

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 )  
submarine cables between Point Reyes, )  
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

OPPOSITIONS OF HAWAIIAN TELEPHONE COMPANY  
TO PETITIONS FOR REHEARING OF RCA  
COMMUNICATIONS INC. AND GLOBE  
WIRELESS, LTD.

Hawaiian Telephone Company (Hawaiian) pursuant to  
the provisions of Section 1.895 of the Commission's Rules of  
Practice and Procedure, hereby submits its oppositions to the  
petitions for rehearing filed by RCA Communications, Inc.  
(RCAC), and Globe Wireless, Ltd. (Globe), requesting a modifi-  
cation of the Commission's orders released September 8, 1955  
and September 19, 1955. Hawaiian respectfully requests that  
the Commission deny such petitions for rehearing. In support  
of this request, Hawaiian respectfully represents as follows:

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1. Hawaiian hereby incorporates by reference its opposition to the petition for rehearing filed by The Western Union Telegraph Company (Western Union) for the purposes, among others, of showing that:

(a) Hawaiian has a direct and immediate interest in these proceedings.

(b) Section 222 of the Communications Act and the conditions and obligations set forth therein are not applicable to these proceedings or to the Applicant, American Telephone and Telegraph Company (AT&T) or to Hawaiian, nor does such section express any Congressional policy applicable to these proceedings.

(c) Section 214 of the Communications Act and Sections 34-39 of Title 47, U.S.C. are applicable to this proceeding.

(d) Under the definitions of Section 3 of the Communications Act, telegraph communications authorized to be transmitted via the trans-Pacific cable are "interstate communications."

(e) Under Section 214 of the Communications Act the criterion for extending lines is "present and future public convenience and necessity" which is to be construed as to secure for the public the broad aims of such Act.

These showings, it is respectfully submitted, likewise show that Globe's allegations that the orders controvert Congressional policy are without merit.

2. RCAC requests the Commission to set aside its authorization for use of the cable for telegraph purposes and to delay its decision with respect thereto. It asserts such authorization has not been justified because the "Orders do not 'find' that the cable facilities are required for telegraph

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service." It is important to note in this connection that RCAC does not allege that the Commission has not made the requisite statutory finding in authorizing the construction and operation of the cable or that such finding is not otherwise supported. Section 214 does not require a finding as to the adequacy of existing facilities. In construing the same standard in Section 207(a) of the Interstate Commerce Act, Part II (49 U.S.C. 307(a), which appears to have the same common source of derivation as Section 214 of the Communications Act), the courts have repeatedly held that there is no necessity for the Interstate Commerce Commission to make any specific findings concerning the inadequacy of the existing service. Norfolk Southern Bus Corp. v. U. S., (1950) 96 F. Supp. 756, 760, affirmed 340 U.S. 802; St. Johnsbury Trucking Co. v. U. S., (1951) 99 F. Supp. 977, 981; A.B. & C. Motor Transp. Co., Inc. v. U. S., (1946) 69 F. Supp. 166, 169; Lang Transp. Corp. v. U. S., (1948) 75 F. Supp. 915, 931. Although such a finding is unnecessary, the Commission set forth in its order of September 8, 1955 that:

"It is the opinion of the agencies of the Executive Branch of the Government responsible for defense planning in this matter that the installation of a deep-sea cable capable of supplying telephone, telegraph and facsimile types of service at the earliest practicable date is vital to the support of our national defense." (Emphasis added.)

Thus, the order does recite that the use of the cable for telegraph service is vital to national defense which the Commission considered to be of paramount importance and outweighs all other

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considerations involving public convenience and necessity. It is therefore apparent that the Commission determined that the cable facilities are required for telegraph service.

3. In the exercise of its administrative function under Section 214 of the Act, there is no specification of considerations by which the Commission is to be governed in determining what the public convenience and necessity require. See: Chesapeake & Ohio Ry. Co. v. U. S., 283 U.S. 35, 42. The Commission has been entrusted with a wide range of discretionary authority in exercising its functions under such section, Cf. I.C.C. v. Parker, 326 U.S. 60, 65. "Facts vary with cases and [Interstate Commerce] Commission may properly reach varying conclusions therefrom, and it may, within the powers entrusted to it, vary its standards and principles of judgment." Pyramid Moving Co. v. U. S., (1943) 57 F. Supp. 278, affirmed 322 U.S. 715. The Commission decided that the "needs of National Defense of the United States" are not only of paramount importance in evaluating the proposed cable project, but "outweigh any other consideration," and that the cable is vital to such needs. Clearly, this determination is in accord with its discretionary authority under Section 214.

4. RCAC's assertions that the orders do not follow Commission precedents disregard fundamental differences between the trans-Atlantic cable and the trans-Pacific cable. It is true that the Commission deferred decision with regard to

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whether the microwave facilities to be associated with trans-Atlantic cable should be used for telegraph communications between the United States and the United Kingdom and beyond. Under Section 3 of the Act, such communications are "foreign" not "interstate." Telegraph communications between the Mainland and Hawaii are, by reason of the definitions in Section 3 of the Act, "interstate communications." The Commission regularly issues authorizations for the telephone carriers to add to their "interstate facilities" for telegraph communications. The Commission has not, as far as Hawaiian is aware, ever deferred a decision as to the use of the "interstate" facilities until they were completed. The Commission's decisions involving "foreign" telegraph communications clearly show that there are many problems involved in the regulation of such communications which are not common to "interstate" communications. Additionally, certain factors involved in "foreign" communications are subject to negotiations between the United States and foreign governments.

5. On page 4 of its original statement in these proceedings Hawaiian set forth the following intention:

"Our company has no intention of offering public message telegraph service between Hawaii and the mainland. However, we do not believe the Commission should restrict the services which our company or the A.T. & T. may offer to the public to any greater extent than interstate communication services provided by Bell System or other independent telephone companies are restricted on the mainland."

Paragraph 5 of AT&T's application, according to

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Hawaiian's understanding, sets forth a similar intention. Thus, there is no suggestion of "unrestricted entrance" by AT&T and Hawaiian even into the "interstate" telegraph field between the United States and Hawaii. The Commission's published statistics show that on an overall basis international telegraph carriers derive only small percentages of their telegraph revenues from non-message traffic.<sup>1/</sup> When it is further considered that telegraph traffic between the Mainland and Hawaii constitutes only a small segment of the overall telegraph communications it becomes apparent that the area of telegraph competition involved is indeed most restricted.<sup>2/</sup> It thus is apparent that such limited area of competition will have little, if any, effect on the international telegraph carriers. Definitely, there is no basis for RCAC's assertion that such competition "can only result in the demise or impairment of the telegraph industry," or for Globe's allegation that such competition "would result in diversion of traffic which would impair Globe's ability to serve not only between these points but between other points on its system as well."

6. For all the foregoing reasons, it is apparent the Hawaiian cable does not raise "many," if any, of the same

1/ Statistics of Principal Domestic and International Telegraph Carriers Reporting Annually to the Commission, As At December 31, 1954, And For Year Then Ended, F.C.C. No. 23041; Statistics of the Communications Industry in the United States, Year Ended December 31, 1953, pp. 142-144.

2/ Cf. Charges for Communications Service 12 F.C.C. 29, 63.

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problems which the Commission decided it should investigate in connection with the trans-Atlantic cable. However, should any of such problems occur, the Commission can deal with them under the regulatory authority set forth in the Communications Act. Even assuming arguendo that some of the same problems may be involved, the Commission is not bound to reach the same conclusion as it did in authorizing the trans-Atlantic cable. See: Churchill Tabernacle v. F.C.C., (1949) 160 F. 2d 244; F.C.C. v. Broadcast Service Organization, (1949) 337 U.S. 901.

7. RCAC's expressed fears that use of the cable in the manner authorized by the Commission would result in the elimination of radio between the Mainland and Hawaii and would be hazardous for the nation are without foundation. Hawaiian's original statement in these proceedings sets forth the following representation:

"It is our belief and intention that if and when the proposed cable system is installed and operating, commercial radio facilities should also be kept in operation between Hawaii and the mainland, and it is our understanding that the A.T. & T. Company also has this intention. It is obvious that having both types of facilities available and operating will provide the very maximum degree of reliability and security."

8. For the reasons set forth in its original statement, Hawaiian believes that the trans-Pacific cable is essential to provide the character of communication service to which the people of Hawaii are entitled. In an effort to discharge its public duty in this regard, Hawaiian will seek to acquire an

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ownership interest in such cable. In assuming such responsibilities, it is essential that Hawaiian forecast as accurately as possible its capital investments, revenues and expenses. Under the orders now outstanding, Hawaiian believes that it can, as required, make such forecast with reasonable accuracy. The delay RCAC proposes would result in numerous uncertainties and would be most undesirable from Hawaiian's standpoint.

WHEREFORE, Hawaiian respectfully requests that the petitions for rehearing filed by RCAC and Globe be denied, and that Hawaiian be accorded such other and further relief as appears appropriate.

Respectfully submitted,  
HAWAIIAN TELEPHONE COMPANY

By \_\_\_\_\_  
Omar L. Crook  
Its Attorney

Dated October 17, 1955

Wheat, May and Shannon  
903 Commerce Building  
1700 K Street  
Washington 6, D. C.

Attorneys for  
HAWAIIAN TELEPHONE COMPANY