

**ORIGINAL**

Decision No. 70839

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

THE WESTERN UNION TELEGRAPH COMPANY, )  
a corporation,

Complainant,

vs.

THE PACIFIC TELEPHONE AND TELEGRAPH )  
COMPANY, a corporation,

Defendant.

Case No. 8169  
(Filed April 30, 1965)

In the Matter of the Investigation )  
of wide area telephone service and  
other toll service and suspension  
of Tariffs filed by Advice Letter  
Nos. 9034 and 9039 of THE PACIFIC  
TELEPHONE AND TELEGRAPH COMPANY.

Case No. 8176  
(Filed May 11, 1965)

Vaughan, Paul & Lyons, by John G. Lyons; Walter Baker; Thomas R. Marias, for The Western Union Telegraph Company, complainant.  
Arthur T. George; Pillsbury, Madison & Sutro, by George H. Eckhardt, Jr., and R. W. Odgers, for The Pacific Telephone and Telegraph Company, defendant and respondent.  
Thomas O'Connor and Robert R. Laughead, for the City and County of San Francisco; Thomas J. O'Reilly and Max M. Misener, for agencies of the Federal Government; A. J. Terrell, for Sunt Foods and Industries; A. M. Hart and H. Ralph Snyder, for General Telephone Company of California, interested parties.  
James G. Shields, for the Commission staff.

O P I N I O N

On April 21, 1965, The Pacific Telephone and Telegraph Company (Pacific) filed its Advice Letter No. 9034 with associated tariff sheets for the establishment of Wide Area Telephone Service<sup>1/</sup>

1/ Hereinafter referred to as WATS.

as an intrastate service. On April 23, 1965, it filed its Advice Letter No. 9039 to include additional connecting independent telephone company exchanges to which calls from WATS subscribers would be furnished at regular message toll rates. Western Union Telegraph Company filed its complaint herein on April 30, 1965. The Commission suspended the WATS filings, after which eight days of public hearing were held before Examiner Emerson in San Francisco. After oral argument the matters were submitted on January 11, 1966.

On November 18, 1965, Western Union filed a petition for a presiding officer's proposed report on the grounds that the matters present a case of first impression to the Commission; that the tariffs proposed are complex; that the record in these proceedings is complex; and that a proposed report would serve to bring issues into clear focus. The issues and the record, however, appear to us to be clear and uncluttered, and ample time was allowed for oral argument.<sup>2/</sup> We find that the Commission has been fully informed as to the matters at issue and as to the matters of contention raised by the complainant. The petition for a proposed report is hereby denied.

The proposed WATS is a service which would enable a subscriber to make long distance calls at hourly or monthly rates instead of paying message charges for each individual message. It is an optional service, furnished by means of "access lines" arranged for outgoing service only. By such arrangement a subscriber dials all calls directly through the access lines, normally without assistance from an operator. All WATS calls must originate through this access line, which is directly connected

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<sup>2/</sup> It is noted that no counsel fully utilized his allotted time for argument.

to the telephone company's central office equipment for direct distance dialing. Thus, the service does not include incoming calls, person-to-person calls, collect calls, conference calls or credit card calls. Pacific proposes to offer two classes of WATS, on a single- or two-region basis. The proposed Northern California region would consist of numbering plan areas (Code Areas) 209, 408, 415, 707 and 916. The proposed Southern California region would consist of Code Areas 213, 714 and 805. Subscribers would have a choice of one region or of statewide service for each access line. The proposed class of service termed "Full Time" would permit calling within the selected regions at a fixed monthly rate for each access line. For a flat monthly rate per access line, the subscriber could generate any volume of calls, subject only to the physical limitation of the access line, i.e., one call at a time. The proposed class of service termed "Measured Time" would be similar to Full Time service except that the monthly rate would cover only 15 hours of conversation time per access line, with additional charges for additional hours. No calls made from access lines under either of the proposed services would be itemized. The Measured Time service would, of course, be recorded as to time for proper billing purposes.

Pacific's proposed rates for intrastate WATS are illustrated as follows:

	<u>"Measured Time"</u>		<u>"Full Time"</u>	
	<u>Regional</u>	<u>Statewide</u>	<u>Regional</u>	<u>Statewide</u>
Basic Monthly Rate	\$260	\$330	\$650	\$900
Hours in Basic Rate	15	15	unlimited	unlimited
Rate per Additional Hour	\$ 14	\$ 19	\$ 0	\$ 0

Pacific was one of the early proponents of WATS, having concurred with the filing of its parent's interstate tariff, with the Federal Communications Commission in December 1960. With respect to its intrastate offering, it first submitted its proposal for study by the staff of this Commission in 1961. Although discussions continued, concurrence in the proposed intrastate tariff was not obtained at the staff level. Pacific did not bring the matter up again until its formal filing in April 1965.

It is noted that California is, in effect, the only state of the contiguous states where intrastate WATS offerings are not now effective.<sup>3/</sup> There are presently more than 10,000 intrastate access lines in use in other states. Interstate, more than 13,000 access lines are now in use. Interstate and intrastate revenues from WATS (nationwide) are now nearly \$200 million annually. Pacific anticipates some 2,000 intrastate WATS subscribers will apply for the service should it be authorized.

Western Union claims that if WATS becomes effective in California, it will suffer real and substantial revenue losses due to diversion of Western Union's customers to WATS. Western Union contends that the proposed WATS tariffs are unlawful; that they entail unfair competition; and that they merely offer a reduced rate for an existing service. It avers that the tariffs involve unjust and unreasonable discrimination and preferences between the two classes of WATS users and between such users and users of message toll telephone service. It also avers that the WATS tariff is subject to a variety of abuses.

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<sup>3/</sup> Rhode Island is completely covered by extended-area service out of Providence, hence there is no need for WATS in that state. All 46 other contiguous states have intrastate WATS.

Western Union provides message telegraph service; conducts an extensive private-line business, including teletypewriter, data transmission, facsimile, voice and alternate voice/record service, provides a teleprinter exchange service (TELEX) and a broad-band exchange service which provides for the transmission, on a subscriber-to-subscriber basis, of high-speed data, facsimile and voice on an alternate basis.

Western Union admits that all of its California services are offered in competition with those of Pacific. It objects to the competition of Pacific's proposed intrastate WATS, however, because WATS facilities can be used to provide record services which would be an effective substitute for Western Union's services of similar characteristics, particularly in the TELEX segment of Western Union's business. Western Union's witness testified that in other jurisdictions (nationwide) the total measurable annual revenue loss, associated with TELEX cancellations due to WATS, amounts to approximately \$100,000 while the revenue loss associated with private-wire cancellations due to WATS amounts to approximately \$1,600,000. The witness could not give supporting details, however. It is noted that Western Union's TELEX appears to be its fastest growing service and is, in fact, a less expensive service than WATS. The evidence shows that during the period 1962-64 when Western Union was supposedly losing business to WATS, its gross revenues increased on the order of \$22 million.

The Commission staff supports only the measured-time portion of Pacific's WATS proposal. It objects to the full-time concept on the primary grounds that the flat rate charge bears no relation to the amount of usage and that it would give undue preference to the larger toll users.

The 16 public witnesses who testified appear to be representative of a large body of potential users of intrastate WATS who are anxious to have such service for a wide variety of reasons. They established that WATS would spread much of their calling into off-peak hours; that their California businesses were at a competitive disadvantage without the availability of intrastate WATS; that not only would they not decrease their use of Western Union services but, because of the stimulation of business by WATS usage, would, in several instances, increase Western Union usage; and that it will reduce person-to-person calling, thus lessening the costs of the utility in operator-handling such calls. Those with experience in other states or with interstate WATS, established that message toll telephone usage, rather than being reduced, has been stimulated by their WATS usage.<sup>4/</sup>

Pacific's revenue objective for WATS is that net revenues should be unchanged as the result of establishing WATS; that is, the net reduction in revenue should equal the net reduction in expenses. While such an objective is reasonable, it was not accompanied by assurances that the net reduction in expenses is known or can be accurately estimated and that the investment in plant and facilities will not in fact be increased. Pacific's study shows that earnings on unstimulated WATS will approximate 27.6 percent; while with an assumed 100 percent WATS stimulation, earnings will be on the order of 7.9 percent for this segment of its toll business.<sup>5/</sup> It is apparent from such

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<sup>4/</sup> For example, the Federal agencies have experienced a peak-hour calling reduction from 15 to 8 percent of daily usage, while overall usage has increased some 200 percent.

<sup>5/</sup> Percentages are balance net revenue to average plant and working capital per Exhibit No. 19.

presentation that WATS would at least be compensatory.

With respect to costs and revenues, Pacific based its showing on a 'differential cost study'. By such study it attempted to show that the revenue reduction on toll calls attributable to its proposed WATS tariffs would exactly equal cost savings allocable to such service. This type of study has the same infirmities that we have pointed out on several occasions.<sup>6/</sup> That is to say, it is a formula approach largely theoretical and is lacking in the factual elements essential to rate making. There is, furthermore, an additional infirmity in the overall presentation in that the data on which it is based are now nearly six years old. Among other things, this particularly affects Pacific's assumptions respecting cost "savings" which may be attributed to the elimination of operator-handled calls and to switchboard allocations. With today's wide acceptance and usage of direct distance dialing (DDD) by telephone users, it seems contrary to reason to expect that anything approaching Pacific's assumed 77 percent WATS expense savings can be realistically attributed to the conversion of person traffic. Such a 1960 calculation is of doubtful value for application in 1966.

The evidence leaves no doubt that WATS will stimulate intrastate usage and that such stimulation, because of the "separations" methods presently applied, will occasion a shift of plant and expenses from interstate to intrastate operations.

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<sup>6/</sup> See: Dec. No. 67579, Appl. No. 45803, issued July 21, 1964;  
Dec. No. 67580, Appl. No. 44201 and Case No. 7300,  
issued July 21, 1964; and  
Dec. No. 67876, Appl. No. 45703, issued Sept. 22, 1964.

Beyond this effect, however, it seems readily apparent that stimulated WATS usage will of itself generate increased costs. In such regard, Pacific assumes that all stimulation will occur outside of the customers' busy hour and that, therefore, no increased costs will occur. The evidence is clear, however, that different switching offices and trunk groups in the states' toll network have different busy hours. It is reasonable to assume that a portion of the stimulated WATS traffic will flow over portions of the toll network having such different busy hours and that some additional switching or trunking plant will be needed to meet the stimulated WATS traffic. In short, net plant allocated to intra-state operations will increase due to the stimulation of WATS traffic during both peak and off-peak hours. The inevitable result, unless the new service meets the full costs properly allocable to it, is additional cost to general ratepayers.

Two of the principal determinants of the cost of the type of telephone service being considered are the amount of time the facilities are used and the associated distance between the points being served. Rates for a number of telephone service offerings reflect this proposition. For example, the charges per minute in message toll service (a segment of which WATS would replace) reflect the amount of time facilities are used and such charges vary with increments of distance. The same is true of rates for TWX service. Private-line rates are flat as to time but vary with distance. Basically, the proposed "measured-time" WATS follows these patterns, although it is a "two-part" or "minimum charge" type of rate whereby a fixed charge is assessed for a given amount of usage with additional charges being assessed for additional usage increments. In this respect, the rate form



is the same as that used by water utilities for many years. Among other advantages, it has the advantage of producing increasing revenues with increased usage while at the same time producing a known and relatively constant minimum income.

The proposed "full-time" WATS is wholly a flat-rate proposal which, in effect, would make the entire State a single exchange; or the two regions of the State two noninterconnected exchanges, depending upon the WATS subscribers' choice. Charges for the flat-rate proposal would not vary with time or with distance, yet one of the purposes of WATS is to specially replace message toll service where rates do vary with both. We are not unmindful of the flat rates accorded exchange and extended-area service offerings, nor of the commuted-toll nature of multmessage unit rates, whereby the great bulk of telephone subscribers are charged for telephone service. WATS, however, is an optional and specialized service intended to appeal to a special class of very large toll users whose initial numbers (perhaps 2,000) are relatively small but whose stimulated usage of the service will affect Pacific's overall operations, as hereinabove discussed. We believe that the flat-rate proposal ("full-time service") is not a proper rate form for the service contemplated for WATS subscribers. Measured service usually is the most equitable means of spreading the costs of service among utility users. This principle is particularly applicable where, as here, wide variations from an "average" usage may occur.

In view of the evidence and the foregoing discussion of its more important elements, the Commission finds: (1) that it is fair and reasonable to authorize the establishment of measured-time WATS within California under a "minimum charge" rate form,

(2) that such service and the rates hereinafter authorized will be nondiscriminatory in nature and (3) that any increases in charges which may occur as the result of the rates authorized herein are justified. The authorized rates will provide for two classes of users: those whose anticipated usage will be on the order of 15 hours per month and those whose anticipated usage will be on the order of 125 hours per month. A comparison of the two rates, for assumed hours of usage, is illustrated in the following tabulations:

Authorized Intrastate WATS Rates

	<u>Medium-Volume Usage</u>		<u>Large-Volume Usage</u>	
	<u>Regional</u>	<u>Statewide</u>	<u>Regional</u>	<u>Statewide</u>
Number of Hours	15	15	125	125
Basic Monthly Rate	\$260	\$330	\$650	\$900
Rate per Additional Hour	14.00	19.00	4.50	6.00

Billing Comparisons

<u>Hours</u>				
15	\$ 260	\$ 330	\$ 650	\$ 900
25	400	520	650	900
43	652	862	650	900
45	680	900	650	900
50	750	995	650	900
75	1,100	1,470	650	900
100	1,450	1,945	650	900
125	1,800	2,420	650	900
150			762.50	1,050
200			987.50	1,350
300			1,437.50	1,950
400			1,887.50	2,550
500			2,537.50	3,150

The Commission concludes that the complaint of The Western Union Telegraph Company (Case No. 8169) should be dismissed and that tariff schedules for the WATS offering of Pacific should be authorized as set forth in the following order.

O R D E R

IT IS ORDERED as follows:

1. The complaint of The Western Union Telegraph Company, Case No. 8169, is dismissed.
2. The tariff schedules filed by Advice Letter No. 9225 of The Pacific Telephone and Telegraph Company are permanently suspended.
3. The Pacific Telephone and Telegraph Company is authorized to file with this Commission, on or after the effective date of this order and in conformance with the provisions of General Order No. 96-A, tariff sheets which are identical to those set forth in Exhibit No. 21 in this proceeding except as the same may be modified by Appendix A attached to this order and, on not less than five days' notice to the public and to this Commission, to make said tariffs effective for service rendered thereunder on and after July 15, 1966.

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

Dated at San Francisco, California, this 14<sup>th</sup> day of JUNE, 1966.

Frederick B. Holdhoff  
President

John J. [unclear]

George E. [unclear]

August [unclear]

William W. [unclear]  
Commissioners

Appendix A  
Sheet 1 of 5

The following listed tariff sheets of Schedule Cal. P.U.C. No. 128-T, Wide Area Telephone Service, are changed to the extent set forth hereunder:

1st Revised Sheet 1

List of Effective Sheets - changed to the extent required by other changes of this schedule.

Original Sheet 2

Original Sheet 3

Contents - changed to the extent required by other changes of this schedule.

Original Sheet 4

Symbols - no change.

1st Revised Sheet 5

Changed as follows:

APPLICABILITY

Applicable to intrastate wide area telephone service furnished or made available over facilities wholly within or partly within and partly without the State of California by The Pacific Telephone and Telegraph Company, hereinafter referred to as the Telephone Company or by any other telephone company which elects to offer such service on the bases hereinafter set forth.

TERRITORY

Throughout the territory served.

CLASS OF SERVICE

(D)

Measured Time Service

(T)

- (a) Measured time service permits calling within a specified service area over an access line at the rates specified herein. Service is offered with two options of an initial measured time period of fifteen hours or 125 hours accumulated time per month or any fraction thereof. The additional period is measured in hourly increments with fractional time periods in excess of 30 minutes treated as full hours.

(M)

(C)

(C)

Appendix A  
Sheet 2 of 5

1st Revised Sheet 5 (continued)

- (b) Where a subscriber subscribes to more than one access line of the same option to the same service area, in the same premises, the initial measured time period will be the product of the initial period per line multiplied by the number of access lines; the additional period, in such a case, will be the sum of the accumulated measured times of such access lines in excess of that product. The additional period is measured in hourly increments with fractional time periods in excess of 30 minutes treated as full hours. (T)
- (c) Measured time begins when connection is established from the access line to the called station, and ends when such connection is terminated. (T)

Original Sheet 6

Service Areas - No change.

Original Sheet 7

Changed as follows:

RATES AND CHARGES

- (1) The rates set forth below apply to WATS throughout the service areas shown above, with the exception of certain exchanges and toll stations listed in Special Condition 28. (D)

Calls placed over WATS access lines to exchanges and toll stations listed in Special Condition 28 will be furnished at message toll telephone service rates as set forth in Schedule Cal. P.U.C. No. 53-T.

- (2) Where an access line terminates in a standard type telephone, no additional rate or charge applies for such standard type telephone. If other than a standard type telephone termination is involved, appropriate tariff rates and charges will apply. (T)

- (3) Monthly Rates (T)

	Option 1		Option 2	
	First 15 Hours	Each Hour	First 125 Hours	Each Hour
Per Access Line:				
CAL.-N Service Area	\$260.00	\$14.00	\$650.00	\$4.50(c)
CAL.-S Service Area	260.00	14.00	650.00	4.50(c)
CAL. Statewide Service Area	330.00	19.00	900.00	6.00(c)
Installation Charge				

Appendix A  
Sheet 3 of 5

Original Sheet 7 (continued)

- (4) An installation charge of \$10.00 applies, per access line, to each initial termination in a standard type telephone, PBX, Key equipment, or other miscellaneous or supplemental equipment. (T)

Original Sheet 8

No change.

Original Sheet 9

No change.

Original Sheet 10

No change.

Original Sheet 11

Special Condition 7, Rates for Fractional Periods, is changed as follows:

For the purpose of administering this condition with respect to the determination of charges for a fractional part of a month, every month is considered to have thirty days.

(D)

Fractional parts of a month are charged for at a rate proportionate to the actual number of days of service as related to the rate and 15 or 125 hour time allowance for the initial period. Any increment of time in excess of the adjusted initial hours allowance and greater than 30 minutes in length will be charged for at the additional period rate. (T)

1st Revised Sheet 12

Changed as follows:

10. Advance Payments

Applicants for service will be required to make an advance payment at the time of application, equal to the installation charges, if applicable, and the rate for one month for the service desired. (T)

The amount of the advance payment is credited to the subscriber's account as applying to any indebtedness for the service furnished.

11. Deposits

An applicant for service may be required to make a deposit in accord with requirements of Rule No. 7, Deposits, of Schedule Cal. P.U.C. No. 36-T, Rules. (C)  
(C)  
(C)

Appendix A  
Sheet 4 of 5

1st Revised Sheet 12 (continued)

12. Cancellation of Application for Service

- a. Where an application for service is cancelled by the applicant prior to the start of installation of facilities, no charge applies.
- b. Where installation of facilities has been started prior to the cancellation, installation charges apply.

13. Denial and Discontinuance of Service

Service to applicants may be denied and service of subscribers may be discontinued in accord with the provisions of Rule No. 11, Discontinuance of Service, of Schedule Cal. P.U.C. No. 36-T, Rules.

(C)  
(C)  
(C)  
(C)

Original Sheet 13

Delete Special Condition No. 13, Continued.

Original Sheet 14

No change.

Original Sheet 15

No change.

Original Sheet 16

No change.

Original Sheet 17

No change.

Original Sheet 18

Special Condition 24, Maintenance and Repairs - No change.

Special Condition 25, Defacement of Premises - No change.

Special Condition 26, Liability of Telephone Company - Delete material on this sheet.

Appendix A  
Sheet 5 of 5Original Sheet 19

Change as follows:

26. Allowance for Interruptions (C)
- a. No credit is allowed for interruption of less than 24 hours. Where the subscriber has not used the initial measured time period during the billing period in which the interruption occurred and where the interruption is 24 consecutive hours or more and is not due to the willfulness or negligence of the subscriber or the failure of any facility provided by the subscriber, credit is allowed in an amount equal to 1/30 of the initial charge for each 24 hours, or fraction thereof exceeding one-half, of the interruption. Where a credit is allowed against the initial charge, the initial period shall be reduced in the same proportion and additional hourly rates shall apply to each hour, or fraction thereof exceeding one-half, for service furnished in excess of the initial period as so reduced. (T)
- b. Message toll telephone service furnished at a subscriber's request when his WATS is interrupted is charged for at the message toll telephone service rates set forth in Schedule Cal. P.U.C. No. 53-T. (T)
- c. When the lines of other telephone companies are used in establishing connections to points not reached by the Telephone Company's lines, the Telephone Company is not liable for any act or omission of the other telephone companies. (T)
27. Indemnity (T)
- The Telephone Company shall be indemnified and saved harmless by the subscriber against claims for libel, slander, or the infringement of copyright arising directly or indirectly from the material transmitted over the facilities or the use thereof; against claims for infringement of patents arising from combining with, or using in connection with, facilities furnished by the Telephone Company, apparatus and systems of the subscriber; and against all other claims arising out of any act or omission of the subscriber in connection with the services and facilities provided by the Telephone Company. (T)

1st Revised Sheet 20

Renumber Special Condition 27 to 28, Exceptions. Change text to extent required by current agreements with connecting companies.