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ALJ/CLF/rsr

Decision 88 07 035 JUL 8 1988

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of Alternative
Regulatory Frameworks for Local
Exchange Carriers.

)
) I.87-11-033
) (Filed November 25, 1987)

And Related Matter.

)
) Case 87-07-024
) (Filed July 16, 1987)

OPINION ON ELIGIBILITY FOR COMPENSATION

On February 26, 1988, Toward Utility Rate Normalization (TURN) filed in this docket a Request for Finding of Eligibility for Compensation, under Article 18.7 (Rules 76.51 through 76.62) of the Commission's Rules of Practice and Procedure. No response to TURN's request has been filed by any other party.

Article 18.7 contains the requirements to be met by intervenors seeking compensation "for reasonable advocate's fees, reasonable expert witness fees, and other reasonable costs...of participation or intervention in any proceeding of the Commission initiated on or after January 1, 1985, to modify a rate or establish a fact or rule that may influence a rate." (Rule 76.51.) Since the Commission initiated Investigation (I.) 87-11-033 to reexamine the entire regulatory framework for local exchange carriers, it is clear that this proceeding may "modify a rate or establish a fact or rule that may influence a rate" and that TURN's Request for Finding of Eligibility for Compensation is appropriately considered under the provisions of Article 18.7.

Rule 76.54 requires filing of a request for eligibility within 30 days of the first prehearing conference or within 45 days after the close of the evidentiary record. The first prehearing conference in this case was held on January 29, 1988. Since TURN's

request was filed within 30 days after that date, TURN's filing is timely.

Rule 76.54(a) requires that a request for eligibility include four items:

- "(1) A showing by the customer that participation in the hearing or proceeding would pose a significant financial hardship. A summary of the finances of the customer shall distinguish between grant funds committed to specific projects and discretionary funds...;
- "(2) A statement of 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."

The adequacy of TURN's filing on each of these items is addressed in turn below.

Significant Financial Hardship

Rule 76.52(f) defines "significant financial hardship" to mean both of the following:

- "(1) That, in the judgment of the Commission, the customer has or represents an interest not otherwise adequately represented, representation of which is necessary for a fair determination of the proceeding; and,
- "(2) Either that the customer cannot afford to pay the costs of effective participation, including advocate's fees, expert witness fees, and other reasonable costs of participation and the cost of obtaining judicial review, or that, in the case of a group or organization, the economic interest of the individual members of the group or organization is small in

comparison to the costs of effective participation in the proceeding."

TURN submits that it represents an interest--the residential customer class--that would not otherwise be adequately represented in this proceeding. TURN states that the Commission has specifically found that activities of the Division of Ratepayer Advocates do not obviate the need for residential class representation, citing Decision (D.) 85-01-009.

TURN states that it knows of two other parties appearing in this proceeding on behalf of residential customers (generally, or some sectors thereof), although TURN is presently unaware of the extent of their anticipated involvement. TURN argues that TURN's participation would still be necessary even with the participation of other class representative(s), quoting D.85-01-009 in which we found eligible and awarded compensation to both TURN and a second participant, Dr. Brylawski:

"It can scarcely be argued...that the participation of Brylawski, a constructive but relatively inexperienced participant in the proceeding working solely with his personal resources, constitutes adequate representation of the residential ratepayer class.

"We find that, in the absence of TURN's participation, the residential telephone ratepayer class would not be adequately represented, and that such representation would assist in reaching a fair determination in the proceeding. We also find that TURN does represent the class of residential telephone ratepayers." (D.85-01-009, mimeo. p. 5.)

TURN notes that representatives of the cities of Los Angeles, San Diego, and San Francisco participated in that proceeding, representing primarily their cities as ratepaying entities. According to TURN, the grant of compensation in

D.85-01-009 recognized that secondary contributions of such participants on behalf of residential customers do not obviate the need for TURN's participation.

TURN argues that the same considerations continue to apply, and we agree. While TURN does not specify in its filing the two other parties which in its view are appearing in this proceeding on behalf of residential customers, a review of the appearance list shows them to be Public Advocates and Center for Public Interest Law. Perusal of the comments and reply comments filed in this proceeding to date shows that TURN's participation has been much more extensive than either of the other two parties. In addition, the cities of Los Angeles, San Diego, and San Francisco are represented. As TURN points out, we have previously recognized that participation by cities does not replace the need for TURN's participation. We conclude that TURN has met the test of Rule 76.52(f)(1).

For an organization like TURN, Rule 76.52(f)(2) weighs the economic interests of the organization's individual members against the costs of effective participation. On the matter of economic interests, TURN states that it represents the interests of numerous constituent groups, including the Consumer Cooperative of Berkeley, California Legislative Council for Older Americans, San Francisco Consumer Action, and the California Gray Panthers, whose members include individual residential customers of Pacific Bell (Pacific), as well as thousands of individual citizens in Pacific's service area. TURN submits that the economic interests of these individual members are obviously small in comparison to the costs of effective participation in this proceeding. As discussed below, TURN's preliminary budget for participation in this proceeding is proposed to be \$158,125.

While not reaching any conclusions about the reasonableness of TURN's proposed budget, we agree with TURN that the economic interests of its members are individually much smaller

than the amounts TURN can be expected to spend in a proceeding of this magnitude. We reiterate our opinion expressed in D.85-06-028 and elsewhere that there is a need for organized groups with the requisite experience and resources to represent residential customers and to participate in our proceedings on a continuing basis. We conclude that TURN, as such an organization, meets the requirements of Rule 76.52(f)(2).

In addressing the significant financial hardship issue under Rule 76.54(a)(1), TURN is also required to provide a summary of finances distinguishing between grant funds committed to specific projects and discretionary funds. TURN provided such information for the twelve months ending June 30, 1987.

During that period, TURN had a total income of \$597,000, over half of which came from individual contributions. Attorneys fees of \$186,000 were received during this period, and \$10,000 came from a restricted grant. Other income and interest made up the balance of the reported income. On the expense side, TURN spent \$557,000 for the twelve months: \$316,000 on its mail campaign (half allocated to education), \$139,000 on salaries, \$30,000 on consultant and other personnel costs, \$13,000 for newsletter costs, and the balance on operating expenses.

TURN states that, because of its costs of building a donor base which it hopes will render it self-sufficient in the next few years, it necessarily counts on all income sources to pursue its regulatory program. It concludes that without the compensation program there is no question that its participation on behalf of its extensive constituency would be severely truncated.

We conclude that TURN has met the requirements of Rule 76.54(a)(1) and has shown that its participation in this proceeding would pose a significant financial hardship.

Statement of Issues

Rule 76.54(a)(2) requires a statement of issues that the party intends to raise. TURN states that, since this investigation

will explore alternative regulatory frameworks for local exchange carriers, the list of potential issues is vast. Further, since the proceeding was recently filed, the scope of TURN's participation is uncertain. TURN lists the following Phase I issues which it plans to raise: measures of competition in relevant markets; price flexibility; the intraLATA ban on competition; and ratepayer safeguards. TURN cautions that this list must be viewed as preliminary and subject to later modification or addition as the investigation unfolds.

In Phase I, TURN plans to present one or two witnesses. It states that it will be active with one attorney in all phases. It reiterates that the degree of activity and number of witnesses will depend on how and when the proceeding unfolds, and notes that the Commission has recognized in past proceedings that preliminary budgets and discussions of issues are necessarily vague.

We find that TURN has complied with Rule 76.54(a)(2).

Estimate of the Compensation to be Sought

Rule 76.54(a)(3) requires an estimate of the compensation to be sought. TURN indicates that it will seek full compensation on any and all issues to which it "substantially contributes," but that it is too early to know what these issues will be. In light of the early stage of this proceeding, TURN has complied adequately with Rule 76.54(a)(3).

Budget

Rule 76.54(a)(4) requires a budget for the party's presentation. TURN has presented a preliminary budget of \$158,125, estimating attorney/advocate fees of \$93,750, consultant fees of \$50,000, and other reasonable fees and expenses of \$14,375. These figures are necessarily preliminary and their reasonableness will be reviewed at the compensation stage of this proceeding.

Common Legal Representative

Rule 76.54(b) allows other parties to comment on the request, including a discussion of whether a common legal

representative is appropriate. Under Rule 76.55 our decision on the request may designate a common legal representative. TURN maintains that there is no information in this proceeding to indicate any need for a common legal representative, since no other consumer has yet filed a request for finding of eligibility for compensation and, further, the proceeding is still sufficiently undefined that it would be premature to isolate and assign issues. At this juncture we see no need to designate a common legal representative.

Conclusion

We have determined that TURN has shown that its participation in this proceeding would pose a significant financial hardship, as defined in Rule 76.52(f), and has submitted the summary of finances required by Rule 76.54(a). This "significant financial hardship" determination will carry over to TURN's participation in other proceedings in 1988.

For purposes of this proceeding only, TURN has met the other three requirements of Rule 76.54(a). In addition, no party has responded to TURN's request or raised the issue of the appropriateness of a common legal representative. Therefore, TURN is eligible for an award of compensation for its participation in this case.

Findings of Fact

1. TURN's request for eligibility was timely filed and addresses all four elements required by Rule 76.54(a) of the Commission's Rules of Practice and Procedure.
2. TURN represents the interests of individual residential customers not otherwise adequately represented in this proceeding who, as individuals, have a small economic interest in comparison to the costs of effective individual participation.
3. TURN has demonstrated that its participation in this proceeding would pose a significant financial hardship under Rule 76.52(f) and Rule 76.54(a)(1).

4. There is no need at this time to designate a common legal representative for the interests TURN represents in this proceeding.

Conclusions of Law

1. TURN should be found eligible under Article 18.7 of our rules to claim compensation for its participation in this proceeding.

2. The determination that TURN has met its burden of showing that its participation in this proceeding would pose a significant financial hardship should carry over to TURN's participation in other proceedings in 1988.

ORDER

IT IS ORDERED that:

1. Toward Utility Rate Normalization (TURN) is eligible to claim compensation for its participation in this proceeding.

2. The determination that TURN has met its burden of showing that its participation in this proceeding would pose a significant financial hardship shall carry over to TURN's participation in other proceedings in 1988.

This order is effective today.

Dated JUL 8 1988, at San Francisco, California.

STANLEY W. HULETT
President
DONALD VIAL
G. MITCHELL WILK
JOHN B. OHANIAN
Commissioners

Commissioner Frederick R. Duda,
being necessarily absent, did not
participate.

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


Victor Weissac, Executive Director