certificate between Salt Lake City and Ogden. Obviously the holding of express service down to 100 pounds by the Commission eliminates the problems envisioned by the truck lines from Wycoff's competition. These small packages are a nuisance to the truck lines.

The only carrier directly affected is Lake Shore Motor Coach Lines which has local bus service between Salt Lake City and Ogden. Back in 1958 this Court heeded its cry and took this segment of service away from Wycoff after an award by the Commission. The Commission was fully aware of that and of the Court's reasoning; thus at pages 8 and 9 of the Report and Order (R.1238-39) it quoted extensively from your decision.

The evidence shows that there have been substantial changes in population and business requirements along this area of the Wasatch Front. Lake Shore has failed to meet the needs of the traveling public and the shippers during this 10-year grace period afforded it. No pickup or delivery service is provided by it at Salt Lake City or intermediate points. Intermediate points such as Freeport Center just west of Clearfield (one of the largest shipping points in Utah) received *no* service from Lake Shore. Merchants must go to the bus stop to get merchandise, or in Salt Lake City and

Ogden hire and pay a separate charge for deliveries. It is not a problem of insufficient schedules but rather the passengers are primary and the express secondary on busses and the service for express falls short of the needs of the shippers and consignees. Wycoff has and can meet these special requirements of the public.

All of these factors were clearly before the Commission. It is well informed as to the services of each of the three modes of transportation available to the shippers:

1. regular truck lines—satisfactory on large shipments;
2. Wycoff's express service with expedited handling and direct pickup and delivery;
3. busses handling first passengers and their baggage and secondarily small express; no pickup or delivery.

In its Report and Order at page 13 (R.1243) said:

The general commodity truck lines seem to satisfy their shippers' demands on heavier shipments of freight. The buses are so restricted in many phases of operations that their express service does not adequately meet the present and developing business requirements in the areas for which they hold authority. Particularly, lack of pickup and delivery service is a disadvantage to many shippers and receivers. The Commission concludes that to the extent above set forth and with respect to the areas above set forth the existing express service is inadequate.

There exists in Utah a need for an expended efficient express service. Single line responsibility to serve the growing industrial and commercial areas of the state with radiating service to the other highway points in Utah is in the public interest and is needed on express shipments not exceeding 100 pounds in weight. The granting of this express service limited to not over 100 pounds per shipment will not result in an unreasonable diversion of traffic from the bus or truck lines.

Wycoff has demonstrated its ability to maintain express-type service on dependable schedules with direct delivery to the consignee, utilizing a simplified-type billing. Shippers in Utah should be given an opportunity to utilize this efficient-type service on shipments not over 100 pounds in weight whenever their business judgment dictates a need for expediting delivery.

This Commission is not alone in its recognition of the special service provided by Wycoff. In its published reports, Wycoff Company, Incorporated, Extension - So. Idaho 1968 F.CC 36,250 considered an order in which a weight restriction of 100 pounds was imposed on the express service and said in part:

In our opinion, the evidence of record supports protestants' position. Briefly applicant proposes to transport only small shipments in equipment particularly adapted to the transportation of small packages, to provide an expedited service, and to perform deliveries in a number of ways designed to meet the convenience of particular consignees. Features of the proposed service include daily published schedules; late evening de-

partures and early morning arrivals, with same day service to certain points; weekend deliveries and door-to-door pickup and delivery service provided on all shipments handled. For many years applicant has provided this type of service under permanent authority to transport films, newspapers, and certain other items as well as a similar service under temporary authority generally co-extensive with that covered by the instant application. The feasibility of applicant providing the type of expeditious service it here proposes is attested to by the shippers supporting the instant application who all express a high degree of satisfaction with applicant's present service under temporary authority. Unquestionably, applicant's service is geared specifically to meet the needs of the shipping public in connection with the movement of small-package traffic.

As no attack is made upon the safety record, personnel, equipment, service or financial ability of Wycoff to render the proposed service, we shall assume that such are conceded for the purpose of the appeal. This Court should be aware that the "complete satisfaction" of shippers with plaintiffs' services boldly proclaimed by their brief is not true.

POINT IV

THE REMOVAL OF THE TEN-YEAR OLD 500-POUND PER SCHEDULE RESTRICTION AND THE TIE TO NEWSPAPER PUBLICATION TIMES WAS SUPPORTED BY ADEQUATE EVIDENCE AND IS CONSIST-

ENT WITH SOUND PRINCIPLES OF REGULATION.

In the past much oratory has gone into the proposition that Wycoff "agreed" to the 500 pound per schedule and to the coordination of its schedules to newspaper publication so these should not be changed. It is true that such a stipulation was made when the first express authority (100 pound limit) was granted in 1958. It is equally true that the Commission has been aware of the problems created by these throughout the years.

The weight per schedule limit made it necessary for Wycoff to discontinue its pickup service in Salt Lake City, Ogden, and Provo because otherwise urgently needed freight would pile up because the 500-pound limit on a schedule had already been reached. This was a potential source of discrimination between shippers and something which the Commission and Wycoff both sought to change. When the abortive certificate was granted in 1968 (in the Sub 14 proceedings) the weight and newspaper restrictions were removed and the Order required Wycoff to institute pickup and delivery services at all points served. These services were then reinstated and thus the Commission had the advantage of considering the services both with and without the operation of the restrictions.

There was evidence and ample proof of the problems and desirability of removing these restrictions. The growth of the areas served since 1958 and the

statistical exhibits on schedules (R.1207) and weights per schedule (R.1208) show conclusively the need for this change. These and the direct testimony of Mr. Andrus have not been refuted and the Commission made its findings quoted above that "Efficiency of operations and better service to the public make possible the movement of express-type traffic for the shippers without waiting for a newspaper schedule." Further, it found that it would be a hardship on shippers to discontinue the new schedules. The court must realize, as the evidence shows, that during the past 10 years Wycoff has new and additional interstate express service and schedules which can be used for intrastate express to better serve the public. The Commission recognized these efficiencies and services to the public.

The only two plaintiffs who might be concerned about this phase of the proceedings must be the two transcontinental bus lines, Greyhound and Trailways System. We would suggest that their concern for the 500-pound per schedule is truly hypocritical as that was stipulated back in 1958 as a protection for the truck lines and they no longer care. These buses have limited carrying capacity in the bays below the seats and the passengers' baggage must be first accommodated. For them to come to the Supreme Court on this issue alone when they are so restricted by their own devices of bus express capacity seems in poor taste and destructive of the principles of efficiency and service espoused by most carriers.

The Commission had competent evidence before it upon which to base its removal of these two antiquated and crippling restrictions and wisely decided that in the interest of efficiency and proper traffic regulation. As to the 500-pound restriction, the Commission found and concluded (R.1241):

12. Delays occur in express service presently rendered by Wycoff because of the present 500 pounds schedule limitation. Express shipments when tendered in excess of the 500 pounds per schedule are of necessity delayed to a later schedule. A number of shippers and receivers of express shipments testified as to such weight per schedule delays and of the inconveniences and hardships resulting from the same. None of the protestant carriers in Utah have such a weight per schedule restriction. It is the Commission's view that there is no logical, reasonable basis for the continued imposition of a 500 pound per schedule limitation. Wycoff's operating experience with said limitation demonstrates that it is impractical, inefficient, and unworkable. Said limitation should be removed.

As substantial evidence supports this determination, the Order of the Commission should be protected and affirmed by the Court.

The thrust of much of the arguments of the plaintiffs' brief is directed to the availability of motor carrier and bus service throughout the state. This fails to have any meaning to the Court because Wycoff already has almost statewide authority up to 100 pounds and the only new area added is the Salt Lake City-Ogden

segment. One gets the feeling that plaintiffs had forgotten such and are trying to have this Court conduct an appeal on the 1958 Report and Order.

The only place where the plaintiffs' brief deals with the statewide 500 pound per schedule issue is on page 22 and 23. No facts are shown but only generalities first that "the record is void of any substantial evidence to support the Commission's action" and later, that the exhibits must be "properly analyzed" without any explanation. At no place has any plaintiff shown or argued that the removal of the 500-pound per schedule limit or the termination of newspaper publication scheduling would adversely affect it. Nowhere is any proof of how the deletion of these two restrictions would be prejudicial to the plaintiffs.

No other truck line or bus line has its schedules restricted to any tie such as time of newspaper publication. None have a weight limit per schedule imposed by the Commission, except the self-imposed limit of the restricted baggage space provided by the bus companies.

POINT V

THE COMMISSION'S ORDER IS NOT ARBITRARY OR CAPRICIOUS AND WILL NOT RESULT IN DESTRUCTION OF ANY EXISTING CARRIER SERVICES.

Lake Shore asserts that the diversion of the Salt Lake City-Ogden express traffic to Wycoff will "result in substantial destruction of existing carriers" and that the Commission's Order is arbitrary and capricious. We know, as the record reveals, that the Commission was acutely aware that some diversion would result from the more efficient and effective services of Wycoff. However, it did what always must be done, made its decision in the public interest.

At page 7 of its Report and Order (R.1237), it reviewed the services of the bus companies now appealing the decision. Then at page 13 (R.1243) we find:

The general commodity truck lines seem to satisfy their shippers' demands on heavier shipments of freight. The buses are so restricted in many phases of operations that their express service does not adequately meet the present and developing business requirements in the areas for which they hold authority. Particularly, lack of pickup and delivery service is a disadvantage to many shippers and receivers. The Commission concludes that to the extent above set forth and with respect to the areas above set forth the existing express service is inadequate.

There exists in Utah a need for an expanded efficient express service. Single line responsibility to serve the growing industrial and commercial areas of the state with radiating service to the other highway points in Utah is in the public interest and is needed on express shipments not exceeding 100 pounds in weight. The granting of this express service limited to not over 100 pounds per shipment will not result in an unrea-

sonable diversion of traffic from the bus or true lines.

The Commission has found and concluded that the diversion would not be unreasonable when the express service of Wycoff is limited to 100 pounds. As this relates to the bus companies, Wycoff already has 100 pound express to all parts of the state except the Salt Lake City-Ogden area so the Greyhound and Trailways systems will not have any different competition in most of the state. As between Salt Lake City and Ogden, the Wycoff service under the 1966 certificate in Sub 14 had authority to transport up to 250 pounds per shipment. This has been cut back to 100 pounds now.

Reference is made in the brief to testimony of Mr. Gordon Ronneberg (R.687) and Mr. Alma Johnson (R.698) of Lake Shore. Cook Transportation of Logan had just purchased the rights of this bus company. When the general manager was asked as to why they oppose the application, he answered (R.692): "The reason for our opposition to this application is basically because of the decline in passenger traffic." On the traffic study presented by Lake Shore for one week [selected by it and not the dates directed by the Commission (Exhibit 35, R.1018-1033)] on express shipments, only two were for an intermediate point between Ogden and Salt Lake City and the balance were for either Salt Lake City or Ogden. He admitted that they have no agent at Clearfield, do not serve the Freeport

Center, and provide no pickup or delivery services (R.695)

Mr. Alma Johnson formerly worked for Lake Shore as an accountant but was discontinued when Cook bought the line in May 1969. He presented exhibits of volumes of traffic and revenues. These show that (Exhibit 37) the charter type operations of Lake Shore are its largest division of service. This means that the buses are being used for charter trips for groups rather than serving local passenger and express. Notwithstanding a reduction of local express and general passenger traffic, a good operating ratio has been maintained by this carrier (R.705). Exhibit 36 reflects that the monthly averages for express revenue for 12-month periods ending August 31 were:

August 31, 1966	\$2,896.00
August 31, 1967	2,967.00
August 31, 1968	2,220.00

This average monthly decline in express revenue of \$750.00 was more than offset by the charter revenues of the company. Mr. Johnson joined with the new general manager in showing that their problem was the decline in regular local passenger revenues, \$3,500 to \$4,500 each of five succeeding years (R.706). He said, "I think this is a normal trend throughout the bus industry—and it is attributable to many factors". Then he outlined some: freeways, more second and third cars in families, shopping centers, etc. On cross examination Mr. Johnson attributed the decline in express

revenues to the Wycoff service, pickup and delivery services by Wycoff, and a rate lower than the combination bus charges plus the extra carrier which had to be hired for deliveries to and from the bus depot. This was his estimate though he acknowledged that the express decline corresponded roughly with the decline in local bus passenger revenues. Even their charter revenues had declined in 1968 from a high of \$191,300 in 1967 to \$144,748 in 1968 (R.713). Certainly no bus passenger or charter passenger revenue declines can be attributed to Wycoff by even the most prejudiced witness.

The Commission was faced with the growing and vital needs of the public as reflected by the Appendix and a possible decline in express revenues by Lake Shore. The public good prevailed in its judgment as it should. Then to afford further protection to the buses, the Commission by its Order required Wycoff to raise its express rates and this has been done.

Not only the Legislature but this Court has recognized the authority and duty of the Commission to give considerations to the elements of efficiency and economy in public transportation. In May 1968 this Court in *Prichard Transfer v. W. S. Hatch Co.*, 21 Utah 2d 106, 441 P.2d 135, affirmed an award of authority on a haul of sulphuric acid from Mexican Hat to Moab, Utah, resulting in a direct and total diversion of the traffic from Prichard Transfer to W. S. Hatch Co. The opinion reads in part:

Under ordinary circumstances rates are not a controlling subject of inquiry in an application for a certificate of public convenience and necessity. However, the Commission is charged with the duty of seeing that the public receives the most efficient and economical service possible. *Lakeshore Motor Coach Lines, Inc., v. Welling*, 9 Utah 2d 114, 339 P.2d 1011 (1959).

The bus companies, with their very limited express authorities and restricted baggage compartments, if successful here, would be able to stifle all competition and hinder the economic growth of the state along the Wasatch Front. There are a number of items of property not accepted by busses such as unwrapped tires, etc. The business community is entitled to have access to good transportation services for themselves and their customers. The changing habits of the potential passengers resulting in decline of passenger revenue for the busses which they hope to make up by added express revenues should not deprive business and industry of Wycoff's expedited express services.

We would call to the attention of the Court that the public witnesses reflected in the Appendix as to the Salt Lake City-Ogden segment and the many other witnesses are all familiar with bus, truck, and Wycoff services and have made a deliberate election to support the requested express service by Wycoff. These businessmen do not come to hearings unless they feel a genuine need. They have left their businesses and some of them travelled substantial distances to testify as to the needs for service. The Commissioners saw as well

as heard these men as well as the representatives of the numerous protestants and counsel. The decision of the Commission deserves your affirmation.

POINT VI

THE COMMISSION WEIGHED AND CONSIDERED THE SERVICE OF EXISTING CARRIERS, BOTH BUS AND TRUCK, AND THIS COURT'S DIRECTIVES BEFORE EXERCISING ITS STATUTORY RESPONSIBILITIES.

The Commissioners are to be commended for the careful and thorough approach they've taken in this case. Every opportunity was given to protestants to present their sides of the matter, including requiring Wycoff to produce over 6000 of its freight bills. Extended recesses were given to allow protestants to present exhibits.

As noted above, the Commission even made an evaluation of this Court's prior decisions in a similar type case between the same parties.

We shall not review the history of decisions in Utah on the prerogatives and duties of the Commission. Two sentences from § 57-7-16, U.C.A. 1953, will help the Court to keep in focus the fact that the Legislature has entrusted the Commission with certain phases of responsibility and discretion in these matters relating to the regulation of motor carriers. These read:

54-7-16. 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.

This Court has frequently turned to the basic rule that the determinations of the Commission shall be sustained unless shown to be clearly arbitrary and capricious. The most recent decision of this Court in this area of law known to counsel is that of *Armored Motors Service v. Public Service Commission*, 23 Utah 2d 418, 464 P.2d 582 (January 28, 1970). In this case the plaintiff asked this Court to overturn the Commission's award of authority to Frank J. Terry for 50-pound service into specified areas of Davis and Salt Lake Counties. Your Court affirmed the Report and Order of the Commission and said in part:

We are neither unaware nor appreciative of the force of the argument advanced by the plaintiff that in conformity with the statutory admonition to the Commission to “* * * supervise and regulate all common motor carriers * * * so as to insure adequate transportation services * * * and so to prevent unnecessary duplication of service. * * *” it should exercise caution in granting new authority, nor that it would be ill-advised and improvident to allow the initiation of new services which would so infringe upon other car-

riers as to impair, or to hazard the continuance of existing services. However, correlative to the foregoing, it must also be realized that the legislature has given the Commission the responsibility for the overall planning and regulation of certain public services, including transportation. Because that is the purpose for which the Commission was established and functions, it is assumed to have specialized knowledge and expertise in that field. Consequently it is accorded comparatively broad prerogatives in carrying out investigations and making determinations in the discharge of its duties. For these reasons its findings and orders are endowed with the presumptions of verity; and upon appeal to this court we assume that the Commission believed those aspects of the evidence which support its findings and we review the record in the light most favorable to them.

May we urge that you keep in mind the years of exposure this Commission has had to the transportation problems in Utah. Its specialized knowledge and expertise in this field have been applied to the problems in this case. Where there was a valid showing for needed services, the application was granted. Where the Commission felt that no such proof was adduced, the application was denied. These are sincere and competent decisions made by this administrative body in the discharge of its discretionary duties and should be affirmed.

Full weight has been given to all types of transportation and all areas of service. What the large truck lines do best, they have been left to do without bringing Wycoff into the area of transportation over 100 pounds

per shipment. What the bus lines do best, transport passengers, they have been left to do that recognizing that their express service is incidental only and that no pickup or delivery service is provided. And what Wycoff does best the Commission has allowed it to do between Salt Lake City and Ogden; namely, render expedited express-type service on shipments under 100 pounds coupled with pickup and delivery service. Thus, the different modes of transportation have been evaluated and the public's needs have been met.

CONCLUSION

It is believed that in this case all of the essential elements necessary to prove convenience and necessity for the 100 pound express service between Salt Lake City and Ogden have been established by Wycoff. Likewise, adequate competent evidence supports the elimination by the Commission of the 500 pound per schedule and the newspaper scheduling restrictions from the Wycoff authority. Though this extension of express authority will have some impact on Lake Shore between Salt Lake City and Ogden, such is not destructive and has not resulted and will not result in any reduction in passenger service to the public.

As the state's industry and population grow, the transportation facilities must expand to meet this development. The public's needs are the prime concern of the Commission and responsive to that mandate, this

extension of authority has been granted to Wycoff
The affirmation of the Commission's Report and Order
is urged.

Respectfully submitted,

HARRY D. PUGSLEY

Attorney for Wycoff Company, Incorporated

VERNON B. ROMNEY

Attorney General of Utah

APPENDIX

Public Witnesses and Evidence

Re: Salt Lake City - Ogden

Ford Motor Co. - Salt Lake City, Utah

Thomas E. Hagerman, Traffic Manager (R. 27) - uses Wycoff and all other bus and truck lines - use Wycoff for 24 shipments per day averaging 37 pounds on intrastate destinations - 35 dealers in Utah - North and South - would be a disadvantage to have the 500 pound per schedule continued - when in force they had to change routings and "dealers became dissatisfied because they could not receive the service that they requested." (R 31) Bus lines make no deliveries - "great disadvantage" - also the busses will not take some auto parts unless packaged and unless under 8 feet - uses Wycoff "mainly for our emergency-type shipments, mainly dealer request, to service their day-to-day emergency needs." (R 33)

Fuller Brush Company - Salt Lake City, Utah

Thomas R. Brennan (R 77) - 200 salespeople - In Utah - many are ladies working out of homes throughout the state - Wycoff makes direct delivery to homes - including rural routes between Salt Lake City and Ogden - they use all modes of transportation - shipments average 75 pounds (R 81) Wycoff provides "very next morning" delivery in 90% of the cases -

requires Saturday deliveries - he is aware of the bank service in Utah (R 85)

Commercial Security Bank - Ogden

John Howard - Vice President and Manager of the Data Processing Department (R 91) has branches in Salt Lake City, Tooele and Grantsville - made survey of available service - "Wycoff was the most satisfactory" - (R 92) - requires early A.M. delivery before the bank opens - with same day delivery, as the materials are processed over night.

Proudfit Sporting Goods Company - Ogden, Utah

Pedigo H. Voll - Vice President - distributes sporting goods from Ogden throughout the state of Utah (R 102) uses all types of transportation - has 50 to 75 shipments by Wycoff per week - Wycoff provides direct pickup at Ogden and has provided "very good" service to points intermediate between Ogden and Salt Lake as well. Has attempted to use Lake Shore but it does not provide pickup service in Ogden nor delivery. On service beyond Salt Lake uses Wycoff because they have 2 to 3 days delay with the truck lines and others going beyond (R 106) - needs this service because its competition is in Salt Lake City and must have prompt delivery for its customers.

Continental Bank & Trust Company - Salt Lake City

Darwin Stevenson, Asst. Vice President - Data Processing - (R 121) - facilities located at 2nd South

and Main Street in Salt Lake City and they service banks at North Davis (in Layton)and Bountiful, as well as other banks within the state - must work on material overnight - Wycoff delivers from 6:30 to 9:30 P.M. and picks up at 2:30, 4:30 and 6:00 A.M. for same-day delivery to the banks - does not know of any other carrier providing that service, with direct pickup and delivery - the commodities transported are checks, data processing, etc.

American Red Cross - Salt Lake City

Orin Bennett Beckstrand (R 132) - operates blood center in Salt Lake City - receives blood inbound and ships outbound, serving 38 hospitals throughout the state of Utah - uses Wycoff express service in the two-way movement of blood - also uses all other carriers as the requirements demand - Wycoff makes delivery in the early A.M., having a key for access to the building - bus service is sometimes available in the morning but makes no deliveries or pickups at that time - use Wycoff for 30 to 40 shipments per month - desires continuation of the Wycoff service established under the temporary authority.

Horsley Company - Ogden, Utah

George Horsley, Sr., President (R 141) - ships conveyors and fork lift trucks and parts for repairs - uses Wycoff at Ogden for pickup and delivery and service into Salt Lake City and intermediate points - has 5 to 15 shipments per day - prefers Wycoff on shipments

beyond Salt Lake City because of the direct delivery to the customer - is concerned with the delay on the transfer from one truck line to another truck line of service beyond Salt Lake City.

Homelite - North Salt Lake

Bill Peterson, Sales and Service Representative for Southern Utah (R 151) - ships as far south as Kanab and St. George - uses all types of transportation - average shipment 1 pound to 25 pounds - "the majority of shipments that are expedient will go by Wyocon because of the service we get from them. Our customer is usually in a broke-down condition, and depends upon quick service for service parts to get him back in business, get him back to work." (R 154) - these are chain saws, water pumps, generators and portable construction equipment.

J. C. Penney Company - Salt Lake City

Gilbert J. Morgan, Office Manager - Western Accounting Division (R 196) - 23 J. C. Penney stores in Utah serviced at Salt Lake City in their accounting - statewide, including Ogden and Layton to the North - requires late Monday afternoon pickup and early Tuesday morning delivery to Salt Lake, and the reverse direction late Thursday pickup and early Friday A.M. delivery to the stores throughout Utah - these are payroll and accounting records in locked bags, 10 to 15 pounds - "I, frankly, know of no other way that we could meet our deadlines and schedules for this payroll

without assistance such as this." (R 199) - prefers to have a single carrier responsible for the statewide service.

Charles Bruning Company - Salt Lake City

Paul H. Heath, Chief Order Clerk (R 205) - addressograph and multigraph commodities throughout the state of Utah - 27 pounds to 100 pounds - desires continuation of the same Wycoff service to the Ogden and intermediate points, as well as other areas within the state of Utah - these are engineering and drafting supplies, including coated paper.

Flinco Tire Terminal - Salt Lake City

Arvil Johansen - Service Manager (R 229) - ships into many areas of the state, including Ogden, Roy and Layton and other northern points, but not Logan - tires, front-end alignments, accessories, batteries - they have their own delivery trucks but it is easier to use Wycoff because of same-day delivery to the north by Wycoff - "they call us in the morning and they have to have the tires late that afternoon or the next morning in order to keep their equipment going, especially on heavy batteries for the diesels and heavy truck tires." (R 231) - bus lines unwilling to take unwrapped tires.

Western Electric Company, Incorporated - Salt Lake City

Robert Gettman - Transportation associate - (R 243) - ship telephones and accessories to Mountain

States Telephone locations, primarily urgent shipments requiring early-next-morning delivery, and in some cases same-day delivery, particularly north of Salt Lake City in Utah - unhappy with the bus service because it does not provide pickup or delivery (R 249).

*Mepco (military equipment and parts company) -
North Salt Lake*

Don Falkner - owner (R 262) ships from North Salt Lake parts and equipment all over the state of Utah - needs Wycoff service at North Salt Lake - his line has never provided a pickup service for their business at North Salt Lake (R 265) - shipments vary from a roller bearing to a transmission, with a 25 pound average.

*Mountain States Veterinary Medical Supply Company
- Provo, Utah*

Dr. Grover T. Purvance (R 274) - the company was formed by a group of veterinarians and distributes drugs from 27 different companies to the veterinarians in the state, with average shipments of less than 50 pounds - some products, like vaccines, are perishable and deteriorate very fast, and others are more stable - uses Wycoff primarily - 76 shipments during April by Wycoff, 10 by common carrier, 20 by bus and 30 by mail - acquainted with all types of transportation - busses provide no pickup and delivery service in Provo and they are two miles from the bus depot - frequently require same-day delivery out of Provo to points north

Roy Auto Parts - Roy, Utah

Thomas Hunter - Assistant Manager (R 283) - ships new parts, automobile parts and paint, plus glass, throughout the state from Roy, Utah, both north and south - as to bus service he testified (R 286) "Most of our parts are quite bulky. The busses don't particularly like to haul them. And secondly, it is inconvenient for us to run from Roy over to Ogden to pick them up, and then it's our customer preference too. If the customer - a lot of these body shops that want parts right to their door, they don't want to have to stop the job they are working on to go and pick up the parts." He was asked if he knew of a bus agency in Roy, and he stated that though he has been a businessman there for five years, he knew of none at all.

Five Points Electric Supply Company - Ogden, Utah

Ernest V. Wall - Manager (R 303) has both incoming and outgoing shipments at Ogden - the incoming primarily from Salt Lake and the outgoing directed north as far as Tremonton and Logan and south as far as Richfield - electrical supplies, wiring materials, lighting fixtures to stores, dealers and contractors - has used the busses and other truck lines and is familiar with them, but testified, when asked about the Wycoff service, "We feel that in the electrical industry that service is the only thing we have to sell - everything else is so competitive that you can't figure it being sold - and in the past Wycoff has given us so much better service than any of the other carriers, that is why

we go to them exclusively." - most shipments below pounds - even though they use their own trucks most service to the north, they have almost daily shipments by Wycoff to the northern area, as well throughout the state.

Poppleton Beauty Supply - Ogden

Don Poppleton - owner and manager (R 313) ships from Ogden to points throughout the state, both north and as far south as Payson, average 25 pounds to a customer - Wycoff provides twice daily pickup at Ogden for them - the busses do not pick up for them in Ogden nor deliver to their customers (R 317).

Framm Corporation - Freeport Center - Clearfield Utah

Dean Payne, Order and Billing Manager (R 336) - manufactures and distributes oil filters and automobile filters from Freeport Center to almost every county in the state of Utah to distributors and jobbers - uses Wycoff on the smaller shipments and emergency shipments because of "the fast delivery service" out of Clearfield - on shipments out of Clearfield to points beyond Salt Lake City by truck it is generally second day delivery at best, except with Wycoff they get first day delivery south of Salt Lake (R 336) - this service is important because in many places units of heavy equipment are down waiting for replacement of filters and therefore "we need immediate delivery." No trucks

service at the Freeport Center west of Clearfield - Barton is the only truck line serving that point intra-state.

Fabtex, Incorporated - Bountiful

Richard Boden - General Manager (R 341) - distributes sewing notions and fabrics throughout the state of Utah from Bountiful in shipments averaging between 50 and 75 pounds - Wycoff provides 2 pickups daily and they need authorization to continue Wycoff service for their business between Brigham City on the north and Payson on the south, with 80% going into the Salt Lake area - average 5 shipments per day, with almost every package under 100 pounds.

American Oil Company - Salt Lake City

Barr Moss - Distribution Analyst (R 436) - ships from warehouse at Midvale, Utah throughout the state of Utah, both north and south, service station equipment, filters, tires, batteries, etc. - shipments 20 to 50 pounds - prefers Wycoff on shipments through Salt Lake City because of only one carrier and to avoid delays - seldom uses busses and does not know of any bus location in Midvale - saves 1 day in shipments to Ogden by using Wycoff - shipments include Atlas tires - services Salt Lake City and points north by their own trucks and Wycoff - desires service at Salt Lake and points north.

Clearfield Auto Parts - Clearfield, Utah

Larry Kasting - owner (R 452) - operates parts company at Clearfield - most inbound shipments come from the Salt Lake area from a number of different suppliers - Wycoff delivers twice a day direct to their door, the first at 8:00 A.M. and the second at 3:30 P.M., the second giving same-day delivery of Salt Lake on shipments from 15 to 100 pounds. Bus depot at Clearfield is in an electrical shop and frequently shipments are carried into Ogden and (R 452 and 454) - also has outbound movement to various points within Utah and utilizes Wycoff because of pickup and delivery service. He is about 8 or 9 blocks from the bus depot in Clearfield and they make deliveries to him - Wycoff makes Saturday deliveries and others do not.

Ogden Auto Parts & Glass Company - Ogden, Utah

Gene Simpson - owner (R 463) - handles new body parts, paint and glass - receives material, supplies and equipment from Salt Lake City - uses Wycoff on replacements when needed "if we have one come in the morning, we can get hold of Wycoff before noon and they will have it to us that afternoon, or at the latest by the next morning." (R 464) - they also operate Saturdays with Wycoff delivery, but would have to pick up at Barton's on Saturdays - have outbound shipments from Ogden to various points, primarily north of Ogden - bus does not provide delivery to them at Ogden - Wycoff does not provide pickup or delivery for their customers.

Mountain States Implement Company - Ogden

Cleve Poulsen, Wholesale Division Manager (R 470) - Shipments primarily outbound throughout the entire state of Utah to practically all farm dealerships - 75 customers in Utah - used Wycoff as a pickup directly at their place of business and delivers directly to their customers - average 10 shipments per day with 80% by Wycoff - uses Barton occasionally and busses very limited, "mainly because they require special packaging the merchandise with luggage and that, so it has to be specially wrapped, and it is inconvenient because we have to handle it to their terminal, and then when it is delivered to our customer they have to pick it up at the bus depot." (R 474) - desires a continuation of the Wycoff service - "It is a very valuable service to us and our customers" (R 474) - witness identified some of the items that they must wrap or specially package in order to ship by bus, such as a furrower with sharp edges, etc. - when asked about shipments through Salt Lake City from Ogden to points east and south, he testified as to the interchange between the truck lines causes a day's delay frequently, and the necessity of paying two minimums for the two truck lines involved (R 478) - their business is mostly emergency for farm dealers requiring merchandise by the next day.

Utah Bearing - Ogden, Utah

Dale Francis, Manager (R 484) - the company has stores in Salt Lake and in Ogden and they have

shipments moving between their stores as well as out-
bound from Ogden, servicing from Spanish Fork to
Provo to points north of Ogden, averaging 8 to 10
pounds in weight on shipments - they do not use the
bus outbound from Ogden because of "lack of service"
and uses Barton only on the larger shipments - uses
Wycoff express service "because customers require
this service to the destination to their firms". (R 493)
- "We have found on occasions that larger shipments,
bus, we have more trouble than we do with Wycoff
for some reason." - Wycoff delivers twice a day there
at Ogden and picks up four or five times per day at
their place of business (R 493)

Carter Supply Company - Ogden

Farrell Corter - President and General Manager
- (R 498) wholesale distributors of electronic parts
and equipment and service parts to points throughout
the state of Utah, primarily outbound shipments, serv-
ing dealers who repair television sets, electronic equip-
ment and radio, as well as schools and industrial ac-
counts, with audio-visual products - ship as far south
as St. George and as far north as Logan and Tremonton,
with average shipments between 18 and 100 pounds
- used Barton on the heavier shipments and Wycoff
on the others - uses busses only when they get a local
call and then it is necessary for them to take it to the
bus depot for the customer to pick up at destination
when asked on cross-examination why he does not use
the busses he testified, "It is too inconvenient" (R 506)

Wycoff also services intermediate points such as Hill Field - generally they require first-day delivery - Wycoff makes Saturday deliveries and he does not know of any other carrier that does so.

Ogden Implement Company - Ogden

George D. Berkeley - Assistant Manager (R 529) handles Allis-Chalmers and other farm equipment and related machinery lines - has customers throughout the state of Utah - most shipments via Wycoff are urgency repair parts where a customer has broken down out on the field and needs a bearing or some part - Wycoff picks up twice a day, or more if necessary. During a sample month they had 29 inbound shipments and 34 outbound by Wycoff. When asked about the bus lines he stated he very seldom uses it because, "Q. What service does the bus line provide at your place of business, if any?" A. "None whatsoever. They come to Ogden, which is two or two and a half miles away, and we of course can get a shipment in and out of there, but it requires so much time getting it up to the bus and going after it that it is undesirable." (R 533)

Albion Veterinary Supply - Ogden

De Wayne Ashmead, Vice-President (R 554) - they service farmers, ranchers, veterinarians and other distributors throughout the state of Utah out of Ogden - it has found the Wycoff service "excellent" - the shipments usually not exceeding 25 or 30 pounds - there

is an urgency in getting the shipments to the customer because of animals being sick and also because vaccine must be kept cool or it will deteriorate - Wycoff has been able to effectuate delivery without loss - was asked about the service south of Salt Lake City testified that it would take parcel post four to five days, another truck company two to three days, maybe three days, to get there, and "Wycoff we could do it in one night." (R 557)

The attention of the Court is directed to Exhibits 60 through 67 inclusive (R 1142-1149) consisting of 198 pages of detailed abstract of Wycoff freight bills for the 10 days assigned by the Commission for study which reflect the Wycoff service throughout the state of Utah, including between Salt Lake and Ogden, showing the name of the shipper, the consignee, the number of pieces, the weight and the time of delivery where that information was available on the particular freight bill. On many of these freight bills no time of delivery is reflected, in part due to the fact that deliveries were made at times when the stores were closed, open, so that the shipments would be available for early morning use by the consignee, consistent with the expedited delivery service rendered by Wycoff. The Commission is directed to these as further illustrating the use and requirement of service made by the shippers in the Ogden-Salt Lake area and between said points and other areas of the state beyond Salt Lake City.

We have tabulated the first two and the most recent

of these traffic exhibits (which incidentally were prepared by protestants from the Wycoff freight bills submitted for their examination) and find from them the following number of shipments to and from the Ogden and intermediate area:

Exh. 60 - January 8, 1968	87
Exh. 61 - July 17, 1968	168
Exh. 66 - June 4, 1969	171

These exhibits illustrate the extensive use and dependency of the public in the Ogden and intermediate to Salt Lake area upon Wycoff service under the prior authority and the temporary authority.