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Decision 88 05 028 MAY 11 1988

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's
own motion into 976 Information
Access Service.

I.85-04-047
(Filed April 17, 1985)

Case 86-06-012
(Filed June 5, 1986)

Case 86-12-014
(Filed December 5, 1986)

Case 86-12-062
(Filed December 23, 1986)

Case 86-12-063
(Filed December 23, 1986)

Case 86-12-064
(Filed December 23, 1986)

Case 87-01-007
(Filed January 7, 1987)

Case 87-04-009
(Filed April 8, 1987)

Case 87-04-031
(Filed April 16, 1987)

Case 87-08-026
(Filed August 14, 1987)

And Related Matters.

(See Decision 85-11-028 for appearances.)

O P I N I O N

Introduction

On June 20, 1985, Public Advocates, Inc. (Public Advocates) filed a Request for Finding of Eligibility pursuant to Rule 76.54 on behalf of the following intervenors: Parents Opposed to Pacific Bell Exploitation of Children, Glide Memorial United Methodist Church, American G. I. Forum, the League of United Latin American Citizens, Fairness in Business Standards, and 18 individually named children.

Decision (D.) 86-05-007 dated May 7, 1986 denied the request without prejudice. In that decision we distinguished between "client customers" and "representative customers" for purposes of Public Utilities Code Section 1802(e) and Rule 76.52(e) of our Rules of Practice and Procedure and implicitly classified Public Advocates as a "representative customer" due to the fact that it is barred from collecting fees from its clients. We further found that Public Advocates' filing was inadequate in view of its failure to identify the "customer" seeking compensation and to demonstrate its own eligibility (versus that of its client customers) for compensation on the basis of a significant financial hardship showing. Public Advocates was authorized to make an amended request for compensation filing within 30 days. The amended request was filed on September 4, 1986.

In its amended filing, Public Advocates urged that D.86-01-006 dated January 8, 1986 (Pacific Bell Application (A.) 85-01-034) be determinative of its eligibility for compensation. Public Advocates states that in that decision we approved its eligibility stating that its participation was necessary for a fair determination of the issues in the proceeding and that the organizations represented could not otherwise be adequately represented.

In D.86-11-079 dated November 14, 1986 in AT&T Communications of California, Inc. A.85-11-029 to increase certain intrastate rates, we found Public Advocates eligible to claim compensation for its participation in that proceeding; the determination of "significant financial hardship" made in that decision carried over to other proceedings in 1986. In accepting Public Advocates' argument that a nonprofit public interest law firm classified as a charitable organization under Section 501(c)(3) of the Internal Revenue Code and barred from charging fees to its clients by Internal Revenue Service regulations should be eligible for fees so long as it demonstrates that the customers' (clients) participation in the proceeding would pose a "significant financial hardship", we stated:

"To sum up: The definition of a public interest law firm found in Revenue Ruling 75-74 is keyed to representation of clients whose representation by private law firms is economically infeasible. Revenue Ruling 75-75 is unequivocal in its statement that only a mandated preclusion from charging fees clearly establishes that public interest firms are providing representation not available from traditional private sources. Finally, Revenue Ruling 75-76 clarifies that the acceptance of fee awards from a court (or administrative agency such as this Commission) is not necessarily inconsistent with the basis of the IRC charitable exemption of public interest law firms.

"It is apparent that had the Commission had the benefit of Public Advocates' arguments prior to issuance of D.86-05-007, its major concern might have been satisfactorily addressed. For example, at mimeo. page 7, the Commission stated: 'The chief concern is that an affluent client could arrange to be represented by a nonprofit firm to evade responsibility for paying for the costs of representing the client's interests. If an award were made to the representative under these circumstances, the cost of representation would have been shifted from the client who could afford the

costs to the general body of ratepayers. This is not a result that was intended by the Legislature when it authorized the compensation program.' (D.86-05-007, mimeo. p. 7.) Of course, with the benefit of the knowledge we now have regarding Revenue Ruling 75-74, 75-75, and 75-76, we understand that the above scenario would not occur in the case of Public Advocates, so long as it wishes to conform to these Revenue Rulings in order to maintain its status as a Section (c)(3) exempt organization.

"It is clear that the goal and policies of this Commission in administering the intervenor funding program are generally consistent with the IRS Revenue Rulings interpreting the Section 501(c)(3) charitable exemption and that, for purposes of assessing a public interest law firm's eligibility for compensation, we should look to the significant financial hardship of the client or customer represented by the public interest group. Therefore in the case of Section 501(c)(3) organizations such as Public Advocates we have reconsidered our earlier determination that the 'representative customer' must qualify under one of the categories of 'customer' set forth in Section 1802(e) and Rule 76.52(e). We will proceed to analyze the eligibility question in a manner consistent with our analysis of Public Advocates' eligibility in D.86-01-006."

Based on the above, we conclude that for the purposes of this proceeding, Public Advocates does qualify under one of the categories of "customers" set forth in Section 1802(e) and Rule 76.52(e).

As required by Rule 76.54, and determined in D.86-05-007, Public Advocates's request for a finding of eligibility was timely filed.

Rule 76-54 also requires:

"(1) A showing by the customer that participation in the hearing or proceeding would pose a significant financial hardship...;"

"(2) A statement of the issues that the customer intends to raise in the hearing or proceeding;

"(3) An estimate of the compensation that will be sought;

"(4) A budget for the customer's presentation."
Rule 76.54(a)(1)-(4), as amended by D.85-06-126 dated June 21, 1985 effective July 21, 1985.

Significant Financial Hardship

Public Advocates states that the organizations it represents are all customers of Pacific Bell and/or GTE, that each has inadequate funding to carry out the purpose of its existence, and that the individual members do not have the financial resources to retain adequate legal representation.

We believe that it is in the public interest that the record be fully developed on the issues of advertising disclosure standards for the 976 industry, the adjustment policy for 976 calls made without consent or knowledge of the telephone subscriber, the need for the blocking of access to 976 service, and the distribution of the costs associated with access blocking. Even though the Division of Ratepayer Advocates and the other participants have addressed these issues, it is our view that participation by several parties helps to ensure full development of the record. We conclude that the adequate representation of these public interest concerns requires participation of additional parties in this case.

Public Advocates also states that each of its clients has insufficient funds with which to retain legal counsel, and that with a trivial or insignificant interest in the matter, all would suffer great financial hardship if they were to hire an attorney for even one day since one day's attorney's fees (\$1,000 to \$1,500) could exceed the discretionary income of the average family in any year and would far exceed the aggregate financial interest of any customer.

We agree with Public Advocates that it would not be cost-effective for the individual ratepayers concerned with these proceedings to finance expenditures on their own behalf. The economic interests of the individual members of these client groups is small in comparison to the costs of effective participation.

Issues to be Raised

Public Advocates outlined the issues it was primarily interested in its original filing, which was reviewed in D.86-05-007. In its amended request for eligibility, the issues were summarized as follows:

1. Whether 976 service should be permitted to continue at all, particularly in light of the evidence that the majority of the revenue is derived from adult entertainment, that children make a disproportionate percentage of all 976 calls without authorization from their parents, and that the number of complaints may be unprecedented in Commission and/or telephone company history.

2. What restriction should be imposed on 976 service if it is to continue? Public Advocates urges that at a minimum there should be: (a) automatic blocking without charge to the subscriber, with an option of an adult-access number where blocking is in place, (b) information as to cost and, where appropriate, the need for parental advice in all recorded messages, (c) full refunds for all parents whose children have made unauthorized telephone calls from the commencement of 976 service, (d) no 976 services by vendors for children-directed messages, and (e) no 976 advertising or promotion directed at children.

3. The crucial need for telephone company information regarding hearings and rights of ratepayers to be conveyed bilingually where appropriate.

Other issues raised by Public Advocates include non-termination of service for refusal to pay charges for unauthorized 976 calls, the large number (allegedly over 90,000) complaints, and

that any social utility of the 976 service is outweighed by its harm to children.

Estimate of Compensation That
Will be Sought and Budget

In its initial filing Public Advocates estimates it will seek compensation in the amount of \$132,000. This estimate includes its attorneys, paralegals and law students, expert witness fees, and all miscellaneous expenses (including travel, long distance calls, and postage). The individual hourly rates are as follows:

All paralegal	No charge
Law externs	\$50/hr.
Robert Gnaizda	\$225/hr.
Sidney Wolinsky	\$225/hr.

Conclusion

We have determined that for purposes of this proceeding that the entities represented by Public Advocates have met the burden of showing significant financial hardship. This determination will carry over to Public Advocates' participation on behalf of these particular clients in other proceedings in calendar year 1988. Public Advocates is put on notice that it must be prepared to meet the significant financial hardship test on behalf of clients not included in this determination. Public Advocates has also adequately addressed the other three requirements of Rule 76.54 (statement of issues, budget, and compensation estimate).

In sum, Public Advocates is eligible for an award of compensation in this proceeding.

Findings of Fact

1. Public Advocates requests a finding of eligibility for compensation in the Commission's investigation (I.85-04-047) of 976 Information Access Service provided by telecommunication companies for its participation in issues relating to whether the service

should continue or if restrictions and conditions should be imposed.

2. Public Advocates has met the requirements of Rule 76.54 of the Commission's Rules of Practice and Procedure for a finding of eligibility.

Conclusion of Law

Public Advocates' request for a finding of eligibility for compensation should be granted.

ORDER

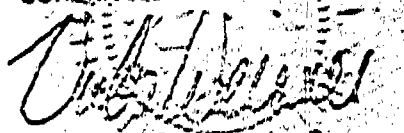
IT IS ORDERED that the request of Public Advocates, Inc. for a finding of eligibility for compensation is granted.

This order becomes effective 30 days from today.

Dated MAY 11 1988, at San Francisco, California.

STANLEY W. HULETT
President
DONALD VIAL
FREDERICK R. DUDA
C. MITCHELL WILK
JOHN B. OHANIAN
Commissioners

I CERTIFY THAT THIS DECISION
WAS APPROVED BY THE ABOVE
COMMISSIONERS TODAY


Victor Weiss, Executive Director