

**ORIGINAL**Decision No. 65500

## 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 an agreement,  
designated Contract No. 3, covering  
the leasing of facilities for furnish-  
ing TELPAK Service.

Application No. 44997  
(Filed December 4, 1962)

Arthur T. George and Maurice D. L. Fuller, Jr., by  
Maurice D. L. Fuller, Jr., for The Pacific  
Telephone and Telegraph Company, applicant.  
Lawrence Berman, Noel Dyer, for The Western Union  
Telegraph Company, applicant.  
Best, Best & Krieger, by James H. Krieger and  
Glen E. Stephens, for California Interstate  
Telephone Company, interested party.  
J. E. Brown, for the Commission staff.

O P I N I O N

After due notice, public hearing in this matter was held before Examiner Emerson on February 6, 1963, at San Francisco.

In this proceeding, The Pacific Telephone and Telegraph Company and The Western Union Telegraph Company seek authority to carry out the terms and conditions of an agreement, designated Contract No. 3, covering the reciprocal leasing of facilities for furnishing TELPAK service<sup>1/</sup> to the public.

Contracts Nos. 1 and 2 between the same parties, having heretofore been placed before the Commission, may be summarized briefly as follows: Contract No. 1 (dated August 1, 1946 and as amended in 1949, 1958 and 1962) covers the leasing of circuits

<sup>1/</sup> TELPAK is a private line service offering under which a customer leases large, specified segments of communications capacity between specified points.

within exchange areas and certain items of telephone equipment, duct, and pole line attachment space. This contract contains 11 sections with three associated rental schedules. Contract No. 2 (dated August 1, 1946 and as amended in 1954, 1955, 1958 and 1962) covers the leasing of circuits between exchange areas. This contract comprises 12 sections, one schedule, and a supplemental agreement<sup>2/</sup>

Contract No. 3 is dated September 20, 1962 and, as above stated, covers the leasing of facilities for furnishing TELPAK service. It contains 13 sections and one rate schedule, the latter setting forth four classifications based upon various channel bandwidths. Basically, it is the broad-band channel characteristics and the rental charges therefor which distinguish this contract from Nos. 1 and 2. Contract No. 3 provides for the reciprocal leasing of channels of 48, 96, 240 or 1000 Kilocycles per second bandwidth, utilizing wire, radio or both, in providing service to a customer, with charges per channel based on the airline mileages between the telephone exchange areas in which the channels terminate. A channel terminal is required at each end of each channel and the terminal installation, monthly rental, extension, and move charges are specified or referred to in Schedule A of the contract. Basically, the charges are 7 percent below the regular tariff rates.

TELPAK facilities may be used by the customer for various communications purposes such as transmission of voice, data, facsimile and other forms of recorded messages. At the customer's

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<sup>2/</sup> These contracts are treated in this Commission's Decision No. 64152 and the contracts themselves are part of Application No. 44163, which decision and application are by reference a part of the present record.

request, his base capacity may be arranged for operation as a single broad-band channel or as a number of channels of specified lesser grade. Certain alternate arrangements are also available to the customer, such as part-time use of a single broad-band channel and part-time use of a number of lesser grade channels. Further, through interconnection with nation-wide telegraphic, telephonic and microwave communications networks, the customer effectively has unlimited access to any parts of the nation for which he desires such service.

Western Union has opposed the Bell system offering of TELPAK service before the Federal Communications Commission. However, since such Bell system service is actually in effect, Western Union feels it must offer the same service because of competitive considerations. Contract No. 3 places it in such a competitive situation. The contract, by its terms and by law, is subject to such changes or modifications as this Commission may from time to time direct in the exercise of its jurisdiction and may not become effective in California except upon approval of the Commission.

Western Union has been and is now expanding its facilities. It is presently constructing a nation-wide microwave network which will greatly expand its circuit facilities available for the offering of all types of communication service, including private line voice transmission. Western Union holds itself out to provide private line services on a nation-wide basis and it has been its practice to furnish the circuitry for such services from its own plant facilities and to supplement such facilities by leasing those of other communication carriers where necessary

to derive additional circuits. With respect to service involving extensions into areas, beyond its own lines and those of the Bell system, served by an independent telephone company, it either leases facilities from the independent company or constructs its own facilities to obtain or reach a customer. Pacific Telephone, on the other hand, does not extend its facilities into the territory of an independent telephone company. This situation, respecting Western Union, disturbs the California Interstate Telephone Company and in this proceeding, while not opposing approval of Contract No. 3, it presented evidence respecting the possible consequences of the contract which might be unfavorable to it and urged that the Commission attach certain conditions to the contract; namely, that Western Union be required either to lease facilities from an independent company, or where new facilities are to be constructed, that Western Union be required to obtain the authority of this Commission prior to construction.

We interpret California Interstate's position, in effect, as being one of not opposing competition between Western Union and Pacific Telephone but objecting to the possibility of Western Union competing with California Interstate. In its view, Contract No. 3, if not directly inviting such competition, indirectly makes such competition probable. In this respect, California Interstate's position and evidence in this proceeding is substantially the same as that placed before the Commission at the time amendments to Contracts Nos. 1 and 2 were under consideration.<sup>3/</sup> In addition, however, California Interstate alleges that Western

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<sup>3/</sup> See Decision No. 64152 in Application No. 44163, issued August 21, 1962.

Union has now competitively invaded its territory<sup>4/</sup> and that the consequences of Contract No. 3 will be further to aggravate or multiply such situation, particularly in view of the privilege of Western Union interconnecting with the general toll and exchange telephone networks of the Bell system granted by the contract.

The evidence discloses nothing which this Commission finds to be adverse to the public interest respecting the competitive situation between the parties to Contract No. 3. Insofar as the possibilities of, or allegations respecting, unfair competition between Western Union and California Interstate may be concerned, we point out that Commission determinations on such a subject may be made in a proceeding appropriate to such an issue. We do not find that such an issue is germane to this proceeding. It should go without saying, however, that any approval of Contract No. 3 which may be given in this proceeding should in no way be construed as authorizing either Pacific Telephone or Western Union to go beyond the precise terms of the contract as authorized either as to the services to be rendered or as to the rates and charges therefor; or, further, as to any extension of facilities into any area or territory into which the parties have no legal right to enter.

In view of the evidence, the Commission finds that carrying out the terms and conditions of Contract No. 3 will not be adverse to the public interest and that the contract should be authorized.

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<sup>4/</sup> The alleged invasion of territory is one of the issues in Case No. 7469 (Calif. Interstate vs. Western Union) now before the Commission.

ORDER

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 that certain written agreement between them, dated September 20, 1962, and designated Contract No. 3, covering the leasing of facilities for furnishing TELPAK service, as the same is set forth in Exhibit A attached to the application herein.

2. Within thirty days after the effective date of this order, applicants shall file with this Commission four certified copies of said agreement as executed, together with a statement of the date on which said agreement is deemed to be effective.

3. Applicants shall notify this Commission in writing 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 28<sup>th</sup> day of MAY, 1963.

George L. Hoover  
President  
Frederick B. Holbrook  
William W. Bennett

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Commissioners

Commissioner Everett C. McKeage, being necessarily absent, did not participate in the disposition of this proceeding.