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# REMOVAL OF DIVESTMENT REQUIREMENT OF

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### HEARING

BEFORE THE

### COMMITTEE ON COMMERCE

### UNITED STATES SENATE

EIGHTY-SEVENTH CONGRESS

SECOND SESSION

ON

### S. 3646

A BILL TO AMEND THE COMMUNICATIONS ACT OF 1934, AS  
AMENDED, RELATIVE TO MERGER OF DOMESTIC  
TELEGRAPH CARRIERS

AUGUST 27, 1962

Printed for the use of the Committee on Commerce



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SECTION 225 OF COMMUNICATIONS ACT OF 1934

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## REMOVAL OF DIVESTMENT REQUIREMENT OF SECTION 222 OF COMMUNICATIONS ACT OF 1934

MONDAY, AUGUST 27, 1962

U.S. SENATE,  
COMMITTEE ON COMMERCE,  
*Washington, D.C.*

The committee met at 10:05 a.m., in room 5110, New Senate Office Building, Hon. Frank J. Lausche presiding.

Senator LAUSCHE. The meeting will come to order.

S. 3646, sponsored by Senators Magnuson, Kefauver, and Lausche, would repeal the subsection of the Communications Act of 1934 that requires a domestic carrier to divest itself of its international telegraph operations if it consolidates or merges with another domestic carrier.

While the language of the statute is general, what we are talking about are the oversea cables owned by Western Union. The section of the act involved was passed in 1943 to permit the merging of Western Union and Postal Telegraph, then very close to bankruptcy with a debt of over \$12 million owed to the Reconstruction Finance Corporation. World War II was on, and the country needed all of its communication facilities.

It was feared at the time that Western Union, after the merger, would be able to control all international traffic and favor its own cable system. Accordingly, the act also required Western Union, as the sole domestic carrier, to divide the international traffic picked up by it between its own cable system and the competing carriers in accordance with a formula agreed upon by all the international carriers and approved by the Commission. Western Union has been governed by such formula for close to 19 years and the sufficiency of the protection afforded by it is indicated by the increase in the volume of traffic and the improved operating results of the other carriers as contrasted with Western Union's cable system.

Elimination of the divestment provision by the proposed bill would leave unaffected the provision in the Communications Act which requires Western Union to distribute international traffic in accordance with a formula as mentioned.

We will develop by the testimony this morning how severe has been the handicap of the divestment provision and why during the 19-year period Western Union has been unable to sell the cables in question.

Before calling the first witness, I wish to announce that Senator Kefauver, who cannot be here this morning, wants it known that he is in favor of this legislation, and I insert in the record a statement he made on the Senate floor urging an amendment to the satellite bill to accomplish what this bill proposes to do and a statement.

(The statement from the Congressional Record follows:)

Mr. KEFAUVER. In 1943 there were two telegraph companies in the United States. A.T. & T. had not entered the private line telex field at that time. Postal Telegraph was in bad shape. Western Union agreed to take it over and merge the two companies. But in order to make possible the merger of the companies, it was necessary to enact a law to get around the antitrust laws.

Public Law 4 of the 78th Congress was then passed authorizing the merger of Western Union and Postal Telegraph. But, over the objection of Western Union, there was forced into the bill at that time a second section which required, as a condition of the merger, that Western Union give up its international operations. Western Union at that time, as now, had some international telegraph operations.

The PRESIDING OFFICER. The Senate will be in order.

Mr. KEFAUVER. Mr. President, for 19 years Western Union has been under the ax of divestiture. They have not been able to find anyone who would be able to take over the business, and who would be satisfactory. They made very little money out of their oversea business, but they would like to keep it.

It is true, as Mr. Barr has pointed out before the committees, that A.T. & T. has no restriction on it for voice or telegraph business in the United States. Since 1945 A.T. & T.'s telegraph business in the United States has increased from 19 to 45 percent of all the telegraph business in the United States. A.T. & T. has no restrictions upon it for telegraph business overseas or for voice business overseas. It is the only company that sends voice messages overseas from the United States. As Mr. Barr has pointed out, it is utterly unfair to allow a large company to have no restrictions on it for voice or telegraph domestically or overseas, and at the same time to require a small company, Western Union, which is offering a little competition on telegraph business—none on voice business—to go through with this divestiture. They have made a genuine effort to dispose of their oversea business, but they have not been able to do so.

Western Union is the oldest telegraph company in the world. It was formed 103 years ago. It is a good company. It has fine management. It has done much in research and development. It has pioneered in the telegraph business.

Western Union cannot and would not be interested in going into the satellite corporation if it has to be divested of its oversea business, as is required by the second section of the act of 1943.

A.T. & T. has assets amounting to \$27 billion. Western Union has assets amounting to \$315 million. Are we going to impose no restrictions on the giant with respect to voice and telegraph business domestically and overseas, and at the same time require a small competitor, one one-hundredth, approximately, the size of A.T. & T., to divest itself of its oversea business? This amendment would provide a little competition. That is what we need to have. Western Union could then go into the voice business, if they could do oversea business and use the satellite. They cannot at the present time, because they do not have the facility. A.T. & T. will not let them use their cables. Therefore, by direction of Congress, they will have to go out of the oversea business. It is not fair. It is not right. We need a little competition in this field.

I was looking in the Fortune directory this morning for the comparable sizes of these two corporations. I find under utilities that A.T. & T. is No. 1 in everything. It is No. 1 in income, No. 1 in the business it does. It earns a net profit on investment, after taxes, of more than 9 percent. I looked down the list to try to find Western Union. It is not listed in Fortune's 500 large corporations. However, I have an annual report by Western Union. This little company has spent more than \$200 million in the last few years in modernizing its plants and its operations, getting in a position to do better business.

It will have to give up its oversea business. A little competitor will have gone by the wayside. It cannot get into the satellite corporation, because it would have no business there. Mr. Barr says they want to, but there would be no use of their getting into the satellite corporation if they could not send messages from here to Europe or somewhere else.

So I say that in the name of competition, in the name of fairness between these companies, in the name of trying to help the little company have some advantages that the larger company has, this restriction in the 1943 law ought to be removed. That is the purpose of the amendment.

(The prepared statement of Estes Kefauver follows:)

Mr. Chairman, I want first of all to express appreciation for the promptness with which the chairman of the Committee on Commerce (Mr. Magnuson) has scheduled hearings on S. 3646. He has faithfully kept the undertaking which he gave to me in the course of a colloquy on the Senate floor on August 16. I hope that this committee and thereafter the Senate and the House will act expeditiously to remedy an injustice and to provide a measure of competition in a vitally important area.

The measure before this committee will, if enacted, lift from the Western Union Telegraph Co. the requirement that it divest itself of its international telegraph operations. It is identical with an amendment which I proposed to H.R. 11040, the commercial communications satellite system bill. On August 16, the Senate tabled my amendment, after Senator Magnuson had made known his support of its objectives. In the midst of our colloquy, Senator Magnuson introduced the bill now before you, and Senator Lausche and I joined as sponsors.

For some years now, a requirement that Western Union divest itself of its international operations has been discriminatory to that company; with the enactment of the communications satellite legislation, that requirement becomes a positive cause of harm to the public interest.

With the committee's indulgence, I shall summarize the history of this requirement of divestiture. Western Union and Postal Telegraph were the Nation's only telegraph companies in 1943. Subsequently, American Telephone & Telegraph entered the private line field. Postal's position was grave, and Western Union agreed to absorb it and to merge the two companies. To make the merger possible in the face of the antitrust laws, legislation was considered necessary. Accordingly, in 1943, the 78th Congress enacted Public Law 4, which authorized the merger. Western Union at that time had international telegraph operations, and it still has them. Over Western Union's objection, the legislation included a provision that required that carrier to give up its international operations as a condition to the merger.

Nineteen years have passed since that enactment, and Western Union has not been able to find any satisfactory company which could take over the international operation, from which it derives little profit, but which it would like to retain. Senator Magnuson, in our colloquy of August 16, declared that the members of the Federal Communications Commission "know that Western Union has honestly tried to divest itself." Nevertheless, for 19 years, the ax of divestiture has hung over Western Union.

I have said that for years, this requirement of divestiture has been discriminatory as against Western Union, which is the oldest of the world's telegraph companies. Formed 103 years ago, it has done much in research and development. It has good management. Yet, it is faced with this restriction, whereas A.T. & T. has no restriction on it for voice or telegraph business either in the United States or overseas.

Mr. Samuel Barr, vice president of Western Union, is entirely in the right when he complains that it is unfair to allow A.T. & T., a large company, to send voice or telegraph messages without restrictions, domestically or overseas, and compel the small company to divest itself of this small share of foreign business.

Unrestricted A.T. & T. has assets of \$27 billion as against assets of \$315 million for Western Union. The giant A.T. & T. is unrestricted, and ironically, to meet antitrust objections, a company one one-hundredth of its size is required to make this divestiture. Unrestricted A.T. & T. is No. 1 in the utilities field; it is No. 1 in income, No. 1 in volume of business, and earns a net profit on investment, after taxes, of more than 8 percent. Restricted Western Union, on the other hand, is not found anywhere in the listing of the 50 largest utilities, but it is trying to get in the position of doing better business, spending more than \$200 million in the last few years in modernizing its plants and operations.

So much for the question of fairness. It is my earnest belief that the divestiture requirement, assuming that it was wise in 1943, imposes a discriminatory hardship today, and in the face of the absence of restriction on the giant of the industry, is an absurdity today.

I turn from the question of discrimination to that of competition. The new communications satellite legislation gives enormous importance to the requirement on Western Union that it divest itself of oversea business. Shall we, by a legislative restraint imposed to curb a monopolistic tendency in one company, guarantee the monopolistic position in a new realm of a company 100 times the size of the restricted company? To ask the question is to demonstrate its absurdity.

#### 4 REMOVE DIVESTMENT REQUIREMENT OF COMMUNICATIONS ACT

I have taken pains today to speak with more brevity than has become my custom in treating of matters in the area of communications. I am grateful to the committee for permitting me to make this statement and I urge that the most expeditious action be taken to insure some measure of competition in this field.

Senator LAUSCHE. Now, the first witness will be Samuel M. Barr, vice president, planning, Western Union of New York. Mr. Barr.

Will you please identify your associates, so if they speak the stenographer will know their names?

#### **STATEMENT OF SAMUEL M. BARR, VICE PRESIDENT, PLANNING THE WESTERN UNION TELEGRAPH CO., ACCOMPANIED BY WILLIAM D. GAILLARD, JR., GENERAL COUNSEL AND JOHN H. WATERS, GENERAL ATTORNEY**

Mr. BARR. Mr. Chairman, I am Samuel M. Barr, vice president, planning, of the Western Union Telegraph Co. On my left is Mr. Gaillard, our general counsel for the company, and Mr. Waters the general attorney of Western Union.

I appreciate the opportunity of appearing before this committee and presenting the views of my company with regard to the proposals embodied in S. 3646, eliminating from the Communications Act of 1934 the provision that Western Union divest itself of its international telegraph operations.

As the chairman has said, this divestment provision was a part of the 1943 amendment of the Communications Act which permitted the merger of Western Union and Postal Telegraph, Inc.

The divestment provision was included in the merger legislation to overcome the fears of the international telegraph and radio carriers which competed with the cable system of Western Union. It was urged by the competing carriers that Western Union, following a merger with Postal and thereupon becoming the only domestic telegraph carrier throughout the country, could use its nationwide coverage to pick up international traffic and favor its own cable system in the handling of that traffic to destinations overseas.

Recognizing that divestment could not be immediate, the legislation provided protection to the competing carriers pending divestment. It required Western Union, as the sole domestic carrier, to divide the international traffic picked up by it between its own cable system and the competing carriers in accordance with a formula agreed upon by all the international carriers and approved by the Commission.

Western Union has been governed by such formula for close to 19 years and the sufficiency of the protection afforded by it is indicated by the increase in the revenues and the improved operating results of the other carriers as contrasted with the decline in Western Union's cable system's results.

We have had attached an exhibit to the end of the statement to show some of the figures, and it may be relevant to review at this time a few of the figures. We have a 3-year comparison indicated, and I shall take 1959 as the first year for that year, the A.C. & R. group, which is the All American Cable & Radio Group, reported a gross revenue of \$34.4 million. The RCAC Co. reported a gross revenue of \$29.6 million. The Western Union International Cable section reported a gross revenue of \$15.3 million.

Now, as we go to 1961, roughly 2 years thereafter, we find the A.C. & R. revenue stated at \$36.4 million, an increase of approximately

\$2 million. The RCAC group reported a revenue of \$34.8 million, an increase of approximately \$5 million. And the Western Union International section reported a decrease to \$12.8 million, or roughly a drop of approximately \$2.5 million.

Now, those are very interesting figures because they do show what has happened. And certainly for these last 3 years, if we look at the net income side, we find an increase in the net income for both the other two carriers and a sharp decrease in net income for the Western Union Cable Co., the telegraph section.

Senator LAUSCHE. What is the source of these figures?

Mr. BARR. These are reports that are filed with the FCC and come from those reports. The carriers all file their annual statements with the FCC, indicating their revenues and their operations, both the gross revenues and net income.

Senator LAUSCHE. These figures are a summation of the figures contained in those reports?

Mr. BARR. That is correct.

Senator LAUSCHE. I see.

Mr. BARR. It may be noted that in RCA's annual report for 1961, the following appears on page 22, and I quote:

The worldwide communications network of RCA Communications, Inc., carried a record volume of international traffic in 1961, resulting in the largest total sales and profits in the company's history.

Elimination of the divestment provision by the proposed bill would leave unaffected the provision in the Communications Act which requires Western Union to distribute international traffic in accordance with a formula as mentioned.

It has been anticipated at the time of the enactment of the legislation which permitted the Western Union-Postal merger and which contained the divestment provision that divestment would be effectuated within a reasonable time. Accordingly, it was not anticipated that the effect of the divestment provision would be substantially adverse to the competitive position of the Western Union cable system in relation to the other international carriers. Contrary to what was anticipated, however, it proved impossible to effectuate divestment promptly and the effect of the divestment provision on the competitive position of the Western Union cable system has been serious.

Western Union has diligently and conscientiously attempted to effectuate divestment. Divestment by way of sale to one or more of the competing international carriers was and is barred by the Communications Act and the antitrust laws. With these logical and otherwise available divestees of the cable system eliminated from the field of divestees, Western Union was unable for a long period of time to find a purchaser ready and willing to acquire its cable system. In fact, it was not until 1956 that such a potential purchaser was found.

The tentative agreement then reached with American Securities Corp., the potential purchaser, has, over the period of more than 6 years since it was made, been altered and amended in basic respects. In fact, for a period of about 1 year, it was completely off. It was not until February of this year that the necessary Federal Communications Commission approval of an amendment agreement in its then form was obtained. But even that agreement as approved by the Commission was and still is subject to the fulfillment of a number of major conditions.

One such condition was the successful negotiation by American Securities of an agreement with the Anglo-American Telegraph Co., Ltd., a British company, under which Anglo would permit the transfer of Western Union's lessee's interest in transatlantic cables constituting important parts of the cable system which were leased from Anglo under a lease which runs to 2011. Without Anglo's consent, the leased cables cannot be transferred.

These American Securities-Anglo negotiations were concluded just last week. Under the agreements reached, Anglo will grant the required consent to the transfer of the leased cables and will release Western Union of any further obligations under the lease.

The Anglo commitments are, however, subject to a number of conditions; and the Western Union-American Securities agreement also remains subject to further conditions. Without attempting to list all these conditions, the following list indicates why no assurance can be given at this time that the conditions will all occur:

(1) Anglo's commitments are subject to approving action by the holders of 75 percent of its outstanding stock represented at a meeting. This meeting is scheduled for about the end of October 1962.

(2) Assuming such 75 percent stockholder approval, British law permits minority Anglo stockholder application to a court to block performance of the commitment.

(3) The Federal Communications Commission must approve a new amendment of the Western Union-American Securities agreement.

(4) Western Union must receive a ruling from the U.S. Treasury Department as to the deductibility of the loss measured by the difference between its tax basis for the cable system and the net amount to be received by it upon divestment, which loss, because of forced divestment at a point of time when its earnings of the cable system are depressed, will be substantial and its recognition for tax purposes will be the most important element of value Western Union will realize upon divestment.

(5) Foreign governmental approvals must be obtained for the transfer by Western Union to the divested cable company of various licenses, franchises, contracts, and operating agreements which are essential to the operation of the cable system.

(6) Other consents must be obtained, largely from nongovernmental entities, for the transfer of leases, rights, contracts, et cetera, which are necessary for cable system operations.

(7) Market conditions must be such at the time divestment is consummated that underwriters will be willing to underwrite the offering by Western Union of the securities of the divestee cable company which will be issued to Western Union upon the transfer of the cable system and the sale of which by Western Union will effectuate divestment.

These conditions and others must be met before December 31, 1962. If not met, the Western Union-American Securities agreement will lapse.

If the agreement should fail of consumation, Western Union is convinced that divestment cannot be consummated on terms which would be in the public interest and in the national interest.

The field of possible purchasers of the cable system has been exhausted. With no willing purchaser of the cable system available, Western Union can say without hesitation that no method of divest-

ment is possible other than by way of spinoff to its stockholders of securities of a corporation to which the system is transferred.

The divestment requirement has been interpreted by the Federal Communications Commission and the U.S. court of appeals as sanctioning a divestment by way of a corporate spinoff. This construction was adopted despite Western Union's arguments that it was not the intent of Congress that it be compelled to effect divestment in that manner but, on the contrary, it was the intent of Congress that divestment was to be made only by sale and at a price commensurate with the value of the cable system. RCA Communications, Inc., in proceedings before the Commission and before the court, contended that pursuant to the authority of the divestment provision, Western Union should be ordered to spin off the cable system.

If Western Union cables were spun off and separated from the main company, it would be helpless to compete against its two major competitors; namely, RCA Communications, Inc., and American Cable & Radio Corp., each of whom has the backing and powerful resources of its parent company—Radio Corp. of America in the case of RCAC, and International Telephone & Telegraph Co., in the case of American Cable & Radio.

It would be tragic to sacrifice the cable system through a spinoff merely to pay warped lipservice to a legislative provision enacted 19 years ago which has proved in practical effect wholly unnecessary for the purposes for which it was enacted.

Western Union has contended and still contends that such a divestment would result in a destruction of the cable system and would not be in the public interest. Western Union would receive no consideration. It would have no tax benefit and it would be required to guarantee the performance by the spun-off company of all of the covenants of the Anglo lease including the rental payment of \$735,000 for a period of 49 years. Moreover, such a divestment would not eliminate the factor of self-interest which the divestment provision was designed to accomplish.

In the event that the current agreement for the sale of the cable system with American Securities is not consummated, Western Union may well be faced with an order from the Federal Communications Commission directing it to spin off its cable system. Relief from this onerous requirement cannot be obtained from either the Commission or the courts but can only come from Congress. The removal of this divestment provision, therefore, is urgently needed by Western Union to prevent the great financial loss which it would sustain if it were compelled to effect such a divestment.

During the 19 years Western Union has been subject to the divestment provision, its international operations have been under a most severe competitive handicap.

Western Union has, since the first transatlantic cable was laid in 1866, been engaged in telegraph operations both as a domestic and as an international carrier. The A.T. & T., Western Union's major competitor, is permitted to engage in both domestic and international telegraph and telephone operations. At present, international voice communications are being handled in the main by A.T. & T.'s submarine cables and Western Union has been denied the use of such cables to provide competition in this field.

The implementation of a communication satellite system provides for the first time the opportunity to effectively compete in the inter-

national field in all forms of telecommunications, video, voice, high speed data facsimile, and telegraph. Western Union now has under construction approximately 5,000 miles of domestic microwave facilities which span the continent and which will provide facilities for effective competition with the A.T. & T. in all forms of telecommunications in the domestic field.

To make such competition effective in its broadest aspect can only be accomplished if Western Union can extend its domestic facilities via the satellite into the international field. Such enhancement of competition is undeniably in the public interest.

It may well be noted that the satellite bill itself as presently drawn specifically affords to all the carriers complete use of the satellite for all forms of telecommunication and does not restrict the use by any carrier of the facilities so provided. Failure to eliminate the divestment provision will, in the event divestment is not consummated, deny to Western Union the opportunity to provide effective competition in this entire field of telecommunications.

It is important to note that the Senate Interstate and Foreign Commerce Committee endeavored to describe the situation in which the law placed Western Union in its Report 19, dated February 7, 1947, 80th Congress, 1st session, wherein it said, and I quote:

The Western Union Co. has found itself in the anomalous position of not being able to dispose of its extensive transatlantic cables and has continued to operate them under special permit of the Federal Communications Commission, which has been renewed from time to time, until some final solution of the merger question is made by the Congress. It is neither a sound nor healthy situation for a corporation to operate a phase of its business under a law which provides that it must eventually dispose of that phase of its business, but meanwhile must continue to operate it. Obviously, the corporation does not know whether it should make improvements in its cable lines, aggressively seek new business and attempt to build up its international business or assume that eventually it must dispose of this operation and do little about it.

The committee report concluded with the following recommendation, and I quote:

The committee believes that in fairness to the Western Union and in the interest of strengthening this domestic communications company so that it can offer a better service to American users, the Congress should \* \* \* either eliminate from the law the provision which prevents the Western Union Co. from carrying on fully and freely its international business by cable, or expedite legislation providing for merger of international carriers so that the cables may be transferred to such a carrier \* \* \*

I respectfully submit, Mr. Chairman, that for all of the foregoing reasons, the divestment provision of the Communications Act should be eliminated and S. 3646 should be favorably reported by this committee.

I should like to thank the committee for affording me the opportunity to present these facts. We shall be glad, of course, to produce any further information this committee may desire and to answer any questions that may be asked at this time.

Senator LAUSCHE. Now, then, this law that was passed in the forties declared that your business in the long run shall be confined to domestic service and not international, is that correct?

Mr. BARR. That is correct.

Senator LAUSCHE. And it also contained the provision that you had to divest.

Mr. BARR. That is correct.

Senator LAUSCHE. You mentioned that A.T. & T. has the right to engage in the carriage of domestic and international service messages.

Mr. BARR. Yes, sir.

Senator LAUSCHE. What about the other, RCAC? Is it limited only to domestic or is it also allowed to give international service?

Mr. BARR. It is primarily an international service that it provides. It has certain gateway cities in which in the domestic field it can extend its international business and in which it can pick up international business. But going back for some time, the RCAC—

Senator LAUSCHE. Let's keep our minds on what I am trying to find out here. You, by this law of the forties when actually put into effect, will be limited in the provision of domestic service?

Mr. BARR. Yes, sir.

Senator LAUSCHE. You say that A.T. & T. is not limited in the same respect?

Mr. BARR. Yes, sir.

Senator LAUSCHE. Does this third operator fall within your category or in the category of A.T. & T. or a blend of the two?

Mr. BARR. I would say it falls practically in a third category, that of an international operation and not a domestic operation.

Senator LAUSCHE. Now, according to your understanding, why has A.T. & T. been permitted to serve domestically and internationally while there has been imposed upon Western Union this requirement of only domestic service?

Mr. BARR. That is a difficult question for me to answer. I will try and do my best with it.

The manner and the areas in which carriers can serve is proscribed and authorized by the FCC. To the extent each carrier serves in a particular area, that is under the provisions of their proscription. That is my answer to the question as to why A.T. & T. has been allowed. Presumably, it was authorized to do so by the FCC.

That is the first part of it. Now the second part, as I recall is— I just missed that again. Would you mind giving me that again?

Senator LAUSCHE. Well, I think you have answered it.

Mr. BARR. Have I answered both sides of it?

Senator LAUSCHE. Yes.

Mr. BARR. Thank you.

Senator LAUSCHE. Why is this inequality of treatment?

Mr. BARR. I think it stems back to 1943 when we took over the Postal, in order for the then merged domestic company which also was engaged at that time and prior to 1866 in the international field, the fear evidenced by the other carriers that this merged company would direct the entire international business which was picked up within the confines of the United States and would throw that business to its own cable system and, therefore, the other two companies would suffer. To avoid that situation, this bill carried the requirement that the merged company divest itself of the international field.

Perhaps it was also an alternate to the fact that the Congress may at that time have considered and, unfortunately for us, not accurately so that the merged company was being given a monopoly in the domestic area of telegraph communications despite the fact that even at that time the A.T. & T. was also competing with Western Union for domestic telegraph communications. Yet, I believe that the first concept I mentioned was in the thinking of the Congress or the com-

mittee of the Congress who stipulated that Western Union should get out of the international field because it was then given a so-called monopoly in the domestic field.

That is about the answer I can give you.

Senator LAUSCHE. What was the relative capital strength of these three institutions in the 1940's?

Mr. BARR. I don't have those figures, but I do have some interesting figures that perhaps relate to revenue if I may give it to you.

This act was passed in 1943. As of 1942, a year before this act was passed the A.C. & R. group had total revenues of \$14 million. The RCA company had a revenue of \$8,335,000. The Western Union Cable System in its international operations had a revenue of \$9,277,000. This is a year before this bill was passed.

And if you take it as of the past year, the A.C. R. revenue of \$14 million has grown to \$36 million. The RCA revenue of \$8.3 million has grown to \$34.8 million. And the Western Union revenue of \$9.2 has grown to \$12.8. In other words, there has been a much larger growth since this Communications Act was passed in 1943 in the revenues of the two carriers than there has been in the revenue of the Western Union Cable System.

Senator LAUSCHE. Will you describe in layman's language this term "spinoff"? How does it operate and what is its impact? Spinoff—disposition—is that what you are talking about?

Mr. BARR. No. I think it is giving to the stockholders of the Western Union Telegraph Co. the stock that would be issued for the new spun-off company. Just spinning off or distributing the ownership measured by the common shares that would be issued, giving that to the current stockholders of Western Union, that is spinning it off.

Have I made that clear?

Senator LAUSCHE. No, you have not. What becomes of those assets?

Mr. BARR. They are turned over to a new company which would have to be formed—a new company—let's call it Western Union International for want of a better name—would have to be organized. It would issue common stock. The common stock that it issued would be turned over to the present stockholders of Western Union, but the company as such would be left with just common stock. It would have no further assets than the assets currently available in the international section of Western Union, whatever plant they had, whatever facilities they had available.

But, unfortunately, what they could not spin off, what Western Union could not spin off, would be the contract for the lease of the transatlantic cables from the Anglo Co. which has in it a rental payment of \$735,000 for 49 years. That liability would still remain with the Western Union Telegraph Co.

Mr. ZAPPLE. In the event this legislation is enacted, would Western Union still continue to press for successful consummation of the agreement with American Securities?

Mr. BARR. As it has, yes.

Senator LAUSCHE. What is the answer?

Mr. BARR. As it has, yes.

Senator LAUSCHE. Well, I think that is all. Thanks very much.

Mr. BARR. Thank you, Mr. Chairman.

Senator LAUSCHE. Senator Yarborough, do you have some questions?

Senator YARBOROUGH. No, Mr. Chairman. Unfortunately, I was detained and did not get here for all of Mr. Barr's statement, but I will read it and study it.

I want to commend the chairman for his cosponsorship of this legislation that is pending here that we are hearing. I think that this is a forward step, this bill that the chairman has introduced here and cosponsored with others. I will study this with care.

Mr. BARR. Thank you.

Senator LAUSCHE. There has just arrived a letter dated August 24 addressed to the Honorable Warren G. Magnuson and written by Nicholas deB. Katzenbach, Deputy Attorney General. It reads:

This is in response to your request for the views of the Department of Justice on S. 3646 which would amend the Communications Act of 1934, as amended, to eliminate the requirement that Western Union divest itself of its foreign telegraph operations.

By an amendment to the Communications Act in 1943, Congress granted authority to the FCC to approve mergers of domestic telegraph carriers, but required that any such merger should provide for the divestiture of the international operations of any merged company within a reasonable time.

Under the 1943 amendment, the FCC approved the merger of the Western Union Co. and the Postal Telegraph Co. and directed that Western Union divest itself of its foreign telegraph operations. S. 3646 would amend the Federal Communications Act by repealing the provision requiring this divestiture, thus permitting Western Union to retain its foreign telegraph operations.

At the time of passage of the 1943 amendment telegraph and telephone operations were wholly separate and the competitive situations in record and voice transmission could be considered separately. However, technological changes since 1943 have done much to diminish the significance of differentiating between record and voice transmission.

It also appears that technological innovation is continuing at an increasing pace and some of the problems attendant upon the development of new methods of long-distance communication have recently been before the Senate. These technological developments have changed, and are continuing to change, the competitive situation and Western Union is today subject to competition in the international field that could not have been foreseen in 1943.

Obviously, some of the considerations which led to the enactment of the 1943 amendment are still relevant. Time has not permitted a complete investigation and review of all the facts relevant to a judgment in this matter. However, based upon the information that we now have and rather extensive background data relating to this field, it is our present opinion that the situation has so far changed since 1943 that other considerations now outweigh those which led to the enactment of the divestiture provision.

For these reasons, we believe that reconsideration of the divestiture provision is now appropriate and therefore, the Department of Justice favors the enactment of S. 3646.

Is there anything further you desire to say, Mr. Barr?

Mr. BARR. No, Mr. Chairman.

Senator YARBOROUGH. Mr. Chairman, I do have a question of Mr. Barr.

Mr. Barr, in my State of Texas, we have widespread complaints that the Western Union Telegraph Co. has pulled in its horns in recent years and does not have the stations that it formerly had. Of course, I realize that when the railroad takes off a station agent in a small town, there is also a telegraph operator and that necessarily you cannot put a full-time telegraph operator there where you formerly had a joint operation and the hours are shorter, and it is more difficult to get telegraph messages.

Of course, on this committee, we have had some study of conditions where the situation of the Western Union Telegraph Co. is in reference to income. Now, if this law is passed and this prohibition is repealed, insofar as your international operations are concerned, is there

reasonable hope that that might so strengthen the company that it would give better domestic service?

Mr. BARR. We believe so.

Senator YARBOROUGH. The people there like the service; they do not want to see it restricted or curtailed.

Mr. BARR. That is not the complete answer, Senator. There are other matters of domestic competition in the communications field that Western Union is faced with. But certainly every area of revenue that Western Union can add to its current revenues will assist it in maintaining the quality of service that we think the general public requires and should have.

Senator YARBOROUGH. They have seen a gradual restriction on service, restriction of areas. It is more difficult to get this in smaller towns and there is a widespread disappointment in that because it makes it more difficult for people in smaller towns to have the rapid communication they formerly had. And they want to see that area of Western Union be in a position to furnish the services to as wide areas as possible.

Mr. BARR. We want that, too. And perhaps, as you have indicated, it is the economic position we have found ourselves in in the light of the effective competition we are today meeting in the domestic field that has resulted in our attempting to provide the service within our own capability of so doing. And in these smaller areas, smaller towns, in order to give the quality of service we would like to give and could afford to give, we have installed approximately 9,000 agencies. These are local people in the town, the drugstore, for example, wherein we establish a small Western Union office directly connected to our system, and the drugstore man acts as our agent in picking up, transmitting, and delivering our messages.

In other words, our complete desire, of course, and obviously, it should be so, is to accrue the maximum of revenues wherever we can get them, but we must be able to handle the business rather within the revenues we receive.

And so our attempt to keep our expenditures within the revenue content, which we must to to continue in service, has led us into this area where some of our Western Union offices, because of the high cost of maintaining them, have been replaced with these agencies. It is merely a matter of just normal survival.

Senator YARBOROUGH. Well, it is a difficult problem, and I have this complaint from lawyers in the county seat of towns of 3,000, 4,000, 5,000, or 6,000 people. It affects other professions and businesses. They say that over weekends now the post office closes Friday afternoon, Western Union is gone over the weekend, and they can phone by long distance, but they have no way of getting rapid service on written communications. And they are placed at a disadvantage competing with somebody in a city of 100,000 people 30 or 70 miles away. These are all factors that go into this growth of cities and the flight of people that has gone on from down on the farms and ranches now to the county seats up in the 5,000 class. And I find professional people and businessmen in towns of that size complaining of that being an impediment to their profession, their business. The fact they cannot get the former speedy written communication service has been a handicap.

I am just hopeful that this legislation if passed might so strengthen the position of the company that these agencies might some way

start training people to send messages, get the type of service they formerly had.

Mr. BARR. We think it will, and we are certainly in favor of expanding the service to its maximum content. We want more telegrams; we do not want less. It is a question of how we can get them.

Senator YARBOROUGH. Thank you, sir.

Thank you, Mr. Chairman.

Senator LAUSCHE. Mr. Robert E. Lee, Federal Communications Commission, please.

Proceed.

**STATEMENT OF ROBERT E. LEE, FEDERAL COMMUNICATIONS COMMISSION; ACCOMPANIED BY HENRY GELLER, ASSOCIATE GENERAL COUNSEL, ASHER ENDE, ATTORNEY FOR FCC, MARION WOODWARD, CHIEF, INTERNATIONAL DIVISION, COMMON CARRIER BUREAU, ALEX ROSEMAN, ATTORNEY FOR FCC**

Mr. LEE. Mr. Chairman, I come here on behalf of the Federal Communications Commission, but I think I should state that in view of the shortage of time, I have been unable to formally clear this statement that I am about to give with the other Commissioners. It is my belief that it represents their views because it is consistent with the position previously taken. But we have not formally done that.

Likewise, the Bureau of the Budget asked me to state that time has not permitted them to clear a position on this particular paper.

I would like to identify the experts who are with me. On my far right, Mr. Alex Roseman and Mr. Marion Woodward next to him. And on my left, Mr. Henry Geller and Mr. Asher Ende who, by the way, has been with this problem since its inception in 1947. So I hope you will excuse me if I bounce some of the questions to him.

I wish to thank the committee for the opportunity to comment on S. 3646, which would repeal paragraph (2)—

Senator LAUSCHE. If you let the first and second paragraphs be written into the record, they are preliminary and get down to the core of the discussion. I suppose it is at the bottom of your first page.

Mr. LEE. Right. Thank you.

(The omitted paragraphs follow:)

I wish to thank the committee for the opportunity to comment on S. 3646, which would repeal paragraph (2) of subsection (c) of section 222 of the Communications Act, and thereby relieve the Western Union Telegraph Co. from the statutory obligation to divest itself of its international telegraph operations.

As you may know, most of my fellow Commissioners, including Chairman Minow, were not available during the time the Commission had for the preparation of comments on S. 3646. Therefore, I feel that it would be most appropriate for me today to review some of the past history of the divestment requirement, including views held at least in the past by the Commission with respect to its need, and then comment on the substance of S. 3646 with the understanding that the views I express are necessarily my own. I would hope, however, that my views in this respect would be endorsed by my fellow Commissioners. For my views are essentially the same as those expressed by the full Commission as recently as October of 1960.

Mr. LEE. Let me start by a review of events from 1943 to the present.

Section 222 was added to the Communications Act in 1943 by Public Law 4, 78th Congress, 1st session. Its purpose was to exempt from the antitrust laws a merger between Western Union and its

principal competitor for domestic telegraph message traffic, Postal Telegraph, Inc., upon a determination by the Commission that such a merger would be in the public interest.

The merger took place shortly thereafter, giving Western Union a virtual monopoly position with respect to the handling of message telegraph business within the continental United States.

Western Union, however, also operated a cable system over which it handled telegraph traffic between the continental United States and oversea points. In this respect, it competed with a number of other telegraph carriers which were primarily engaged in the handling of such international telegraph traffic. The three major units of the international telegraph industry were then, as now, Western Union, the American Cable & Radio Corp. companies, which were affiliates of Postal, and RCA Communications, Inc.

These other international carriers, however, did not maintain facilities within the continental United States for the pickup and delivery of oversea traffic, except in a few so-called gateway cities, principally New York, Washington, and San Francisco. They depended largely on the domestic systems of Western Union and Postal, with whom they had agreements covering such pickup and delivery functions.

Thus, it was industry practice when a message was filed with either Western Union or Postal for such carrier to select the oversea carrier which would handle the message out of the United States. Messages filed with Western Union were either turned over to its international department or to an independent international carrier with whom Western Union had contractual relations. Similarly, messages filed with Postal were transmitted overseas either by an affiliated international carrier or turned over to another international carrier with whom it had a contract.

During the hearings preceding the enactment of section 222, strong fears were expressed that Western Union after its acquisition of Postal would use its domestic monopoly position to favor its own oversea arm in the distribution of outbound international telegraph traffic that was filed with it. Congress, recognizing the validity of such fears, sought to eliminate such possible favoritism and thereby foster competition in the international field by requiring as a condition to merger between Western Union and Postal that Western Union divest itself of its international operations.

Similarly, to avoid favoritism by Western Union to any particular international carrier, including its own cable system before it was divested, Congress required that Western Union distribute outbound telegraph traffic among the several international carriers in accordance with a formula to be approved or prescribed by the Commission.

I might add that a review of the legislative history of domestic telegraph merger proposals shows that the congressional committees concerned, the industry, and the Commission were consistently unanimous in their view that a divestment requirement should be an essential part of any bill authorizing a merger of domestic telegraph carriers. This position was based on the undeniable premise that so long as the domestic telegraph monopoly was a major factor in the international field, it would be difficult if not impossible to prevent it from discriminating in favor of its own international operations.

A reading of legislative history on the matter points out that the only proper solution to the problems of favoritism and unfair advan-

tage which the domestic telegraph monopoly would have over its over-sea competitors by retaining its cable system was the divestment provision, and Western Union necessarily accepted it as a condition of domestic merger with Postal. I might also add here that the findings of the Commission in its decision in docket 10151 in 1958, which I will refer to in more detail, bear out the fears expressed in 1943.

The merger between Western Union and Postal was approved by the Commission on September 27, 1943, the Western Union was ordered to use due diligence, as required by section 222, to divest within 1 year. The Commission indicated, however, that if divestment could not be reasonably effected within that period, it would consider an appropriate petition for an extension of time. Thereafter, the Commission granted successive yearly extensions on petitions of Western Union.

In 1952, troubled by the extended delay by Western Union in effecting divestment, the Commission instituted an investigation, *Western Union Divestment*, docket No. 10151, inquiring into the following questions, among others: The efforts made by Western Union to divest; the problems involved; whether the Commission could and should prescribe a divestment plan; the problems which would arise from continued operation by Western Union as an international telegraph carrier in competition with other international telegraph carriers; whether the Commission should modify its 1943 divestment order; and whether the Commission should recommend to the Congress that the divestment requirement be modified.

Following a lengthy proceeding, the Commission in 1958 concluded, *Western Union Divestment* (25 F.C.C. 35), that Western Union had failed to exercise due diligence to effect a divestment; that it was possible and practicable for it to divest; and that continued operation by Western Union of its cable system gave rise to serious problems in the distribution of international telegraph traffic which could not be alleviated other than by divestment.

With respect to this last point, the Commission devoted 33 paragraphs in its decision to an evaluation of the full nature and extent of the problems resulting from the operation by Western Union of its own cable system in competition with the other international telegraph carriers (25 F.C.C. 35, 62-71). Upon the basis of the findings, the Commission reached the following conclusions with respect to this matter.

If you wish, sir, I could skip that; it is a matter of public record.

Senator LAUSCHE. No; you better read it.

Mr. LEE (reading):

Under the international formula, Western Union is in the dual position of an international participant and the initial judge of any differences of opinion which may arise as to formula interpretation. Assuming the best of faith on its part in its interpretation of the formula, Western Union cannot be regarded as an impersonal forwarder in the present conditions of conflicting interests. We think that it is manifest, from our extensive findings in this connection, that continued operation of the cables by Western Union gives rise to serious problems in the distribution of international telegraph traffic, and that such problems cannot be alleviated other than by divestment. Thus, the reasons which impelled Congress to require divestment of Western Union's telegraph operations have been amply justified by experience under a combined landline-cable operation.

In view of its findings and conclusions, the Commission saw no reason to recommend that the Congress modify the divestment requirement. Believing that Western Union should have the oppor-

tunity to choose a divestment plan itself, the Commission stated that it was unnecessary for it to determine its power to prescribe a plan. Accordingly, it ordered that Western Union submit a divestment plan.

On appeal by Western Union, the U.S. Court of Appeals for the Second Circuit, although remanding the matter on other grounds, sustained the basic findings and conclusions of the Commission, with the exception of certain issues on which it declined to pass.

Thereafter, on January 28, 1960, Western Union filed a plan providing for divestment of its international operations to a noncommunications entity. Proceedings were initiated by the Commission to assess the plan, but were dismissed in August of that year when it developed that the proposed purchaser was unable to satisfactorily demonstrate its financial capability to consummate the plan.

Western Union then, in response to Commission order, in September 1960, filed another plan, in the form of an agreement with American Securities Corp., an investment banking house. This plan was approved in March of 1961 by the Commission with certain modifications. Several further modifications later requested by the parties were agreed to by the Commission.

In essence, the agreement provides for the transfer of the Western Union international operations to a new corporation in exchange for stock and debentures. These are to be sold by Western Union to its shareholders and the public. American Securities will purchase sufficient stock from the new corporation to give it control.

American Securities and Western Union are presently expending considerable time and effort on certain conditions which must be met before the agreement can become final. Both anticipate that their efforts in this direction will be successful in the near future and that divestment will be successfully consummated.

As you may recall, your committee by letter of August 17, 1960, requested the Commission's views on the elimination of the divestment requirement. In such letter, the Commission's attention was directed to the fact that during the 1959 hearings on a proposed bill to permit merger of the international telegraph carriers, the suggestion was made, as we understood it, by Western Union that the Congress should either enact such legislation or repeal the divestment requirement. In our October 4, 1960, response to your letter, the Commission recommended most strongly that your committee reject any proposal for a repeal of the divestment requirement.

We commented that the proposal could in no way be considered as an alternative for international merger; that the suggestion was made by Western Union on an erroneous assumption, namely, that in the absence of merger legislation, Western Union would have no practicable and feasible means of complying with the divestment requirement; and that we believed the divestment requirement represented a carefully thought out sound evaluation of public policy by the Congress.

I see no reason to depart from that view today.

I quite frankly cannot see the connection between the divestment requirement and merger. I am not today here to comment on the merits of a merger. As you know, the Commission has endorsed permissive merger legislation in the international telegraph field, but it has not, at least in recent years, taken a position on legislation to permit an international-domestic telegraph merger. It has been suggested that to permit Western Union to retain its international

operations would provide a nucleus for a domestic-international merger.

I believe this argument to be without merit. Such a merger would in my opinion be in no way impeded by a prior divestment. I might also observe that the merger legislation considered by your committee in 1959 specifically prohibited any combination of the merged international carrier and the domestic Western Union system.

It has also been urged that (1) if the present divestment plan cannot be consummated, no future divestment can take place on terms which would be in the public interest, and (2) that the divestment requirement places Western Union under a severe competitive handicap.

With regard to the first contention, I might note that the same contention was made before your committee in 1959 during the merger hearings by the president of Western Union, who alleged that none of the methods of divestment suggested by the Commission in its 1958 decision as available were permitted or required by section 222 or, indeed, were feasible.

As I have pointed out, the court of appeals disagreed, upholding the Commission's conclusion that methods other than a divestment to a competing international carrier or a merged international carrier, which cannot be done today without legislation, were available to Western Union.

Although it declined to pass on whether they were feasible, it specifically stated that it did not—

intimate disagreement with the Commission's finding that methods of divestment are available \* \* \* which are lawful, feasible, and in the public interest.

Accordingly, it would appear that any suggestion that divestment is impossible if the present plan is not consummated is unduly pessimistic and is not in accord with practicalities and the thinking of either the Commission or the court on the matter.

Nor can I understand how the divestment requirement has placed the Western Union international operations under a competitive handicap. Since it was and now is competing directly only with other international telegraph carriers who have no corresponding domestic system, it would appear that these carriers, not Western Union's cable system, are the ones under a competitive handicap. This is borne out by the number of complaints made against Western Union to the Commission by Western Union's competitors, alleging that Western Union has discriminated against its competitors in favor of its own international operations in the handling of overseas telegraph traffic.

Now let me turn to the effects of divestment on the competitive relationship between Western Union and the American Telephone & Telegraph Co., which operates domestically and internationally. A.T. & T. handles to a very limited extent record communications internationally while Western Union and the international telegraph carriers handle very little telephone communications between the continental United States and overseas points.

The Commission has followed a policy of authorizing A.T. & T. to provide record services only in very exceptional circumstances.

Should there be an increasing demand for facilities capable of transmitting internationally both voice and record communications on an alternate or simultaneous basis, the traditional separation of these services will require reassessment. The Commission is aware

of the significance of this possibility and is actively considering the various alternative approaches to its accommodation in a manner best serving the public interest. I cannot see, however, how the retention of its international operations by Western Union is relevant to this problem or would provide any more competition with A.T. & T. than would otherwise be provided.

Western Union, after divestment, could interconnect with any international carrier authorized to provide a voice/record service, and so be able to provide a through service from any point in the United States in competition with A.T. & T., assuming that A.T. & T. were also authorized to provide such service. I think I can safely say that the Commission would require such interconnection in the public interest.

I should point out that interconnection is common in the field; both the international carriers and A.T. & T. necessarily interconnect with their foreign correspondents abroad. A.T. & T. has a multiplicity of interconnections with nonaffiliates in the United States. And both A.T. & T. and Western Union interconnect with the several international telegraph carriers at present.

Before I close, I would like to comment on certain statements made on the Senate floor with respect to this matter last August 16, as reported in the Congressional Record for that day. I think the discussion there discloses several misapprehensions of fact which your committee will wish to consider in acting on the present bill.

First, it was observed that A.T. & T. will not let Western Union use its cables for voice communications. Western Union, of course, as well as its competitors, do lease channels in the A.T. & T. cables for record communications. I might add that A.T. & T. is authorized to lease to the international telegraph carriers, including Western Union, channels to handle voice-record communications for the Department of Defense to the same extent as A.T. & T. is allowed to furnish such service. However, to my knowledge, the Commission is not aware of any request by the carriers for authority to transmit voice communications between the continental United States and oversea points.

Second, there is an implication in the record that the Western Union cable system will be forced out of business through divestment. This is not true; the divestee will continue to operate it. The Commission would not approve any divestment plan which did not give reasonable assurance of the continuation of the divested international operations.

Senator YARBOROUGH. Mr. Chairman, pardon me for interrupting. I am forced to go. I just want to say, Mr. Lee, I have read your full statement and that of Mr. Tower whom we have not reached. I have read yours, and I am very much interested in your comments on the debate that arose on the communications bill. I have read both and will study them.

Mr. LEE. Thank you very much, sir.

Senator LAUSCHE. I think we should suspend at this time. I will go down to report and will be right back.

(Whereupon a recess was taken.)

Senator LAUSCHE. Continue.

Mr. LEE. Third, the statement is made that Western Union will have no desire to go into the proposed space satellite corporation if they divest. I wish to make it perfectly clear that I do not believe

that the Commission will refuse to permit Western Union to own stock in the corporation if it divests. And in view of Western Union's position that it should not be denied access to the space communications system for possible eventual domestic use, a position shared by the Commission, I cannot believe that Western Union would find it to its best interests not to participate in stockownership even after divestment.

Fourth, it was indicated that there is no opposition on the part of the carriers to Western Union continuing in the international field. This, I am certain, is not the case. The competing international carriers have over the years shown quite an active desire that Western Union comply with the divestment requirement. They are the ones for whose benefit the requirement was imposed.

In view of the foregoing, I recommend that S. 3646 should not be approved by this committee.

Thank you very much.

Senator LAUSCHE. On the floor of the Senate in this discussion of August 16, I think it was, the statement was made that A.T. & T. was allowed to serve domestically and internationally and that Western Union was not. Is that true?

Mr. LEE. This is in voice communications, I believe. That is true.

Senator LAUSCHE. That is A.T. & T. in voice communications is allowed to serve both domestically and internationally?

Mr. LEE. That is correct. There are no competitors.

Senator LAUSCHE. There are no competitors in that field?

Mr. LEE. No.

Senator LAUSCHE. With regard to written or record communication, A.T. & T. is not allowed?

Mr. LEE. As a general policy, they are not allowed. We have made, I suppose, a half dozen exceptions primarily for military reasons where they would require a larger bandwidth, for example, than Western Union could provide. These are minor exceptions.

Here, I have a list of eight.

Senator LAUSCHE. Do you make a differentiation in the principle that ought to apply with regard to monopoly, one, against voice communications and, two, against record communications?

Mr. LEE. The general policy over the years has been that Western Union would handle record communications and A.T. & T. would handle voice communications with these few exceptions.

Senator LAUSCHE. That is the basis from which you begin, then?

Mr. LEE. That is correct, sir.

Senator LAUSCHE. That the policy shall be that A.T. & T. shall handle voice; Western Union shall handle record?

Mr. LEE. Record in the message service; yes, sir.

Senator LAUSCHE. In domestic service?

Mr. LEE. In the message service.

Is that right, Mr. Woodward?

I wonder if we could elaborate a little on that with Mr. Woodward.

Senator LAUSCHE. What I am trying to find out is if you are trying to distinguish the principles that are to be applied to voice and record solely on the basis that one is voice and the other is record communication.

Mr. WOODWARD. Sir, it is a long history in the domestic field where the A.T. & T. is permitted to operate certain types of record communications such as the TWX service, the teletype operator exchange

service and the private line service. They are in competition with Western Union domestically in the United States for those types of telegraph services, not in the message telegraph service, but in those customer-to-customer types of telegraph services.

When A.T. & T. began to lay its transatlantic cables, it was the thought of the telegraph industry, the Western Union and A.C. & R. and RCA that the A.T. & T. would be in a position in the international field if they were permitted to operate these services to put the telegraph companies out of business.

Now we have a completely competitive situation in the international field. A.T. & T. primarily renders a voice service only in the international field with the certain exceptions that Commissioner Lee has mentioned. The telegraph companies provide the record communication services. In certain cases, the telegraph companies will furnish a voice service used for communication purposes. RCA has been authorized to use voice circuits for teleprinter, et cetera. The A.T. & T. is authorized in the transatlantic field to use their communications systems to provide joint record and voice services to the military only.

We have restrictions put in there to protect the telegraph companies for the reason that if the A.T. & T. went in that field with its enormous number of channels, it would reduce the telegraph revenues of the carriers. The mere fact that the military have been able to lease channels wide capacity in the North Atlantic has caused Western Union some \$1.5 million loss in revenues, commercial cable cost some \$400,000 a year loss in revenue. And this primarily is responsible for the reduction in the Western Union revenues over the period of 1958 to date.

So if we let A.T. & T. have unlimited use of their international cable with their enormous capacity to compete with the telegraph companies, we have the same problems in the international field that we encounter in the domestic field where A.T. & T. does compete with Western Union.

Senator LAUSCHE. Well——

Mr. LEE. I wonder if Mr. Roseman could add a point.

Senator LAUSCHE. Let me get this clear. There is a long dissertation of what has been done, but I still do not have an explanation of whether different principles are applied to one as distinguished from the other.

Mr. WOODWARD. There is a different position——

Senator LAUSCHE. Now A.T. & T. first on voice, it has complete assignment of the service on voice internationally.

Mr. WOODWARD. Yes, sir.

Senator LAUSCHE. To what extent does A.T. & T. serve by way of record communication?

Mr. WOODWARD. In the international field, sir, in the transatlantic, the only service they offer in the record field is for the military service.

Senator LAUSCHE. For the military?

Mr. WOODWARD. In the Caribbean area, to Puerto Rico, to Jamaica—they will have it to Jamaica and to Bermuda, they will be able to offer an alternate voice circuit and a teleprinter or facsimile circuit, but in the leased channel service.

Senator LAUSCHE. But A.T. & T. has been given the right to give international voice and in a limited degree international record communications service?

Mr. WOODWARD. Yes, sir.

Senator LAUSCHE. Now what is A.T. & T. permitted to do domestically, both by way of voice and by way of record communications?

Mr. WOODWARD. The A.T. & T. domestically furnished a teletype exchange service by means of which customers can exchange record communications on an exchange basis from customer to customer. They also offer the private line telegraph services.

Senator LAUSCHE. Right. Then, domestically, both by way of record and voice, A.T. & T. in a limited degree does render service.

Mr. WOODWARD. Sir, in the domestic field, it is more than a limited degree. In the domestic field, the A.T. & T. telegraph revenues amount to about 40 percent of the total telegraph revenues. The only thing they do not engage in is the message telegraph service.

Senator LAUSCHE. Now, then, if this order of the 1943 law is put into effect, Western Union would be limited in its service domestically to record communications.

Mr. WOODWARD. Sir, Western Union has entered into an agreement with the A.T. & T. that permits Western Union to lease certain channels from the A.T. & T. and put voice communications over them. The Western Union has—

Senator LAUSCHE. Internationally?

Mr. WOODWARD. I thought you said domestically.

Senator LAUSCHE. All right, domestically.

Mr. WOODWARD. I am speaking domestically, and then I will go to international, if you will.

Western Union, as Mr. Barr said just now, is putting in over 5,000 miles of microwave of its own construction over which they will be able to render a private line voice service.

Senator LAUSCHE. Domestically?

Mr. WOODWARD. Domestically. There are no restrictions whatsoever in the domestic field about Western Union engaging in the telephone type services. As a matter of fact, Western Union used to be in the message telephone service. They sold their facilities out on the west coast some years ago.

In the international field—

Senator LAUSCHE. Let's get this summarized. Domestically, it can render both services, but in the rendition of voice service, it leases from A.T. & T.

Mr. WOODWARD. It can lease from A.T. & T. or it can use its own facilities. Up to very recently, the broadband services were obtained from the A.T. & T. Now, as Mr. Barr just said, Western Union has gone into a very large microwave program where they will have ample facilities of their own in many cases to provide the services.

Senator LAUSCHE. Now, with regard to international service.

Mr. WOODWARD. In the international service, to give a voice service, sir, you have to have wideband communications. Until recently—that is, until 1956—when the cable channels became available, there were no really good ways that the telegraph companies could engage in the telephone services. Western Union did not have such capacity to engage in an international telephone service. They have since about 1958 been able to lease channels from the A.T. & T. broadband channels over which they are now conducting record communication services. We authorize the A.T. & T. to lease facilities to Western Union as well as to the other telegraph companies to provide services other than record services. But so far, there have not been

any applications before the Commission from any telegraph company to use broadband communications for voice communications.

Senator LAUSCHE. Well, let me get this clear. In the international communication, under this law of 1943, is not Western Union completely barred from operating?

Mr. WOODWARD. Western Union is operating now just exactly as A.C. & R. and RCA are.

Senator LAUSCHE. Until they sell their cable, they are allowed to operate in the interim, of course.

Mr. WOODWARD. They are required to divest themselves of their international facilities, but until they do so—

Senator LAUSCHE. What?

Mr. WOODWARD. They are required to divest themselves, but until they do so, they operate exactly as they always have and exactly the same way that RCA and anybody else operates.

Senator LAUSCHE. After they divest, they will be completely out of the international field?

Mr. WOODWARD. Yes, sir.

Senator LAUSCHE. So there is a difference in the rights accorded to A.T. & T. and those accorded to Western Union.

Mr. WOODWARD. Yes, sir. Shall I explain why?

Senator LAUSCHE. Now, let's first identify the difference.

Mr. WOODWARD. The A.T. & T. through its longlines and through its associated companies furnish long distance communications services in the United States. The A.T. & T. have cable and radio facilities that they operate to Europe so the A.T. & T. and its associated companies together furnish communications domestically and internationally.

Senator LAUSCHE. Why is A.T. & T. given the right to render certain domestic service, although Western Union is barred from rendering international service?

Mr. WOODWARD. May I change that question around a little bit, Senator Lausche, to tell you why Western Union is required to divest in the international field and A.T. & T. is not required to divest? Isn't that your question?

Senator LAUSCHE. That is exactly what I want to have you answer, yes.

Mr. WOODWARD. In the international telephone service, there is no competition. A.T. & T. picking up a telephone call in the United States to send it to Europe has got only one way to send it. That is over A.T. & T. facilities to Europe. In the telegraph field, Western Union, picking up a message, would internally at Milwaukee or anywhere, sending that message to Europe, has several routes that message can follow; after it gets to New York, it takes the A.C. & R. route or an RCA route or other routes in addition to the RCA routes.

It was the feeling of Congress if Western Union had the sole pickup function in the United States, they would be in the position to decide where that message should be handled to New York, what channel handled it—either Western Union International, RCA, or A.C. & R. So, to prevent a possible discrimination or favoritism of its own domestic system, Congress put in the divestment requirement in the international service.

If we had competition in the international telephone field, you would have to work out some sort of a formula like we have in the

telegraph field. It may be necessary for the A.T. & T. to divest itself of its international telephone operations in that case, but we do not have that case.

Senator LAUSCHE. Now, what about this formula that was included in the 1943 law to insure an equitable distribution of the services that it was to render internationally?

Mr. WOODWARD. The companies proposed a formula to the Commission back at the divestment hearing, and there was a disagreement in certain respects so the formula in essence was agreed to by the companies, but prescribed by the Commission because of the slight disagreement. That formula tells, in effect, the Western Union lines what proportion of the unrouted traffic ought to be handed to the individual companies.

That would be fine, sir, but there have been any number of complaints before the Commission. Many of them were brought out in hearings; many of them were referred to in Commissioner Lee's statement, in docket 10151, that the other companies thought that Western Union was not treating the A.C. & R. and RCA made many complaints before the Commission. At one time there, we had about four hearings going on simultaneously in respect to the fact that Western Union who actually had the traffic in the first place was not distributing it fairly to the other companies.

Senator LAUSCHE. Was the Commission able to handle that situation?

Mr. WOODWARD. The Commission decided that the only way it could be handled was by divestment of Western Union.

Mr. ZAPPLE. Commissioner Lee, both you and Mr. Woodward keep referring to the distinction between record and voice communications. Is it a fact that in recent past and as projected for the future, the technological developments have so advanced that this distinction will become so blurred that the difference between a record and voice communications will be almost eliminated?

Mr. LEE. Yes, I think that is quite accurate.

Mr. ZAPPLE. Is it also correct to say that in the international field today the existing international carriers do not have the capacity nor the facilities to keep pace with the technological developments and demands that are required by the users?

Mr. LEE. I think I would pass that question to Woody here.

Mr. WOODWARD. They do not have facilities of their own, but they have leased a large number—about 26,000—voice channels from A.T. & T. or from the Canadians.

Mr. ZAPPLE. Just to press that point, is it fair to say, then, that the competition that exists today in the international telegraph field depends upon the use of the facilities of A.T. & T.?

Mr. WOODWARD. Very much so.

Mr. ZAPPLE. And that this condition will continue unless something is done?

Mr. WOODWARD. This condition will continue so long as they rely on the cables. In the event of the satellite system, it is presumed that each one of these companies will buy in this corporation and have their own facilities.

Mr. ZAPPLE. Why would you say that the present international telegraph carriers are unable to establish their own facilities to meet the new needs, or to ask the question another way, are they in a posi-

tion to install their own modern facilities to meet present and future demands?

Mr. WOODWARD. What you asked just a while ago is very true. There is a very small line and it is becoming more blurred between record communications and voice communications. Any communications facilities that are being laid down today are broadband communications capable of both record and voice service. The telegraph companies have their own; RCA and A.C. & R. and Western Union are not in the position to provide with their foreign correspondents abroad facilities solely for telegraph purposes.

Mr. ZAPPLE. And as you see it projecting for the future, will they be in a position to do this or will this condition continue where they will be dependent upon the facilities of the A.T. & T.?

Mr. WOODWARD. Until the satellite system proves to be a system in operation.

Mr. ZAPPLE. Now, assuming facilities become available under the present situation, under the present law, can a carrier compete effectively with A.T. & T., both domestically and internationally, or is a modification in the policy of the Commission or the Communications Act required?

Mr. WOODWARD. Are you speaking with respect to this divestment provision?

Mr. ZAPPLE. Including that and any other observation you wish to make.

Mr. WOODWARD. In my personal opinion, the divestment proceeding has nothing to do with that, nothing whatsoever.

Mr. ZAPPLE. Does not the divestment provision at the present time prohibit Western Union from engaging in effective competition?

Mr. WOODWARD. It requires Western Union internationally to divest itself of its international facilities, but there will be another party that will come in and presumably will be in the position to do the same thing internationally that Western Union is doing internationally.

Mr. ZAPPLE. But assuming the point Senator Lausche was making to you earlier, that the entity may assume the responsibility of Western Union in the international field, would it be able to compete on an equal footing with A.T. & T., both domestically and internationally? Or to put it another way, wouldn't such a carrier be limited purely to the international field?

Mr. WOODWARD. That outfit will be able to compete with A.T. & T. and, as a matter of fact, as has RCA and A.C. & R. or any other international carrier.

Mr. ZAPPLE. Are you suggesting, therefore, that RCA and A.C. & R. compete effectively domestically and internationally with A.T. & T. today?

Mr. WOODWARD. I did not say internationally, Mr. Zapple—domestically, internationally only.

Mr. ZAPPLE. Let me ask you one more question. Do they today compete effectively with A.T. & T. both domestically and internationally; that is RCA and A.C. & R. and Western Union?

Mr. WOODWARD. RCA and A.C. & R. are not engaged in any domestic operations and therefore they do not compete with the A.T. & T.

Senator LAUSCHE. Senator Scott?

Senator SCOTT. No questions.

Senator LAUSCHE. All right.

Thanks very much.

Mr. LEE. Thank you very much, Senator. I appreciate being here.

Senator LAUSCHE. Mr. Bertram B. Tower.

**STATEMENT OF B. B. TOWER, PRESIDENT, AMERICAN CABLE & RADIO CORP., ACCOMPANIED BY JOHN A. HARTMAN, JR., VICE PRESIDENT AND GENERAL COUNSEL**

Mr. TOWER. My name is Bertram B. Tower and I am president of American Cable & Radio Corp., a telecommunications operating subsidiary of International Telephone & Telegraph Corp. (ITT). We appreciate very much the opportunity you have extended for us to present our views on S. 3646.

The U.S. operating subsidiaries of American Cable & Radio Corp. are All America Cables & Radio, Inc., which operates by cable between the United States and the Caribbean and Latin American areas; the Commercial Cable Co., which operates by cable transatlantic to the United Kingdom, continental Europe, and beyond through connections abroad; Globe Wireless, which operates by radio between the United States and Pacific points; and Mackay Radio & Telegraph Co., which operates by radio between the United States and all the areas of the world. These companies operate as a unit, thus providing cable and radio service substantially on a worldwide basis.

Our system competes in the international record communications field with Western Union Cables, RCA Communications, and other smaller U.S. companies as well as foreign carriers. We are, therefore, very much concerned with the proposal of S. 3646 that Western Union be permitted to retain its international operations while still having its widespread domestic telegraph system. To permit this situation to continue and in fact endorse it, as the bill proposes, would seriously impair our competitive position and potential and would perpetuate a distinctly preferential position for Western Union in its competition with the other international telegraph carriers. We must, therefore, urge that this committee not report the bill out favorably.

By way of background I would like to point out that section 222 of the Communications Act, which the bill would amend, was enacted in 1943 to permit the acquisition by Western Union of Postal Telegraph Co. As a condition to such acquisition Congress determined that the resulting merged domestic company must divest itself of its international operations. At the same time there was a proposal before Congress to permit the merger of the international telegraph companies which was not enacted.

The reasons for requiring the divestment of its international telegraph division by the domestic telegraph monopoly then created were considered fully in hearings before this committee and before the FCC. The most important reason was and continues to be the very serious competitive disadvantage with which the other international telegraph carriers would be faced if Western Union, as the sole pickup and delivery agent for international telegraph message traffic throughout the United States except New York, San Francisco, and Washington, was permitted to have its extensive operations

and thousands of offices in direct and unlimited competition with the very limited offices of the other international carriers. Even with the restrictions imposed under the existing divestment law, the situation has resulted in an almost continuous series of complaints and proceedings before the FCC and in the courts. Now to remove all such restrictions and give Western Union a wide open field internationally would be disastrous to the other international telegraph carriers.

The record at present is that Western Union has contracted to sell its international operations to American Securities Corp., and the terms and conditions of such divestment have been approved by the FCC after hearings. For Congress now to legislate continuation of Western Union in the international field would be to reverse directly the congressional policy expressed in 1943 and the public interest findings of the FCC, and to perpetuate the inequitable situation in which Western Union competitors have been placed by Western Union's failure to comply with the divestment requirements. Unless you are prepared to change entirely the legislative concept of international competition, the Western Union international operations should be divested into a separate company operating solely in the international record field.

If this committee believes that, for other reasons, it should nonetheless permit Western Union to remain in both the domestic and international fields then it should also permit Western Union competitors to combine and expand competitively into the domestic field or take whatever other action may be necessary to protect their competitive positions. Certainly, otherwise all U.S. origin international record business including telex, data, and leased traffic picked up by Western Union domestic system by reason of its domestic position would have to be distributed equitably among the international record carriers if they were to survive. We respectfully submit that this committee should not look only at Western Union's problems but should also consider the overall competitive situation the Congress itself has insisted upon in the international field for many years by maintaining the legal blocks to international telegraph merger.

In this connection we have appeared before your committee on a number of occasions, the most recent being just a little over 2 years ago, in support of permissive international telegraph merger legislation. We still strongly advocate enactment of such legislation for the reasons we have presented in the past to the committee at length. However, we are opposed to the concept of mandatory merger, which the bill before you would tend to force as a matter of competitive inequality. We believe in competition as a useful economic tool. If the international record carriers, individually as companies, believe a merger or mergers will improve their competitive capacity, they should be permitted to merge but should not be required to do so as a matter of law. Here I would point out that we are suggesting only a privilege which Congress has extended for years to the telephone industry both domestic and international and to the domestic telegraph industry but has so far refused to the international telegraph industry.

It is our understanding that the bill before you arose at the present time as a proposed amendment to the satellite bill recently considered on the floor of the Senate and that the expressed purpose of such amendment was to permit the creation of an effective competition to

A.T. & T. by permitting Western Union to remain in the international field as well as the domestic field.

Although we have a sympathetic understanding of Western Union's problems in competing effectively with A.T. & T. we do not believe that the bill before you will in any way serve to solve these problems. If it is the desire of Congress to create or permit the creation of potentially effective competition to the A.T. & T. system, you will have to go much deeper than merely permitting Western Union to continue to do what it has been doing for these past 19 years since it acquired the Postal system, namely, continuing to operate in both the domestic and international telegraph fields. The fact is that, despite the divestment order of 19 years ago, Western Union has not divested but in fact has continued to expand its capacity in the international field, largely through leased A.T. & T. facilities. So it is difficult to see how the legislation you are considering, which permits continuation of the existing situation, will improve Western Union's competitive capacity as against A.T. & T.

Neither Western Union as the domestic record carrier nor the international record carriers have resources, individually or in combination, to create effective competition if A.T. & T. is to be permitted to provide both voice and record services. So long as A.T. & T. with its tremendous resources is permitted to provide both voice and record communications and to expand into the modern record forms of data and other types of computer communications, it will grow increasingly powerful to the detriment of its telegraph competitors who can only become increasingly less effective.

Although our system does not operate in the domestic field, nevertheless in principle that which we do recommend for the international field applies also domestically. We recognize, of course, that the existing situation in the domestic field differs from that in the international area. A.T. & T. is already extensively engaged in domestic commercial record services such as TWX, data transmissions and various private line record services as well as voice service, but has not yet expanded commercially into the record field on an international basis. In our opinion, the Congress must establish and the FCC must enforce a firm policy that A.T. & T. must stay out of the international record field, except for the leasing of capacity to international record carriers, if truly effective competition with A.T. & T. in international communications is to be achieved.

If the record field with its future data potential is reserved now for carriers other than A.T. & T. it would serve as a basis for developing strengths which might provide resources adequate to enable an effective competition with A.T. & T. Ultimately mixed voice and record communications by both the record carrier or carriers and A.T. & T. may be possible but, in the meantime, it is clear that a combination of all record carriers would not be capable presently of competing effectively with A.T. & T. in either the record or voice fields.

We cannot see the need for a complete international communications monopoly as has been suggested, encompassing both the voice and record fields. Such a monopoly would have advantages technically and ease problems abroad where you have in many instances a complete monopoly of all forms of communications. However, we do not believe it is necessary for the United States to compromise its concept of competition to that degree, but rather that an atmosphere

of real competitive potential should be created. To create such an atmosphere, the record carriers must be given a chance to develop the new and more profitable forms of record service.

Permissive international telegraph merger legislation certainly would aid in strengthening the potential of the international record carriers to provide effective competition. The interconnection of the domestic record carrier, Western Union, with the international record carrier or carriers, can be just as effective in developing the resources of the record companies as would be a completely merged domestic and international record company. Let me emphasize that if the present trend of A.T. & T. expansion into the record field continues the ultimate result will be a strengthening of A.T. & T.'s position as against all of the record carriers. To relieve Western Union of the requirement that it divest its international operations does not solve this problem. To the contrary such action would merely tend to weaken the other international record carriers to the advantage of Western Union.

We respectfully urge, therefore, that this committee not act favorably on the bill before it but, as promptly as possible take action aiming toward the root of the problem.

Senator LAUSCHE. Thank you very much, Mr. Tower.

Mr. ZAPPLE. Just a couple of questions.

Would it be fair to say, Mr. Tower, that in opposing this legislation your suggestion therefore takes a two-pronged approach: one, that permissive merger legislation in the international field for international telegraph carriers be enacted?

Mr. TOWER. Yes, sir.

Mr. ZAPPLE. Two, that a policy declaration be made by the Congress to the effect that the A.T. & T. be prohibited from engaging in data transmission in the international field?

Mr. TOWER. In all forms of record communication; yes, sir. I think that sums it up.

Mr. ZAPPLE. You say if these two points are accomplished this would create an opportunity for effective competition with A.T. & T?

Mr. TOWER. It could. It could very well; yes, sir.

Mr. ZAPPLE. You think that the enactment of this legislation that is pending before us would have an adverse effect on the competitive position of the telegraph carriers, both domestically and internationally?

Mr. TOWER. Yes, sir.

Mr. ZAPPLE. Why do you say that?

Mr. TOWER. Well, for the many reasons that have been set out before this committee in the past and before the FCC in various hearings that we have engaged in, really adversary hearings regarding the actions by Western Union and their performance in handling the international forms of distribution of traffic. Western Union in a position of expanding its operations beyond the areas in which they are now serving would certainly dilute the existing availability of traffic to all parts of the world. The expansion of its modern telex domestic system through its own cable system internationally, without any restriction, with no formula to guide it, with respect to the position of the other carriers could be very disastrous to the other carriers.

Mr. ZAPPLE. What would you project for the future with respect to the international telegraph field if the Congress fails to carry forth

the suggestions you have made: One, not enact legislation to permit the merger in the international telegraph field; two, neither Congress nor the FCC enunciate a policy with reference to data transmissions in the international field; three, Congress fails to enact the bill that is pending before this committee? What do you foresee so far as the development in the communications field is concerned as it relates to your company and the other companies in the business?

Mr. TOWER. I believe that the international telegraph carriers, including the Western Union Cables, would be in a very serious situation in future years with the advancement by A.T. & T. into extended forms of record communications which they have already announced. The possible extension of the domestic data phone business of A.T. & T. internationally would have a very profound effect on the revenues of the international carriers.

I think the future of the International carriers is seriously jeopardized unless something is done along the lines I have indicated in my testimony.

Mr. ZAPPLE. Is it fair to say also for the record that as an international carrier you would become dependent more and more as time goes on upon the facilities of A.T. & T.?

Mr. TOWER. Yes, sir. We certainly have become so. This was one of the items of importance that we indicated to this committee in 1959. We foresaw that the international carriers would in effect become just an adjunct of the A.T. & T. expanded facilities throughout the world. As you are well aware, this committee is aware, the A.T. & T. has extended its cables to other parts of the world.

Senator LAUSCHE. Thank you, Mr. Tower. Do you have any further comment?

Mr. TOWER. Thank you very much.

Senator LAUSCHE. Thank you, sir.

Mr. Joseph P. Selly, president, American Communications Association.

**STATEMENT OF JOSEPH P. SELLY, PRESIDENT, AMERICAN COMMUNICATIONS ASSOCIATION; ACCOMPANIED BY LAWRENCE ELLIS, SECRETARY-TREASURER, LOCAL 11**

Senator LAUSCHE. Mr. Selly, I understand you do not have a written statement, but you have a statement to make?

Mr. SELLY. Yes, sir.

Senator LAUSCHE. We are glad to have you here. Just identify yourself and your associate and then proceed in your own way.

Mr. SELLY. Thank you, Mr. Chairman.

My name is Joseph P. Selly, president, American Communications Association. My associate is Mr. Lawrence Ellis, secretary-treasurer of Local 11 of the American Communications Association.

Mr. Chairman, because of the limited time since I was informed I would be able to appear, I was not able to prepare a statement. I will try to make my comments as brief and to the point as possible.

Senator LAUSCHE. We are very glad to have you proceed, and if you later wish to submit a statement it will be made part of the record.

Mr. SELLY. Thank you.

I want at the outset to indicate that I appear not only on behalf of the workers in the United States who are covered by contracts which

this union holds with RCA Communications, French Cables, and the Western Union Cable Co., but I have also been authorized to speak for the Western Union Cable Employees Association, a British union which represents all of the employees of Western Union Cable in the European division, so that for the purposes of this hearing I am authorized to speak for the overwhelming majority of Western Union Cable employees.

We are in favor of the legislation that is before this committee, fundamentally for two reasons, first because we think it can be shown that it is in the public interest to pass this legislation and secondly we believe it can be shown that failure to pass it will continue to do serious injury to employees in the industry.

First on the public interest aspect. Section 222(c)(2), the requirement for divestment, when it was enacted undoubtedly had an important and laudable purpose. It was designed to guarantee continued fair competition among the international telegraph carriers. The act was designed to provide that continued fair competition and had two important sections, one, the divestment provision and, two, section 222(e), the provision requiring the establishment of an international formula to guarantee that Western Union landlines would not be able to compete unfairly with its competitors in the international field.

I suggest that time has shown that whereas the second provision has operated more or less effectively to guarantee the public interest and to guarantee fair competition, the first provision—that is, the divestment mandate—has acted somewhat as a drug which not only has not cured the disease but with the passage of time has had very unfortunate side effects. More precisely, I would say the divestment mandate has because of the passage of years since its enactment become not a spur to competition but a hindrance to genuine fair competition in the international telegraph field.

Now as to the effect on the employees of this divestment requirement.

The law was passed in 1943. Up to about 6 years ago there was no particular reaction on the part of the employees to the divestment provision because there were no overt evidences of the fact that the company was going to divest its property. The Commission year after year granted additional extensions to Western Union Telegraph Co.

However, about 6 years ago, as a result of the prodding of the Federal Communications Commission, Western Union Telegraph Co. engaged in a series of negotiations with different buyers, seeking to sell its cable properties.

The first that I recall was the Textron Co., a textile outfit. The second was a Mr. Barnes, a real estate operator in Chicago. There were several intervening ones, and finally the American Securities Corp., an investment banking institute.

I ask you to visualize the inevitable effect on the employees—who, incidentally, are employees of comparatively long service—the confusion and the uncertainties that were attendant on these repeated moves to divest the property. Almost from one year to the next the workers and their union did not know with whom we were going to have contractual arrangements.

The employees are concerned because after years of service they see jeopardy to their job status, job security, their seniority rights,

and their very important pension rights, and because of this the employees have suffered in terms of their morale to such an extent that I think we can take the evidence of the president of the company in this respect. He was asked by counsel for the Commission, Mr. Ende, why he felt that there was a danger that the value of the cables would be dissipated if the divestment requirement were not removed, and Mr. Marshall answered in part as follows:

Well, to give you one example, at least, we will have employees that will know what they are doing and know what they are working for. Today our employees are sitting on a ledge, not knowing which way to turn, whether the cables are going to be abandoned, sold, merged, or whatnot. This is a very important thing in the management of any company.

Now, if Mr. Marshall, president of the company, were aware of that, I assure you that the union representing the workers who have a much more intimate contact with them say that that goes in spades.

The fact is that here we have a group of employees who we think are as efficient and competent as any group in the international field, with long years of service, who simply cannot do the kind of work they are capable of with the constant threat of a change in their relationship with the employer. They don't know from one day to the next whether it is going to be a real estate broker, a textile manufacturer, or a Wall Street investment banking house that is going to come in and purport to run a telegraph industry, a highly complex, technologically developing industry, and this does not make for good labor relations. It does not make for good production on the part of workers who are very jealous of their skills and who are anxious and have proved in the past they are able to do a good job.

We suggest that the divestment mandate, whatever its purpose may have been originally, has operated, at least in the last several years, to the detriment of the labor relations.

One last point. It has also acted as an unfair impediment to free collective bargaining, because when we meet with the company and ask for what we consider legitimate increases in wages and other provisions for the benefit of the employees we are confronted in recent years with the plea on the part of the company that they cannot act as they might wish to act under ordinary circumstances because of the uncertainty of their own future. Just as they cannot make capital investments for the new technological developments to the extent that they might want to do it because it is a risk they don't care to take in the absence of certainty about future ownership, in the same way they have been limited and they have stated this in their approach to the union in negotiating what otherwise might be available for appropriate compensation. So we feel that in addition to its adverse effect on competition in the industry it has had a serious adverse effect on the legitimate rights of the workers involved.

One last point on the effect of this uncertainty as to the future.

In the hearings on divestment which took place about a year ago before the Federal Communications Commission—a little more than a year ago—evidence was presented to show that of some 1,300 workers employed by Western Union cables internationally, 387 as of that time were eligible for pension; that is, they were currently employed but they had acquired sufficient seniority, years of age plus years of service. There is a formula we have worked out under contract, so that 387 of the oldtimers, the most skilled, the most experienced people, could by their option that day require the company to retire them on pension.

We pointed out to the Commission in our opposition to the approval of the American Securities sale that these employees might, and many of them have said they would, exercise that option the day the company is sold. We were asked under cross-examination why that is so, since the American Securities Corp. is agreeing to assume the obligations which currently Western Union has in regard to the employees. Why should the employees have a different feeling about the new employer?

Our answer was in two parts. First, Western Union Telegraph Co. has been the employer of these employees anywhere from 20 to 40 years. We know this company. The devil we know about is better than the devil we don't know. Second, the pension rights which we think we have under the existing contract not only have been paid over a 25-year association with this union but for more than 60 years this company has been meeting its obligations, and that record is one that gives some reassurance to the people.

Finally, American Securities specifically refuses to guarantee the payment of the pensions in the event they take over the company. They rely on a very complicated legal question, and none of this is very reassuring to the people. They want to continue in a situation where, having given 20 to 45 years of service to a company, they will have some assurance, a reasonable assurance, that their pension rights are guaranteed, that they will in fact receive their pensions.

Further on the question of the effect of competition on the company, this point has been developed by other witnesses, and I will confine myself to a few brief comments.

It has been stated by every witness and by questions that have been raised indicating that there is a general awareness of the tremendous technological developments in this industry and the fact that things proceed at a pace that makes former developments pale into insignificance. The recent satellite development is the most dramatic example, and I predict that within 5 years we will be talking about new developments that cannot be anticipated today.

All of these developments require for their exploitation by any company in this field a sound and viable fiscal structure, and I submit that an international telegraph company, cut loose from its parent, as would be the case if Western Union were compelled to divest its cable company with no connection with the parent corporation with a hundred years of experience in technological development, with an engineering staff, with know-how, with the resources—no such company would be viable. Such a company would be a victim of the competing companies, because in the case of RCAC and American Cable & Radio, both of these are children of very powerful parents, RCAC being a very small comparatively subsidiary of a very large corporation, RCA, and similarly American Cable & Radio being a small subsidiary of a very large parent corporation, International Telephone & Telegraph. To cut this cable company, Western Union Cable, loose from its parent and ask it to compete in a field where there is need for tremendous capital investment because of these new dramatic developments it seems to me is unrealistic and lends point to the assertion that the removal of the divestment provision will be a spur to competition, although it was originally designed to enhance competition.

One last comment. This hearing was not called, of course, to hear argument on the merits of merger, but because it has been mentioned by several witnesses I would like to repeat briefly the reasons for my union's opposition to permissive merger legislation and to remind the chairman that in the hearings that were held sometime ago the position that the union took was supported and, as a matter of fact, developed in its antitrust aspects by the Department of Justice.

We do not think that international merger solves anything, and I would take as my authority for this my predecessor on the witness stand, who while advocating merger admits that the combined resources of all the international companies plus the domestic company could not permit them to survive against A. T. & T. And for once I must agree with my general opponent, Mr. Tower, when he says that the fundamental question involved here is the viability and survivability of (a) the international carriers and (b) the domestic carrier.

The fundamental question is getting A.T. & T. out of the record telegraph business, both domestic and international.

My union has petitioned the Federal Communications Commission for a hearing to look at this question of the incursion, not so gradual incursion, of A.T. & T. into the record telegraph business, and the Commission on its own motion has called for a hearing, which I am hoping will be productive of results.

In conclusion, I want to thank the committee for hearing me and indicate again that we are opposed to the divestment provision. We are in favor of the bill before you to knock out the divestment provision, because we think it will enhance competition in the international telegraph field and will relieve the workers in the industry from an onerous burden of uncertainty.

Senator LAUSCHE. Thank you, Mr. Selly. I do not believe there are any questions. If you later wish to submit a statement, we will make it part of the record.

Mr. SELLY. Thank you, sir.

Senator LAUSCHE. Thank you very much.

Are there any other witnesses?

The hearing is adjourned.

(Whereupon, at 12:10 p.m., the committee recessed, to reconvene at 2:30 p.m., this date.)

(Reports on the bill from the Department of Justice and the General Accounting Office follow:)

U.S. DEPARTMENT OF JUSTICE,  
OFFICE OF THE DEPUTY ATTORNEY GENERAL,  
Washington, D.C., August 24, 1962.

HON. WARREN G. MAGNUSON,  
Chairman, Committee on Commerce,  
U.S. Senate, Washington, D.C.

DEAR SENATOR: This is in response to your request for the views of the Department of Justice on S. 3646 which would amend the Communications Act of 1934, as amended, to eliminate the requirement that Western Union divest itself of its foreign telegraph operations.

By an amendment to the Communications Act in 1943, Congress granted authority to the FCC to approve mergers of domestic telegraph carriers but required that any such merger should provide for the divestiture of the international operations of any merged company within a reasonable time.

Under the 1943 amendment, the FCC approved the merger of the Western Union Co. and the Postal Telegraph Co. and directed that Western Union divest itself of its foreign telegraph operations. S. 3646 would amend the Federal

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Communications Act by repealing the provision requiring this divestiture, thus permitting Western Union to retain its foreign telegraph operations.

At the time of passage of the 1943 amendment telegraph and telephone operations were wholly separate and the competitive situations in record and voice transmission could be considered separately. However, technological changes since 1943 have done much to diminish the significance of differentiating between record and voice transmission.

It also appears that technological innovation is continuing at an increasing pace and some of the problems attendant upon the development of new methods of long-distance communication have recently been before the Senate. These technological developments have changed, and are continuing to change, the competitive situation and Western Union is today subject to competition in the international field that could not have been foreseen in 1943.

Obviously, some of the considerations which led to the enactment of the 1943 amendment are still relevant. Time has not permitted a complete investigation and review of all the facts relevant to a judgment in this matter. However, based upon the information that we now have and rather extensive background data relating to this field, it is our present opinion that the situation has so far changed since 1943 that other considerations now outweigh those which led to the enactment of the divestiture provision.

For these reasons we believe that reconsideration of the divestiture provision is now appropriate and therefore the Department of Justice favors the enactment of S. 3646.

Sincerely,

NICHOLAS DEB. KATZENBACH,  
Deputy Attorney General.

COMPTROLLER GENERAL OF THE UNITED STATES,  
Washington, August 28, 1962.

HON. WARREN G. MAGNUSON,  
Chairman, Committee on Commerce, U.S. Senate.

DEAR MR. CHAIRMAN: Your letter of August 17, 1962, acknowledged August 20, transmitted a copy of S. 3646, entitled "A bill to amend the Communications Act of 1934, as amended, relative to merger of domestic telegraph carriers," and requested our comments thereon.

We have no special information concerning the subject matter of the bill. Hence, and since the bill, if enacted, would not affect the functions and responsibilities of our Office, we have no comments with respect to its merits or recommendations regarding its enactment.

It is noted that, while the bill speaks of amending the Communications Act of 1934, as amended, and the first provision of the bill does amend said act by repealing section 222 thereof, the second provision does not appear to constitute an amendment of the act but, rather, would constitute independent legislation. If this is the intent, the second provision of the bill should be separated from the amending portion thereof by designating it as an independent section 2. However, if the second provision actually is intended as an amendment of the Communications Act of 1934, the bill should be changed so as to indicate clearly where the new provision should be added to the act.

Sincerely yours,

JOSEPH CAMPBELL,  
Comptroller General of the United States.







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