

Decision No. 67811

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

California Interstate Telephone Company, a corporation,

Complainant,

vs.

Case No. 7980

Western Union Telegraph Company, a corporation, and The Pacific Telephone and Telegraph Company, a corporation,

Defendants.

James H. Krieger of Best, Best & Krieger and John H. Barrows, for California Interstate Telephone Company, complainant.
Arthur T. George and Pillsbury, Madison and Sutro by Richard W. Odgers, for The Pacific Telephone and Telegraph Company, defendant.
 Vaughan, Paul & Lyons by John G. Lyons and John H. Waters by George T. Vogel, for Western Union Telegraph Company, defendant.

ORDER VACATING TEMPORARY RESTRAINING ORDER

Pursuant to the complaint herein filed on August 14, 1964, by California Interstate Telephone Company against Western Union Telegraph Company and The Pacific Telephone and Telegraph Company, this Commission, on August 18, 1964, issued its Temporary Restraining Order ordering the defendants Western Union Telegraph Company and The Pacific Telephone and Telegraph Company, until further order of the Commission to cease and desist from constructing, extending, or interconnecting any plant or system in such a way as to connect any voice circuit derived from defendant Western Union Telegraph Company's Pasadena-Goldstone microwave system with the Centrex telephone equipment of the defendant The Pacific Telephone and Telegraph

Company located in Pasadena, California, and leased by it to the Jet Propulsion Laboratory, a Division of the California Institute of Technology.

Public hearing in this matter was held before Examiner Cline in San Francisco on August 24, 1964.

During the course of the hearing a motion was made on behalf of the defendant Western Union Telegraph Company, hereinafter sometimes called Western Union, that the Temporary Restraining Order be vacated on the ground that the evidence shows that the additional service to be provided, if provided, will be provided under a tariff on file with the Federal Communications Commission, and, for that reason, this Commission should not take jurisdiction, and on the further ground that except for the modest loss of rental revenue no injury at all has been shown by the complainant California Interstate Telephone Company, hereinafter sometimes called CITCO, since the mere loss of revenues while a proceeding is pending is not irreparable damage.

At the close of the hearing the motion was taken under submission subject to the filing of briefs on or before Friday, August 28, and the matter was continued to a date to be set. The briefs have been filed and the Commission is now prepared to rule on the motion that the Temporary Restraining Order be vacated.

The only issue presented to the Commission for determination at this time is whether the Temporary Restraining Order should be vacated or whether it should be allowed to remain in effect while this case is pending.

From the evidence introduced in this proceeding the Commission finds as follows:

1. The five private line voice circuits to be leased by Western Union to Jet Propulsion Laboratory, hereinafter sometimes

called JPL, between Goldstone and Pasadena, are interstate lines furnished under a tariff filed with the Federal Communications Commission, hereinafter sometimes designated FCC, at a total rental of \$340 per month.

2. The Centrex at Pasadena to which JPL has requested that the five private line voice circuits of Western Union be connected is leased by The Pacific Telephone and Telegraph Company, hereinafter sometimes called Pacific Telephone to JPL under a tariff lawfully filed with this Commission.

3. The five private line voice circuits of Western Union are to be used in rotary with, and are to serve identically as, the seven dial private line voice circuits furnished to JPL by CITCO and Pacific Telephone jointly under a tariff filed with the FCC.

4. CITCO and Pacific Telephone jointly, if requested by JPL, could furnish the five additional private line voice circuits between Goldstone and Pasadena for connection to the Centrex at Pasadena within three weeks from the date of such request.

5. The damages, if any, which CITCO may sustain as the result of the leasing of the five private line voice circuits between Goldstone and Pasadena by Western Union to JPL instead of by CITCO and Pacific Telephone jointly to JPL is CITCO's portion of the rental for the five private line voice circuits which would be furnished jointly by CITCO and Pacific Telephone less CITCO's share of the expense of operating said private line voice circuits.

6. JPL has private line voice circuits from Pasadena, California, to Cape Kennedy, Florida, connected to the Centrex at Pasadena which it leases from Pacific Telephone.

7. If the five private line voice circuits between Goldstone and Pasadena to be leased by Western Union to JPL are connected to the Centrex at Pasadena which JPL leases from Pacific Telephone said circuits may be used by JPL for intrastate as well as interstate voice communications.

The Commission concludes that to prevent the connection of the five private line voice circuits between Goldstone and Pasadena to be leased to JPL by Western Union to the Centrex at Pasadena leased to JPL by Pacific Telephone will prohibit the use of those private line voice circuits for interstate communications beyond that Centrex, and that therefore the Temporary Restraining Order issued herein should be vacated.

IT IS ORDERED that the Temporary Restraining Order issued herein by this Commission on August 18, 1964, is vacated.

The Secretary is directed to cause a certified copy of this Order Vacating Temporary Restraining Order to be served forthwith upon the complainant and upon each of the defendants.

This order shall be effective upon the date hereof.

Dated at San Francisco, California, this 1st day of September, 1964.

*I concur in this order because of the special circumstances existing. However, my concurrence is not to be held as holding that this Commission has not jurisdiction over the communications service involved.
Curtis Ortega
Commissioner.*

Frederick B. Holbrook
President

George T. Thayer

William B. Bennett

Commissioners

Commissioner Peter E. Mitchell, being necessarily absent, did not participate in the disposition of this proceeding.