

ORIGINAL

Decision No. 66102

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

CALIFORNIA INTERSTATE TELEPHONE
COMPANY, a corporation,

Complainant,

vs.

Case No. 7469

WESTERN UNION TELEGRAPH COMPANY,
a corporation,

Defendant.

ORDER ON REHEARING RESCINDING DECISION NO. 65557
AND DISMISSING COMPLAINT

On July 23, 1963, this Commission issued its order granting rehearing of Decision No. 65557 herein, limited however, to the filing of briefs relative to this Commission's jurisdiction over the furnishing of the communications services involved herein, as this question of jurisdiction had not previously been raised and briefed by the parties hereto. Defendant belatedly raised the question of jurisdiction in its petition for rehearing, contending that the federal authority has exclusive jurisdiction, thus excluding state action. Said briefs have now been filed and the matter was taken under submission on September 16, 1963, the date of the filing of defendant's closing brief on rehearing. Narrative of the facts concerning the matters involved herein appears in said Decision No. 65557 and will not be repeated here.

The Commission finds:

1. The wide band or simplex private line communications system which defendant Western Union Telegraph Company proposes to furnish to Jet Propulsion Laboratory pursuant to Jet Propulsion Laboratory Service Authorization No. SA-5560 accepted by Western Union on June 14, 1962, and the fully executed basic termination agreement returned to Jet Propulsion Laboratory by letter dated July 13, 1962, will consist of a one-way channel equipped for receiving data from spacecraft in orbit and relaying such data received at Goldstone, California, to Jet Propulsion Laboratory facilities at Pasadena, California, for analysis and said system will be used entirely in interstate or foreign commerce.

2. The message or duplex private line communications system which said defendant proposes to furnish to Jet Propulsion Laboratory pursuant to the aforesaid agreement will consist of duplex channel on which all commands originating at the Jet Propulsion Laboratory in Pasadena will be sent to the spacecraft in orbit and on which data received from such spacecraft may be transmitted to Jet Propulsion Laboratory computers in Pasadena. Such uses are uses wholly in interstate or foreign commerce. In addition the duplex channel will be used in intrastate commerce for the transmission between Goldstone and Pasadena of (1) data concerning the operating parameters of the ground station at Goldstone, and data to be used in evaluating spacecraft telemetry, and (2) voice communications for co-ordination purposes and for checking on the operating characteristics of the station at Goldstone and clearing up any trouble with the signal, transmitters or receivers. Such intrastate use is secondary and subsidiary to the primary use of radio communication and data transmission in interstate or foreign commerce.

3. The interstate or foreign and intrastate uses of the duplex system and the amounts charged pursuant to the agreement for such services are not severable and such interstate or foreign uses are primary uses of the system.

4. Such private line channels will be furnished in connection with the radio communications between the ground station at Goldstone and spacecraft in orbit.

The Commission concludes:

1. Under Federal law the provision of the communications services involved herein and the interconnection of such facilities are matters within the exclusive jurisdiction of the Federal Communications Commission.

2. This Commission has no jurisdiction of the subject matter of the complaint herein.

3. The order in Decision No. 65557, issued June 11, 1963, and the findings and conclusions in said Decision No. 65557 insofar as they may be inconsistent with this decision should be rescinded and the complaint herein should be dismissed.

Therefore, IT IS HEREBY ORDERED that the order in Decision No. 65557, issued herein on June 11, 1963, and the findings and conclusions in said Decision No. 65557 insofar as they may be

inconsistent herewith are hereby rescinded and the complaint herein of California Interstate Telephone Company against Western Union Telegraph Company is hereby dismissed.

Dated at San Francisco, California, this 1st day of OCTOBER, 1963.

William L. Bennett
President
Ed E. Mitchell
Robert W. Page
George T. Hoover
Friedrich B. Holoboff
Commissioners