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

REPLY OF THE WESTERN UNION
TELEGRAPH COMPANY

STATEMENT

The following is submitted in reply to the oppositions submitted by American Telephone and Telegraph Company (hereinafter referred to as "AT&T) and The Hawaiian Telephone Company (hereinafter referred to as the "Hawaiian Co.").

The AT&T states that our petition presents "no facts or matters which were not before the Commission when it issued the orders of which reconsideration is sought". On the contrary our petition called to the Commission's attention the Congressional policy expressed in the Communications Act that there be a separation of domestic and international telegraph operations, a point which had not been specifically mentioned by any of the parties nor considered by the Commission in either of its orders of September 8 and 19, 1955.

Since the arguments made by the Hawaiian Company are substantially identical to those of the AT&T, where reference is made in this reply to arguments advanced by the AT&T they will be deemed to refer also to similar arguments made by the Hawaiian Company.

Argument

1. Although concededly engaged in domestic telegraph operations, the AT&T argues that it is not a domestic telegraph carrier to which Section 222 applies, since the major portion of its traffic and revenues is not derived from domestic telegraph operations. We think it clear that the interpretation given to the definition by the AT&T is erroneous.

The definitions of "domestic telegraph carrier" and "international telegraph carrier" contained in the Act simply provide a basis for determining into which category a carrier that is engaged in both domestic and international telegraph operations will fall. Since the major portion of the AT&T's telegraph traffic and revenues would be derived from domestic operations, as compared with the telegraph traffic and revenues derived from its international operations, it is a domestic telegraph carrier within the meaning of the Act. There is no requirement in the Act, as the AT&T suggests, that its domestic telegraph traffic and revenues constitute the major portion of its traffic and revenues received from all sources.

A simple example makes the fallacy of the AT&T's argument quite apparent. Let us suppose that General Motors acquires all of the assets of Western Union and thereafter conducts the telegraph operations, both domestic and international, theretofore carried on by Western Union. Can it be successfully argued that, since the domestic telegraph traffic and revenues derived by General Motors would not constitute a major portion of revenues received from all sources, it would not become a domestic telegraph carrier? And that, since it would not become a domestic telegraph carrier, it would be under no mandate to divest itself of the international operations acquired from Western Union?

AT&T argues that none of the provisions of Section 222 applies to it and that it is not within the purview of that Section. On the contrary, Congress in enacting the merger legislation set forth in Section 222 was aware of the domestic telegraph operations carried on by the AT&T and expected that AT&T would divest itself of its domestic telegraph operations by sale to Western Union for it provided in Section 222 (b) (1):

> "It shall be lawful upon application to and approval by the Commission as hereinafter provided, for any two or more domestic telegraph carriers to effect a consolidation or merger; <u>and for any domestic telegraph carrier, as a part of any such consolidation or merger or thereafter, to acquire all or any part of the domestic telegraph properties, domestic telegraph facilities, or domestic telegraph operations of any carrier which is not primarily a telegraph carrier</u> * * * " (Emphasis supplied).

It is clear therefore that AT&T is within the purview of Section 222. Although it is not primarily a telegraph carrier it is a domestic telegraph carrier within the meaning of Section 222 which requires a separation of domestic and international telegraph operations.

AT&T's argument apparently comes to this: Although it engages in substantial domestic telegraph operations* it is not a domestic telegraph carrier within the meaning of Section 222, but occupies a privileged status immune from laws and policies applying to other carriers.

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* While Western Union's participation in the total national message revenues decreased from 81.5% in 1946 to 67.4% in 1954, the Bell System's participation increased from 18.5% in 1946 to 32.6% in 1954.

2. The AT&T argues that telegraph communications between the United States and Hawaii are "international" only for the purposes of Section 222 which applies only to merger or consolidation of a domestic telegraph carrier, that there is no merger or consolidation involved here and that it is not a merged carrier. Just how traffic can be "international" for such purposes only and not for any other is unclear to us. Globe Wireless, Mackay Radio and RCAC were not parties to the merger between Western Union and Postal and none of them are merged carriers. Yet they are all required to treat traffic to Hawaii as international traffic. We cannot understand how a message carried to Hawaii by those carriers is considered to be international and the same message, if handled by the AT&T, will be considered to be domestic.

The reason that all telegraph carriers (including AT&T) are required to consider telegraph traffic to Hawaii as international is clear. Notwithstanding the definition of "interstate communication" contained in Section 3 (e) of the Act, telegraph traffic to Hawaii, Puerto Rico, the Virgin Islands, Guam and Midway has always been considered to be international traffic, and rates and tariffs were predicated on that premise. Conversely, traffic to Alaska was considered to be domestic. All that was done in 1943 when Section 222 (a) (6) was enacted was that Congressional recognition was given to a situation which had existed historically and traditionally.

Furthermore, AT&T overlooks the fact that the purpose of Section 222 is twofold. In addition to permitting the merger of domestic telegraph companies, it contains an expression of Congressional intent that there be a separation of domestic and international operations. Being a domestic telegraph carrier within the meaning of Section 222 of the Act which sets forth the principle of a separation of domestic and international telegraph operations, it already is within the purview of the Act, and the definition of "international telegraph operations" contained in Section 222 (e) (6) will apply to it.

We submit that telegraph traffic, if and when handled by AT&T, between the United States and Hawaii will be international telegraph traffic.

3. The AT&T disputes the existence of a Congressional policy that there be a separation of domestic and international telegraph operations. Here again the AT&T does not truly challenge the existence of such policy, but would limit its application to situations where domestic telegraph companies merge. The underlying policy that there be such a separation is not so limited by any provision of the Act.

Although Section 222 (b) (1) of the Act authorizes mergers between domestic telegraph carriers, it specifically prohibits the merger of a domestic telegraph carrier with an international telegraph carrier. We submit that by requiring, in Section 222 (c) (2) of the Act, that the one domestic carrier <u>presently</u> engaged in international operations divest itself of such international operations, and that by prohibiting, in Section 222 (b) (1) of the Act, <u>future</u> mergers between domestic and international carriers, Congress has made it unmistakably clear that there should be a separation of domestic and international telegraph operations.

Wherefore, Western Union respectfully requests that the Commission reconsider and modify its orders of September 8, 1955 and September 19, 1955 so as to limit the use of the facilities therein authorized to telephone services between the United States and Hawaii,

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and to include the further provision that the American Telephone and Telegraph Company make available to the record communications carriers the necessary facilities to meet all record communications requirements.

Respectfully submitted,

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Dated: New York, N. Y.
October 14, 1955

AFFIDAVIT OF SERVICE

STATE OF NEW YORK)
)ss
COUNTY OF NEW YORK)

ANNA V. De GARAY, being duly sworn, deposes and says that she has this day served copies of the foregoing Reply of The Western Union Telegraph Company, on the following, by mailing copies thereof to them at the following addresses:

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ANNA V. De GARAY

Subscribed and sworn to before me
this 14th day of October 1955

WALTER E. BESIEGEL

WALTER E. BESIEGEL
Notary Public, State of New York
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Qual. in Richmond Co. Cert. filed
with N. Y. Co. Clerk
Commission Expires March 30, 1957.

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