

**ORIGINAL**Decision No. 57758

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application	)	
of California Interstate Telephone	)	
Company, a corporation, for author-	)	
ity to carry out the terms of an	)	Application No. 40251
agreement pertaining to the leasing	)	
of circuits for transmission of	)	
telegraphic messages.	)	

O P I N I O N

Applicant, California Interstate Telephone Company, seeks authority to carry out the terms of an agreement entered into between it and the Western Union Telegraph Company.

A duly noticed public hearing was held in this matter before Examiner Donald B. Jarvis in San Francisco, on September 11, 1958.

The contract in question provides that Interstate will lease telegraph circuits to Western Union for a period of 10 years at specified rates. These circuits are located in the counties of Mono, Inyo, Kern and San Bernardino.

Evidence of record discloses that both Interstate and Western Union have operating rights and filed tariff schedules in the area here involved. This area is primarily a sparsely populated desert region. Interstate and Western Union competed with each other until 1951. During 1951 Interstate discontinued the handling of telegraph messages and money transfer service under its tariffs and commenced agency operations for Western Union. The vice president and secretary of Interstate testified that in the area here in question "... there is a relatively small amount of telegraph business

and in order to approach economical operation it is necessary for one company to have all of the telegraph business." At the hearing counsel for Interstate stated that "... if this application is approved it (Interstate) will withdraw its filed tariffs for public telegraph service."

The agency agreement under which Interstate and Western Union had been operating since 1951 expired on May 25, 1958. The parties have continued to operate under the terms of that agreement pending the disposition of this matter.

The facilities to be leased pursuant to the agreement here under consideration are those now used by Interstate; with slight modifications. Charges for the leased circuits are primarily based upon a fixed amount per mile of wire used. "Setting-up" and "terminal loop" charges are also provided. The amount of the charges called for by the agreement is based upon a similar type of agreement between Western Union and The Pacific Telephone and Telegraph Company, which is not a party to this proceeding. Interstate's rate engineer and collection supervisor testified that Interstate had made no cost study or independent review of the proposed charges provided for by the contract.

Interstate suffered a net loss of \$28,000 under the agency agreement from January 1, 1951 through July 31, 1958. Because of Interstate's accounting procedures this figure does not include items such as facility costs, heat, light, directory administrative costs and general office salaries and expenses. A witness estimated that these items amounted to \$7,000 in 1957.

If the estimate of expenses for costs not reflected by Interstate's accounting procedures be accepted, Interstate sustained in 1957 a loss of \$6,000 on its operations under the agency agreement.

Under the proposed agreement said witness estimated that Interstate would have suffered a \$2,700 loss.

The Commission staff did not present evidence in this proceeding and confined its participation to cross-examining witnesses called by other parties to the record. The record shows that the deficits under the Western Union agency agreement were charged to the regular operations of Interstate rather than any surplus accounts. A witness for Interstate testified that the same procedure would be followed if the agreement here under consideration were approved. The Commission staff took the position that the losses sustained by Interstate should not be charged to regular operations and thus passed on in the rate structure to its telephone patrons. This application does not raise any issues concerning the proper allocation on the books of Interstate of losses sustained by telegraph operations. The point raised by the staff will not be passed upon in this proceeding. This opinion shall not be construed as approving or disapproving Interstate's accounting procedures with respect to losses sustained in telegraph operations.

The Commission is of the opinion that in substance the agreement here in question would help reduce the losses suffered by Interstate in its telegraph operations, but that certain modifications need to be made before this Commission will grant authority to carry out the terms thereof.

Paragraph 8 of the agreement provides as follows:

"It is the intent of this agreement that Interstate shall make available to Western Union in its territory circuit facilities at rental rates comparable to those charged Western Union by The Pacific Telephone and Telegraph Company for like facilities. If during the term hereof, there shall be negotiated any increase in such rates, pursuant to an agreement by Western Union and The Pacific Telephone and Telegraph Company, Western Union agrees similarly to pay Interstate at such increased rates for facilities leased hereunder."

Paragraph 8 is contrary to public policy and cannot be approved. This application provides for the lease of public utility operating property for which Commission approval is required (Public Utilities Code Section 851). In addition, the amount charged under the agreement for the use of the leased facilities is a rate subject to regulation by this Commission (Cal. Const. Art. XII, Sec. 23; Public Utilities Code Sections 451 et seq.). Paragraph 8 provides for an automatic increase in rates without prior Commission approval which is contrary to Public Utilities Code Section 454 which provides as follows:

"No public utility shall raise any rate or so alter any classification, contract, practice, or rule as to result in any increase in any rate except upon a showing before the commission and a finding by the commission that such increase is justified."

The vice of paragraph 8 is compounded by the fact that an automatic increase in rates would be dependent upon the happening of an event over which Interstate would have no control. Furthermore, we take official notice of the fact that Western Union is a public utility subject to the regulation of this Commission. Increased charges under the agreement here involved could affect rates charged by Western Union to its customers. This is another reason why an automatic increase provision will not be approved.

Paragraph 3 of the agreement provides in part that: "All circuit facilities leased hereunder shall be on a monthly basis." This language appears to conflict with paragraph 7 which provides as follows:

"This agreement shall take effect on the first day of April, 1958 and shall be and continue in effect for an initial term extending to the first day of May, 1968, and if not terminated at the end of such term shall continue in effect for additional terms of one year thereafter, subject to termination at the end of such initial term or any such additional term on six months' notice in writing by either party to the other."

This point was raised by the examiner at the hearing. The attorneys representing Interstate and Western Union assured the Commission that the intent of paragraph 3 was to provide for a 10-year lease with monthly charges. The last sentence of paragraph 3 (quoted above) should be struck from the contract.

If Interstate and Western Union agree to modify the agreement to conform to the requirements above set forth, the authority herein sought will be granted.

It should be noted that this decision in no way passes upon the question of whether Interstate should be permitted to withdraw its telegraph tariffs now on file with this Commission. If such authority is desired it must be properly secured (Public Utilities Code Sections 489, 490, 491, 495; General Order 96, Section XIV).

O R D E R

A public hearing having been held and based on the evidence therein adduced,

IT IS ORDERED that:

1. If California Interstate Telephone Company and Western Union Telegraph Company mutually agree to strike from their agreement, dated June 26, 1958, all of paragraph 8 and the last sentence of paragraph 3, they shall notify this Commission in writing within thirty days after the effective date of this order that such action has been taken and file with this Commission two certified copies of the agreement as so amended.

2. If the parties modify the agreement and timely file the amended copy thereof as provided for in paragraph 1 of this order, California Interstate Telephone Company shall have the authority to carry out the remaining terms of the contract dated June 26, 1958.

between it and Western Union Telegraph Company for the lease of telegraph circuits.

3. If the parties do not modify the agreement of June 26, 1958 or timely file the amended copy provided for in paragraph 1 of the order, this application will be denied.

4. If the authority herein granted is exercised, applicant shall, within sixty days after June 30, 1959 and yearly thereafter, file the following statements with respect to facilities leased under said agreement relating to California intrastate operations:

- a. A detailed summary of the plant and equipment being leased to Western Union, showing applicant's regularly filed rate then in effect for such service and the rate being provided in the agreement.
- b. A summary showing the computation of the amount by which applicant's charges for its services provided under said agreement differ from the charges computed at applicant's filed tariff rates.

5. If the authority herein granted is exercised, applicant shall notify this Commission of the date of termination of said agreement within thirty days from and after said date of termination.

The effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California, this 30<sup>th</sup> day of December, 1958.

[Signature]  
President

[Signature]  
[Signature]  
[Signature]  
Commissioners