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- APPROVAL
- 1&2 INFORMATION
- SIGNATURE
- ACTION
- DIRECT REPLY
- RETURN
- COMMENT
- PREPARATION OF REPLY
- DISPATCH
- CONCURRENCE
- RECOMMENDATION
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Remarks:

*Gen. Mc I haven't read. Please file me in if there is anything I should know.*

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EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF DEFENSE MOBILIZATION  
WASHINGTON 25, D. C.

October 26, 1955

Honorable Allen W. Dulles  
Director  
Central Intelligence Agency  
Washington, D. C.

DULLES/CIA/ALEXANDER  
(P)

Dear Mr. Dulles:

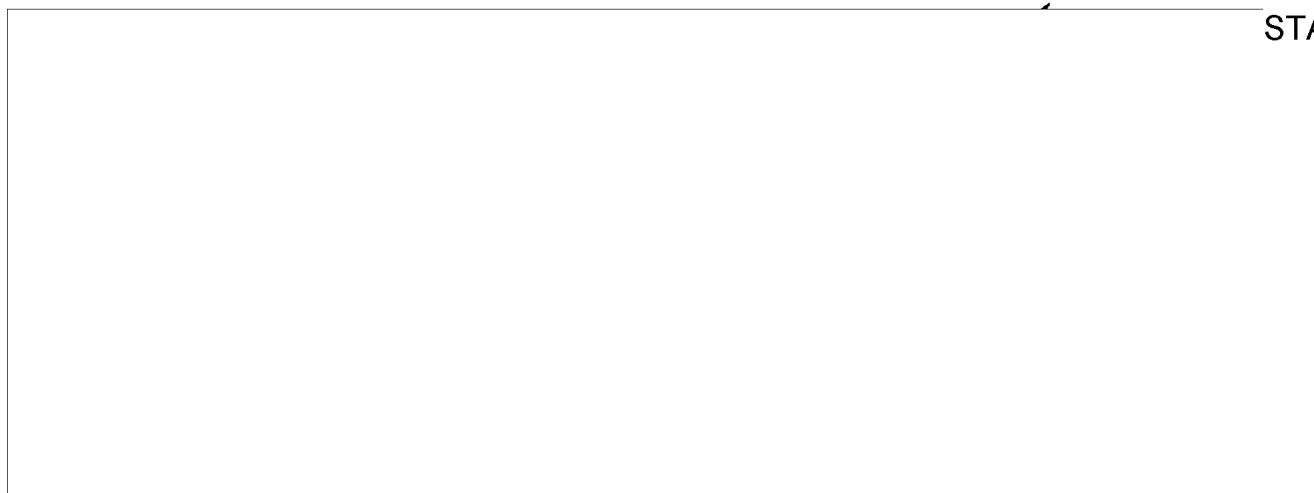
As a matter of additional information concerning  
the subject of the Pacific cable installation, there is  
attached the Reply Of RCA Communications, Inc. To Oppositions  
Of American Telephone And Telegraph Company And Hawaiian  
Telephone Company.

Sincerely yours,



F. C. Alexander  
Deputy Assistant Director  
for Telecommunications

Attachment



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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington 25, D. C.

In the Matter of the Application of	)	
	)	
AMERICAN TELEPHONE AND	)	
TELEGRAPH COMPANY	)	
	)	
For authority under Section 214 of the	)	
Communications Act of 1934, as amended,	)	FILE NO. P-C-3630
to construct and operate twin deep-sea	)	
submarine cables between Point Reyes,	)	
California and Koko Head, Oahu, Hawaii	)	
	)	
In the Matter of	)	
	)	
License authorizing the landing and	)	
operation of twin submarine cables	)	
between Point Reyes, California and	)	FILE NO. S-C-L-14
Koko Head, Oahu, Hawaii by the American	)	
Telephone and Telegraph Company	)	
	)	

REPLY OF RCA COMMUNICATIONS, INC. TO OPPOSITIONS  
OF AMERICAN TELEPHONE AND TELEGRAPH COMPANY  
AND HAWAIIAN TELEPHONE COMPANY

Howard R. Hawkins,  
Frederick M. Porter,

Attorneys for RCA Communications, Inc.

October 21, 1955.

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington 25, D. C.

In the Matter of the Application of )  
)

AMERICAN TELEPHONE AND )  
TELEGRAPH COMPANY )  
)

For authority under Section 214 of the )  
Communications Act of 1934, as amended, )  
to construct and operate twin deep-sea )  
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California and Koko Head, Oahu, Hawaii )  
)

FILE NO. P-C-3630

In the Matter of )  
)

License authorizing the landing and )  
operation of twin submarine cables )  
between Point Reyes, California and )  
Koko Head, Oahu, Hawaii by the American )  
Telephone and Telegraph Company )  
)

FILE NO. S-C-L-14

REPLY OF RCA COMMUNICATIONS, INC.

The Orders of the Commission which permit AT&T's intrusion into the overseas telegraph field jettison sound precedents of this Commission and long-established U.S. policy. These Orders are not supported by adequate findings or by substantial evidence as to telegraph service. They are wholly unjustified.

The AT&T's Opposition raises no valid objection to reserving the issue of telegraph service. The contention that such action would be "unreasonable" (page 7) is not supported and does not rest upon the public interest.

1. New matters presented. — The AT&T states (pages 1-2) that "no new matter" has been presented by RCA's Petition. This is not the fact. Indeed, points included in the Petition (e.g., pages 13-16) could arise for the first time only after the very summary approach by the Commission in this proceeding.

2. A dangerous first step. — The AT&T says that statements concerning the use of its Atlantic cable for telegraph service have been taken out of context and that there has been no change in its position. To eliminate any possible question of the context, the Commission is requested to consider as part of the record the full text of the letters cited by the parties.

From the letters it is undeniable that despite the AT&T's stated position on November 20, 1953, it did thereafter request and urge the Commission to authorize its Atlantic facilities for "telegraph service." The AT&T's Opposition (pages 4-5), while expressing a "desire to stay out of the international telegraph field," nowhere commits itself to such a course of action or states a present or long-range intention to stay out of the international telegraph field. Such service with Hawaii would be merely a first step toward the ultimate end—a dangerous and destructive step for the international telegraph carriers and the over-all public interest.

3. Prejudgment of the telegraph issue. — The AT&T states that the petitioners, without commitment on their part, would be glad to

have AT&T undertake construction of the cable "which will be available for their use." Under RCA's proposed revision of the Orders, however, whether or on what conditions the AT&T or any international telegraph carrier should be permitted to use the cable for telegraph service would be reserved for appropriate determination by the Commission in the light of all pertinent considerations. . Whatever the considerations, they can be evaluated more judiciously at the time a specific factual situation is presented to the Commission. . Prejudgment of this vital telegraph issue would not be in order.

4. RCA's Petition not predicated upon an assumption. — The AT&T contends that RCA's Petition is "predicated upon the assumption" that Section 222 of the Act applies.\* Apart from the fact that the express policy of Congress in Section 222 is not an assumption, RCA's Petition cites this policy as only one of several reasons why the issue of telegraph service should be reserved. . These other considerations are applicable regardless of the interpretation which the Commission reaches as to Section 222 of the Act.

5. Policy of Section 222 a factor in the public interest. — The indisputable fact is that communication with Hawaii involves overseas telegraph service whether or not it is "interstate," domestic or international. . Such service has been historically treated differently from

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\* References to the AT&T should be considered applicable to Hawaiian's Opposition wherever pertinent.

communications within the continental United States. There is no magic in the repeated and misplaced emphasis on the term "interstate" in the AT&T's Opposition. Here, as in all other cases, the Commission is bound to look at the substance.

The Supreme Court has decided, and the Court of Appeals has repeatedly held, that all provisions of the Communications Act—reflecting as they do the policy of Congress—must be considered as factors in the public interest standard.\* Section 222 may not summarily be brushed aside.

The AT&T cites Section 3(e) of the Act to support the argument that communications service with Hawaii is "interstate" and that precedents involving overseas service are not applicable. Section 3(e) is a general definition, not directly applicable to the instant questions of policy. The obvious purpose of 3(e) is to define the geographical scope of the Commission's jurisdiction set forth in Section 2(a) of the Act. Even if Sections 3(e) and 222 should be deemed in conflict, the specific policy of the latter controls over the general provision in Section 3(e). Ginsberg & Sons v. Popkin, 285 U.S. 204, 208 (1932).

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\* Interstate Commerce Commission v. Parker, 326 U.S. 60, 71 (1945); Mansfield Journal Co. v. Federal Communications Commission, 180 F. 2d 28, 33 (D.C. Cir. 1950); Western Union Division, Commercial Telegraphers' Union v. United States, 87 F. Supp. 324, 335 (D. Ct. D.C. 1949), aff'd per curiam 338 U.S. 864 (1949).

Congress has been vitally concerned with the inherent and unfair competitive problems of combined domestic and overseas telegraph operations. Congress resolved these problems by adopting a basic policy in Section 222 requiring separation of such operations. This was to eliminate "the power of life and death over our international companies" (Hearings on S. 2598, 77th Cong. 2d Sess. p. 26). Communication with Hawaii was definitely placed in the category of overseas or international telegraph operations. Section 222(a)(5) and (6).

Yet the Orders would create another situation of the very type Congress condemned in requiring divestment and in restricting mergers between overseas and domestic telegraph carriers. How can the Orders possibly be valid as to telegraph service when Congress has decided that such combined operations do not serve the public interest?

6. Insufficient basic findings and no substantial evidence. —

Hawaiian claims that RCA does not allege the Commission has failed to make the requisite statutory findings in authorizing construction and operation of the cable or that such findings are not otherwise supported. On the contrary, RCA specifically alleged that such findings have not been made as to telegraph service (RCA Petition, pages 13-14). There is a total absence of any finding by the Commission on the issue of telegraph service. Reference to a letter from another government agency does not constitute a finding by the Commission which supports the Orders.



While urging that it is "purely technical," the AT&T recognizes this defect in the Orders. But it is far more than technical. There is no substantial evidence to support any finding by the Commission that unrestricted operation of the facilities for telegraph service is desirable or in the public interest. Any attempt to amend the Orders as AT&T suggests would merely compound the lack of support for the Orders. AT&T has not satisfied the statutory burden of showing that the public convenience and necessity would be served by the unrestricted licensing of AT&T to enter the overseas telegraph field.

The AT&T contends that "existing facilities are radio facilities and subject to deficiencies in reliability and quality inherent on circuits of that type." If AT&T is referring to telegraph, the contention is not entitled to any weight. RCA has pioneered the radiotelegraph with Hawaii for over thirty years. RCA categorically denies that such service is deficient in reliability or quality.

History shows that the radio has been far more efficient and reliable than the cable in telegraph service with Hawaii. The cable is inevitably subject to interruptions (of short or long duration) and other deficiencies inherent in that medium of communication.

7. AT&T's claimed commitments are irrelevant. — Injection of the claim that AT&T "has already committed large sums of money to the project" is unjustified and unwarranted (page 7). It is fully aware of legal procedures and that the Commission has no alternative but

adherence to the administrative process. If AT&T has expended any sums of money since the Orders were issued, such action was taken entirely at its own risk. It cannot now be heard to claim—in an effort to support the unjustified Orders—that it has relied upon these Orders.

Moreover, AT&T does not state that any specific commitment has been made for telegraph service or that its commitments would have been any different if the issue of telegraph service had been initially reserved. Of course, the cable is the same whether used for telephone or both telegraph and telephone services. Pressure arguments are not factors in the public interest standard. Private parties cannot attempt to estop the Commission from carrying out the statutory mandate. See National Labor Relations Board v. Baltimore Transit Co., 140 F. 2d (4 Cir. 1944); cert. den. 321 U.S. 795.

Conclusion.

The Orders should be revised to include a provision as follows:

"The cable facilities herein authorized shall not be used to provide record communication services between the United States and Hawaii, unless and until prior authorization for such use has been granted by the Commission upon specific application therefor."

Respectfully submitted,  
RCA COMMUNICATIONS, INC.,

By \_\_\_\_\_  
Howard R. Hawkins

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Frederick M. Porter,

New York, N. Y.,  
October 21, 1955.

Attorneys, 66 Broad Street,  
New York 4, N. Y.

CERTIFICATE OF SERVICE

I, MILDRED JOHNSON, hereby certify that on the 24th day of October, 1955, I served the foregoing Reply of RCA Communications, Inc. to Oppositions of American Telephone and Telegraph Company and Hawaiian Telephone Company on the following, by mailing copies thereof to them at the following addresses:

James A. Kennedy, Esq.,  
American Cable & Radio Corporation,  
67 Broad Street,  
New York 4, N. Y.

Ernest D. North, Esq.,  
American Telephone and Telegraph Company,  
32 Avenue of the Americas,  
New York 13, N. Y.

Office of Defense Mobilization,  
Washington 25, D. C.  
Attention: Mr. F. C. Alexander.

Harold G. Cowgill, Esq., Chief,  
Common Carrier Bureau,  
Federal Communications Commission,  
Washington 25, D. C.

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The Western Union Telegraph Company,  
60 Hudson Street,  
New York 13, N. Y.

Omar L. Crook, Esq.,  
Hawaiian Telephone Company,  
1700 K Street, N. W.,  
Washington, D. C.

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s/ Mildred Johnson