

Decision SS 05 071 MAY 25 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 86-12-014
) (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)

And Related Matters.

) 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)

OPINION ON REQUEST FOR FINDING OF ELIGIBILITY
AND REQUEST FOR AN AWARD OF COMPENSATION

On April 15, 1988, Toward Utility Rate Normalization (TURN) filed a combined request for a finding of eligibility and request to receive compensation under Article 18.7 of our Rules of Practice and Procedure (Rules) for its substantial contribution to Decision (D.) 88-03-042. That decision was issued after Applications for Rehearing were filed by Phone Programs, Inc. (PPI)

and Information Providers Association (IPA) and petitions for modification were filed by Pacific Bell and TURN of D.87-12-038 dated December 9, 1987. In D.87-12-038 we ordered all local exchange carriers who provide 976 IAS service to offer central office blocking of 976 IAS to residential subscribers no later than February 1, 1988 for a charge of \$2.00 per line. D.88-03-042 modified D.87-12-038 by reducing the blocking charge from \$2.00 per line to \$.01.

Rule 76.54(a) states:

"(a) Within 30 days of the first prehearing conference or within 45 days after the close of the evidentiary record, a customer seeking an award under this article shall file with the Commission's Docket Office and serve all parties to the hearing or proceeding a Request for Finding of Eligibility for Compensation, in compliance with Rules 2, 3, 4, 5, 6, and 7 with an attached certificate of service by mail on all parties..."¹

TURN states that it did not file its request for eligibility within 30 days of the first prehearing conference, as required by Rule 76.54 because when the investigation into 976 IAS service began it did not envision that it would be actively participating in the proceeding. TURN states that it was not until D.87-12-038 imposed a \$2.00 charge for blocking that it became directly involved.

TURN states that though Rule 76.54(a) also requires that a Request for a Finding of Eligibility be filed within 45 days after the close of the evidentiary record, and though the record has not been formally closed since further hearing is anticipated, the issue of blocking has been put to rest and thus its request is consistent with Rule 76.53(c) which encourages customers to file as soon as possible in the progress of the proceeding.

1 These time requirements are also codified in PU Code § 1804(a).

TURN also states that given the lengthy and expensive nature of most Commission proceedings, limited customer resources necessitate intermittent participation in many proceedings. It states that these same restraints force it to seek compensation at the earliest possible date under the Rules. It states that in this instance, it made a substantial contribution to D.88-03-042 following the relevant hearings and the fact that it was unable to forecast its potential contribution at the time of the first prehearing conference in 1985 should not hinder its efforts to seek an award of compensation. It states that the unusual circumstances notwithstanding, the Request for a Finding of Eligibility is timely under a reasonable interpretation of Rules 76.53 and 76.54(a).

TURN states it did seek a Commission finding of "Significant Financial Hardship" for calendar year 1988 in accordance with Rule 76.54(a)(1) on February 26, 1988 in I.87-11-033, for which a decision has not been issued.²

TURN states that pursuant to Rule 76.53, it made a substantial contribution to D.88-03-042, by arguing in its petition that a residential blocking charge of any amount would be inequitable and uneconomically unsound, and (in recognition of the fact that Public Utilities Code Section 2884(a) mandated a charge of some amount) by suggesting \$.01 as more appropriate than the \$2.00 originally ordered. TURN states that the Commission concurred in its reasoning in modifying D.87-12-038.

On May 6, 1988 GTE California Incorporated (GTE-C) filed its formal response opposing TURN's request for compensation, on the grounds that the request for compensation was not filed within

² Even if TURN ultimately satisfies the "significant financial hardship" test in I.87-11-033 (or another proceeding) which would then carry over for the 1988 calendar year (Rule 76.54(a)(1)), it must still establish eligibility for compensation in this proceeding by addressing the additional requirements of Rule 76.54(a)(2) through (4).

30 days of the issuance of the decision to which the request relates (Rule 76.56). GTE-C's response did not address the timeliness issue in the context of TURN's eligibility request (Rule 76.54).

Discussion

As TURN acknowledges, Rule 76.54 requires that a request for a finding of eligibility be filed within 30 days of the first prehearing conference or within 45 days after the close of the evidentiary record. TURN did not file a timely request for a finding of eligibility after the prehearing conference and may not file such request again until the evidentiary record is closed. TURN's argument that it did not envision participating in the proceeding at the prehearing conference is not sufficient to waive PU Code § 1804(a) or Rule 76.54.

While we sympathize with TURN that the lengthy and extensive nature of some Commission proceedings may necessitate only intermittent participation, we believe the intervenor compensation statutes and rules should be consistently applied, especially where the statutory directive is unambiguous.

Based on the filing and the circumstances surrounding this proceeding, we are of the opinion that TURN's requests for eligibility and compensation are premature and should be denied without prejudice. TURN may file a timely request for eligibility to receive compensation when the evidentiary record is closed.

Since we have resolved the timeliness issue in the context of the eligibility issue (Rule 76.54), rather than the compensation issue (Rule 76.56), we effectively reject GTE-California's opposition argument, which was premised on Rule 76.56.

Findings of Fact

1. TURN requests a combined finding of eligibility and award of compensation in the amount of \$2,432.67 for its contribution to D.88-03-042 relating to the reduction of the charge to residential subscribers for blocking 976 IAS service.

2. TURN has not met the requirements of Rule 76.54 for a finding of eligibility in this proceeding.

Conclusion of Law

TURN's request for a finding of eligibility and award of compensation should be denied without prejudice in accordance with the preceding discussion.

ORDER

IT IS ORDERED that the request of Toward Utility Rate Normalization (TURN) for a finding of eligibility and compensation is denied without prejudice. TURN may refile its request for eligibility at the close of the evidentiary record in this proceeding as specified in PU Code § 1804 and the Commission's Rules of Practice and Procedure.

This order is effective today.

Dated MAY 25 1988, at San Francisco, California.

STANLEY W. HULETT
President

DONALD VIAL
FREDERICK R. DUDA
G. MITCHELL WILK
JOHN B. OHANIAN
Commissioners

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

Victor Weisman
Victor Weisman, Executive Director

TURN also states that given the lengthy and expensive nature of most Commission proceedings, limited customer resources necessitate intermittent participation in many proceedings. It states that these same restraints force it to seek compensation at the earliest possible date under the Rules. It states that in this instance, it made a substantial contribution to D.88-03-042 following the relevant hearings and the fact that it was unable to forecast its potential contribution at the time of the first prehearing conference in 1985 should not hinder its efforts to seek an award of compensation. It states that the unusual circumstances notwithstanding, the Request for a Finding of Eligibility is timely under a reasonable interpretation of Rules 76.53 and 76.54(a).

TURN states it did seek a Commission finding of "Significant Financial Hardship" for calendar year 1988 in accordance with Rule 76.54(a)(1) on February 26, 1988 in I.87-11-033, for which a decision has not been issued.²

TURN states that pursuant to Rule 76.53, it made a substantial contribution to D.88-03-042, by arguing in its petition that a residential blocking charge of any amount would be inequitable and uneconomically unsound, and (in recognition of the fact that Public Utilities Code Section 2884(a) mandated a charge of some amount) by suggesting \$.01 as more appropriate than the \$2.00 originally ordered. TURN states that the Commission concurred in its reasoning in modifying D.87-12-038.

Discussion

As TURN acknowledges, Rule 76.54 requires that a request for a finding of eligibility be filed within 30 days of the first

² Even if TURN ultimately satisfies the "significant financial hardship" test in I.87-11-033 (or another proceeding) which would then carry over for the 1988 calendar year (Rule 76.54(a)(1)), it must still establish eligibility for compensation in this proceeding by addressing the additional requirements of Rule 76.54(a)(2) through (4).

prehearing conference or within 45 days after the close of the evidentiary record. TURN did not file a timely request for a finding of eligibility after the prehearing conference and may not file such request again until the evidentiary record is closed. TURN's argument that it did not envision participating in the proceeding at the prehearing conference is not sufficient to waive PU Code § 1804(a) or Rule 76.54.

Nor do we find compelling TURN's argument that the blocking issue has been put to rest and its request for a finding of eligibility and compensation is consistent with Rule 76.53(c). The encouraging of customers to file requests for compensation as soon as possible in the progress of the proceeding under Rule 76.53(c) assumes that the customer filing for compensation has been found eligible for compensation, since PU Code § 1804(c) and Rule 76.56 provide that compensation requests are to be filed subsequent to a Commission decision finding eligibility, not before. The separate determination of eligibility and compensation enables the Commission to consider the issue of significant financial hardship, the extent of the intervenor's participation, its compensation estimate, and the designation of a common legal representative, prior to entertaining a compensation request (Rule 76.54(a)). This in turn streamlines the decisionmaking process at the compensation stage.

While we sympathize with TURN that the lengthy and extensive nature of some Commission proceedings may necessitate only intermittent participation, we believe the intervenor compensation statutes and rules should be consistently applied, especially where the statutory directive is unambiguous.

Based on the filing and the circumstances surrounding this proceeding, we are of the opinion that TURN's requests for eligibility and compensation are premature and should be denied without prejudice. TURN may file a timely request for eligibility to receive compensation when the evidentiary record is closed. If

we thereafter find TURN eligible for compensation in this proceeding, it may then file a Request for Compensation covering the items it seeks here, in accordance with Rule 76.56.

Findings of Fact

1. TURN requests a combined finding of eligibility and award of compensation in the amount of \$2,432.67 for its contribution to D.88-03-042 relating to the reduction of the charge to residential subscribers for blocking 976 IAS service.

2. TURN has not met the requirements of Rule 76.54 for a finding of eligibility in this proceeding.

Conclusion of Law

TURN's request for a finding of eligibility and award of compensation should be denied without prejudice in accordance with the preceding discussion.

ORDER

IT IS ORDERED that the request of Toward Utility Rate Normalization (TURN) for a finding of eligibility and compensation is denied without prejudice. TURN may refile its request for eligibility at the close of the evidentiary record in this proceeding as specified in PU Code § 1804 and the Commission's Rules of Practice and Procedure.

This order is effective today.

Dated _____, at San Francisco, California.