

A324836

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 ~~Restated~~ Certificate of Incorporation of the Corporation was filed by the Department of State of the State of New York on: April 8, 1851

(3) The provisions of the Restated Certificate of Incorporation, as heretofore amended, are hereby further amended to: (a) authorize a new class of shares designated as Class A Preferred Shares with an authorized issue of 5,000,000 shares; (b) fix the relative rights, preferences and limitations of the Class A Preferred Shares; and (c) amend certain provisions relating to the Common Shares regarding their relative rights, preferences and limitations with respect to the Class A Preferred Shares, all as follows:

(i) The provisions which state the aggregate number of shares which the Corporation shall have authority to issue is hereby amended to read as follows:

THIRD: The aggregate number of shares which the Corporation shall have authority to issue is 11,031,250, divided into (a) 1,031,250 shares, of the par value of \$100 each, of a class designated Cumulative Preferred Shares, (b) 5,000,000 shares, of the par value of \$1.00 each, of a class designated Class A Preferred Shares, and (c) 5,000,000 shares, of the par value of \$2.50 each, of a class designated Common Shares.

(ii) The provisions which state the relative rights, preferences and limitations of the 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 Cumulative Preferred Shares:

#### Class A Preferred Shares

1. *Issuable in Series.* The Class A Preferred Shares may be issued in series, and authority is vested in the Board of Directors, subject to the provisions hereof, from time to time to establish and designate series and to fix the variations in the relative rights, preferences and limitations as between series, in the following respects:

(a) the number of shares (and whether or not subject to increase or decrease by the Board of Directors) included in any series and the distinctive designation of such series;

(b) the rate of dividends which the shares of such series shall be entitled to receive, the conditions upon, and the times of payment of, such dividends, the relationship and preference, if any, of such dividends to dividends payable on any other class or classes or any other series of shares, and whether such dividends shall be cumulative or non-cumulative, and, if cumulative, the date or dates from which dividends thereon shall be cumulative;

(c) the terms, if any, upon which the shares of such series shall be redeemable, and the redemption price (which may, but need not, vary according to the time or circumstances of redemption); and whether or not shares redeemed shall be canceled and/or reissuable;

(d) the terms of a sinking or analogous fund, if any, for the purchase or redemption of the shares of such series, and whether or not shares purchased or redeemed through the operation of such fund shall be canceled and/or reissuable;

(e) the terms, if any, upon which the shares of such series shall be convertible into or exchangeable for shares of a different series of Class A Preferred Shares, for Cumulative Preferred Shares or for Junior Shares, the price and/or rate of conversion or exchange (which price and/or rate may, but need not, vary according to the time or circumstances of conversion or exchange), the protection of the right of conversion or exchange against dilution and its preservation in the event of consolidation, merger, or sale or conveyance of the Corporation's property as an entirety or substantially as an entirety, and whether or not shares converted or exchanged and canceled shall be reissuable; and the issue of shares of any series which are to have any such right of conversion or exchange is authorized and the Board of Directors is further authorized, in the event of such an issue, by certificate of amendment as provided by law, to increase the authorized shares of any class or series to such number as will be sufficient, when

added to the previously authorized but unissued shares of such class or series, to satisfy such right of conversion or exchange;

(f) the amount ("liquidation price") which each share of such series shall be entitled to receive upon voluntary or involuntary liquidation, dissolution or winding up of the Corporation (which amount may, but need not, vary according to whether such action is voluntary or involuntary and/or according to the time or circumstances of the action);

(g) subject to the provisions hereof, voting rights to which the holders of the shares of such series shall be entitled;

(h) limitations and restrictions, if any, for the benefit of the holders of the shares of such series (in addition to those set forth herein), upon the incurring of indebtedness by the Corporation, the issue of additional Class A Preferred Shares or Cumulative Preferred Shares, the purchase, redemption or other retirement of Class A Preferred Shares or Cumulative Preferred Shares (otherwise than through the operation of any sinking or analogous fund provided for any series), the issue of any Prior Shares, and/or the making of Junior Share Payments;

(i) such other special rights and privileges, if any, for the benefit of the holders of shares of such series, as shall not be inconsistent with the provisions hereof.

Class A Preferred Shares shall rank on a parity with the Cumulative Preferred Shares with respect to dividends and distribution of assets upon liquidation. Each Class A Preferred Share of any series shall be equal to every other share of the same series, except that, if the dividends thereon are cumulative, the date or dates from which dividends thereon shall be cumulative may differ. Subject to the designations, relative rights, preferences and limitations applicable to separate series, each Class A Preferred Share shall be equal to every other share.

2. *Dividends.* The holders of Class A Preferred Shares of each series shall be entitled to the payment or the declaration and setting aside of sufficient funds for the payment, if and when declared by the Board of Directors out of funds legally available for the payment of dividends, of dividends (and, if cumulative, from the date or dates fixed with respect to such series) at the rate fixed with respect to such series, payable in cash on such conditions and at such times as shall be fixed with respect to such series, before any dividend shall be declared upon any Junior Shares or any other Junior Share Payment shall be made. Accumulations of dividends shall not bear interest.

3. *Redemption and Purchase.* A. The Corporation may, at the election of its Board of Directors, at any time or from time to time, redeem the whole or any part of any one or more series of Class A Preferred Shares which are at the time redeemable, at the redemption

prices fixed for the respective series. In case the Corporation shall elect to redeem less than all the outstanding shares of any series, the shares to be redeemed shall be selected by lot or pro rata (as nearly as may be) or in any other equitable manner determined by the Board of Directors.

B. Notice of every such redemption shall be mailed, first class postage prepaid, not less than 30 nor more than 50 days prior to the date fixed for redemption ("redemption date"), to each holder of record of the shares to be redeemed, at his address as the same appears on the record of shareholders; but neither failure to mail any such notice to one or more such holders nor any defect in any notice shall affect the sufficiency of the proceedings for redemption as to other holders. Each such notice shall state the redemption date, the number of shares of each series to be redeemed, and, if less than all the shares of any series held by such holder are to be redeemed, the number of such shares to be redeemed from him; the redemption price applicable to the shares of each series to be redeemed; the place or places where such shares are to be surrendered for payment of the redemption price; that dividends on the shares to be redeemed will cease on such redemption date; and the effect, if any, of such redemption on any right of conversion or exchange of the shares to be redeemed.

C. Notice having been mailed as aforesaid, from and after the redemption date (unless default shall be made by the Corporation in providing money for the payment of the redemption price) all dividends on the shares so called for redemption shall cease to accrue, said shares shall no longer be deemed to be outstanding, all rights of the holders thereof as shareholders of the Corporation (except the right to receive the redemption price and any right of conversion or exchange which may be exercisable up to the close of business on the redemption date) shall cease and determine, and, upon surrender in accordance with said notice of the certificates for any such shares (properly endorsed or assigned for transfer, if the Board of Directors shall so require), such shares shall be redeemed by the Corporation at the applicable redemption price; *provided, however*, that the Corporation may include in such notice a statement that the money required for the payment of the redemption price will be deposited on a specified date, prior to the redemption date, with a specified bank or trust company (which shall have an office in the City of New York) in trust for the benefit of the holders of the shares so called for redemption, and, notice having been given as aforesaid, from and after such deposit the shares so called for redemption shall no longer be deemed to be outstanding, all rights of the holders thereof as shareholders of the Corporation (except any right of conversion or exchange which may be exercisable after the date of such deposit) shall cease and determine, and the holders of such shares shall look for payment of the redemption price only to the funds so deposited and in no event to the Corporation unless said funds shall be repaid to the Corporation as hereinafter provided. The holders of such shares shall not be entitled to any interest allowed by such depository on money so deposited, but any such interest shall be paid to the Corporation. In case after any such deposit any shares called for

90

redemption shall be converted or exchanged pursuant to any right exercisable after the date of the deposit, the money deposited in respect of such shares shall upon such conversion or exchange be repaid by the depository to the Corporation. Any moneys deposited as aforesaid for the redemption of any shares and remaining unclaimed for 6 years after the date of such deposit shall then be repaid to the Corporation upon its request, and the holders of such shares shall thereafter look only to the Corporation for payment thereof.

D. In no event shall the Corporation redeem or make any payment (whether in cash or in property) on account of the purchase, redemption or other retirement of less than all the outstanding Class A Preferred Shares unless the conditions set forth in at least one of the following clauses (a) to (c) inclusive, shall exist:

(a) full cumulative dividends shall have been paid or declared and set aside for payment upon all outstanding Class A Preferred Shares entitled to receive cumulative dividends for all past quarterly dividend periods, and upon all outstanding Class A Preferred Shares (other than shares then to be redeemed or theretofore called for redemption) for the then current quarterly dividend period and for any future quarterly dividend periods up to and including the period within which the redemption date or date of such purchase or retirement falls, or up to such date if it be a dividend payment date; or

(b) such redemption, purchase or other retirement is effected solely by the application of moneys previously and properly set aside for and then held in any sinking or analogous fund provided for any series of the Class A Preferred Shares; or

(c) in the case of purchases, such purchases are made pursuant to an offer to purchase made on a comparable basis to the holders of all the outstanding Class A Preferred Shares.

4. *Preference on Liquidation, etc.* In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation, the holders of the Class A Preferred Shares of each series shall be entitled to receive payment out of the net assets of the Corporation (whether from capital or surplus or both) of the liquidation price fixed for such series at the time and under the circumstances applicable, *pari passu* with the holders of the Cumulative Preferred Shares of each series, before any distribution or payment shall be made to the holders of Junior Shares. If the stated amounts payable in such event on the Class A Preferred Shares of all series outstanding are not paid in full, the shares of all series shall share ratably in any distribution of assets in accordance with the sums which would be payable on such distribution if all sums payable were discharged in full.

Neither the merger or consolidation of the Corporation nor the voluntary sale or conveyance of the Corporation's property as an entirety or substantially as an entirety shall be

deemed to be a liquidation, dissolution or winding up of the Corporation for the purposes of this paragraph.

5. *Voting Rights.* A. If at any time the amount of cumulative dividends then accrued on the Class A Preferred Shares shall equal or exceed an amount equal to six quarterly dividends on such shares, then the number of directors of the Corporation shall be increased by such number, not more than two for each series of Class A Preferred Shares, as may be fixed at the times of the establishment and designation of the respective series; and the holders of shares of each series of the Class A Preferred Shares shall have the right, voting as a separate class for not more than two directors, as may be fixed as aforesaid, to elect such directors at the special meeting hereinafter provided for and at each annual meeting of shareholders until full cumulative dividends shall have been paid or declared and set aside for payment upon all outstanding Class A Preferred Shares for all past quarterly dividend periods and for the then current quarterly dividend period, whereupon the holders of the Class A Preferred Shares shall be divested of such voting right (subject, however, to such voting right at any time or from time to time similarly arising and being divested).

At any time when the holders of the Class A Preferred Shares shall have thus become entitled to elect directors, a special meeting of the holders of the Class A Preferred Shares shall be called for the purpose of electing such directors, to be held within 90 days after the right to elect them shall arise, upon notice given in the manner provided by law or by the by-laws of the Corporation for giving notice of special meetings of shareholders; *provided, however,* that such a special meeting shall not be called if the annual meeting of shareholders is to convene within said 90 days. At such special meeting and/or at any annual meeting at which the holders of the Class A Preferred Shares shall be entitled to elect directors, the holders of one-third of the then outstanding Class A Preferred Shares, or one-third of the then outstanding shares of each series entitled to vote as a separate class, present in person or by proxy, shall be sufficient to constitute a quorum for the election of such directors, and such directors shall be elected by a plurality of the votes cast at any such meeting at which there shall be a quorum. Whenever the holders of the Class A Preferred Shares shall be divested of such voting right as hereinabove provided, the directors elected by them shall thereupon cease to be directors of the Corporation and the number of directors shall be correspondingly reduced.

B. In addition to any right provided by law or otherwise specifically provided herein or in the certificate of amendment required by law with respect to any series established by the Board of Directors, the holders of Class A Preferred Shares of each series shall be entitled at any meeting of the shareholders for the election of directors (but only when not entitled to vote to elect additional directors as set forth in A above) or for any other purpose to cast, in respect of each share held, that number of votes or that fraction of one vote determined by

multiplying each such share by a fraction, the numerator of which is the involuntary liquidation price applicable to such share and the denominator of which is \$100. At any time that the shares of one or more series of Class A Preferred Shares shall be entitled to vote as a class on any matter, the number of votes which may be cast in respect of each share shall be similarly determined, except that, in any circumstance where all of the shares entitled so to vote as a class shall have the same involuntary liquidation price, each share shall be entitled to one vote.

C. Any amendment of the certificate of incorporation which would authorize Prior Shares or would adversely affect any of the relative rights, preferences and limitations of the Class A Preferred Shares or any series thereof shall be authorized by the vote of the holders, voting as a class, of at least two-thirds of the outstanding Class A Preferred Shares or, if the amendment would adversely affect only one or more, but less than all, series, of at least two-thirds of the series whose rights would be affected.

6. *Definitions.* The following terms used herein shall have the following meanings:

*Junior Shares:* the Common Shares and shares of any other class or classes of shares hereafter created ranking junior to the Class A Preferred Shares as to dividends or distribution of assets upon liquidation.

*Junior Share Payment:* the declaration of any dividend on Junior Shares, or the making of any payment on account of, or the setting aside of money for a sinking or analogous fund for, the purchase, redemption or other retirement of Junior Shares, or the making of any distribution in respect thereof, either directly or indirectly, and whether in cash or property or in obligations or shares of the Corporation other than shares of any class ranking junior to the Class A Preferred Shares as to dividends and distribution of assets upon liquidation.

*Prior Shares:* shares of any class or classes hereafter created ranking prior to the Class A Preferred Shares as to dividends or distribution of assets upon liquidation.

(iii) The provisions which state the relative rights, preferences and limitations of the Common Shares are hereby amended to read as follows:

#### Common Shares

1. *Dividends.* Subject to the rights of the Cumulative Preferred Shares and the Class A Preferred Shares, dividends may be paid upon the Common Shares if and when declared by the Board of Directors out of any funds legally available for the payment of dividends.

2. *Liquidation, etc.* In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation, and after the stated amounts payable in such event on the

Cumulative Preferred Shares and the Class A Preferred Shares shall have been paid in full or provision for the payment shall have been made, the remaining net assets of the Corporation shall be distributed pro rata to the holders of the Common Shares.

3. *Voting Rights.* Except as otherwise provided by law or as otherwise expressly provided herein with respect to the Cumulative Preferred Shares or the Class A Preferred Shares or in the certificate of amendment required by law with respect to any series of the Cumulative Preferred Shares or the Class A Preferred Shares established by the Board of Directors, the holders of the Common Shares shall have the exclusive right to vote for the election of directors and for all other purposes.

\* \* \*

(4) The foregoing amendment to the Restated Certificate of Incorporation was authorized at a meeting of shareholders of the Corporation duly called and held for such purpose on the 21<sup>st</sup> day of June, 1976 by the required vote of the holders of a majority of all outstanding 5.20% Cumulative Preferred Shares, 6% Cumulative Preferred Shares, and Common Shares, voting together as a single class, and by the unanimous vote of the holder of all outstanding Common Shares, such Shares constituting all the outstanding shares of the Corporation entitled to vote thereon.

IN WITNESS WHEREOF, the undersigned have signed this certificate this 21 day of June, 1976, and the statements contained herein are affirmed as true under the penalties of perjury.

*E. D. Hilburn*

E. D. Hilburn, President

*R. C. Hostetler*

R. C. Hostetler, Secretary

[SEAL]



CASE 27026 - Petition of Western Union Telegraph Company  
for approval, pursuant to Section 108 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 805 of the Business Corporation Law,  
executed June 21, 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

G-2504

and Chap 97 L. 1851

NYL

City of New York and Municipalities  
Western Union Telegraph Company

STATE OF NEW YORK  
DEPARTMENT OF STATE  
TAX \$ 2500.  
FILING FEE \$ 30.

4/8/1851

FF-88

FILED JUN 25 1976

*Handwritten:* Millions

Secretary of State

By

*Handwritten:* 31 NY

*Handwritten:* just Aug. 5/22/70

*Handwritten:* 1,031,250 PV \$100. ; 5,000,000 PV \$2.50

Mudge, Rose, Guthrie & Alexander  
20 Broad Street  
New York, N. Y. 10005

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

22509

*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.*

JUL 23 1976

*Witness my hand and seal of the Department of State on*

*Frank M. Lyons*  
Secretary of State

G662-504