

Decision No. 64152**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of The Pacific Telephone and Telegraph Company, a corporation, and The Western Union Telegraph Company, a corporation, for authority to carry out the terms of two agreements amending Contract No. 1, pertaining to the leasing of circuits within exchange areas, and an agreement amending Contract No. 2, pertaining to the leasing of circuits between exchange areas.

Application No. 44163

Arthur T. George and Maurice D. L. Fuller, Jr., for The Pacific Telephone and Telegraph Company, applicant.

Noel Dyer for The Western Union Telegraph Company, applicant.

James H. Krieger and John H. Barrows for California Interstate Telephone Company, interested party.

Paul Popenoe, Jr., for the Commission staff.

O P I N I O NIntroduction

Pursuant to order of the Commission in Decision No. 39219, dated July 19, 1946, applicants, The Pacific Telephone and Telegraph Company, hereinafter sometimes called Pacific Company, and The Western Union Telegraph Company, hereinafter sometimes called Western Union, entered into two agreements effective August 1, 1946, designated Contracts No. 1 and No. 2, respectively. In Decision No. 57553, dated November 3, 1958, the Commission authorized applicants to carry out the amendments to said contracts.

On February 6, 1962, applicants Pacific Company and Western Union filed the application herein requesting the Commission to issue its order authorizing said applicants, as of January 1, 1962, to carry out the terms of:

(1) Two agreements amending Contract No. 1 pertaining to the leasing of circuits within exchange areas; and

(2) An agreement amending Contract No. 2 pertaining to the leasing of circuits between exchange areas.

As alleged in the application, Contract No. 1, as amended, covers the leasing of circuits within Pacific Company's exchange areas and provides, in part, that each party will lease to the other, upon reasonable notice, circuits of the kinds and under the terms and conditions therein stated for operation by the lessee for use in the conduct of its public communications business. A copy of the said Contract No. 1, as amended, is attached to the application as Exhibit A.

Applicants now propose further to amend said Contract No. 1 by two agreements. The principal effects of the first agreement, a copy of which is attached to the application as Exhibit B, would be to:

(1) Increase the purposes for which circuits leased to Western Union by Pacific may be used to include

- (a) voice coordination of facsimile transmission,
- (b) data transmission service, including voice coordination thereof.
- (c) remote control and operation of sensing devices, alarms, signals, displays, controls, computers, and
- (d) the local termination of interexchange circuits used for various purposes, including private line leased for voice or alternate voice transmission.

(2) Permit circuits leased to Western Union to be connected with circuits owned by

- (a) the United States government on reservations of the National Aeronautics and Space Administration, and

(b) electric power, or oil, oil products, or natural gas pipeline companies, or railroad companies where the circuits of such companies are provided primarily to communicate with points located along a right of way owned or controlled by such companies and extending between or beyond exchange areas of Pacific Company.

(3) Permit termination at both ends, of circuits leased by Pacific Company to Western Union, when used for voice transmission, in telephone instrumentalities furnished by a telephone company under filed tariffs (except such circuits may also be terminated in instrumentalities of United States Military Departments or of the National Aeronautics and Space Administration where such interconnection is authorized). Through such instrumentalities connection may be made, where authorized by tariffs, with the general exchange and toll telephone networks.

(4) Insure that the transmission and signalling characteristics of the circuits of Western Union, when connected to instrumentalities or circuits of the Pacific Company, are of as high a standard as that established by Pacific Company for circuits used by it in providing comparable services.

(5) Provide for making leased circuits available for the purpose of investigation and clearing of troubles thereon.

(6) Revise provisions respecting the creation of additional communication channels from circuits leased.

(7) Permit the furnishing of circuits by the Pacific Company to Western Union with special characteristics and specify the reimbursement therefor.

Applicants further propose to amend said Contract No. 1 by a second agreement, the sole effect of which would be to substitute the words "item 6" for the words "item 7" in the first paragraph of Section 2, paragraph (a) of Contract No. 1 so as to fully conform said agreement to the terms of Exhibit B attached to the application herein.

As further alleged in the application, Contract No. 2, as amended, covers the leasing of circuits between Pacific Company's exchange areas and provides, in part, that each party will lease to the other, upon reasonable notice, circuits of the kinds and under the terms and conditions therein stated for operation by the lessee for use in the conduct of its public communications business. A copy of said Contract No. 2, as amended, is attached to the application herein as Exhibit C.

Applicants now propose further to amend said Contract No. 2 by an agreement, a copy of which is attached to the application as Exhibit D, the principal effects of which would be to:

(1) Reduce the minimum aggregate amount of circuit rentals to be paid by Western Union to Pacific Company for the calendar year 1963.

(2) Increase the purposes for which circuits leased to Western Union by Pacific Company may be used to include

- (a) data transmission service, including voice coordination thereof,
- (b) remote control and operation of sensing devices, alarms, signals, displays, controls, or computers, and
- (c) private line leased voice or alternate voice transmission.

(3) Permit circuits leased to Western to be connected with circuits owned by

- (a) the United States government on reservations of the National Aeronautics and Space Administration, and
- (b) electric power, or oil, oil products, or natural gas pipeline companies, or railroad companies where the circuits of such companies are provided primarily to communicate with points located along a right of way owned or controlled by such companies and extending between or beyond exchange areas of Pacific Company.

(4) Permit termination, at both ends, of circuits leased by Pacific Company to Western Union, when used for voice transmission, in telephone instrumentalities furnished by a telephone company under filed tariffs (except that such circuits may also be terminated in instrumentalities of United States Military Departments or of the National Aeronautics and Space Administration where such interconnection is authorized). Through such instrumentalities connection may be made, where authorized by tariffs, with the general exchange and toll telephone networks.

(5) Insure that the transmission and signalling characteristics of the circuits of Western Union, when connected to instrumentalities or circuits of the Pacific Company, are of as high a standard as that established by Pacific Company for circuits used by it in providing comparable services.

(6) Provide for making leased circuits available for the purpose of investigation and clearing of troubles thereon.

(7) Revise provisions respecting the creation of additional communication channels from circuits leased.

(8) Specify the reimbursement for the furnishing of circuits with special characteristics.

(9) Revise certain rates and charges.

In so far as California intrastate operations are concerned, both Exhibit B and Exhibit D which are attached to the application herein provide:

"(1) This amendment shall not become effective until authorization of the Public Utilities Commission of the State of California is obtained.

"(2) This amendment shall be subject to such changes or modifications as may be required or authorized by any regulatory commission in the exercise of its lawful jurisdiction."

Public Hearing

Public hearing on the application herein was held before Examiner Wilson E. Cline in San Francisco on June 19, 1962. The matter was taken under submission upon the receipt of the late-filed Exhibit No. 2 in evidence on June 28, 1962.

Pacific Telephone and Telegraph Company

The General Tariff Engineer for Pacific Company testified regarding the provisions of Contract No. 1 and Contract No. 2 and the effect of the proposed amendments to said contracts. He further testified that based on July 1, 1961 data, the proposed amendments will result initially in a decrease of approximately \$52,900 in annual revenues of Pacific Company but will not impair its ability properly to discharge its responsibility to the public. The contract amendments here under consideration have been effective for interstate service and in intrastate service in all states except California since January 1, 1962.

This witness also testified that the basic leasing agreements between Pacific Company and Western Union have been in effect since 1928 and that they are based on the desirability of avoiding, where possible, duplication of facilities in order to save expense. The agreements do not purport to impose any obligations on any companies other than the Pacific Company and Western Union, and other companies are perfectly free to enter into similar agreements with Western Union or Pacific Company. The Pacific Company has no serving facilities which enter into the service territory of California Interstate Telephone Company but it does have four East-West trans-continental toll leads which cross the territory of California Interstate Telephone Company.

Western Union

The Assistant Vice President in the Finance Department of Western Union also testified regarding Contracts Nos. 1 and 2 and the proposed amendments thereto.

On cross-examination this witness testified that Western Union is constructing a microwave facility between Goldstone and Pasadena to provide two very broad band circuits for the handling of high speed data. Voice transmission as such is not involved except possibly to a minor degree for coordinating purposes. If voice coordination between Goldstone and Pasadena is required there is a possibility that telephone instruments of the Pacific Company would be used at Pasadena. He further testified that Goldstone is just outside the service territory of California Interstate Telephone Company.

The Goldstone contract for the construction of the microwave facility was entered into between the National Aeronautics and Space Administration, sometimes hereinafter called NASA, and Western Union as the result of competitive bidding in which California Interstate Company participated. It was awarded to Western Union February 19, 1962, whereas the amendments to Contracts Nos. 1 and 2 which are here under consideration are dated January 1, 1962.

The witness for Western Union also testified that the termination of service in Bell instrumentalities is limited to Western Union private line services which are used for voice transmission, and the use of the terminal instrumentalities of Bell is restricted to voice use and nothing else. In other words a Western Union leased voice private line terminating on a Bell Telephone Company PBX switchboard could be connected to the toll and exchange network if a similar line by Bell could be.

Commission Staff

Evidence regarding the effect of the proposed amendments was also introduced through a Commission staff witness. This witness presented the following staff recommendations for the Commission's consideration:

- "a. It appears that the proposed contract amendments will be in the public interest through facilitating the efficient and economical use of circuits which may be required for the furnishing of communications' services to the public. Such arrangements should not impair the ability of either Pacific or Western Union to meet their public service obligations.
- "b. If the proposed amendments to Contract No. 1 and Contract No. 2 are authorized, recommendation is made that the applicants file statements in respect to leased facilities under Contracts Nos. 1 and 2, as amended in essentially the same way as set forth in ordering paragraph 3 (a), (b), (c), (d), of Decision No. 57553, and, in addition, file within 60 days after June 30 of each year statement of any changes in the equipment quantities being leased."

The staff witness testified that in preparing the staff report and making the recommendations that the contract amendments are in the public interest, the staff did not take into account in any way the effect of constructing the facilities necessary to perform the services in territories other than those of the Pacific Company.

California Interstate Telephone Company

The Vice President of California Interstate Telephone Company testified that his company's concern in this proceeding is not to question the desirability of the principle of leasing circuits and facilities between communication companies but the possible financial impact upon California Interstate Telephone of the amendments which are the subject of this proceeding.

California Interstate Telephone Company is presently furnishing public telephone service at Goldstone as well as private line service voice transmission to the Goldstone tracking station of the Jet Propulsion Laboratory which is a branch of NASA. The traffic is routed through Barstow to San Bernardino at which point it is connected with the facilities of The Pacific Telephone and Telegraph Company.

Under the Contracts Nos. 1 and 2 as proposed to be amended if a circuit used for voice transmission in telephone instrumentalities interconnected with Pacific Company's toll network is terminated within California Interstate Telephone Company's territory it must be terminated in an instrumentality furnished by the California Interstate Telephone Company under its filed tariffs or in instrumentalities of United States Military Departments or of the National Aeronautics and Space Administration.

Although only companies which could interconnect with the general toll and exchange network were permitted to bid on the NASA communication facility between Pasadena and Goldstone, Western Union was included as a bidder by virtue of the amendments which are pending in this proceeding. The only other bid submitted was a joint bid by Pacific Company and California Interstate Telephone Company. Western Union was the successful bidder.

The witness for California Interstate Telephone Company further testified that he knew of no other facility which Western Union proposed to construct in California Interstate's territory which might adversely affect its revenue, that California Interstate Telephone Company itself is completely free to enter into agreements with Western Union or with the Pacific Company concerning the leasing of California Interstate Telephone Company's facilities within its territory, and that California Interstate Telephone Company has

already entered into a leasing agreement with Western Union restricted to the message-type of telegraph service.

Counsel for California Interstate Telephone Company urged that the Commission approve the amendments to Contracts Nos. 1 and 2 only upon the condition that Western Union may not, because of these contracts as amended, extend its lines into any independent telephone company's territory or duplicate any facilities without first having exhausted the possibility of leasing those circuits, and without having properly noticed the proceeding before this Commission as an extension of facilities by a utility, pursuant to Public Utilities Code Section 1001, into the already served territory of another utility. ✓

California Independent Telephone Association

Late-filed Exhibit No. 2 states the position of the California Independent Telephone Association in this matter as follows:

1. The activity and services of Western Union, except for those activities and services provided under existing arrangements, should be limited or restricted to the exchange territories of The Pacific Telephone and Telegraph Company until such time as agreements and contracts can be negotiated between the independent telephone companies and The Western Union Telegraph Company.

2. Under Section 1001 of the Public Utilities Code of the State of California the construction of voice transmission facilities by The Western Union Telegraph Company within the filed serving area of an independent telephone company would require a certificate from this Commission that the present or future public convenience and necessity require or will require such construction.

3. Any proposed duplication by The Western Union Telegraph Company of independent telephone company voice transmission facilities which exist or can be constructed should be properly noticed and made the subject of hearings before this Commission.

Findings

The Commission finds that the only evidence, other than speculative, pertaining to actual or threatened invasion of the service territory of California Interstate Telephone Company or any other independent telephone company by reason of the amendments to Contract No. 1 and Contract No. 2 offered in this proceeding is that pertaining to construction of the two very broad band circuits for the handling of high speed data and voice transmission for coordinating purposes between the Jet Propulsion Laboratory at Goldstone and the Jet Propulsion Research Center at Pasadena which are operated by the National Aeronautics and Space Administration. Although California Interstate Telephone Company has had full knowledge of this extension of Western Union facilities no complaint has been filed with this Commission.

The Commission further finds that the agreements described in the application herein amending Contract No. 1 and Contract No. 2 will not be adverse to the public interest and that the application herein should be granted without the restrictions and conditions requested by California Interstate Telephone Company and California Independent Telephone Association but subject to the ordering paragraphs recommended by the Commission staff.

O R D E R

A public hearing having been held in the above-entitled matter and the Commission being informed therein,

IT IS ORDERED that:

1. The Pacific Telephone and Telegraph Company and The Western Union Telegraph Company, applicants herein, are authorized to carry out the terms and conditions of the written agreement dated January 1,

1962, attached to the application herein as Exhibit B, and amending Contract No. 1 described in and attached to said application as Exhibit A, and said applicants are authorized further to amend said Contract No. 1 by another agreement, the sole effect of which would be to substitute the words "item 6" for the words "item 7" in the first paragraph of Section 2, paragraph (a) of Contract No. 1 so as to fully conform said agreement to the terms of said Exhibit B.

2. Said applicants are further authorized to carry out the terms and conditions of the written agreement dated January 1, 1962, attached to the application herein as Exhibit D, and amending Contract No. 2 described in and attached to said application as Exhibit C.

3. Applicants shall file with the Commission within thirty days after the effective date of this order, two certified copies of the amending agreements as executed, together with a statement of the date on which the amending agreements are deemed to have become effective.

4. If the authority herein granted is exercised applicants shall, within sixty days thereafter, file the following statements with respect to facilities based under Contracts Nos. 1 and 2, as amended, relating to California intrastate operations:

- (a) The Pacific Telephone and Telegraph Company shall file a detailed summary of the plant and equipment being leased to The Western Union Telegraph Company by reason of the amendments to Contracts Nos. 1 and 2 authorized herein showing its regularly filed rate as of December 31, 1961, for such service and the rate being provided in Contracts Nos. 1 and 2, as amended.
- (b) The Western Union Telegraph Company shall file a detailed summary of the plant and equipment being leased to The Pacific Telephone and Telegraph Company by reason of the amendments to Contracts Nos. 1 and 2 authorized herein showing its regularly filed rate as of December 31, 1961, for such service and the rate being provided in Contracts Nos. 1 and 2, as amended.

- (c) The Pacific Telephone and Telegraph Company shall file a summary showing the computation of the amount by which charges for its service provided under Contracts Nos. 1 and 2, as amended, differ from the charges computed at the filed tariff rates of The Pacific Telephone and Telegraph Company.
- (d) The Western Union Telegraph Company shall file a summary showing the computation of the amount by which charges for its services provided under Contracts Nos. 1 and 2, as amended, differ from the charges computed at the filed tariff rates of The Western Union Telegraph Company.

5. Within sixty days after June 30 of each year applicants shall file a statement of any changes in the equipment being leased as provided in Sections (a), (b), (c) and (d) of ordering paragraph 4 above, as of June 30 of each year.

6. Applicants shall notify this Commission of the date of termination of said Contracts Nos. 1 and 2, as amended, 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 21st day of August, 1962.

George T. Crover
President

John J. Mitchell

W. Lynn Fox

Walter D. B. B. B.

Frederick B. Helobuff
Commissioners