1972

# David R. Williams Dba Industrial Communications v. Public Service Commission of Utah, Hal S. Bennett Frank Warner And Eugene S. Lambert, Commissioners of the Public Service Commission of Utah : Petition For Rehearing And Brief of Defendants And Protestant Mobile Radio Telephone Service, Inc.

# In The Supreme Court of the State of Utah

DAVID R. WILLIAMS DBA INDUSTRIAL COMMUNICATIONS,
*Plaintiff,*

vs.

PUBLIC SERVICE COMMISSION OF UTAH, HAL S. BENNETT, FRANK WARNER and EUGENE S. LAMBERT, COMMISSIONERS OF THE PUBLIC SERVICE COMMISSION OF UTAH,
*Defendants,*

MOBILE RADIO TELEPHONE SERVICE, INC.,
*Protestant.*

Case No. 12871

## PETITION FOR REHEARING AND BRIEF OF DEFENDANTS AND PROTESTANT

Mobile Radio Telephone Service, Inc.

The Defendants and the Protestant, Mobile Radio Telephone Service, Inc., respectfully submit this brief in support of the grounds alleged in the Petition for Rehearing attached hereto.

## STATEMENT OF FACTS

On February 18, 1971, the Plaintiff filed with the

Public Service Commission of Utah an application for a certificate of convenience and necessity to provide two-way radio, paging and dispatch service to the general public area of Utah. The matter was ordered for hearing on April 15, 1971, and after two days of hearing was continued to June 22, 1971, for an additional two and one-half days of hearings.

Several witnesses testified on behalf of the Plaintiff, one of whom was Charles Goff who testified that he needed additional radio service in his business. He indicated he had used Mountain Bell's telephone service but found it to be congested (R. 369). He further indicated that he would be interested in a service less congested than Mountain Bell and that *he had never had any contact personally with Mobile Radio Telephone Service, Inc., the Protestant herein, and had not made personal inquiry into its operation* (R. 370-373, emphasis added). Neil W. Goodsell, M.D., testified on behalf of the Plaintiff that he administered a private radio service for a group of physicians. He indicated that he would be interested in a comparable service because of the many problems he had encountered with his Medic-Call organization. *He stated that he had only made limited personal inquiry into the service available to him by the existing common carrier, Mobile Radio Telephone Service, Inc., and was not aware of its ability to fulfill his organization's needs* (R. 165, 171, emphasis added).

Ken Isaacson testified on behalf of the Plaintiff

that he was presently *a subscriber to the Protestant' service and found the service to be terrific from* 8:00 *a.m. until approximately* 3:30 *p.m. when the congestion problem became the greatest during the peak hours* (R. 148, emphasis added). Additional witnesses testified that they had found the service to both Mountain Bell and Mobile Radio Telephone Service, Inc., to be congested during peak hours.

The Plaintiff testified that even in his business he had received complaints, that he had dissatisfied customers and that he sometimes felt the complaints were not justified (R. 326).

Barton North of Mountain Bell testified that all of its channels were overloaded and crowded, but that there were no present applications for additional channels although there were available channels open to Mountain Bell (R. 646). *He further indicated that during the years* 1968, 1969 *and* 1970 *there were no held orders; and that, in fact, in* 1970 *there were five less units than in* 1968 (R. 640, emphasis added). *Mr. North conducted surveys of the metropolitan area of Salt Lake and found that there was no immediate demand for additional services.* He stated that the records for the past three years showed a stabilizing effect on the number of customers Mountain Bell had. *There were no additional requests for service and no appreciable difference in the number of subscribers for the last two years* (R. 364, emphasis added).

Max E. Bangerter, president of the Protestant corporation, Mobile Radio Telephone Service, Inc., testified that his corporation was constantly seeking ways of raising additional capital so that it might improve and expand the equipment for a statewide operation that it felt it needed in the future (R. 31). He indicated that originally his company had started out with two-way radio units of the tube type, which were simplex units with a microphone and speaker. This had been upgraded to transistorized and partly-transistorized units. Subsequently, selective calling systems were also introduced as well as pushbutton dials which were Mobile's own concept of how push-button dials should be used in a mobile phone. This concept was introduced by Mobile to the National Association of Mobile Systems and has now been widely accepted (R. 34). Thereafter, duplex systems were upgraded with push-button dials.

When channel congestion was felt to be a problem by the Protestant, applications were filed with the F.C.C. for three additional channels. However, *the F.C.C. did not find there was sufficient need shown for the three channels so it only granted two additional channels* (R. 37, emphasis added). Some time later additional channel-loading studies were made which Protestant felt could substantiate the need for additional channels so additional applications were filed with the F.C.C. (R. 37). Applications were filed and amendments made, but time continued to drag on pending the F.C.C.'s granting of the additional channels. The Pro-

testant solicited letters from its subscribers, on the advice of its Washington counsel, to indicate the crowded conditions of the channels in hopes of expediting the F.C.C.'s decision to grant the additional channels.

Protestant has invested a considerable amount of money in equipment in order to upgrade its service, has sought to increase its plant facilities to better serve the public, and has obtained new and larger facilities and buildings with which to better serve its subscribers (R. 189, 206). Numerous witnesses testified that the quality of the service provided by the Protestant was excellent (R. 575-579, 582-586, 600-607, 608-612, 612-623).

Farrell Packard, in fact, testified that he had had both the service of Mountain Bell and that of the Protestant and *he found the service of the Protesant to be about ten times better than that of Mountain Bell* (R. 615, emphasis added).

## POINTS UPON WHICH DEFENDANTS AND PROTESTANT INTEND TO RELY

I. THE COURT ERRED IN FINDING THE DECISION OF THE PUBLIC SERVICE COMMISSION ARBITRARY AND CAPRICIOUS AND IN NOT FINDING ANY REASONABLE BASIS IN THE EVIDENCE TO SUPPORT THE DECISION OF THE COMMISSION.

II. THE COURT ERRED IN FINDING THAT THE DUPLICATION OF EXPENSIVE FACILITIES WAS NOT AN IMPORTANT FACTOR IN THIS CASE, AND THAT COMPETITION WOULD BE A WHOLESOME AND STIMULATING FACTOR WHICH WOULD TEND TO FURTHER THE OBJECTIVE TO BE DESIRED OF ASSURING THE PUBLIC THE BEST POSSIBLE SERVICE IN THE MOST ECONOMICAL AND EFFICIENT MANNER THEREBY IGNORING THE DOCTRINE OF REGULATED MONOPOLY.

## ARGUMENT

### I.

THE COURT ERRED IN FINDING THE DECISION OF THE PUBLIC SERVICE COMMISSION ARBITRARY AND CAPRICIOUS AND IN NOT FINDING ANY REASONABLE BASIS IN THE EVIDENCE TO SUPPORT THE DECISION OF THE COMMISSION.

The court in its decision of December 7, 1972, set forth the legal proposition that it must view the evi-

dence in the light most favorable to the findings of the Public Service Commission. If there is any reasonable basis in the evidence to support the findings, they will not be disturbed. *Goodrich v. Public Service Commission,* 114 Ut. 296, 198 P.2d 975. In *Goodrich* the court held that the Commission was in a much more favorable position to determine the benefits and detriments of two competing systems than was the court. The court indicated that unless it could determine that the Commission was clearly in error and was capricious in so finding, it was powerless to overturn its position. *Goodrich v. Public Service Commission, supra.,* 977.

It is submitted that this decision by the Public Service Commission was not an arbirtary or capricious action. Cases have held that arbitrary or capricious actions of administrative bodies means a wilful and unreasoning action, without consideration, and a disregard of facts or circumstances of the case. *Where there is room for two opinions, an action is not arbitrary and capricious when exercised honestly and upon due consideration, however much it may be believed that an erroneous conclusion was reached. In re Buffelen Lumber & Mfg. Co.,* 201 P.2d 194, 196, 32 Wash.2d 458 (emphasis added) ; *The Petition of the City of Bellevue,* 383 P.2d 286, 288, 62 Wash.2d 458; *Wagoner v. City of Arlington,* Tex. Civ. App., 345 S.W.2d 759, 764; also see *Monashino v. Rohan,* 178 N.Y.S.2d 246, 248; 13 Misc.2d 729; *Northern Pacific Transport Co. v. Washington Utilities Transport Commission,* 418 P.2d 424,

427, 69 Wash.2d 373; *State Board of Tax Commissioners v. Wright,* 215 N.E.2d 57, 64, 139 Ind.App. 370. Administrative determination must lack rational basis to be "arbitrary and capricious". *Douglas v. Miller,* 285 N.Y.S.2d 174, 175, 55 Misc.2d 303.

It is therefore submitted that in order for the court to find the decision of the Public Service Commission arbitrary and capricious, it must find that there was a willful and unreasoning action, without consideration, with a complete disregard of facts or circumstances of the case which lacked a rational basis upon which a decision could be made. It is submitted that the court cannot be justified in making such a finding based upon the evidence in this case.

Inasmuch as the court has placed great reliance upon the findings of the Commission in making its decision, it is necessary to review those findings and the record in order to make a determination as to whether or not the Commission has been arbitrary and capricious.

The first finding cited by the court is Finding No. 4 (R. 920). In that finding the Commission indicated that there were various subscribers on waiting lists between Mountain Bell and Mobile Radio Telephone Service, Inc., and that additional witnesses testified to the need for additional mobile radio service, but they had not placed orders for such service with either of the present utilities because of crowded channel conditions.

The principal witnesses who testified and whose testimonies were the basis for the Commission's finding were Charles Goff, Neil W. Goodsell and Ken Isaacson. However, the record will show that *Charles Goff had never had any contract personally with Mobile Radio Telephone Service, Inc., and had not made personal inquiry into its operation* (R. 370-373, emphasis added). Neil W. Goodsell also indicated that he had only made limited personal inquiry into the services available to him from Mobile Radio Telephone Service, Inc., and *was not aware of its ability to fulfill his organizations' needs* (R. 165, 171, amphasis added). Ken Isaacson testified that he had found the Protestant's service to be terrific from 8:00 a.m. until approximately 3:30 p.m. when the congestion problem became greatest during the peak hours (R. 148). The other witnesses testified that the congestion appeared to be greatest during the peak hours.

Therefore, the finding of the Commission does not totally represent the entire record, but points out the congested nature of the channels which the Protestant admitted. However, until the F.C.C. acts upon the applications granting the additional channels, present channels may remain contested. This is not the fault of the R.C.C. carrier, Mobile Radio Telephone Service, Inc., but lies in the maze of administrative chaos within the F.C.C.

The court then cited the finding of the Commission

listed as Finding No. 7 (R. 921) in which Mountain Bell Telephone Company will not accept additional subscribers because the present channels are filled to capacity and the company had no present plans to install additional channels.

Once again, it is important to review the record to appreciate the total background of this finding of the Commission. Barton North of Mountain Bell testified that all of its channels were crowded but that there were no present applications for additional channels although there were available channels open to Mountain Bell (R. 646). The reason therefor was that Mr. North had conducted surveys of the metropolitan area of Salt Lake and found that *there was no immediate demand for additional services. He stated that the records for the three years previous showed a stabilizing effect on the number of customers of Mountain Bell; and there were no additional requests for service and no appreciable difference in the number of subscribers for the two previous years* (R. 364, emphasis added). The reason for this is clearly set forth in the record for the finding of the Commission.

The court then goes on to state that there is an unfulfilled public need for the proposed service and that it is somewhat paradoxical for the Commission to make the findings recited and then to conclude that the granting of the application would be against the public interest. It is submitted that the court must remember

that the Commission did not stop just with the findings recited in the brief of the Plaintiff and further quoted in the court's decision.

The Commission made the further finding in Finding No. 8 (R. 921),

> "Mobile Radio Telephone Service is not accepting subscribers on its present system, but is taking orders for additional channels which have been authorized by the F.C.C., but which have not yet been placed in service."

Therefore, the Protestant was seeking additional business that he could utilize in the operation of the new channels that were to be granted to him. Thus, the reason for the held orders.

Finding No. 12 of the Commission recited:

> "Several witnesses testified concerning *alleged* inadequate service received from Mobile Radio Telephone Service. Several of the witnesses who testified had been asked to testify by the applicant, and the record shows one of the witnesses to be a sergeant with the Deseret Detective Agency, who was paid by the applicant to obtain data for presentation in this proceeding." (R. 922, emphasis added)

The Commission in this finding sets forth that the inadequate "service" was alleged and did not make a finding that it was in fact inadequate.

In Finding No. 17 the Commission stated:

> "Essentially, the matter to be decided in this case is whether or not the public interest can best be served by having an additional common carrier for mobile radio telephone service within the F.C.C. channel allocations made to carriers which do not also have land line facilities." (R. 293)

This was the crux of the case as far as the Commission was concerned.

The Commission then went on further indicating that regulated monopoly is the law with regard to telephone carriers and others. (See argument in Point II.)

The court pointed out in Finding No. 19:

> "Any utility serving the public will be unable to fully satisfy all the subscribers thereof. (The plaintiff admitted that he too had complaints which he felt were unjustified.) *The fact that the applicant herein can find a few dis-gruntled subscribers and can even hire an investigator to find fault does not show that there is sufficient justification for diluting the market of the present carrier, with competition.* There has been no complaint registered with this Commission, either formally or informally, that could have heretofore provided the basis for investigation by the Commission." (R. 924, emphasis added)

It is a relatively easy task to find disgruntled customers with any utility, whether it be Mountain Bell, Utah Power & Light Company, Mountain Fuel Supply, or the Protestant, or, for that matter, the Plaintiff in his own private operation. The question is whether or not the complaints are sufficient to justify an action by the Commission to allow additional certificates to be issued. It is submitted that the answer in this case is clearly no.

The Commission went on to state in Finding No. 20:

"We specifically find:

"A. That Protestant Mobile Radio Telephone Service, Inc., an R.C.C. operation in the Wasatch Front area, has constantly, earnestly and energentically sought to and has substantially upgraded and expanded its service to the public since its certification by the Commission.

"B. That when channel congestion was indicated on both Protestant's system and the Mountain Bell mobile radio system, Protestant filed and actively presented applications with the Federal Communications Commission for additional channels. The granting of all or some of these channels will greatly relieve the present congestion and broaden the service to new customers.

"C. That to grant the application herein would be clearly against the public interest."

This finding was made based upon the record which indicated that the Protestant had constantly sought ways of raising additional capital so that it might improve and expand the equipment for a better operation (R. 31). The Protestant has had a constant degree of progression in that it started out with two-radio units of the tube type, which were simplex units with a microphone and speaker. This was then upgraded to transistorized and partly transistorized units. Subsequently, selective calling systems were also introduced as well as push-button dial, which were the Protestant's own concept of how push-button dials should be used in mobile phones. This concept was introduced to the National Association of Mobile Systems and has now been widely accepted (R. 34). Thereafter, duplex systems were upgraded with push-button dials.

When channel congestion was felt to be a problem by the Protestant, applications were filed with the F.C.C. for three additional channels; however, the F.C.C. did not find sufficient need for the three channels so it only granted two additional channels. Additional channels studies were made and subsequently additional applications were filed together with letters solicited from subscribers telling the F.C.C. about the crowded conditions in the hope that these would expedite the F.C.C.'s decision to grant the additional channels. Facilities have been upgraded, plant facilities have been enlarged with the hope of better serving the public.

It is exceedingly difficult to see what more the Protestant could have done to improve his service to the public. The burden for the lack of expeditious handling of the F.C.C. matters in granting additional channels should not be placed upon the Protestant.

The reason for the Commission's findings to have been drafted as they were may well be explained in the statement of Commissioner Vernieu in conversing with Plaintiff's expert, Harold Mordkofsky:

> "Q. *Isn't it also true that the law of the various commissions throughout the country is to the effect that if there is a defect or a problem with the common carrier presently in existence, that common carrier should be regulated and should be 'set straight in their ways', so to speak, by the commission, by order other than letting the newcomer in, or prior thereto?"* (R. 258)

The decision of the Commission certainly must be saying to all who read it, "Get the job done or we will let someone else in to do it."

The question asked by Commissioner Vernieu would certainly give effect to the direction the Commission was going and the basis upon which they ruled as they did. It would certainly indicate that this was not a capricious and arbitrary decision.

It is respectfully submitted that the record is re-

plete with reasonable evidence that would justify the findings of the Commission.

## II.

## THE COURT ERRED IN FINDING THAT THE DUPLICATION OF EXPENSIVE FACILITIES WAS NOT AN IMPORTANT FACTOR IN THIS CASE, AND THAT COMPETITION WOULD BE A WHOLESOME AND STIMULATING FACTOR WHICH WOULD TEND TO FURTHER THE OBJECTIVE TO BE DESIRED OF ASSURING THE PUBLIC THE BEST POSSIBLE SERVICE IN THE MOST ECONOMICAL AND EFFICIENT MANNER THEREBY IGNORING THE DOCTRINE OF REGULATED MONOPOLY.

The court has indicated in its decision that the primary reason for the granting of monopoly franchises is to avoid wasteful duplication of facilities such as in railroad and telephone services. It goes on to indicate that the instant situation does not appear to have the factor of duplication of expensive facilities or the danger of impairing or destroying existing service. With that premise, it is respectfully submitted that the court has erred.

The Protestant herein is a small corporation totally owned by Max E. Bangerter, its president. The corporation, i.e., Max E. Bangerter, has given his total life savings and earnings to see the business grow, develop and succeed as a public utility. Mr. Bangerter has made long-term investments in real property, has increased his plant facilities to better serve the public by obtaining larger and better facilities and buildings with which he can better serve his subscribers, has indebted himself and invested over $400,000 in long-term and short-term indebtedness to upgrade his equipment as necessary to provide the best possible service to the public.

To not allow competition in an already difficult field, in which Mountain Bell competes with the Protestant, would be to dilute the market and create a situation that could bring potential economic chaos to the Protestant.

The court's premise that competition is wholesome in this field not only totally ignores the doctrine of regulated monopoly, but in effect emasculates the doctrine. It is respectfully submitted the court is in error in making such a premise.

In *Lakeshore Motor Coach Lines, Inc., v. Welling,* 9 Ut.2d 114, 339 P.2d 1011 (1959), in original proceedings to review an order of the Public Service Commission granting increased authority to operate a taxi service between Ogden and the Salt Lake City Airport by

adding additional points of pickup and delivery, this court has stated:

> "It is to be kept in mind that the functions of a common carrier affect the public interest in such a way that the legislature has deemed it proper to grant monopolistic franchises and consequently subject them to general supervision and control by the Public Service Commission." *Lakeshore, supra.,* 1013.

If the above-cited case leaves any doubt that the doctrine of "regulated monopoly" is recognized in this state, such doubt must be disspelled by the later order of the Commisison in "In the Matter of the Amended Application of San Miguel Power Association, Inc., for a Certificate of Convenience and Necessity", issued April 9, 1971, Case No. 5486, where it is stated that,

> "The policy of this Commission and of the State of Utah, as announced in many cases, is one of *regulated monopoly.* This is distinguishable in some instances from carrier certificates in this state *but with respect to electricity, gas, water and telephone service, that is the public policy.* This does no mean that the Commission, during the term of the certificate, cannot question the right of a particular utility to continue serving in all or a portion of a county or other described area. Naturally, this Commission can award such territory to another if the utility is failing to or has failed to satisfy its utilitiy responsibilties or if it has abandoned a particular area." (Emphasis added.)

Wherein does the record show that Protestant is failing or has failed to satisfy its utility responsibilities?

Other states have adopted the policy of "regulated monopoly", including Colorado, Kentucky and Missouri, among others.

A most recent case is that of the District Court in and for the City and County of Denver, Colorado, reversing an order of the Public Utilities Commission of the State of Colorado in *Answerfone, Inc., et al. v. Public Utilities Commission, et al.,* Civil Action No. C-16864. The court, citing *Donahue v. PUC,* 145 Colo. 499, 359 P.2d 1024; and *PUC v. Harvey,* 150 Colo. 158, 371 P.2d 452 (1962), held that the defendant commission committed error by ignoring the doctrine of regulated monopoly in applying the law to the facts in that case; the court quoted extensively from the *Donahue* case:

> "The finding which is called the 'serious question' confronting the Commission, namely, 'is there sufficient business to warrant two certified carriers?' amounts to a repudiation of the basic concept upon which the structure of public utility commission powers is based, namely, that of regulated monopoly."

The court then went on to quote from the case of *Denver and Rio Grande Western R.R. Co. v. Pacific Utilities Commission,* 142 Colo. 400, 351 P.2d 278, 280, in which it stated:

> "The theory of regulated monopoly is based upon the fact that, except as shown, it is better to have fewer utilities who make a reasonable return among their investments and thus give the public better and more expeditious service, than to throw the doors open so that, although the number of operators may be increased, service to the public may become disorganized."

The court then went on to say,

> "In our opinion, there is no competent evidence in the record before us to show need for the additional service by the applicant, nor can there be *until Protestant has had a reasonable time to demonstrate what may be done by him free and unfettered by the unauthorized competition to which he has been subjected at all times pertinent to this action.*" (Emphasis added.)

There is little evidence in this record which would sustain a finding that adequate service is not available from the licensed R.C.C. It is admitted that the various channels are congested, but the present R.C.C. has done everything within its power to seek additional channels from the F.C.C. which channels have been granted but have since been held up partly because of actions taken by the plaintiff herein through his attorney in Washington, D.C. This action by the Plaintiff herein has helped to cause the exact condition which he now tells this court is sufficient reason to allow him to come in and com-

pete with the present R.C.C. carrier, the Protestant herein.

In the case of *Combs v. Johnson,* 34 P.U.R.3d 466, 331 S.W.2d 730 (Ky. 1959), the controversy involved the granting to the common carrier a motor freight certificate for carrying freight between certain points in Kentucky. The question was whether the granting of a certificate was improper. On appeal, the order granting was reversed, and the court said:

> "The fact that shippers would like better service or that it would be convenient is not sufficient substantial evidence that the present service has that character of inadequacy which justifies the granting of a certificate to a new carrier. As said in the *Eck-Miller* case [*Eck-Miller Transfer Co. v. Armes,* 269 S.W.2d 287, 289 (1954)], that inadequacy must consist of *indifference, poor management or disregard of the rights of consumers persisting over such a period of time as to establish an inability or unwillingness to render adequate service.*
>
> "Appellant's proof in some instances of unsatisfactory service did not constitute such inadequacy nor was it sufficient to establish that present carriers on this route lack the ability or inclination to furnish reasonably adequate service in light of conditions shown to exist. In substance, the situation is the same as that shown to exist in *Jones v. Webb Transfer Line,* 32 P.U.R.3d 268, 328 S.W.2d 407 (Ky.

1950)." (Emphasis added.)

In the case of *Grand River Mutual Telephone Corporation v. Farmers Mutual Telephone Company of Mailland,* 37 P.U.R.3d 531 (1960), the Commission indicated,

> "Where a telephone company is not furnishing adequate service, *it is the Commission's duty to give the company an opportunity to improve its service before authorizing another utility to enter its territory and provide additional service.*" (Emphasis added.)

The Plaintiff's own expert witness, Harold Mordkofsky, indicated that several states had adopted a regulated monopoly theory with regard to R.C.C. carriers. He also indicated that a few states recently have enacted legislation that certainly would protect an existing carrier much more so than in many other states (R. 526). He indicated that the legislation provides basically that any proposed new carrier would have to show: 1) a need for a service; and 2) that the existing carrier cannot or will not or has shown no inclination to provide the service proposed by the new applicant (R. 527).

It was at this point that Commissioner Hacking made his now famous "chicken and egg" statement. The specific comment was not quoted in full. Commissioner Hacking was discussing some of the state commission problems with Harold Mordkofsky.

> "Commissioner Hacking: Well — but,

then you get to this situation — and I think maybe we've somewhat the same situation right here — as a growing public need for this type of service, and is to a degree growing by leaps and bounds. Nobody can fully serve that need unless — no single party, and maybe no combination of parties can serve that need *unless the Federal Communications Commission gives them permission, licensed channels.*

"So you get in a situation where you've got the hen or the egg — which comes first here, the hen or the egg, and what will the state commission do in the meantime when they're trying to find out whether the egg is going to be coming forth or the chicken— which is going to come first?" (R. 532, emphasis added.)

It is obvious that Commissioner Hacking was in no way inferring that the Plaintiff had a problem because he could not acquire channels until he received certification, but that the practical problem was the F.C.C. slowed things up and created problems for any carrier until such time as they decided to grant channels to that carrier to carry forth in its operation. He specifically stated that this had nothing to do with this applicant, the Plainiff herein, but only as to practical considerations by the state commission.

"Commissioner Hacking: No—and I'm talking about practical considerations rather than the particular rights of any applicant or

anything—I am talking about practical considerations by the state commission of the type things." (R. 532)

It is respectfully submitted that the court erred in overlooking the doctrine of regulated monopoly.

## CONCLUSION

The decision of the Public Service Commission was rendered after a lengthy four and one-half day hearing. There are 659 pages of testimony taken from more than 25 witnesses. Some 63 exhibits were admitted into evidence. The Commisison still was not satisfied and so it required both the applicant (the Plaintiff herein) and the Protestant to file briefs on both the facts and the law. Only then, after careful review of the record and the briefs of counsel was a decision rendered. It is obvious that the decision was not arbitrary or capricious but was only rendered after diligent consideration.

It is respectfully submitted that the Petition for Rehearing be granted.

Respectfully submitted,

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