

CT

A325745

CERTIFICATE OF AMENDMENT
of the
RESTATED CERTIFICATE OF INCORPORATION
of
THE WESTERN UNION TELEGRAPH COMPANY
Under Section 805 of the Business Corporation Law

The undersigned, being respectively the President and the Secretary of THE WESTERN UNION TELEGRAPH COMPANY (a corporation organized under the laws of the State of New York), Do HEREBY CERTIFY as follows:

(1)* The name of the Corporation is The Western Union Telegraph Company. The name under which it was originally incorporated is The New York and Mississippi Valley Printing Telegraph Company.

(2) The Certificate of Incorporation of the Corporation was filed in the office of the Secretary of State of New York on April 8, 1851. The Restated Certificate of Incorporation of the Corporation was filed by the Department of State of the State of New York on May 22, 1970.

(3) The provisions of the Restated Certificate of Incorporation, as heretofore amended, are hereby further amended to fix the relative rights, preferences and limitations of the 10.25% Cumulative Class A Preferred Shares as follows:

(i) The provisions which state the relative rights, preferences and limitations of the 10.25% Cumulative Class A Preferred Shares are hereby adopted by adding the following at the end of the provisions which state the relative rights, preferences and limitations of the Class A Preferred Shares:

10.25% Cumulative Class A Preferred Shares

1. *Number and Designation.* The number of shares included in such series shall be 2,000,000 and such number shall not be subject to increase or decrease by the Board of Directors; and the distinctive designation of such series shall be "10.25% Cumulative Class A Preferred Shares".

2. *Dividends.* The rate of dividends which the 10.25% Cumulative Class A Preferred Shares shall be entitled to receive shall be \$2.5625 per share per annum, payable in cash quarterly on the first days of January, April, July and October of each year. Dividends on the 10.25% Cumulative Class A Preferred Shares shall be cumulative and the date from which such dividends shall be cumulative shall be the date of issuance thereof, except that dividends on any shares issued after the date of initial issuance of any shares of such series shall be cumulative from the beginning of the quarterly period following the dividend payment date on which dividends shall have last been paid on the then outstanding 10.25% Cumulative Class A Preferred Shares.

3. *Redemption.* The 10.25% Cumulative Class A Preferred Shares shall be redeemable, pursuant to Section 4 below, at any time on or after July 1, 1981, in part from time to time at the redemption price of \$25 per share plus in every event an amount equal to all cumulative dividends accrued to the date fixed for redemption; and they shall also be redeemable, otherwise than pursuant to said Section, in whole or in part at any time or from time to time on or after July 1, 1981, at the redemption price at the time applicable in accordance with the following table:

<i>If Redeemed During 12 Months Beginning July 1</i>	<i>Redemption Price</i>	<i>If Redeemed During 12 Months Beginning July 1</i>	<i>Redemption Price</i>
1981	\$27.50	1991	\$26.25
1982	27.375	1992	26.125
1983	27.25	1993	26.00
1984	27.125	1994	25.875
1985	27.00	1995	25.75
1986	26.875	1996	25.625
1987	26.75	1997	25.50
1988	26.625	1998	25.375
1989	26.50	1999	25.25
1990	26.375	2000	25.125
		2001 or any later year ..	25.00

plus in every event an amount equal to all cumulative dividends accrued to the date fixed for redemption.

10.25% Cumulative Class A Preferred Shares redeemed shall be canceled and shall not be resuable.

4. *Sinking Fund.* (1) The Corporation shall on July 1, 1981, and on each July 1 thereafter so long as any of the 10.25% Cumulative Class A Preferred Shares shall be outstanding, redeem 40,000 shares of said series; *provided, however*, that the Corporation shall have the right to satisfy the sinking fund obligation on any sinking fund date, in whole or in part, by purchasing 10.25% Cumulative Class A Preferred Shares, or by redeeming shares of said series otherwise than pursuant to this Subdivision, from time to time not less than 45 days prior to such sinking fund payment date; and as a sinking fund for such redemptions the Corporation shall on each sinking fund date set aside the amount necessary to effect the redemption of the shares required to be redeemed on such date and shall apply such amount to such redemption. The redemptions required by this paragraph shall be cumulative (but without interest) and the failure to redeem shares as so required on any sinking fund date shall be made good (but without interest) before any dividend shall be declared upon any Junior Shares or any other Junior Share Payment shall be made.

10.25% Cumulative Class A Preferred Shares purchased and used to satisfy, in whole or in part, the sinking fund obligation due on any sinking fund date shall be canceled and shall not be reissuable.

(2) In addition to the redemptions required by *Subdivision (1)* above, the Corporation, at its election, may on any sinking fund date redeem an additional number of 10.25% Cumulative Class A Preferred Shares up to but not exceeding 40,000 shares. The right to redeem pursuant to this Subdivision shall not be cumulative, and its exercise shall not relieve the Corporation from its obligations under *Subdivision (1)* above.

5. *Non-Convertibility.* The 10.25% Cumulative Class A Preferred Shares shall not be convertible into or exchangeable for Cumulative Preferred Shares, shares of a different series of Class A Preferred Shares or for Junior Shares.

6. *Liquidation Prices.* The liquidation price which each of the 10.25% Cumulative Class A Preferred Shares shall be entitled to receive upon liquidation, dissolution or winding up of the Corporation shall, if the liquidation, dissolution or winding up is voluntary, be an amount equal to the redemption price per share which at the time of such liquidation, dissolution or winding up would be applicable under *Section 3* above upon redemption otherwise than pursuant to *Section 4*, or, if the liquidation, dissolution or winding up is involuntary, \$25 per share, plus in every event an amount equal to all cumulative dividends accrued to the date fixed for the payment.

7. *Voting Rights.* If at any time the amount of cumulative dividends then accrued on the 10.25% Cumulative Class A Preferred Shares shall equal or exceed an amount equal to six quarterly dividends on such shares, then the holders of the 10.25% Cumulative Class A Preferred Shares shall

have the right, voting as a separate class, to elect two directors in accordance with and subject to the provisions hereof. In addition to the voting rights provided in *Section 5* of the provisions hereof entitled Class A Preferred Shares, 10.25% Cumulative Class A Preferred Shares shall have the voting rights provided in *Section 8* below.

8. *Restrictions on Certain Actions.* So long as any of the 10.25% Cumulative Class A Preferred Shares shall be outstanding, without the written consent of, or the affirmative vote at a meeting called for such purpose of, the holders of a majority of the total number of shares of said series at the time outstanding:

(1) *Cumulative Preferred Shares, Class A Preferred Shares and Parity Shares.* The Corporation will not issue, sell or otherwise dispose of any Cumulative Preferred Shares, Class A Preferred Shares (other than the 10.25% Cumulative Class A Preferred Shares) or any Parity Shares, unless the following conditions are satisfied:

(i) immediately after the issue, sale or other disposition of the proposed Cumulative Preferred Shares, Class A Preferred Shares or Parity Shares (the "proposed transaction"), and after giving effect to the retirement of any Prior Shares, Cumulative Preferred Shares, Class A Preferred Shares and Parity Shares which are concurrently being retired, Consolidated Junior Share Equity shall be at least equal to 100% of the Prior Shares, Cumulative Preferred Shares, Class A Preferred Shares and Parity Shares (at the liquidation prices, exclusive of accrued dividends, at the time applicable upon voluntary liquidation, dissolution or winding up) to be outstanding immediately after the proposed transaction;

(ii) the Consolidated Net Income for a period of 12 consecutive calendar months within the 24 calendar months preceding the calendar month in which the proposed transaction is to occur shall have been at least 2 times the aggregate amount of the annual dividends on Prior Shares, Cumulative Preferred Shares, Class A Preferred Shares and Parity Shares to be outstanding immediately after the proposed transaction, after giving effect to the retirement of any Prior Shares, Cumulative Preferred Shares, Class A Preferred Shares or Parity Shares which are concurrently being retired; and

(iii) the Consolidated Net Earnings Available for Interest for a period of 12 consecutive calendar months within the 24 calendar months preceding the calendar month in which the proposed transaction is to occur shall have been at least $1\frac{1}{2}$ times the sum of (x) the aggregate amount of the annual interest charges on the Consolidated Funded Indebtedness to be outstanding immediately after the proposed transaction, after giving effect to the retirement of any indebtedness which is concurrently being retired, and (y) the aggregate amount of the annual dividends on the Prior Shares, Cumulative Preferred Shares, Class

A Preferred Shares and Parity Shares to be outstanding immediately after the proposed transaction, after giving effect to the retirement of any Prior Shares, Cumulative Preferred Shares, Class A Preferred Shares, or Parity Shares which are concurrently being retired.

(2) *Consolidation or Merger.* The Corporation will not consolidate or merge with or into any other corporation unless the Corporation shall be the surviving corporation and shall not, as a consequence of such merger or consolidation, have outstanding any Cumulative Preferred Shares, Class A Preferred Shares or Parity Shares which the Corporation would not have been permitted by *Subdivision (1)* above of this Section to issue immediately after such consolidation or merger.

(3) *Junior Share Payments.* The Corporation will not declare any cash dividend upon any Junior Shares or make any other Junior Share Payment in cash unless, at the date of such declaration or the date of such other Junior Share Payment (the "Computation Date"), after giving effect, as if paid, to the proposed dividend or other Junior Share Payment, the following conditions are satisfied:

(i) the sum of all cash dividends upon Junior Shares declared and of all other Junior Share Payments made in cash during the period commencing January 1, 1976 to and including the Computation Date shall not exceed the sum of

(a) \$60,000,000, plus (or minus in the case of a deficit)

(b) the Consolidated Net Income for such period, plus

(c) the aggregate amount of the net cash proceeds to the Corporation from sales of Junior Shares subsequent to December 31, 1975, but only insofar as such proceeds do not exceed the aggregate amount of Junior Share Payments (other than dividends on Junior Shares) made in cash by the Corporation subsequent to said date or then being made, plus

(d) the aggregate amount of all contributions made by Western Union Corporation or any of its subsidiaries (other than the Corporation or any of its subsidiaries) to the capital of the Corporation subsequent to December 31, 1975,

less the aggregate amount of all cumulative dividends accrued for such period on Prior Shares, Cumulative Preferred Shares, Class A Preferred Shares and Parity Shares;

(ii) the Consolidated Junior Share Equity shall be at least equal to 100% of the Prior Shares, Cumulative Preferred Shares, Class A Preferred Shares and Parity Shares (at their liquidation prices, exclusive of accrued dividends, at the time applicable upon voluntary liquidation, dissolution or winding-up); and

(iii) the Corporation shall have redeemed the 10.25% Cumulative Class A Preferred Shares required by *Subdivision (1) of Section 4* above to be redeemed on each sinking fund date during such period, or any failure to redeem shares as so required on any such date shall have been made good.

9. *Definitions.* The definitions which incorporate by reference the meanings stated in the provisions hereof fixing the relative rights, preferences and limitations of classes or series of shares shall remain in effect notwithstanding the removal from authorized shares of such classes or series. For all purposes hereof, unless the context otherwise requires,

"*Capital Stock and Surplus*" shall have the meaning stated in the provisions hereof entitled 5.20% Cumulative Preferred Shares.

"*Consolidated Net Income*", "*Consolidated Funded Indebtedness*", "*Consolidated Junior Share Equity*", and "*Consolidated Net Earnings Available for Interest*" shall mean Net Income, Funded Indebtedness, Junior Share Equity and Net Earnings Available for Interest of the Corporation and its Restricted Subsidiaries, consolidated in accordance with generally accepted accounting practice. In determining "*generally accepted accounting practice*" any rules, regulations or orders of any public regulatory authority having jurisdiction over accounts of the particular corporation shall be controlling, except to the extent that such corporation shall at the time be contesting in good faith the validity or applicability to such corporation of any change in any such rule, regulation or order.

"*Funded Indebtedness*" of any corporation at any date shall have the meaning stated in the provisions hereof entitled 5.20% Cumulative Preferred Shares.

"*Indebtedness*", as used in reference to any corporation, shall have the meaning stated in the provisions hereof entitled 5.20% Cumulative Preferred Shares.

"*Junior Share Equity*" shall have the meaning stated in the provisions hereof entitled 5.20% Cumulative Preferred Shares.

"*Junior Share Payment*" shall have the meaning stated in the provisions hereof entitled Class A Preferred Shares.

"*Junior Shares*" shall have the meaning stated in the provisions hereof entitled Class A Preferred Shares.

"*Net Earnings Available for Interest*" of any corporation for any period shall mean the Net Income of such corporation for such period plus the following amounts which, in determining the Net Income, shall have been deducted: all amounts deducted in accordance with *Subclauses (c) and (d) of Clause (2)* of the below definition of Net Income.

"Net Income" of any corporation for any period shall mean the net income (or the net loss, if expenses and other proper income charges exceed revenues and other proper income credits) of such corporation for such period, determined in the following manner:

(1) The gross revenues and other proper income credits of such corporation shall be computed for such periods from books of such corporation maintained in accordance with the Uniform System of Accounts, excluding, however, gains arising from the sale or other disposition of capital assets, and other extraordinary and delayed income credits.

(2) From the amount of such gross revenues and other proper income credits for such period determined as provided in the preceding Clause (1) there shall be deducted an amount equal to the aggregate of all expenses and other proper income charges as shown by books of such corporation maintained in accordance with the Uniform System of Accounts, excluding, however, losses from the sale, abandonment or other disposition of capital assets, and other extraordinary and delayed income charges, but in any event there shall be included in such income charges the following items:

(a) provisions or appropriations for all reserves charged or properly chargeable to income;

(b) provision for depreciation and amortization (which amortization, for the purposes of this subclause (b), shall in the case of the Corporation, with respect to research and development, be on the basis applied in the accounts of the Corporation for 1961, notwithstanding any subsequent change by the Corporation to an accelerated basis for amortization of such items);

(c) all interest charged or properly chargeable to income, exclusive of interest charged to construction and credited to income;

(d) provision for all taxes imposed on or measured by income; provided that, for the purposes of this subclause (d) provision for Federal taxes on income shall be appropriately adjusted (i) to exclude any amounts charged in recognition of deferred Federal income taxes arising out of an election to claim depreciation and/or amortization of properties in excess of the provision for depreciation and/or amortization of such properties actually deducted on the books, and (ii) to exclude the tax effect of any items of income credits or charges required to be excluded in determining Net Income pursuant to this definition; and

(e) all rental payments charged or properly chargeable to income.

"Parity Shares" shall mean shares of any class or classes hereafter created ranking on a parity with the Class A Preferred Shares as to dividends or distribution of assets upon liquidation.

"Prior Shares" shall have the meaning stated in the provisions hereof entitled Class A Preferred Shares.

"Restricted Subsidiary" shall mean (i) every corporation which on January 1, 1976, was a Subsidiary, and (ii) every corporation which becomes a Subsidiary after said date (x) any of or all the properties of which shall be operated as part of or in conjunction with any of the communications properties or facilities of the Corporation or any Restricted Subsidiary, or (y) which shall own or operate properties or facilities which at said date were operated by the Corporation or any Restricted Subsidiary, or (z) which the Board of Directors of the Corporation shall elect to deem a Restricted Subsidiary.

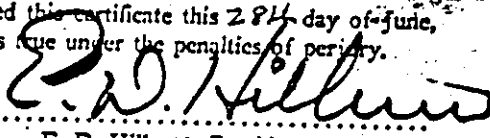
"Subsidiary" shall have the meaning stated in the provisions hereof entitled 5.20% Cumulative Preferred Shares.

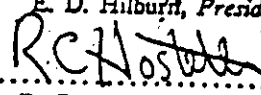
"Uniform System of Accounts" shall have the meaning stated in the provisions hereof entitled 5.20% Cumulative Preferred Shares.

"Voting Stock", as applied to the stock of any corporation, shall have the meaning stated in the provisions hereof entitled 5.20% Cumulative Preferred Shares.

(4) The foregoing amendment to the Restated Certificate of Incorporation was authorized by the Board of Directors of the Corporation at a meeting duly called and held for such purpose on the 25th day of May, 1976.

IN WITNESS WHEREOF, the undersigned have signed this certificate this 28th day of June, 1976, and the statements contained herein are affirmed as true under the penalties of perjury.


.....
E. D. Hilburn, President


.....
R. C. Hostetler, Secretary

[SEAL]

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

Albany, NY, June 30, 1976

CASE 27026 - Petition of Western Union Telegraph Company for approval, pursuant to Section 109 of the Public Service Law, of a certificate of amendment of its certificate of incorporation.

* * * *

The Public Service Commission hereby consents to and approves this Certificate of Amendment of the Restated Certificate of Incorporation of The Western Union Telegraph Company Under Section 305 of the Business Corporation Law, executed June 28, 1976, in accordance with the order of the Public Service Commission dated June 22, 1976.

By the Commission


Secretary

9

CERTIFICATE OF AMENDMENT

of the

RESTATED CERTIFICATE OF INCORPORATION

of

THE WESTERN UNION TELEGRAPH COMPANY

Under Section 805 of the Business Corporation Law

STATE OF NEW YORK
DEPARTMENT OF STATE

TAX \$ none

FILING FEE \$ 50

FILED JUN 30 1976

transmissions

Secretary of State

BY

31 ny
AV/30

NYC

1,031,250 PV \$100

5,000,000 PV \$2.50

5/5 not done

Pd. n. n. n.

of the New York and Mississippi Valley
Printing Telegraph Co.

4/8/1951

Mudge, Rose, Guthrie & Alexander
20 Broad Street
New York, New York 10005
Att; Mr. Ross Wollen, Attorney

17-88

G.

10

State of New York }
Department of State } ss.:

22239

*I hereby certify that I have compared the annexed copy with the original document filed by the Department of State
and that the same is a correct transcript of said original.*

Witness my hand and seal of the Department of State on JUL 23 1976

Frank Milione
Secretary of State

G662-504