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CENTRAL INTELLIGENCE AGENCY
OFFICIAL ROUTING SLIP

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| TO | | INITIALS | DATE |
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| 1 | DD/S | <i>[Signature]</i> | <i>10/24/55</i> |
| 2 | Director of Communications | | |
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| FROM | | INITIALS | DATE |
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| 1 | Assist. to the Director | <i>[Signature]</i> FMC | 21 Oct |
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- APPROVAL
- INFORMATION
- SIGNATURE
- ACTION
- DIRECT REPLY
- RETURN
- COMMENT
- PREPARATION OF REPLY
- DISPATCH
- CONCURRENCE
- RECOMMENDATION
- FILE

Remarks: *Sen. Mc - I haven't read this. If there is anything in it I should be briefed on please let me know.*

[Redacted Signature]

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

55-2867

October 19, 1955

STAT

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

out for [unclear] [unclear]
(to [unclear] [unclear])

Dear Mr. Dulles:

As a matter of information and to complete your records, you will find attached copies of the following papers which have been filed with the Federal Communications Commission in connection with the application of the American Telephone and Telegraph Company for a cable landing license:

Petition For Rehearing On Behalf Of
RCA Communications, Inc.

STAT

Petition For Rehearing On Behalf of Globe
Wireless Ltd.

Opposition Of American Telephone And Telegraph
Company To Petitions Of RCA Communications, Inc.,
And Globe Wireless Ltd. For Rehearing.

Opposition Of American Telephone And Telegraph
Company To Petition Of Western Union For Rehearing.

Opposition Of Hawaiian Telephone Company To
Petition For Rehearing Of The Western Union
Telegraph Company.

Reply Of The Western Union Telegraph Company.

Protest In Behalf Of The Western Union Telegraph
Company.

Sincerely yours,



F. C. Alexander
Deputy Assistant Director
for Telecommunications

Attachments (7)

Executive Registry

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

October 19, 1955

Honorable Allen W. Dulles
Director
Central Intelligence Agency
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Petition For Rehearing Of The Western Union
Telegraph Company.

Reply Of The Western Union Telegraph Company.

Protest In Behalf Of The Western Union Telegraph
Company.

Sincerely yours,

F. C. Alexander
Deputy Assistant Director
for Telecommunications

Attachments (7)

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 |) | |
| Koko Head, Oahu, Hawaii by the American |) | FILE NO. S-C-L-14 |
| Telephone and Telegraph Company |) | |
| |) | |

PETITION FOR REHEARING ON BEHALF OF
RCA COMMUNICATIONS, INC.

Howard R. Hawkins

Frederick M. Porter,

Attorneys for RCA Communications, Inc.

October 7, 1955.

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

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| In the Matter of the Application of |) |
| |) |
| AMERICAN TELEPHONE AND |) |
| TELEGRAPH COMPANY |) |
| |) FILE NO. P-C-3630 |
| For authority under Section 214 of the |) |
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| 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 |) |
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PETITION FOR REHEARING ON BEHALF OF
RCA COMMUNICATIONS, INC. *

Statement.

RCA Communications, Inc. petitions the Commission to reconsider its orders of September 8 and 19, 1955, (the Orders) and 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."

* This petition is filed under Section 405 of the Communications Act and Sections 1.891-96 of the Commission's Rules and Regulations.

The Orders authorize the American Telephone and Telegraph Company (the AT&T) to construct and operate twin submarine cables for telephone and telegraph communication between the United States and Hawaii.

In effect, these Orders permit the unique and strategically placed AT&T—in addition to its present telephone service—to invade the highly competitive field of overseas record communications. Such action is a momentous step—unprecedented in the field of communications.

The Orders, insofar as they permit the AT&T to enter the overseas telegraph field, were actually adopted by a minority of the Commission. Only three Commissioners favored such action. Commissioners Bartley and Lee would reserve the issue of telegraph service, and Commissioners Webster and Mack did not participate in the decision.

RCA urges that the Commission include in the Orders the condition stated above, not in any way for the purpose of precluding the availability of the cable facilities for national defense, but rather to safeguard the maintenance as well of a strong and virile radio medium and better to serve the public interest. Radio has made striking contributions in recent decades to the advance of international communications. Radio has pioneered new communication services at low cost for the public.

Preoccupation with or undue concentration on the cable facilities may well cripple the radio and thus impair, rather than promote, the over-all national interest. The elimination or strangulation of the radio service between the United States and Hawaii, telephone or telegraph, would be hazardous for the Nation.

RCA and the AT&T presently provide a total of fourteen single sideband radiotelephone channels. Standby radiotelephone facilities of RCA are also available for service. RCA has always provided whatever additional facilities are required at its stations for telephone service. No official complaints have ever been received either from the Hawaiian Telephone Company or the AT&T that RCA's circuits have not been entirely adequate.

However, it is not the purpose of this petition to belabor such obvious truisms as that radio is vital, that the cable can be cut or become unavailable for extended periods, and that radio is far more economical than the cables.

Moreover, to suggest that the radiotelegraph between the United States and Hawaii—providing regular message, teleprinter exchange, facsimile, and leased channel or private line services—is inadequate or insufficient for telegraph requirements is to disregard the indisputable facts. This is especially true in communication between the United States and Hawaii. The radio path is perhaps the easiest and

most solid of all overseas radiotelegraph circuits. Equipped with modern devices, RCA's eight radiotelegraph channels with Hawaii are among the most modern and reliable (98 to 99 per cent) telegraph circuits in the world.

Even if some special Government need should exist for cable facilities with Hawaii, this fact clearly would not justify the unrestricted entrance of the AT&T into the overseas telegraph field.

There is no evidence in the application of the AT&T which supports the unrestricted licensing of such company to engage in the overseas telegraph business.

This is recognized by the Commission's Order itself, which contains no "finding" that any unfulfilled need exists for additional telegraph facilities. It is pointed up by the statements of Commissioners Bartley and Lee:

Commissioner Bartley:

"I believe we should maintain our long established U. S. policy in overseas communications, that voice and record communications services should be operated separately and competitively. I would include in this authorization a provision 'that the cable landing facilities herein authorized shall not be used to provide telegraph or facsimile service between the United States and Hawaii unless and until prior authorization for such use has been granted by the Commission upon proper application therefor.'"

Commissioner Lee:

"I concur in the action of the Commission insofar as it relates to the provision of telephone service over the cable facilities proposed by the American Telephone and Telegraph Company herein. Insofar as telegraph service over such facilities is concerned, I would, however, reserve the right to examine in detail at the proper time the question of whether the American Telephone and Telegraph Company should be permitted to operate telegraph services between the United States and Hawaii."

The AT&T states in its application that the cable facilities would not be available for service in any event until sometime in 1958. The question whether or on what conditions the AT&T should be permitted to use those facilities for telegraph purposes clearly cannot be appropriately or adequately evaluated at this early date. This is repeatedly confirmed by the AT&T in its statement of September 2, 1955. This statement was filed in support of the application and in response to several questions raised by the Commission's staff. The AT&T concedes that it does not have the information to answer various questions which the staff considered essential for a determination of this cause. Questions with such far-reaching implications as the entrance of the AT&T into the overseas record communications field should not be determined in a vacuum.

In this case, RCA's plea to the Commission is to maintain control—its regulatory jurisdiction—over the volatile situation created by the AT&T's construction and operation of the cable facilities involved.

Such jurisdiction cannot appropriately be surrendered to the AT&T so that it—rather than the Commission—will determine when, where and under what circumstance the cable facilities will be used in the record communications field.

Under the circumstances, the proper procedure at this time is to reserve that question for later consideration and determination, if necessary, upon specific application in light of all relevant factors. RCA urgently requests the Commission not to license the AT&T to enter the overseas record communications field, with its destructive effects, in the absence of the necessary factual showing upon which to make its determination or without a thorough investigation of the inherent problems. In other words, the Orders are strikingly premature and unjustified insofar as they authorize the AT&T to enter the overseas telegraph field.

The procedure of permitting the AT&T to go forward with its project while reserving the question of any record communications use for later consideration and determination, if necessary, and upon specific application, in the light of all relevant factors, should be acceptable to all who are interested in a fair and orderly determination of this important question. There would be no prejudice or delay of the project. At the same time, the dangers would not be present of unwarranted injury to the over-all public interest from hasty or ill-considered action.

The Orders Disregard Commission Precedent.

On March 2, 1955, the Commission authorized the AT&T to construct microwave facilities to be used in connection with its projected Atlantic cable. In a letter to RCA (and presumably to other carriers) on the same date, the Commission stated as follows:

" . . . it does not appear to be either necessary or appropriate now to pass upon the question whether, or to what extent, use may be made of such facilities in connection with overseas telegraph operations. . . That issue will be resolved at such time as a specific application is considered which raises that problem. . . Thus, in considering the AT&T applications today, the Commission has retained complete control over the possible use of the subject microwave facilities, insofar as telegraph service between points in the United States and points in the United Kingdom, or beyond, are concerned, by directing that any grant of these applications be conditioned upon the following terms:

The facilities herein authorized shall not be used to provide telegraph service between the United States, on the one hand, and the United Kingdom or beyond the United Kingdom, on the other hand, unless prior specific authorization for such use has been granted by the Commission upon proper application therefor. "

This sound precedent is equally applicable to the AT&T's Hawaii cable and points to the appropriate action. At that time, the Commission made special note of the fact that "the Commission has retained complete control" * over the possible use of the facilities for telegraph service.

* Emphasis ours throughout.

This action by the Commission has not delayed or impaired the availability of the AT&T's Atlantic cable. The project has gone forward on schedule and in normal course. At the same time, the Commission continues in a position to take whatever action may be necessary or appropriate to serve the public interest.

On November 3, 1953, the Commission had stated, in a letter to the AT&T, as follows:

" . . . the entrance of the American Telephone and Telegraph Company into the highly competitive field of international telegraph communications between the United States and Europe raises certain problems which require a thorough investigation before their resolution. "

Many of these same problems are inherent in the case of AT&T's Hawaii cable. However, such problems were not investigated or resolved prior to the Orders.

Similarly, the Commission retained complete control and jurisdiction over proposed cable facilities at the time the Commercial Cable Company requested approval of a new Atlantic cable. This cable project also involved considerations similar to those present here; yet the Commission, in its approval of the project in principle, reserved the right, upon proper application, to impose such terms and conditions as required in the public interest upon thorough investigation of the facts and considerations which may be brought to the Commission's attention.

This precedent has been also disregarded by the Commission in the Orders.

Questions involved in the Commercial Cable Company case are not unlike questions inherent in the instant proceeding, such as the economic operation of the cable and the possible competitive effect on the other United States companies in the international telegraph industry. The differences weigh heavily in favor of conditioning the instant grant to the AT&T. This case involves, in addition, all of the unresolved questions inherent in the AT&T's entrance into the overseas telegraph field.

The AT&T would be a competitor engaged, not only in the overseas telegraph service, but also engaged in domestic telegraph communications. Because of AT&T's control over landline telegraph facilities, a factual situation would inherently arise like that which has been the chief source of difficulty in relations between the international telegraph carriers and Western Union—a situation where the Congress has found divestment to be the remedy. However, no consideration has been given to this problem in the Orders nor is its solution a matter which appears to have been considered by the Commission.

The Congress has established a national communications policy that domestic (which includes contiguous foreign countries) and over-

seas telegraph operations shall be carried on by separate carriers. This determination by Congress stems in no small measure from the characteristics of the different operations involved. This policy is set forth in Section 222 of the Communications Act. By its terms, it provides for the regulation of telegraph communication with Hawaii in the same manner as with other overseas points.

The AT&T is neither an international nor an overseas telegraph carrier within the meaning of this policy of Congress. The mere assertion by the AT&T that service with Hawaii is "interstate" (AT&T Statement of September 2, 1955, page 8) does not provide the answer. The intent of Congress in this field is apparent and not confined to the purposes of domestic merger. It is significant that the Communications Act was specifically amended in 1943 to provide for this existing policy of Congress.

The Featherbedding of Telegraph Facilities.

The several telegraph carriers providing service between the United States and Hawaii have available more than adequate facilities to provide the needed public services. These facilities are maintained not only by RCA but also by Mackay Radio and Telegraph Company, Inc. and Globe Wireless, Ltd. All types of telegraph service are offered.

RCA has pioneered with Hawaii the message telegraph, the teleprinter exchange service, facsimile, and leased channel or private

line service. These are the very services (except possibly for message telegraph) which the AT&T now seeks to duplicate over its proposed facilities.

The AT&T's assertion that general telegraph requirements will significantly increase through introduction of the cable facilities or that any unfulfilled demand exists which is not now being satisfied by the existing carriers is pure speculation. Rather, a grant to the AT&T of authority to provide telegraph service would constitute a prime example of featherbedding telegraph facilities and allow the AT&T, through its private line and teletypewriter exchange services, to cream-skim the three international carriers which presently serve Hawaii.

That such action is contemplated by the AT&T is apparent from its applications, because the AT&T argues that unless it is allowed to invade the telegraph field, its cable project will be less profitable than would otherwise be the case, and the economic burden would be shifted to other users of its Nation-wide services. Conversely, if the AT&T is permitted to siphon off such revenues from the existing carriers, their operations will have to be curtailed or the economic burden of maintaining unprofitable or marginal operations with Hawaii shifted to other users of their services.

Moreover, the diversion by the AT&T of telegraph revenue from the existing carriers is especially crucial in view of the marginal

nature of certain of the operations with Hawaii. In the past, the Commission has warned of the dangers of unnecessary duplication. In Mackay Radio and Telegraph Company, Inc., 8 F. C. C. 11, 20 (1940), the Commission stated:

"It must be borne in mind that the preservation of existing facilities which have been satisfactorily serving the public is of primary importance and that to intensify a highly competitive situation not justified by the traffic and revenue available may be economically disastrous to the American communications system as a whole."

The very purpose of common carrier regulation provided by Section 214 of the Communications Act, under which the AT&T application was filed, is "to prevent useless duplication of facilities with consequent higher charges upon the users of the service."

In reviewing the economic conditions which led to the necessity for a merger between Western Union and Postal, the Commission stated in The Western Union Telegraph Company, 10 F. C. C. 148, 162 (1943), as follows:

"Competitive practices have resulted in useless paralleling of facilities, duplication of operations, and wasteful expenditures of resources and manpower. Such competition has, in large measure, been responsible for the unsatisfactory financial condition in which both Postal and Western Union have found themselves during the course of the last decade or more."

The AT&T itself has repeatedly urged before the Commission that duplication of common carrier facilities is contrary to the public interest. For example, in American Telephone and Telegraph Company, etc., Docket No. 8963, 5 Pike & Fischer Radio Reg. 639, 651

(1949), a case involving the question of duplication by Western Union of AT&T's intercity video transmission facilities, the AT&T contended as follows:

" . . . duplication of facilities and service is inefficient, uneconomical and contrary to the public interest. "

The Authorizations For Telegraph Service Are Not Justified.

The Orders broadly authorize the AT&T to provide telegraph service. However, the recitals in the Orders are limited to the bare conclusion that such facilities are needed for national defense or Government purposes, and state as follows:

" . . . in light of the foregoing representations from ODM, the construction and operation of the proposed facilities for telephone service between the United States and Hawaii are desirable and in the public interest. "

The Orders do not "find" that the cable facilities are required for telegraph service. The Orders thus constitute a clear violation of established law requiring that administrative action must be supported by appropriate findings, which, in turn, must be based on substantial evidence. Universal Camera Corp. v. National Labor Relations Board, 340 U.S. 474 (1951); National Labor Relations Board v. Pittsburgh Steamship Co., 340 U.S. 498 (1951); Saginaw Broadcasting Co. v. Federal Communications Commission, 96 F. 2d 554 (D.C. Cir. 1938), cert. denied, 303 U.S. 655.

Moreover, the record before the Commission in this matter would not support the necessary findings that the cable facilities are required for telegraph service.

The burden of proof is on the applicant to show that the public interest would be served by a grant of its application. This burden of proof is not discharged by merely referring to national defense considerations and attempting to use such considerations as a springboard to plunge the AT&T into overseas telegraph communications. Moreover, such an approach is not only contrary to equity and sound principle, but to public interest as well. The Commission should not countenance such an approach to licensing under the Communications Act.

The Dangerous Implications Involved.

On November 20, 1953, the AT&T advised the Commission in connection with its Atlantic cable project that it "has no thought of entering the field of international telegraph communications," and would lease telegraph circuits for Government use only under certain stated conditions. The AT&T added that "we plan no public offering" in the telegraph field.

On February 3, 1955, however, in a letter to the Commission seeking authority to construct microwave facilities to be used in connection with such cable, the AT&T strongly urged that the Commission authorize the facilities for "telegraph services between the United States and the United Kingdom or beyond without the prior consent of the Commission."

As noted above, however, the Commission retained control of the situation and inserted the condition with respect to telegraph service. Nonetheless, this action of the AT&T demonstrates the necessity for the Commission to include in the Orders the same provision. The AT&T seeks in this instance to enter the overseas telegraph field with Hawaii just as it sought to be free to enter the telegraph field with respect to its Atlantic cable.

The problem is pointed up by the AT&T's Statement of September 2, 1955, in support of the instant application, as follows:

" . . . the Bell System is now engaged in the construction of a submarine cable system across the Atlantic Ocean and another between Port Angeles, Washington and Ketchikan, Alaska. The applicant has contemplated that when sufficient growth in business or opportunities to stimulate such additional business are realized, additional submarine cable projects might well be undertaken. One such project has been a cable from the mainland to the Hawaiian Islands. . . "

This development in the international communications field has far-reaching and revolutionary implications. There are ten international telegraph carriers seeking to survive in a limited market. None of these carriers except Western Union has general domestic facilities over which international or overseas record communications must originate or terminate, and Western Union is required to separate its domestic and international facilities. The nature and scope of the domestic facilities of the AT&T are most comprehensive. The combination of domestic facilities and expansion into the international or overseas field of telegraph communication by the AT&T can only result in the demise or impairment of the international telegraph industry as it has been known during its lifetime.

The effects are painfully apparent from the AT&T's sale of overseas leased telegraph channels and related services generally.

The Commission's attention is also invited to the fact that none of the international telegraph carriers is licensed to engage in the international or overseas telephone service in competition with the AT&T, although some of them have adequate facilities usable for this purpose and overseas correspondents ready and anxious to provide the telephone service.

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

Frederick M. Porter.

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

New York, N. Y.,
October 7, 1955.

[Verification attached]

VERIFICATION

THOMPSON H. MITCHELL, being first duly sworn, on oath
deposes and says:

That he is the President of RCA Communications, Inc., a
petitioner in the above-entitled matter; that he has read the within
and foregoing petition for rehearing and knows the contents thereof;
that the matters and things therein stated are true of his own knowledge,
save and except those matters therein stated on information and
belief, and as to those he believes them to be true.

s/ Thompson H. Mitchell

Subscribed and sworn to before me
this 6th day of October, 1955.

s/ Alfred Keiler, Notary Public
State of New York No. 41-2065200
Qualified in Queens County
Certificate filed in New York County
Commission Expires March 30, 1957

[SEAL]

CERTIFICATE OF SERVICE.

I, MILDRED JOHNSON, hereby certify that on the 7th day of October, 1955, I served the foregoing Petition for Rehearing on Behalf of RCA Communications, Inc. on the following, by mailing copies thereof to them at the following addresses:

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

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

Office of Defense Mobilization,
Washington 25, D. C.

T. Brooke Price, Esq.,
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William Wendt, Esq.,
The Western Union
Telegraph Company,
60 Hudson Street,
New York 13, N. Y.

s/ Mildred Johnson