

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

* * *

IN THE MATTER OF THE APPLICATION OF THE)
DENVER TRAMWAY CORPORATION, 350 SOUTH)
SANTA FE DRIVE, DENVER, COLORADO, FOR)
AUTHORITY TO TRANSFER PUC NO. 210 TO) APPLICATION NO. 24927-Transfer
THE CITY AND COUNTY OF DENVER, 353 CITY)
AND COUNTY BUILDING, DENVER, COLORADO.)

IN THE MATTER OF THE APPLICATION OF THE)
DENVER TRAMWAY CORPORATION, 350 SOUTH)
SANTA FE DRIVE, DENVER, COLORADO, FOR) APPLICATION NO. 24928-Transfer
AUTHORITY TO TRANSFER PUC NO. 7099 TO)
THE CITY AND COUNTY OF DENVER, 353 CITY)
AND COUNTY BUILDING, DENVER, COLORADO.)

September 24, 1971

Appearances: Max Zall, Esq., City Attorney, and
Brian H. Goral, Esq., Assistant City
Attorney, Denver, Colorado, for
Transferee.
Raymond B. Danks, Esq., Denver, Colorado,
for Transferor
John R. Barry, Esq., Denver, Colorado,
for Denver-Colorado Springs-Pueblo
Motorway, Inc.; Denver-Salt Lake-
Pacific Stages, Inc.; Continental Bus
System, Inc. (Rocky Mountain Lines
Division); and Continental Central
Lines, Inc., Intervenors and
Protestants.
Edward T. Lyons, Jr., Esq., Denver, Colorado,
for Denver-Boulder Bus Company and Colorado
Motorway, Inc., Intervenors.
John H. Lewis, Esq., Denver, Colorado, for
Greyhound Lines, Inc. (West Division),
Protestant.
Girts Krumins, Esq., Denver, Colorado,
for the Staff of the Commission

PROCEEDINGS

On April 16, 1971, Denver Tramway Corporation applied to the
Commission for authority to transfer Certificate of Public Convenience and
Necessity PUC No. 210 and Certificate of Public Convenience and Necessity

PUC No. 7099 to the City and County of Denver pursuant to C.R.S. 1963, 115-5-5 and 115-9-6, and for emergency and temporary authorities for the City and County of Denver to conduct operations under the Certificates as authorized by C.R.S. 1963, 115-6-20. On April 16, 1971, the request for emergency authority to operate for 15 days (effective April 18, 1971) was authorized by Decision No. 77398. Subsequently, temporary authority to conduct operations was granted for 165 days or until the Commission made a decision on the permanent Application for Transfer, whichever came first (Decisions No. 77511 and 77512, dated April 30, 1971).

The hearing on the permanent Application for Transfer was set for June 10, 1971, and due notice was sent to all interested persons on April 22, 1971, pursuant to C.R.S. 1963, 115-6-8. Thereafter, the hearing was reset to June 23, 1971, at 10:00 o'clock a.m., in the hearing room of the Commission, 507 Columbine Building, 1845 Sherman Street, Denver, Colorado, with notice sent to all interested parties on May 11, 1971.

On April 27, 1971, Denver-Boulder Bus Company and Colorado Motorway, Inc., filed a Petition to Intervene and Protest the transfer of Certificate of Public Convenience and Necessity PUC No. 7099, which Petition was granted on May 6, 1971, by Decision No. 77565. Protest to the transfer of PUC No. 7099 was also filed by Greyhound Lines, Inc. (West Division) on April 27, 1971.

On May 13, 1971, a Petition to Intervene and Protest the transfer of both Certificates was filed by Denver-Colorado Springs-Pueblo Motorway, Inc.; Denver-Salt Lake-Pacific Stages, Inc.; Continental Bus System, Inc. (Rocky Mountain Lines Division); and Continental Central Lines, Inc., which Petition was granted on May 18, 1971, by Decision No. 77595.

The applications were assigned Docket Nos. 24927-Transfer (PUC No. 210) and 24928-Transfer (PUC No. 7099), and consolidated for hearing before the Commissioners.

Houston P. Ishmael (President and General Manager of Transit Management Corporation of Colorado, Inc.), and an employee of ATE Management

and Service Company, Inc.); Edward R. Swanson (Director of Safety for Transit Management Corporation of Colorado, Inc.); David L. Rogers (Chief Clerk of the Transportation Office of Transit Management Corporation of Colorado, Inc.); and Samuel E. Marmaduke (former auditor for Denver Tramway Corporation) testified in support of the Applications for Transfer. Don James (President of Denver-Boulder Bus Company and Colorado Motorway, Inc.) testified in opposition to the transfer of both Certificates. Ralph Berndt (General Manager in the Rocky Mountain Area for Denver-Colorado Springs-Pueblo Motorway, Inc.; Denver-Salt Lake-Pacific Stages, Inc.; Continental Bus System (Rocky Mountain Lines Division); Transcontinental Bus System; American Bus Lines; and Checker Sight-seeing Lines); and K. F. Prosser (District Sales Supervisor for Greyhound Lines, Inc.) testified in opposition to the transfer of Certificate of Public Convenience and Necessity PUC No. 7099.

The Commission took official notice of Decision No. 34881, dated June 1, 1950; Decision No. 57386, dated October 23, 1967; Decision No. 70634, dated January 3, 1968; and Schedule 5200 of the Annual Report of the Denver Tramway Corporation for Year 1970, as filed with this Commission.

The following exhibits were admitted into evidence:

- Exhibit No. 1 - Charter Amendment No. 1 of the City and County of Denver, providing for the purchase of a public transportation system.
- Exhibit No. 2 - Order of the District Court in and for the City and County of Denver, dated April 13, 1971, Civil Action No. 22295, authorizing City and County of Denver to take immediate possession of property of Denver Tramway Corporation.
- Exhibit No. 3 - Letter of Authority setting forth the operating rights under Certificate of Public Convenience and Necessity PUC No. 210, Denver Tramway Corporation.
- Exhibit No. 4 - Letter of Authority setting forth the operating rights under Certificate of Public Convenience and Necessity PUC No. 7099, Denver Tramway Charter Co.
- Exhibit No. 5 - Ordinance No. 70, Series of 1971, City and County of Denver.
- Exhibit No. 6 - Ordinance No. 71, Series of 1971, City and County of Denver.

- Exhibit No. 7 - Article from Rocky Mountain News of May 29, 1971, concerning redemption of Denver Tramway Corporation tokens.
- Exhibit No. 8 - An accounting of the tokens issued by the Denver Tramway Corporation
- Exhibit No. 9 - Casualty Insurance Policy No. 34 C 688737 issued by The Hartford Accident and Indemnity Company and a Comprehensive Liability Policy No. 57 AL 123233 SCA(r) issued by The Aetna Casualty and Surety Company
- Exhibit No. 10 - Three charts showing buses available for charter service for week days, Saturdays and Sundays
- Exhibit No. 11 - List of charter service performed by Denver Tramway Charter Co. for the period April 1 through April 17, 1971
- Exhibit No. 12 - List of charter service performed by Denver Metro Transit for the period April 18 through June 19, 1971
- Exhibit No. 13 - Ordinances No. 139 and No. 155 of the City and County of Denver
- Exhibit No. 14 - Letter of Authority setting forth the operating rights under Certificates of Public Convenience and Necessity PUC No. 43 and PUC No. 43-I of Denver-Boulder Bus Company
- Exhibit No. 15 - Letter dated December 19, 1966, from Mayor of the City and County of Denver to I. B. James, President, and D. B. James, Vice President, Denver Gray Line Sight-Seeing and Rocky Mountain Motor Company
- Exhibit No. 16 - Letter of Authority setting forth operating rights under Certificates of Public Convenience and Necessity PUC No. 5 and PUC No. 5-I of Colorado Motorway, Inc.
- Exhibit No. 17 - Letter of Authority setting forth the operating rights under Certificates of Public Convenience and Necessity PUC No. 36 and PUC No. 36-I of American Buslines, Inc.
- Exhibit No. 18 - Letter of Authority setting forth the operating rights under Certificates of Public Convenience and Necessity PUC No. 48 and PUC No. 48-I of Denver-Colorado Springs-Pueblo Motorway, Inc.
- Exhibit No. 19 - Letter of Authority setting forth the operating rights under Certificates of Public Convenience and Necessity PUC No. 4562 and PUC No. 4562-I of Denver-Colorado Springs-Pueblo Motorway, Inc.
- Exhibit No. 20 - Letter of Authority setting forth the operating rights under Certificates of Public Convenience and Necessity PUC No. 1635 and PUC No. 1635-I of Continental Bus System, Inc.

- Exhibit No. 21 - Letter of Authority setting forth the operating rights under Certificates of Public Convenience and Necessity PUC No. 1635 and PUC No. 1635-I of Continental Bus System, Inc.
- Exhibit No. 22 - Letter of Authority setting forth the operating rights under Certificates of Public Convenience and Necessity PUC No. 1891 and PUC No. 1891-I of Transcontinental Bus System, Inc.
- Exhibit No. 23 - Letter of Authority setting forth the operating rights under Certificates of Public Convenience and Necessity PUC No. 761 and PUC No. 761-I of Denver-Salt Lake-Pacific Stages, Inc.
- Exhibit No. 24 - Equipment list of Continental Trailways, effective April 15, 1971.
- Exhibit No. 25 - Transcript of the PUC record on Application No. 22908-Transfer (Portion) and Application No. 22909-Waiver.
- Exhibit No. 26 - Letter of Authority setting forth the operating rights under Certificates of Public Convenience and Necessity PUC No. 298 and PUC No. 298-I of Greyhound Lines, Inc.
- Exhibit No. 27 - Letter of Authority setting forth the operating rights under Certificates of Public Convenience and Necessity PUC No. 394 and PUC No. 394-I of Greyhound Lines, Inc.
- Exhibit No. 28 - Equipment list of Greyhound Lines, Inc. (Greyhound Lines-West Division), effective June 1, 1971.
- Exhibit No. 29 - List of intrastate charters performed by Greyhound Lines, Inc. (Greyhound Lines-West Division), State of Colorado, January 1971.

In response to the Commission's request, the parties submitted responsive briefs setting forth their position and answering the following questions:

(1) Whether the Commission has jurisdiction as to the mass transportation system and charter service to be operated by the City and County of Denver?

- (a) If the entire trip is within the city limits;
- (b) If the trip is entirely without the city limits;
- (c) If one end of the trip is within and one end is without the city limits; and

(2) If the Commission does not have jurisdiction in any of the aforesaid situations, can the City and County of Denver by consent permit regulation by the Commission?

At the conclusion of the hearing, the matter was taken under advisement.

DISCUSSION

The principal question is whether the Commission has jurisdiction over a municipally owned public utility such as the transportation system owned by the City and County of Denver.

Authority for the City and County of Denver to acquire a transportation system is set forth in Article XX, Section 1, of the Constitution, which provides in pertinent part:

"The municipal corporation known as the city of Denver . . . shall have the power, within or without its territorial limits, to construct, condemn and purchase, purchase, acquire, lease, add to, maintain, conduct and operate transportation systems . . . and any other public utilities or works or ways local in use and extent, for the use of said city and county and the inhabitants thereof, and any such systems, plants or works or ways, or any contracts in relation or connection with either, that may exist and which said city and county may desire to purchase, in whole or in part, the same or any part thereof may be purchased by said city and county which may enforce such purchase by proceedings at law as in taking land for public use by right of eminent domain, and shall have the power to issue bonds upon the vote of the taxpaying electors, at any special or general election, in any amount necessary to carry out any of said powers or purposes, as may by the charter be provided." (Emphasis added)

The ownership by the City and County of Denver of a public transportation system does not ipso facto except such transportation system from the jurisdiction of the Commission.

C.R.S. 1963, 115-1-3 (1) provides:

"The term 'public utility,' when used in articles 1 to 7 of this chapter, includes every common carrier, pipeline corporation, gas corporation, electrical corporation, telephone corporation, telegraph corporation, water corporation, person or municipality operating for the purpose of supplying the public for domestic, mechanical, or public uses, and every corporation, or person now or hereafter declared by law to be affected with a public interest, and each thereof, is hereby declared to be a public utility and to be subject to the jurisdiction, control and regulation of the commission and to the provisions of articles 1 to 7 of this chapter." (Emphasis supplied)

(C.R.S. 1963, 115-9-2, specifically makes this grant of jurisdiction by the Commission applicable to common carriers by motor vehicles.)

Further, CRS 1963, 115-5-4 (1), provides:

"Acquisition by municipality.--(1) Any municipality which has acquired or constructed any public utility plant, property, or facility shall have the power to contract with a public utility for the operation of any part or the whole thereof, subject to the provisions of articles 1 to 7 of this chapter and to exercise by the commission in respect to such public utility of the powers of regulation and supervision conferred upon it "

The jurisdiction of the Commission over a municipally owned public utility is limited by Article V, Section 35, of the State Constitution, which provides:

"The general assembly shall not delegate to any special commission, private corporation or association, any power to make, supervise or interfere with any municipal improvement, money, property or effects, whether held in trust or otherwise, or to levy taxes or perform any municipal function whatever "

In City of Lamar v. Town of Wiley, 80 Colo 18, 248 P 1009 (1926), the Supreme Court considered the restrictive nature of Article V, Section 35, and held in pertinent part:

"In the present case the power rate fixed by the city of Lamar, owner of the public utility, for the town of Wiley, is not a rate fixed for citizens or inhabitants of the city but for another municipality, a consumer outside the city which has no voice in selecting those who fix rates for public service . . . We, therefore hold that where a municipality, as owner of a public utility, furnishes the commodity in question to its citizens and inhabitants, consumers within the city limits, the city itself, through its proper offices, possesses the sole power to fix rates. When a municipality, whether in its operation of its own public utility it acts in its municipal or governmental, or in its proprietary, or quasi public, capacity, or partly in one or partly in the other, and as such furnishes public service to its own citizens and in connection therewith supplies its products to consumers outside of its own territorial boundaries, the function it thereby performs, whatever its nature may be, in supplying outside consumers with a public utility, is and should be attended with the same conditions and be subject to the same control and supervision that apply to a private public utility owner who furnishes like service " (Emphasis supplied.)

Accordingly, the Commission has jurisdiction over a municipally owned transportation system operating without the geographical limits of the city. This jurisdiction of the Commission is applicable to home rule cities. Article XX, Section 6 h, provides that in the case of home rule cities such as Denver, the statutes of the State are applicable except when superseded by the charter or an ordinance enacted pursuant thereto; however, the Colorado Supreme Court held that a municipality has no extra territorial powers except as may be delegated to it by the legislature (City of Pueblo v. Flanders, 225 P.2d 832, 122 Colo. 571)

A possible limitation upon the jurisdiction of the Commission is set forth in Article XXV of the State Constitution, which provides:

"In addition to the powers now vested in the General Assembly of the State of Colorado, all power to regulate the facilities, service and rates and charges therefor, including facilities and service and rates and charges therefor within home rule cities and home rule towns, of every corporation, individual, or association of individuals, wheresoever situate or operating within the State of Colorado, whether within or without a home rule city or home rule town, as a public utility, as presently or as may hereafter be defined as a public utility by the laws of the State of Colorado, is hereby vested in such agency of the State of Colorado as the General Assembly shall by law designate.

"Until such time as the General Assembly may otherwise designate, said authority shall be vested in the Public Utilities Commission of the State of Colorado; provided however, nothing herein shall affect the power of municipalities to exercise reasonable police and licensing powers, nor their power to grant franchises; and provided, further, that nothing herein shall be construed to apply to municipally owned facilities."
(Emphasis added.)

Since the enactment of Article XXV, the Supreme Court has considered several cases in which the Commission has exercised jurisdiction over municipally owned utilities. In The Town of Fountain v. The Public Utilities Commission of the State of Colorado, and Mountain View Electric Association, 167 Colo. 302, 447 P.2d 527 (1968), and Mountain View Electric Association, Inc., v. The Public Utilities Commission of the State of Colorado, and the City of Colorado Springs, 167 Colo. 200, 446 P.2d 424 (1968), the

Supreme Court held that the Commission has authority to reduce the area served by a municipally owned electric utility. By necessary implication the Supreme Court found that the Commission's jurisdiction over municipally owned utilities was not altered by Article XXV. In an earlier case, The City of Thornton, Colorado, v. PUC, 154 Colo. 431, 391 P.2d 374 (1964), it was held in effect that the Commission had no jurisdiction over municipally owned water and sewage systems because the legislature had enacted laws exempting municipally owned water and sewer systems from the jurisdiction of the Commission.

Accordingly, it is concluded that Article XXV is a constitutional grant of additional power to the legislature (Commission) to regulate public utilities within home rule cities and that it in no way diminishes the existing authority of the Commission to regulate the rates, services, and facilities of a municipally owned utility located outside the geographical limits of the municipality. In essence, the rule in City of Lamar v. Town of Wiley, supra, is still the law in Colorado.

Prior to and during the Commission's hearing, the City and County of Denver requested the Commission to exercise jurisdiction over its public transit system. (Subsequently, on September 21, 1971, Denver requested that its application for transfer of Certificate of Public Convenience and Necessity PUC No. 210 be withdrawn.) As long as the City and County of Denver has enacted ordinances to exercise jurisdiction over its public transit system, its request for the Commission to exercise jurisdiction over its public transit system cannot give the Commission jurisdiction it does not otherwise have.

Article XX, Section 6 h, provides in part:

"The statutes of the state of Colorado, so far as applicable, shall continue to apply to such cities and towns, except insofar as superseded by the charters of such cities and towns or by ordinance passed pursuant to such charters."

Further, in Rabinoff v. District Court, 145 Colo. 225, 360 P.2d 344 (1961), and Zellinger, dba Public Distributing Co. et al v. Public Service Company of Colorado, 164 Colo. 424, 435 P 2d 412 (1967), the Supreme Court held that the State has authority within home rule cities, on purely local matters, when the city has not acted on the matter. The City and County of Denver having enacted ordinances exercising jurisdiction over its public transportation system cannot reconstitute jurisdiction in the Commission without first repealing the applicable ordinances.

In essence, it is concluded that the Commission has exclusive jurisdiction over Denver-owned public transportation systems operating outside of Denver and no jurisdiction over that portion of the system inside of Denver.

In the Thornton case, supra, the Supreme Court very clearly and definitely stated that when transferring a Certificate of Public Convenience and Necessity from a privately owned public utility to a municipality, the Commission must delete from the Certificate those portions no longer under its jurisdiction. Therefore, in transferring Certificates of Public Convenience and Necessity PUC No. 210 and PUC No. 7099 to the City and County of Denver, the Commission must delete from the authority granted those portions over which it no longer exercises jurisdiction.

FINDINGS OF FACT

Based upon all evidence of record, the following is found as fact that:

1. Denver Tramway Corporation (a Delaware corporation) has been granted Certificate of Public Convenience and Necessity PUC No. 210 by Decision Nos. 1097, dated February 16, 1927; 3026, dated September 2, 1930; 3712, dated October 23, 1931; 4320, dated May 20, 1932; 17610, dated September 9, 1941; 18158, dated January 20, 1942; 18278, dated February 5, 1942; 20207, dated December 16, 1942; 21102, dated July 1, 1943; 28753, dated July 31, 1947; 32089, dated February 3, 1949; 34694, dated April 21, 1950; 34828, dated May 15, 1950; 34881, dated June 1, 1950; 36262, dated March 14, 1951; 37176, dated August 3, 1951; 40823, dated June 30, 1953; 41419, dated October 21, 1953; 45741, dated May 4, 1956; 52054, dated April 8, 1959; 56476, dated May 18, 1961; 64505, dated February 3, 1965; 65201, dated June 16, 1965; 70479, dated November 28, 1967; 70634, dated January 3, 1968; 72792, dated April 2, 1969; 73965, dated December 5, 1969; 74773, dated April 24, 1970; 74883, dated May 13, 1970; 76396, dated December 3, 1970; and 76547, dated December 24, 1970. (Exhibit No. 3) In general these decisions authorize a mass transportation service on schedule within the City and County of Denver and to and from Aurora, Arvada, Golden, Englewood, and intermediate points.

2. Denver Tramway Charter Co. (a Colorado corporation, wholly owned by Denver Tramway Corporation) has been granted Certificate of Public Convenience and Necessity PUC No. 7099 by Decision No. 70634, dated January 3, 1968. This Certificate authorizes it to provide charter bus service between points in the base area composed of the City and County of Denver, Aurora, Fitzsimons General Hospital, Englewood, Fort Logan, Golden, Arvada and Leyden, Colorado, including intermediate points thereto, and state-wide radial charter bus service from and to the base area. (Exhibit No. 4)

This charter bus service was originally part of the service authorized under Certificate of Public Convenience and Necessity PUC No. 210, but was split off at the request of Denver Tramway Corporation in 1968.

3. Denver Tramway Corporation and the City and County of Denver have applied to the Commission for authority to transfer Certificates of Public Convenience and Necessity PUC No. 210 and PUC No. 7099 to the City and County of Denver, a home rule city under Article XX of the Constitution of the State of Colorado. On September 21, 1971, the City and County of Denver petitioned to amend their application to apply only to Certificate of Public Convenience and Necessity PUC No. 7099.

4. The City and County of Denver cannot withdraw its application for transfer of Certificate of Public Convenience and Necessity PUC No. 210 because the City and County of Denver has indicated that it is going to continue to operate a mass transit system within and without the geographical limits of Denver; the District Court has ordered that the City and County of Denver take over the facilities and operating rights held by Denver Tramway Corporation; the City and County of Denver and Denver Tramway Corporation applied to the Commission for permission to transfer Certificates of Public Convenience and Necessity PUC No. 210 and PUC No. 7099; and the motion to withdraw its application was only made after the hearing was completed.

5. Ordinance No. 297, Series of 1970, authorizing the acquisition of a public transit system, was adopted by a vote of the electors of the City and County of Denver, November 3, 1970 (Exhibit No. 1). This ordinance provides in pertinent part:

"C4.36. . . The Board of Councilmen. . . is authorized and empowered. . .

(a) To acquire by purchase, condemnation and purchase, construction, lease, gift, grant, transfer, or otherwise, to improve by extension, alteration, replacement, reconstruction, or otherwise, to equip, and to operate, repair and maintain facilities for and as a public transportation system, solely within or both within and without the corporation limits of the City and County of Denver,

including without limitation to acquire for the system every estate, interest, privilege, easement, franchise, right of way, term for years, and any other right in land or other real property or personal property or both real and personal property, passenger terminal and parking facilities, buildings, structures, fixtures, buses, other vehicles, equipment, furnishings, and other appurtenances and incidentals, . . . and do all other things necessary or incidental to the powers herein granted, including without limitation to make an agreement for the operation, repair and maintenance of the system with any company or other person (or any combination of the foregoing powers;. . ."

"C4.39. . .The Council shall fix the rates for the service to be rendered by the public transportation system."

"C.4.40. . .The public transportation system shall be under the management, operation and control of the Department of Public Works, and the Manager of Public Works shall perform or cause to be performed all duties and may exercise or cause to be exercised any powers (other than legislative duties and powers) in any way connected with the system."

6. On April 13, 1971, the District Court in and for the City and County of Denver in Civil Action No. 22295 authorized the City and County of Denver to enter upon and take possession of the properties, operating rights and public transportation system of Denver Tramway Corporation and Denver Tramway Charter Co., effective 12:01 a.m. on April 18, 1971, with compensation to be determined at a later date. Further, the Court ordered that Denver Tramway Corporation redeem all tokens received by the City and County of Denver from April 18, 1971, until June 17, 1971. (Exhibit No. 2)

7. Ordinance No. 70, Series of 1971, dated March 1, 1971, sets forth the agreement between the Board of Councilmen of the City and County of Denver and ATE Management and Service Company, Inc. (a Delaware corporation), for Phase 1 - Preparatory, advisory management, and supervisory direct professional services in connection with the acquisition of a public transportation system by City of Denver and the general operation, repair and maintenance thereof. Additionally, it provides for Phase 2 service by Transit Management of Colorado, Inc. (a wholly owned subsidiary of ATE

Management and Service Company, Inc., incorporated under the laws of the State of Colorado). (Exhibit No. 5)

8. Ordinance No. 71, Series of 1971, dated March 1, 1971, sets forth the agreement between the Board of Councilmen of the City and County of Denver and Transit Management of Colorado, Inc. In essence, the agreement provides for Phase 2 - Detailed operational services, maintenance and repair by Transit Management of Colorado, Inc., of the public transportation system to be acquired by the City and County of Denver. All costs, revenues and property utilized by Transit Management of Colorado, Inc., in the operation of the public transit system will belong to or are obligations of the City and County of Denver. Transit Management of Colorado, Inc., will function as an independent contractor under the general supervision of the Department of Public Works. All of the employees of the Denver-owned public transportation system are employees of Transit Management of Colorado, Inc., except the resident manager, administrative assistant, director of marketing, director of finance and accounting, director of operations and director of maintenance (who are employees of ATE Management and Service, Inc.). (Exhibit No. 6)

9. On April 1, 1971, Denver Tramway Corporation terminated the sale of its metal tokens. The purchase of a token is in the nature of a contract between the purchaser and Denver Tramway Corporation for transportation to be provided in the future by Denver Tramway Corporation. As of June 23, 1971, there were \$20,149.35 worth of such tokens outstanding. (Exhibit No. 8) The liability for redemption of outstanding tokens was not transferred to the City and County of Denver by the Court Order for Immediate Possession. (Exhibit No. 2)

10. Denver Tramway Corporation should redeem from the City and County of Denver all tokens received by the City and County of Denver from April 18, 1971, until the effective date of this Order. Any sums held by Denver Tramway Corporation for unredeemed tokens on the effective date of

this Order should be transferred to the City and County of Denver in order to prevent unjust enrichment to the Denver Tramway Corporation.

11. Denver Tramway Corporation and the City and County of Denver have requested the Commission to set a date when redemption of the tokens will cease; however, no satisfactory reason was presented for establishing a termination date for the redemption of outstanding tokens.

12. The public transportation system of the City and County of Denver, under the jurisdiction of the Commission, should continue to accept or redeem the tokens issued by Denver Tramway Corporation for an indefinite period of time, since in taking the property and rights of Denver Tramway Corporation under its Certificate of Public Convenience and Necessity, it should also assume its obligations under such Certificate.

13. The City and County of Denver has established passenger rates for its mass transportation system by Ordinance No. 139, dated April 12, 1971, and Ordinance No. 155, dated April 26, 1971. (Exhibit No. 13)

14. The operation of a transportation system by the City and County outside of Denver is a matter of state-wide concern and is not a local and municipal matter.

15. The Commission only has jurisdiction over the public transportation owned by the City and County of Denver which performs charter bus service into and out of Denver from and to points in the State of Colorado and that portion of the mass transportation system which is without the geographical limits of the City and County of Denver.

16. The City and County of Denver has the technical knowledge, financial ability and physical facilities required to operate the public transit system authorized by Certificates of Public Convenience and Necessity PUC No. 210 and PUC No. 7099.

17. Pursuant to CRS 1963, 115-9-10, the City and County of Denver has submitted satisfactory evidence as to adequate liability insurance. (Exhibit No. 9)

18. The purchase price to be paid for the Certificates and property of Denver Tramway Corporation and Denver Tramway Charter Co. by the City and County of Denver will necessarily be a fair price determined by condemnation proceedings.

19. Public convenience and necessity will be furthered by the transfer of Certificates of Public Convenience and Necessity PUC No. 210 and PUC No. 7099 from Denver Tramway Corporation to the City and County of Denver, with deletions of authority as hereinafter set forth.

20. The Commission should delete from Certificates of Public Convenience and Necessity PUC No. 210 and PUC No. 7099 the portions of the authority previously granted over which it no longer has jurisdiction, namely, the authority to operate the mass transit system authorized under Certificate of Public Convenience and Necessity PUC No. 210 within the City and County of Denver and that portion of the special charter bus service authorized by Certificate of Public Convenience and Necessity PUC No. 7099 which operates within the City and County of Denver.

O R D E R

THE COMMISSION ORDERS:

1. That Denver Tramway Corporation shall redeem the tokens received by the City and County of Denver from April 18, 1971, until the effective date of this Order.

2. That within thirty (30) days from the effective date of this Order, Denver Tramway Corporation shall transfer to the City and County of Denver any sums it has received for tokens which remain unredeemed on that date.

3. That the City and County of Denver shall accept or redeem tokens sold by Denver Tramway Corporation for an indefinite period of time.

4. The motion made by the City and County of Denver on September 21, 1971, to withdraw its application for the transfer of Certificate of Public Convenience and Necessity PUC No. 210 be, and hereby is, denied.

5. That authority under Certificate of Public Convenience and Necessity PUC No. 210 as set forth in Decision Nos. 1097, dated February 16, 1927; 3026, dated September 2, 1930; 3712, dated October 23, 1931; 4320, dated May 20, 1932; 17610, dated September 9, 1941; 18158, dated January 20, 1942; 18278, dated February 5, 1942; 20207, dated December 16, 1942; 21102, dated July 1, 1943; 28753, dated July 31, 1947; 32089, dated February 3, 1949; 34694, dated April 21, 1950; 34828, dated May 15, 1950; 34881, dated June 1, 1950; 36262, dated March 14, 1951; 37176, dated August 3, 1951; 40823, dated June 30, 1953; 41419, dated October 21, 1953; 45741, dated May 4, 1956; 52054, dated April 8, 1959; 56476, dated May 18, 1961; 64505, dated February 3, 1965; 65201, dated June 16, 1965; 70479, dated November 28, 1967; 70634, dated January 3, 1968; 72792, dated April 2, 1969; 73965, dated December 5, 1969; 74773, dated April 24, 1970; 74883, dated May 13, 1970; 76396, dated December 3, 1970; and 76547, dated December 24, 1970, which are adopted herewith by reference thereto, is amended to delete the authority to operate within the City and County of Denver.

6. That the transfer of the authority under Certificate of Public Convenience and Necessity PUC No. 210, as amended by this Order, transferred to the City and County of Denver, be, and hereby is, authorized and approved.

7. That the authority under Certificate of Public Convenience and Necessity PUC No. 7099 is amended to delete the authority to operate from point-to-point within the City and County of Denver.

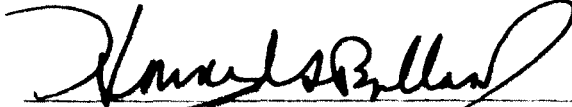

8. That the transfer of the authority under Certificate of Public Convenience and Necessity PUC No. 7099, as amended by this Order, to the City and County of Denver, be, and hereby is, authorized and approved.

9. The Denver Tramway Corporation and Denver Tramway Charter Co. rates, tariffs and regulations shall upon proper adoption notice become and remain those of the City and County of Denver public transportation system under the jurisdiction of the Commission, until changed according to law and the rules and regulations of the Commission.

10. That the City and County of Denver shall operate that portion of its public transit system which is under the jurisdiction of the Commission in accordance with the rules, regulations and orders of the Commission.

11. That this Order shall become effective twenty-one (21) days from this date.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO



Commissioners

COMMISSIONER HENRY E. ZARLENGO SPECIALLY
CONCURRING.

Dated at Denver, Colorado, this
24th day of September, 1971.
hj/vjr

COMMISSIONER HENRY E. ZARLENGO SPECIALLY CONCURRING:

In my judgment the Commission:

(a) does not have jurisdiction over that transportation between points entirely within the City and County of Denver,

(b) has jurisdiction over that transportation between points entirely outside the City and County of Denver;

(c) has jurisdiction over that transportation between points within the City and County of Denver, on the one hand, and points outside the City and County of Denver, on the other hand.

I concur that the request to withdraw application for authority to transfer Certificate of Public Convenience and Necessity PUC No. 210 to the City and County of Denver should be denied.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO


Commissioner

Dated at Denver, Colorado, this
24th day of September, 1971.
vjr