

Decision No. 36845

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the investigation upon the Commission's own motion into the reasonableness of all rates, rentals, charges, classifications, rules, regulations, contracts, and practices or any of them of THE WESTERN UNION TELEGRAPH COMPANY and POSTAL TELEGRAPH-CABLE COMPANY, applicable to California Intrastate Service.

ORIGINAL

Case No. 4692

Alfred Sutro, Felix T. Smith, and Henry G. Hayes,
for The Western Union Telegraph Company.

John J. O'Toole, Dion R. Holm, and Paul L. Beck,
for the City and County of San Francisco.

McCutchen, Thomas, Matthews, Griffiths, and Greene,
by G. William Shea, for Postal Telegraph-Cable Company.

BY THE COMMISSION:

PRELIMINARY OPINION

In this proceeding the Commission on its own motion, on August 10, 1943, instituted an investigation into the reasonableness of the rates, etc. of The Western Union Telegraph Company and Postal Telegraph-Cable Company (California) hereinafter sometimes termed Western Union and Postal Company, respectively.

Hearings were held in the proceeding on September 13, 17, and 18, 1943, and an adjournment was taken to a date to be set.

On September 27, 1943, the Federal Communications Commission, acting under Section 222 of the Communications Act of 1934⁽¹⁾ authorized a proposed consolidation or merger of the Postal Company and Western Union telegraph systems (Docket No. 6517). Such consolidation, involving acquisition by Western Union

(1) The first session of the 78th Congress, on March 6, 1943, amended the Communications Act of 1934 by adding Section 222 to Title 47 of the United States Code (United States Code Congressional Service, 1943, Pamphlet No. 1, p. 3). The new section provides that it shall be lawful, upon application to and approval by the Federal Communications Commission, as provided therein, for any two or more domestic telegraph carriers to effect a consolidation or merger.

of the properties of Postal Company, became effective at midnight October 7, 1943.

On October 19, 1943, the Railroad Commission, in the pending Case No. 4692, ordered that a further hearing be had therein and directed Western Union to show cause, in part, why it should not be required to charge, at all offices in California operated by Postal Company before the merger, the intrastate rates contained in the tariffs of Postal Company on file with the Railroad Commission and in effect on September 27, 1943, until such time as appropriate authorization for the charging of other and different rates had been obtained from the Railroad Commission. Further hearings were had on November 1 and December 1, 1943, and Case No. 4692 was submitted on the latter date.

Concerning the first part of the order to show cause mentioned above, Congress has enacted detailed provisions with respect to the consolidation or merger of domestic telegraph carriers. Supervision and approval of such consolidations have been vested in the Federal Communications Commission. The provisions of the federal statute and the circumstances surrounding its enactment demonstrate a Congressional intent to exclude the states from any control over such a consolidation or merger. Approval of the Federal Communications Commission having been obtained for the acquisition of the Postal Company properties by Western Union, the latter has acquired the Postal Company properties, which properties it may use for the transaction of its business at its filed rates. The consolidation does not result in any change in Western Union rates and, hence, Sections 15 and 63 (a) of the Public Utilities Act do not apply.

That portion of the order to show cause which relates to rates chargeable at former Postal Company offices will be dismissed.

Western Union was also directed to show cause why, in the event a showing and finding be made that the charging of Postal intrastate rates at former Postal Company offices is impracticable or otherwise improper, an order should not be directed to Western Union as follows:

1. To cancel the rates listed on pages 2 to 8, inclusive, of Exhibit No. 3, which exhibit lists 481 instances where rates are higher and 49 instances where rates are lower

than the base rates in the tariff of The Western Union Telegraph Company, and to make the regular base rate applicable thereto.

- "2. To cancel the exception rates listed in Exhibit No. 5, and also the point-to-point exception listed in Exhibit No. 4, and to establish a maximum state rate of forty-eight cents for a ten-word telegram."

The rates referred to in the above quoted paragraphs of the order to show cause are those of Western Union. At the hearing on November 1, 1943, in response to this phase of the order to show cause, counsel for Western Union stated that Western Union would have no opposition to an order of the kind covered by Item 1 quoted above, if the Commission finds that such action is justified. This matter requires discussion of the so-called basic "square" plan of telegraph rates.

At the hearings in the proceeding herein, evidence was presented that Western Union rates for California intrastate service were generally twenty per cent higher than Postal Company rates. It was estimated that if the 1942 telegraph traffic of Postal Company had passed at Western Union rates, the revenue therefrom would have been increased \$115,000, or more. Therefore, consideration is given by the Commission to modifications of Western Union tariff schedules which may be made at this time and which would mitigate the effect of increased charges to the users of California intrastate telegraph service due to the merger of the two companies.

The testimony shows that Western Union and Postal Company were authorized by the Postmaster General of the United States to increase their California intrastate telegraph rates on April 1, 1919. When the Government of the United States, on August 1, 1919, returned the properties to their owners, Postal Company reduced its rates to the pre-war level and Western Union retained its increased rates which then were at a level generally twenty per cent higher than its pre-war level. The Railroad Commission thereupon instituted an investigation into all the rates, charges, and rules and regulations of Western Union (Case No. 1355). After hearings had been held the Commission, on June 29, 1921, made its Decision No. 9180 (20 C.R.C. 188) in the matter authorizing the increases discussed in those hearings.

The record shows that at a hearing in Case No. 1355, Mr. F. W. Lienau, a witness for Western Union, explained a basic plan of Western Union for determining rates and indicated certain exception rates wherein departures from the basic plan were in effect.

Under the basic plan explained by Mr. Lienau, the entire United States has been considered as overlaid with squares fifty miles on each side, arranged in staggered or brick-work fashion. The telegraph rate from any office in one square to an office in the same square or in the next two adjoining rings of squares is thirty cents for a regular ten-word telegram and two and one-half cents for each additional word. For telegrams to offices in the next, or third, ring of squares the rate is thirty-six cents for ten words and two and one-half cents for each additional word. Telegrams to offices in the fourth ring of squares are charged for at a rate of forty-eight cents for ten words and three and one-half cents for each additional word. The intrastate rates for telegrams to offices in squares beyond the fourth ring of squares is sixty cents for ten words and three and one-half cents for each additional word. That rate has been fixed as the California maximum telegram rate.

Under the plan, California is divided into two zones; namely, California North and California South. The dividing line between the two zones extends east and west along the south boundaries of squares 1276, 1263, 1247, and 1227. The maximum rate for a telegram between offices in California North is forty-eight cents for ten words and three and one-half cents for each additional word. Likewise, the maximum rate for telegrams within California South is forty-eight cents for ten words and three and one-half cents for each additional word. The rates and charges for telegrams transmitted between the same two offices are the same regardless of the direction of the message.

Three exceptions to the basic plan were in effect at the time of the hearings in Case No. 1355. There was a maximum rate of forty-eight cents for ten words and three and one-half cents for each additional word for telegrams between San Francisco and any other telegraph office in the state. An identical maximum rate was effective between Sacramento and any other telegraph office in

the state. The third exception rate was a twenty-cent intracity rate, which is a reduction from the basic plan rate of thirty cents. The basic plan rates, and although not specifically mentioned, presumably the three exception rates, were found to be just and reasonable by the Commission in Decision No. 9180.

The studies of Western Union tariff schedules made by the Commission's staff in the present proceeding disclosed errors and various departures from the basic plan which had been found just and reasonable in 1921. These departures from the basic plan and errors in rate filing were discussed at the hearings herein and were exemplified in exhibits accepted in evidence.

The rates referred to in Item 1 of the second part of the order to show cause include tariff schedules which are not in agreement with the basic plan heretofore discussed, and those instances where no rates have been filed for square-to-square rate routes, whether or not there are telegraph offices in such squares. The "exception" rates for Sacramento and San Francisco, the Stockton to Bakersfield deviation rate, and intracity and intercity exception rates are not included in said Item 1.

The Commission is of the opinion and finds that the rate cancellations contemplated by said Item 1, and the filing of tariffs effectuating the basic plan of square-to-square uniform rates, is justified by the record herein.

Certain of the telegraph rate squares embraced in the basic plan are partly in California and partly in adjoining states. In certain instances the normal, physical routing of telegrams from one California office to another California office may cross the state boundary. Messages also may be routed over channels leaving and re-entering the state in order to get them through when shorter, normally-used, physical facilities are out of service or overloaded. At a hearing in this proceeding, Western Union, by counsel, claimed that when the physical routing of a telegram between two California offices is partly outside the state, the traffic is interstate. Inasmuch as Congress has specifically withheld from the Federal Communications Commission regulatory jurisdiction over

such communications, when regulated by state commissions⁽²⁾, the Railroad Commission will require that the rate schedules to be filed as a result of the preliminary order herein contain rates applicable to such communications between every two telegraph rate points located within California.

In order that the changes and improvements in Western Union's tariff schedules, hereinabove discussed, may become effective without delay, a preliminary order will be made at this time. Other issues involved in Case No. 4692 will be considered in a separate and further opinion and order.

PRELIMINARY ORDER

Public hearings having been had in the above proceeding, the Commission being of the opinion that a preliminary order should issue, and based upon the record and upon the findings contained in the above preliminary opinion,

IT IS ORDERED as follows:

1. That The Western Union Telegraph Company shall file, on or before March 1, 1944, the necessary tariff sheets to establish the full basic plan square-to-square rates discussed in the foregoing preliminary opinion and to remove from its tariff schedules the deviations from the basic plan as set forth in Exhibit No. 3 in this proceeding, and make such tariff sheets effective fifteen (15) days from and after the date of filing.

(2) "Interstate communication" or "interstate transmission", as used in the Communications Act (United States Code, Title 47, Chapter 5, Section 153(e)), unless the context otherwise requires, "shall not include wire communication between points within the same State * * * through any place outside thereof, if such communication is regulated by a State commission." Such specific exclusion is an affirmative expression of Congressional judgment that the matter is a proper subject of state, rather than federal, regulation.

2. That portion of the order of October 19, 1943, to show cause, which relates to rates chargeable by The Western Union Telegraph Company at offices in California operated by Postal Telegraph-Cable Company before October 7, 1943, is hereby dismissed.

This preliminary order shall become effective on the twentieth day after service of a certified copy hereof upon The Western Union Telegraph Company.

Dated San Francisco, California, this 21st day of January 1944.

Richard Lachse

Justus D. Calmer
Francis R. Hawener

Commissioners