

Decision 88 12 098 DEC 19 1988**ORIGINAL** DEC 21 1988

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
 PACIFIC BELL, a corporation, for
 authority to increase certain intra-
 state rates and charges applicable
 to telephone services furnished
 within the State of California.

Application 85-01-034
 (Filed January 22, 1985;
 amended June 17, 1985 and
 May 19, 1986)

And Related Matters.

I.85-03-078
 (Filed March 20, 1985)

OII 84
 (Filed December 2, 1980)

Case 86-11-028
 (Filed November 17, 1986)

(See Decisions 85-08-047, 86-01-026, and
 87-12-067 for appearances.)

OPINION ON TURN'S REQUESTS FOR COMPENSATION

I. Summary

Toward Utility Rate Normalization (TURN) has requested compensation in the amount of \$2,569.56 in connection with Decision (D.) 87-10-075, our Opinion on Pacific Bell's Petition for Modification of D.86-12-099. The issue resolved in D.87-10-075 was whether Pacific Bell must file for 1988 attrition. We find that TURN made a substantial contribution to D.87-10-075, and award compensation in the amount of \$2,329.56.

In addition, TURN has requested compensation in the amounts of \$52,639.05 and \$14,203.31 in connection with its involvement in interest synchronization and marketing abuse issues resolved in D.87-12-067, the Second Interim Opinion on Pacific Bell's test-year 1986 revenue requirement. We find that TURN made a substantial contribution to D.87-12-067, and award compensation in the amount of \$53,441.03.

Therefore, the total amount awarded in this decision is \$55,770.59.

II. Issues to be Decided

Rule 76.58 requires us to determine whether TURN made a "substantial contribution" to D.87-10-075 and D.87-12-067; in addition, we must describe the substantial contribution, and determine the amount of compensation to be paid. The term "substantial contribution" as defined in Article 18.7 requires us to make a judgment that:

"...the customer's presentation has substantially assisted the Commission in the making of its order or decision because the order or decision had adopted in whole or in part one or more factual contentions, legal contentions, or specific policy or procedural recommendations presented by the customer." (Rule 76.52(g).) (Emphasis added.)

We proceed to analyze TURN's participation in the development of the issues addressed in D.87-10-075 and D.87-12-067 in order to make a judgment on the substantial contribution issue. Thereafter, we will review the costs submitted by TURN, and make the appropriate award.

III. TURN's Contribution to D.87-10-075 (1988 Attrition)

A. Procedural Background

In D.85-06-028, we found TURN eligible to claim compensation in this proceeding regardless of its duration beyond 1985.

On October 28, 1987, we issued D.87-10-075, ordering Pacific Bell to file a 1988 attrition year advice letter on or before January 30, 1988, addressing both operational and financial attrition.

TURN filed its initial Request for Compensation (Request) relative to D.87-10-075 on November 25, 1987, in compliance with Rule 76.56 which allows an intervenor 30 days from the issuance of a final decision in which to file such request.

Rule 76.56 provides other parties the opportunity to respond to a compensation request within 30 days after service. However, in this instance, no party has formally responded to TURN's request.

Among the procedural requirements to be considered is whether the customer seeking a compensation award is participating or intervening "in a hearing or proceeding for the purpose of modifying a rate or establishing a fact or rule that may influence a rate..." (Rule 76.53). Since Pacific Bell's 1988 attrition filing modified rates, Rule 76.53 is satisfied.

B. 1988 Attrition-Related Filings By Pacific Bell, TURN, and the Division of Ratepayer Advocates

In D.86-12-099 the Commission resolved certain outstanding issues in connection with the operational attrition formula. In so doing, the Commission made several references to specific issues that would be encountered in future attrition reviews, including the 1988 attrition year (D.86-12-099, at

pp. 5-6, 6-20, and Finding of Fact 10).¹ D.87-04-078 resolved appeals of D.86-12-099 and also ordered the Commission's Advisory and Compliance Division (CACD) to convene workshops to address the need for further changes to the attrition methodology. The workshops were held on August 11, 1987. TURN indicates that prior to the workshops, it had attempted to substantiate rumors that Pacific might not file a 1988 attrition application on October 1, 1987. At the workshop, TURN "finally was able to elicit from Pacific Bell's representatives a statement that the utility considered a 1988 filing to be optional, and 'preferred not to' make such a filing." (TURN request, p. 2.) TURN then indicated its intention to file a motion to order such a filing. On August 18, 1987 TURN's Executive Director wrote Pacific Bell requesting a statement of its formal position by August 26, 1987. On that date, TURN received a reply which transmitted a copy of Pacific Bell's Petition for Modification of D.86-12-099. In the Petition, Pacific Bell asked that D.86-12-099 be modified to remove any requirement for a 1988 attrition filing.

On September 2, 1987, TURN filed a "Motion for an Expedited Order to Review 1988 Financial and Operational Attrition". TURN's motion delineated the background of D.86-12-099 in an attempt to refute Pacific Bell's claims, and requested an expedited order requiring Pacific Bell to file a 1988 attrition application as soon as the Commission found practical, setting Pacific Bell's rates subject to refund effective January 1, 1988 to ensure that ratepayers received the full benefit of attrition reductions.

¹ See also Resolution ALJ-156, p. 2, which refers to an additional allowance for the year 1988.

On September 4, 1987, the Division of Ratepayer Advocates (DRA) filed an opposition to Pacific Bell's Petition, raising arguments similar to those advanced by TURN.

C. Issuance of D.87-10-075

In D.87-10-075 we rejected the arguments contained in Pacific Bell's Petition for Modification and granted TURN's motion. We required Pacific Bell to file a 1988 attrition year advice letter on or before January 30, 1988, following the attrition formula adopted in D.85-03-042 as modified by D.86-12-099. We also specified that Pacific Bell's financial attrition request identify all financings and refinancings planned or executed from January 1, 1987 through December 31, 1987. Finally, we specified that Pacific Bell's intrastate rates and charges were to be collected subject to refund with interest beginning January 1, 1988 to account for any adjustments associated with the 1988 attrition year review.

On November 30, 1987, Pacific Bell filed an application for rehearing of D.87-10-075, alleging that the decision violated the rule against retroactive ratemaking. Pacific Bell requested that the decision be changed to make clear that the effects of the 1988 attrition decision after a review of Pacific Bell's attrition year rates would only be applied prospectively from the date such attrition decision became effective. On December 15, 1987, DRA filed a formal opposition to Pacific Bell's application for rehearing. In D.88-01-056, dated January 28, 1988, we modified D.87-10-075 in certain respects, but otherwise denied rehearing. On January 29, 1988, Pacific Bell filed its 1988 operational and financial attrition advice letter (No. 15343) indicating a revenue requirement reduction of \$57.661 million. In Resolution No. T-120979, dated April 13, 1988, we authorized a 1988 attrition revenue requirement reduction of \$64.911 million.

D. The Substantial Contribution Question

TURN makes three key points. First it asserts that its efforts were crucial in motivating Pacific Bell to crystalize the 1988 attrition issue by filing its August 26th Petition for Modification. TURN believes that its inquiry at the August 11th attrition workshop elicited the first clear statement of Pacific Bell's intention not to file, and it believes that the fact that Pacific Bell filed its petition on August 26--the very date by which TURN had demanded a formal statement of position--is no coincidence.

Second, TURN believes that a review of D.87-10-075 reveals that the Commission relied heavily upon the formal arguments included in TURN's motion, and that the decision also explicitly grants the bulk of that motion in Ordering Paragraph 3.

Finally, TURN notes that D.87-10-075 explicitly adopts TURN's recommendation regarding the content of Pacific Bell's 1988 financial attrition filing.

We believe that TURN's presentation constituted a substantial contribution to D.87-10-075 on two independent bases. First, there was no mandated date certain for Pacific Bell's 1988 attrition filing, although certain language in D.86-12-099 indicated that the Commission expected such a filing. TURN was instrumental in eliminating the uncertainty and bringing the issue to a head. More specifically, it appears that Pacific Bell's Petition for Modification was filed in response to TURN's demand for a formal statement of position. But for TURN's prodding, this issue might not have been resolved.

We believe that another basis for finding that TURN substantially contributed to D.87-10-075 was the explicit adoption of its financial attrition recommendation in the following text:

"We believe that TURN's suggestion regarding financial attrition merits adoption. Accordingly, we will require that Pacific Bell's January 30, 1988 advice letter filing identify all financings and refinancings from

January 1, 1987, through December 31, 1987, setting forth in clear detail all such financings or refinancings planned, as well as executed, through the end of the year 1987." (D.87-10-075, mimeo. p. 12.)

Although DRA also played a significant role in achieving resolution of the 1988 attrition filing question by virtue of its opposition to Pacific Bell's Petition for Modification [and its opposition to the application for rehearing of D.87-10-075], we believe that TURN's presentation did not materially duplicate the contribution or presentation of DRA (Rule 76.53(c)). TURN was the only party who requested that the Commission issue an order requiring Pacific Bell to identify its post-January 1, 1987 financings and refinancings and describe any such dealings planned through the end of the year 1987. This recommendation was explicitly adopted in D.87-10-075. This factor, coupled with TURN's key role in prompting Pacific Bell to file its petition for modification, militates against a finding of duplication.

E. Itemization of Costs

TURN's request in connection with D.87-10-075, \$2,569.56,² is detailed as follows:

Advocate Hours (J. F. Elliott)

(1) Hours Related to Attrition Workshop	3.5 @ \$150	=	\$ 525.00
(2) Hours Related to TURN's Motion	6.5 @ \$150	=	975.00
(3) Preparation of Compensation Request	6.0 @ \$150	=	900.00
(4) <u>ADVOCATE TOTAL</u>	<u>16 @ \$150</u>	=	<u>\$2,400.00</u>

(Continued)

² TURN's request is stated as \$2,644.56 (page 8, Request) based on 16.5 advocate hours. However, the itemization of costs includes only 16 hours; Therefore, the total request is actually \$2,569.56.

(Continued)

Other Reasonable Expenses

(5)	Reproduce/Mail Attrition Workshop Comments	-	13.32
(6)	Reproduce/Mail TURN Motion	-	86.64
(7)	Reproduce/Mail Request for Compensation	-	69.58
(8)	<u>EXPENSE TOTAL</u>	-	\$ 169.56
(9)	<u>TOTAL REQUEST IN CONNECTION WITH D.87-10-075</u>	-	\$2,569.56

TURN has requested compensation for 3.5 hours spent in the August 11, 1987 attrition workshop. We will compensate TURN for these hours, because the attrition workshop set the stage for resolution of the uncertainty surrounding the 1988 attrition filing requirement.

TURN seeks compensation for 6.5 hours spent preparing its motion for an expedited order to review 1988 financial and operational attrition. Since this motion was granted in substantial part by D.87-10-075, and we have found no basis for reducing TURN's award on a duplication theory, we will award compensation for all 6.5 hours.

TURN is requesting compensation for 6.0 hours necessary to prepare its compensation request in this matter. As TURN notes, such time is routinely compensable under prior Commission decisions (see, e.g., D.86-04-047), and we will compensate TURN accordingly.

TURN has also requested compensation for certain reproduction and mailing costs associated with its participation in this proceeding. These costs total \$169.56, and are within the realm of reasonableness given the type of involvement underlying TURN's request.

TURN is requesting a rate of \$150 per hour for work performed by staff counsel Elliott during 1987. TURN acknowledges that it has most recently been awarded \$135 per hour for work performed by Elliott primarily in 1986. It submits that another re-evaluation of Elliott's fee is in order given the passage of time. In support of its argument, TURN cites several decisions issued in the 1987 timeframe compensating various attorneys at the rate of \$150 per hour (D.86-07-012, D.86-12-053, D.87-05-030, and D.87-10-078; see generally, request page 10).

TURN asserts that Elliott deserves this increase in hourly rates based on his extensive Commission experience and the degree of responsibility he assumed in this proceeding. However, given the relatively straightforward nature of the issues surrounding the necessity and timing of the 1988 attrition filing, which were primarily procedural in nature, we do not believe that an increase in the \$135 hourly rate is justified. In addition, we have recently affirmed the \$135 hourly rate for counsel Elliott for work spanning June 1987 to July 1988 (D.87-11-025).

F. The Compensation Award

Based upon the proceeding substantial contribution discussion and a review of the itemization of costs submitted by TURN, we will compensate TURN for its participation in D.87-10-075 in the amount of \$2,329.56. We will also require Pacific Bell to pay interest on this principal amount, consistent with previous Commission decisions.

IV. TURN's Contribution to D.87-12-067

A. Procedural Background

On January 28, 1988, TURN filed its Supplemental Request for Compensation (Supplemental Request) relative to its involvement in the issue of interest synchronization, one of several matters resolved in D.87-12-067, the Commission's Second Interim Opinion on

Pacific Bell's revenue requirement.³ TURN requested compensation in the amount of \$52,639.05. TURN's Supplemental Request was timely filed within 30 days of issuance of D.87-12-067.⁴

Thereafter on April 21, 1988, TURN filed an Amendment to Supplemental Request for compensation (the Amendment) in connection with certain marketing abuse issues addressed in D.87-12-067. The Amendment requests compensation in the amount of \$14,203.31. The Amendment was not filed within the 30-day time frame referenced in Rule 76.56, but TURN claims that its failure to address marketing abuse issues in the earlier Supplemental Request was not an oversight, but rather resulted from TURN's assessment that D.87-12-067 did not "finally" resolve marketing abuse issues, so that a request for compensation would not yet have been timely. TURN acknowledges that D.87-12-067 resolved the marketing abuse penalty question, but TURN believed that several other issues relative to the Customer Notification Plan process and the Customer Marketing Oversight Committee, and the implementation of the ratepayer education trust were not finally resolved, since the Commission required further compliance filings or reports that TURN believed would be recognized in further orders. However, when Public Advocates filed a request for compensation on behalf of the Minority Coalition including a claim for work on the marketing abuse issue, TURN concluded that the issue would be addressed in compensation awards flowing from D.87-12-067. Within a week after Pacific Bell filed its formal response to Public Advocates' Request, TURN tendered this Amendment to its January 28th Supplemental Request to incorporate a claim for compensation for

3 Since D.87-12-067 modified Pacific Bell's 1986 test year revenue requirement, Rule 76.53 is satisfied.

4 D.87-12-067 was mailed January 6, 1988.

its work in the marketing abuse area. TURN asks that it be allowed to raise the issue at this time.

On May 23, 1988, Pacific Bell filed a response to TURN's January 28, 1988 Supplemental Request and April 21, 1988 Amendment.⁵ Pacific Bell asserts that TURN's Supplemental Request includes excessive and poorly-documented expert witness fees. Further, Pacific Bell asserts that TURN did not make a substantial contribution to the marketing sales practices issue decided in D.87-12-067, while acknowledging that TURN should receive some compensation for that part of the amount sought attributable to its Customer Notification Plan (CNP) workshop efforts. Pacific Bell does not challenge the timeliness of the Amendment.

As a preliminary matter, we will entertain TURN's Amendment although it is technically out of compliance with Rule 76.56, because it was not filed within 30 days of issuance of D.87-12-067. TURN's explanation that it did not consider D.87-12-067 a "final order" within the parameters of Rule 76.56 because it expected the Commission to issue further orders after reviewing the CNP and CMOC compliance filings is plausible; in addition, TURN acted promptly after becoming aware of the problem, and as a matter of equity we will consider its claim at this time.

**B. TURN's Involvement in the
Interest Synchronization Issue**

In D.87-12-067 we determined that adoption of interest synchronization, consistent with the IRS rules and regulations on point, would effectuate a better sharing of investment tax credit

⁵ While we have considered the portions of the Response addressing the January 28th Supplemental Request, it is technically late under Rule 76.56. TURN served its Supplemental Request on Pacific Bell, whose responsibility it is to direct pleadings to the appropriate person within the company.

(ITC) benefits between investors and ratepayers (Finding of Fact 20). The issue we addressed in D.87-12-067 was whether interest should be imputed on the portion of Pacific Bell's plant financed by ITC when determining the Federal Income Tax allowance for ratemaking purposes (see D.87-12-067, mimeo. pp. 33-36). For ratemaking purposes, a larger income tax expense deduction occurs when interest synchronization is used. This larger interest expense deduction results in a lower Federal Income Tax expense allowance for ratemaking purposes, and a lower gross revenue requirement. In the case of D.87-12-067, the interest synchronization adjustment had a negative incremental revenue requirement impact of \$28.653 million (D.87-12-067, mimeo. p. 11.)

TURN asserts that it made a substantial contribution to D.87-12-067 due to its participation in developing the record on interest synchronization. TURN first raised the issue in the spring of 1985 during Phase One of this proceeding; however, its attempts to gain an extension of the deadline for filing testimony on the interest synchronization issue were initially rejected by the assigned ALJ. Then, subsequent to the issuance of the Internal Revenue Service's proposed regulations on interest synchronization, TURN renewed its request in the summer of 1985, filing a formal motion seeking the acceptance of late-filed testimony, and subsequently amending that motion to present a sample calculation showing the magnitude of dollars at stake. Pacific Bell opposed TURN's motion, the Center for Public Interest Law supported TURN, and DRA made no formal written response. Thereafter, on July 29, 1985, the assigned ALJ issued a ruling (subsequently affirmed in D.85-09-018) setting a testimony submission date of December 16, 1985 for the interest synchronization issue and indicating that the issue would be considered along with other Phase Two revenue requirement issues. That ALJ ruling included the following language:

"We note that TURN was the party to first bring this issue to our attention, and if its

position is ultimately adopted, notwithstanding any supportive testimony from other parties, we will bear this in mind in weighing any request for compensation." (ALJ Ruling dated July 29, 1988, at pp. 2-3.)

Testimony was timely filed by Pacific Bell, TURN, and DRA on December 16, 1985. The Commission's decision in Phase One, D.86-01-026, subsequently affirmed that interest synchronization would be treated as a Phase Two issue. In the meantime, in D.86-02-030, dated February 5, 1986 in A.85-05-017, the Commission applied interest synchronization to the Sierra Pacific Power Company, adopting an uncontested staff recommendation. In that decision the Commission indicated its intent to apply interest synchronization to other utilities if the IRS ultimately approved the practice. Thereafter, on February 29, 1986 Pacific Bell moved to defer interest synchronization issues until the eventual opening of the generic investigation alluded to in D.86-02-030. TURN, DRA, and the City of San Diego formally opposed Pacific Bell's Motion, which was denied by the assigned ALJ, and hearings proceeded. During four days, testimony was presented by Pacific Bell, TURN, and DRA. The issues were briefed by those three parties and the Cities of San Francisco and San Diego. Subsequently, on May 22, 1986, the IRS adopted final regulations approving interest synchronization.

TURN asserts that it substantially contributed to D.87-12-067 in several particulars. First it notes its leading role in raising the issue initially, and pressing the issue despite an initial unfavorable ALJ Ruling to have the issue heard. TURN cites the ALJ's Ruling of July 29, 1985, which specifically mentions TURN's crucial role in raising this issue. TURN also notes that D.87-12-067 relied heavily upon TURN's description of the interest synchronization adjustment, thereby underscoring TURN's contribution to the Commission's understanding and formulation of the issue itself. TURN also claims that it took a

leading role in notifying the Commission that the IRS had issued final interest synchronization regulations, thereby affirming its continuing diligence. Finally, TURN asserts that its arguments were crucial to the Commission's rejection of (1) certain sharing arguments presented by Pacific Bell's witness Walker, and (2) arguments favoring a lesser interest synchronization adjustment on the basis of the underutilization penalty. Finally, TURN notes that D.87-12-067 relies on certain arguments made by TURN in opposition to Pacific Bell's application for rehearing of D.86-01-026, to make the revenue requirement reduction associated with the adoption of interest synchronization effective from March 5, 1986, notwithstanding Pacific Bell's retroactive ratemaking argument. Since TURN has already been compensated for its work in the latter area, (D.87-07-033), it claims no further compensation.

In its formal response to TURN's supplemental request, Pacific Bell does not dispute TURN's substantial contribution to the Commission's decision-making process on the interest synchronization issue (Pacific Bell's response p. 2.) Rather, Pacific Bell's criticism focuses on the amount of expert witness fees TURN requests. No other party has filed a formal response on the issue of TURN's substantial contribution.

In our view, TURN's supplemental request makes a compelling argument that TURN substantially contributed to D.87-12-067 in this area. Indeed, its contribution is not disputed by Pacific Bell. The more difficult question we face is whether TURN's efforts duplicated those of DRA which presented testimony extensively addressing the interest synchronization question, and the Cities of San Diego and San Francisco which briefed the interest synchronization issues from a perspective similar to that of TURN. The question of duplication with DRA is the more difficult issue because both parties' witnesses addressed many of the same key issues, including the policy issues surrounding the merits of adopting the adjustment; their testimony also addressed

in unified fashion Pacific Bell's arguments about the under-utilization penalty issue and the tax remand. Both TURN and DRA made similar arguments about FERC's long-standing use of the interest synchronization adjustment, and both parties took a role in timely notifying the assigned ALJ of the issuance of final IRS regulations, subsequent to the submission of the record. Both parties' efforts were crucial to the outcome of the decision because both parties presented strong counter points to Pacific Bell's opposition showing.

We will not reduce TURN's compensation award on the basis of duplication with DRA or the Cities, however, despite the existence of considerable overlap. We make this decision in recognition of TURN's crucial role in raising the interest synchronization issue in the first place, and persistently pursuing it to ensure that the Commission heard testimony on the issue in this proceeding. This particular substantial contribution to D.87-12-067 was unique to TURN, and of sufficient importance to the decision-making process, that it militates against a reduction on duplication grounds.

C. Itemization of Costs (Interest Synchronization)

TURN's \$52,639.05 Supplemental Request in connection with interest synchronization issues, is itemized as follows:

Advocate Hours (J. F. Elliott)

(1)	38.5 hours in 1985 @ \$125/hour	=	4,812.50
(2)	59.5 hours in 1986 @ \$135/hour	=	8,032.50
(3)	18.0 hours in 1987-1988 @ \$150/hour	=	<u>2,700.00</u>
(4)	ADVOCATE TOTAL	=	\$ 15,545.00

Other Reasonable Expenses

(5)	Reproduce/Mail Motion (7/1/85)	= \$	14.50
(6)	Reproduce/Mail Amended Motion (7/9/85)	=	27.75
(7)	Reproduce/Mail Exh. 501, 502	=	380.75
(8)	Reproduce/Mail Resp. Pac. Motion (3/5/86)	=	27.75
(9)	Reproduce/Mail IS Opening Brief (4/11/86)	=	135.25
(10)	Reproduce/Mail IS Reply Brief (4/25/87)	=	44.75
(11)	Reproduce/Mail Letter to ALJ (6/16/86)	=	11.78
(12)	Reproduce/Mail Supplemental Request	=	84.75
(13)	Billing by Carol T. Coffey	=	<u>36,366.77</u>
(14)	TOTAL SUPPLEMENTAL REQUEST	=	\$ 52,639.05

TURN is requesting compensation for 116 advocate hours spent on the interest synchronization issue by staff counsel Elliott in 1985, 1986, and 1987-1988. These hours reflect a variety of activities including initial research and meetings on the interest synchronization issue as it arose in 1985, time spent in preparation for and attending hearings in 1986, and time spent briefing the issue, reviewing the ALJ draft decision, and filing comments as well as this supplemental request. We will compensate TURN for all of these hours. The hourly rate applicable to the 38.5 hours spent in 1985 is \$125 per hour in accordance with the hourly rate approved by the Commission for that time period. The hourly rate for the balance of the advocate hours (77.5 hours) is \$135 per hour, in accordance with the applicable hourly rate established for Elliott for 1986, and consistent with our prior discussion of 1987-1988. The advocate total awarded is \$15,275.00.

TURN also requests compensation for reproduction and mailing costs associated with the interest synchronization issue

during 1985-1988, in the amount of \$727.28. The mailing and reproduction costs relative to these seven pleadings and documents appear reasonable, and we will compensate TURN accordingly.

TURN has requested compensation for its expert witness Carol Coffey based on actual billings presented to TURN in the amount of \$36,366.77. TURN asserts that Coffey's hourly rate of \$100 is reasonable considering his 50 years of increasingly responsible duties in public utility matters (Supplemental Request, p. 10; see also Exhibits 501 and 502 for Coffey's qualifications as an expert witness). In support of its request, TURN has appended to its supplemental request as Attachment B, a copy of Coffey's billing statement for services rendered to TURN in connection with the interest synchronization issue. Coffey's billing statement lists a total of 359.13 hours spent on the interest synchronization issue; at \$100 per hour, Coffey's request totals \$35,913.33. There is also a claim for \$453.44 associated with travel and miscellaneous charges (tolls, mileage, and parking fees).

In its formal response, Pacific Bell does not question the \$453.00 expense claim, but rather disputes the number of hours Coffey spent developing the interest synchronization issue. Pacific Bell believes that 359 hours of expert witness time, which is more than triple the number of hours spent by TURN's own counsel on the matter, is not reasonable. It notes that on 11 days Coffey billed for more than 10 hours; on 6 days he billed for more than 14 hours; from November 26th to December 9, 1985 he billed for 168.5 hours, amounting to back-to-back 84 hour weeks; from December 7 to 9, 1985, he billed for 53.71 hours, amounting to essentially three straight 18-hour days; on December 8, 1985, he billed for over 23 hours. Pacific Bell urges the Commission to decide whether such daily billings are reasonable.

Further, Pacific Bell believes that TURN has failed to provide a detailed description of the services provided by Coffey as required by the intervenor compensation rules. Pacific Bell

believes that TURN should be required to provide a detailed description of the services performed on each of the 56 days for which compensation is sought, because without such a description it is difficult to comment specifically on the reasonableness of the amount of time spent on the work actually performed on those days. Finally, Pacific Bell believes that Coffey's hours should be capped at 120 hours which is a two-thirds reduction, but approximately equal to the number of hours spent by TURN's counsel on this matter.

We agree with Pacific Bell's criticism of the lack of detail provided in the billing statement, which makes it difficult to assess the reasonableness of the hours claimed. Without some information on the statement as to how the hours were expended, or a brief description of the activities which correspond to the hours claimed, it is very difficult to assess the reasonableness of the claim.

We acknowledge Pacific Bell's question about the reasonableness of the number of hours spent on certain days, but we do not want to engage in the exercise of determining that "X" hours per day is a reasonable figure, because this is a matter of the individual work habits of the expert in question. However, we are more disturbed with the format of the billing statement which makes it impossible to ascertain exactly how these hours were spent.

While the billing statement demonstrates that substantial numbers of hours were spent in the timeframes that bracket the preparation of testimony and hearings, the overall number of hours claimed does seem somewhat excessive. We decline to adopt Pacific Bell's recommendations that we cap the award at 120 hours, but in the exercise of our judgment given our familiarity with Exhibits 501 and 502 and TURN's presentation, we will reduce the hours claimed by one-third and allow compensation for 239.42 hours @ \$100 per hour. The \$100 per hour figure is not disputed and appears

reasonable given Mr. Coffey's level of experience. We will also allow the expense claim of \$453.44 because it is undisputed. Thus, the total award attributable to expert witness Coffey's billing is \$24,395.44.

The total compensation awarded to TURN in connection with its substantial contribution on the interest synchronization issue is \$40,397.72. We will require payment of interest on this amount consistent with Commission policy.

D. TURN's Involvement in the Marketing Abuse Issues Addressed in D.87-12-067.

D.87-12-067 was the third Commission decision issued in connection with the marketing abuse problem.⁶ In D.87-12-067 the Commission required Pacific Bell to develop and test further informational and corrective customer notification/refund measures and undertake a second customer notification plan campaign (Ordering Paragraph 2), and to file a compliance filing 9 months after commencement of the second CNP campaign reporting the results of that effort (Ordering Paragraph 3). The Commission required continuation of the workshop/CNP mechanism as a vehicle to address those marketing abuses covered by D.86-05-072 until further Commission order (Ordering Paragraph 4); it also denied TURN's motion for an order finding Pacific Bell in contempt of D.86-05-072 in connection with 611 referral and branded directory actions subsequent to issuance of that order (Ordering Paragraph 5). The Commission required Pacific Bell to set aside \$16.5 million to establish a legal trust designed to further the goal of ratepayer

6 D.86-05-072 ordered Pacific Bell to cease and desist from violations of PU Code § 532, General Order 153, and Tariff Rules 6 and 12 in connection with its marketing activities. In D.86-08-026 the Commission adopted the Customer Notification Plan (CNP) emanating from workshops; provided for below-the-line treatment of CNP expenses and directed Pacific Bell to accelerate its plans to provide detailed or itemized bills to residential customers.

educational efforts (Ordering Paragraph 6); it also established the Customer Marketing Oversight Committee (CMOC) pursuant to the overall mandate of D.86-05-072 (Ordering Paragraph 7); it required Pacific Bell to revise Tariff Rule 12 in response to DRA's recommendation (Ordering Paragraph 8); and finally it required Pacific Bell to file an advice letter containing its proposal for implementing itemized billing for business customers to be effective by January or February 1989 (Ordering Paragraph 8(a)).

In its April 21, 1988 Amendment TURN asserts that its substantial contributions in the marketing abuse area can be subdivided into two distinct issues: Crafting and implementation of the remedial and preventive activities generally addressed through the CNP process, and now the CMOC; and consideration of appropriate penalties to Pacific Bell.

In the area of remedial activities, TURN notes that it appeared throughout the marketing abuse hearings during Phase Two and participated actively in the ongoing CNP workshops throughout late 1986 and 1987. In addition, it briefed the marketing abuse issues in its opening and reply briefs and included these issues in oral arguments. More specifically, TURN believes its contributions include documentation of customer self-help activities, proof of the continued "branding" of Pacific Bell directories through September 1985, development of the record demonstrating the extent of this incidental problem and successful negotiation with Pacific Bell of corrective bill inserts that were sent to millions of Pacific Bell's customers. TURN also claims that it substantially assisted the CNP workshop participants in analyzing and interpreting the Field Research surveys used to assess the extent of marketing abuses and the progress of remedial activities. TURN also claims active participation in the ongoing CNP workshops.

TURN acknowledges that its primary recommendation of a \$100 million penalty was rejected. TURN has removed the hours and expenses clearly related to that unsuccessful advocacy from its

amendment. However, TURN claims that it made a contribution to the Commission's refinement of the ratepayer education trust penalty proposal, proposing safeguards against conflicts of interest and duplication of efforts that were adopted by the Commission.

In its May 23, 1988 response, Pacific Bell challenges the notion that TURN made a substantial contribution to the marketing abuse issues decided in D.87-12-067. Pacific Bell notes the chief recommendations of TURN unique to this phase of the proceeding: (1) its insistence that the 611 repair referral situation and directory "mishap" warranted an additional \$50 million penalty; and (2) its proposal for a Consumer Advocacy Trust Fund (CATF). Pacific Bell asserts that D.87-12-067 rejected these recommendations, and believes that TURN should not be paid for any time spent on those matters. Although TURN indicates that it has excised hours and expenses clearly related to the \$50 million penalty, Pacific Bell notes that TURN has not indicated whether it also excised advocacy related to the CATF proposal. Further, Pacific Bell states that it is unclear whether TURN actually excised unsuccessful advocacy hours related to its \$50 million penalty proposal, since TURN lists its discovery of the directory "mishap" as one of its substantial contributions.

Pacific Bell believes that TURN's other recommendations were either unadopted or were shared by many parties. For example, its claim that it documented "self-help" activities was not reflected in D.87-12-067. Also, the Commission rejected TURN's suggestion that the ratepayer education proposal needed further safeguards. Pacific Bell notes that TURN's only adopted proposal concerning the ratepayer education trust was TURN's desire not to participate in that endeavor (D.87-12-067, mimeo. p. 87). Finally, Pacific Bell believes that TURN's proposal to continue the CNP workshops was an idea shared by all parties.

Nonetheless, Pacific Bell believes that TURN was a significant contributor to the CNP workshops and should be

compensated for its time spent preparing for and attending those workshops. Pacific Bell would allow compensation for the 17.5 hours spent by TURN's counsel Elliott in these activities (Pacific Bell's response, pp. 5-6).

Pacific Bell is correct that D.87-12-067 rejected TURN's CATF proposal and its request that Pacific Bell be penalized an additional \$50 million due to the 611 repair referral situation and directory "mishap". TURN should not be compensated for those matters. However, we do believe that TURN made a substantial contribution in negotiating an appropriate resolution of the branded directory problem because TURN's efforts resulted in corrective bill inserts being sent to Pacific Bell's customers. Thus, while the \$50 million penalty recommendation was not adopted, TURN successfully negotiated a practical solution to the problem. We find a substantial contribution on that basis. Further, we are prepared to recognize TURN's substantial contribution to the CNP workshops despite our inability to delineate precisely potential duplication of effort. We have acknowledged this problem in past compensation decisions (see e.g., D.87-07-033) and have nonetheless awarded compensation in the interests of not penalizing intervenors for participating in off-the-record workshops. Unlike D.87-07-033, where we reduced TURN's award by 50% to account for duplication with the efforts of other CNP participants, there is no basis in the filings presently before us for making a similar reduction in this instance.

We do not find substantial contributions on the issue of documenting self-help, since we agree with Pacific Bell that this was not a contribution acknowledged in D.87-12-067. Nor do we find a substantial contribution to the penalty issue because the safeguards against conflict of interest and duplication of ratemaking expense for which TURN takes credit were already included in the ALJ's proposed draft decision and we did not amplify on those proposals in response to TURN's comments.

Given the finding of substantial contribution on the branded directory issue and CNP workshops, we will compensate TURN for the 86 advocate hours claimed. Some of these hours may include time spent on the penalty issue, but these are subsumed within the nonseverable hours spent reviewing the ALJ's proposed decision and preparing comments for which we have allowed compensation in connection with TURN's Supplemental Request discussed earlier.

E. Itemization of Costs
(Marketing Abuse)

TURN's \$14,203.31 Amendment to Supplemental Request, in connection with marketing abuse issues, is itemized as follows:

Advocate Hours (Elliott, Barmore)

(1)	39.0 hrs in 1986 (Elliott) @ \$135/hr	=	\$ 5,265.00
(2)	47.0 hrs in 1987 (Elliott) @ \$150/hr	=	7,050.00
(3)	13.0 hrs in 1988 (Barmore) @ \$125/hr	=	1,625.00
(4)	ADVOCATE TOTAL	=	\$13,940.00

Other Reasonable Expenses

(5)	Repro/Mail R/O Opening Brief (38% actual)	=	\$ 108.35
(6)	Repro/Mail R/O Reply Brief (43% actual)	=	28.90
(7)	Repro/Mail Comments on ALJ Draft (70% actual)	=	53.06
(8)	Repro/Mail Amendment to Supplemental Request	=	73.00
(9)	TOTAL AMENDMENT TO SUPPLEMENTAL REQUEST	=	\$14,203.31

Consistent with the preceding discussion of TURN's substantial contribution, we will allow compensation for 86 advocate hours spent by TURN's counsel Elliott on the marketing abuse issue during 1986 and 1987 at an hourly rate of \$135.00.

TURN has also claimed 13 hours of advocate time expended by counsel Barmore in connection with preparation of this amendment. Fees for preparing compensation requests are routinely granted by this Commission, and in this instance the number of hours spent appears to be reasonable, especially given the difficult procedural issue of timeliness. However, we will not compensate on the basis of a \$125.00 per hour rate. We will use

the \$90.00 per hour rate recently adopted in D.88-11-025 as appropriate compensation for Mr. Barmore's time.

TURN is also requesting compensation for reproduction and mailing costs associated with its briefs and comments on the ALJ's proposed decision. These amounts are prorated to capture only those portions of the pleadings dealing with the marketing abuse issue. TURN also requests reproduction and mailing expenses in connection with this amendment. The total of these expenses is \$263.31, which we approve as reasonable in view of the complexity of the issues.

TURN's total compensation for its substantial contribution to the marketing abuse issues resolved in D.87-12-067 is \$13,043.31 plus interest (Rule 76.58).

F. The Compensation Award

Consistent with the preceding discussion, TURN's total compensation award in connection with the interest synchronization issue is \$40,397.72, and in connection with the marketing abuse issue is \$13,043.31 for a total award in connection with D.87-12-067 of \$53,441.03. The calculation of this total award is set forth below in a table which separately describes the interest synchronization and marketing abuse components.

INTEREST SYNCHRONIZATION

Advocate Hours (J. F. Elliott)

(1)	38.5 hours in 1985 @ \$125/hr	=	\$ 4,812.50
(2)	59.5 hours in 1986 @ \$135/hr	=	8,032.50
(3)	18.0 hours in 1987-1988 @ \$135/hr	=	<u>2,430.00</u>
(4)	ADVOCATE TOTAL	=	\$15,275.00

Other Reasonable Expenses

(5)	Reproduce/Mail Motion (7/1/85)	=	\$ 14.50
(6)	Reproduce/Mail Amended Motion (7/9/85)	=	27.75
(7)	Reproduce/Mail Exhibit 501, 502	=	380.75
(8)	Reproduce/Mail Resp. Pac.Motion (3/5/86)	=	27.75
(9)	Reproduce/Mail IS Opening Brief (4/11/86)	=	135.25
(10)	Reproduce/Mail IS Reply Brief (4/25/86)	=	44.75
(11)	Reproduce/Mail Letter to ALJ (6/16/86)	=	11.78
(12)	Reproduce/Mail Supplemental Request	=	<u>84.75</u>
(13)	Expense Total	=	\$ 727.28
(14)	Billing by Carol T. Coffey		
	239.42 hrs @ \$100/hr + \$451.94 (Expenses)	=	\$24,395.44
(15)	TOTAL COMPENSATION AWARD FOR <u>INTEREST SYNCHRONIZATION ISSUE</u>	=	\$40,397.72

MARKETING ABUSE

Advocate Hours (Elliott, Barmore)

(16)	39.0 hrs in 1986 (Elliott) @ \$135/hr	=	\$ 5,265.00
(17)	47.0 hrs in 1987 (Elliott) @ \$135/hr	=	6,345.00
(18)	13.0 hrs in 1988 (Barmore) @ \$90/hr	=	<u>1,170.00</u>
(19)	Advocate Total	=	\$12,780.00

Other Reasonable Expenses

(20)	Repro/Mail R/O Opening Brief (38% actual)	=	\$ 108.35
(21)	Repro/Mail R/O Reply Brief (43% actual)	=	28.90
(22)	Repro/Mail Comments/ALJ Draft (70% actual)	=	53.06
(23)	Repro/Mail Amendment to Supplement	=	<u>73.00</u>
(24)	Expense Total	=	\$ 263.31
(25)	TOTAL AWARD FOR MARKETING ABUSE ISSUE	=	\$13,043.31
(26)	TOTAL AWARD FOR D.87-12-067 <u>(SUM OF (15) AND (25))</u>	=	\$53,441.03

Findings of Fact

1. TURN has requested compensation totalling \$2,569.56 in connection with its participation in those portions of this proceeding culminating in issuance of D.87-10-075. That decision required Pacific Bell to file a 1988 attrition year advice letter addressing both operational and financial attrition, and specified that Pacific Bell's intrastate rates and charges would be collected subject to refund beginning January 1, 1988, to account for any adjustment associated with the 1988 attrition year review.

2. In D.85-06-028, TURN was found eligible to claim compensation for its participation in these proceedings regardless of their duration beyond 1985; thus TURN has met the requisites of Rule 76.54.

3. TURN made a substantial contribution to D.87-10-075 by persistently raising the issue that Pacific Bell was required to file for a 1988 attrition adjustment, pursuant to past Commission decisions. Pacific Bell responded to TURN's inquiries by filing a Petition for Modification of D.86-12-099, thus providing a procedural vehicle for the clarification of its filing obligations. In addition, TURN filed a "Motion for an Expedited Order to Review 1988 Financial and Operational Attrition" which was granted in substantial measure in D.87-10-075.

4. TURN made a substantial contribution to D.87-10-075, which explicitly adopted TURN's request that Pacific Bell be ordered to address 1988 financial attrition issues by identifying its financings and refinancings from January 1, 1987, through December 31, 1987. (D.87-10-075, Ordering Paragraph 1.)

5. As directed by D.87-10-075, Pacific Bell filed Advice Letter 15343 on January 29, 1988, identifying a 1988 attrition year revenue requirement reduction of \$57.661 million. In Resolution T-12079, dated April 13, 1988, the Commission ordered a revenue requirement reduction of \$64.911 million for the 1988 attrition year, based on its independent review of Advice Letter 15343.

6. TURN's presentation of 1988 attrition-related issues, in particular its unique focus on financial attrition issues, did not materially duplicate the contribution of DRA, and consequently no reduction to account for duplication of effort is appropriate.

7. Given TURN's substantial contribution in pressing for Pacific Bell's 1988 attrition filing and in defining certain financial attrition issues in its motion seeking an expedited order, we will allow compensation for 16 advocate hours, as requested.

8. Given the nature and extent of TURN's efforts in connection with the 1988 attrition issue, its expense figure of \$169.56 appears reasonable, and entirely allowable.

9. TURN's request predominantly covers work performed in calendar year 1987, we have used a \$135/hour rate for staff counsel Elliott's time, consistent with the rate recently approved in D.88-11-025 covering approximately the same time period.

10. TURN has requested compensation totalling \$52,639.05 in connection with its participation in developing the interest synchronization issues resolved in D.87-12-067. That decision determined that adoption of an interest synchronization adjustment, which effectively lowered Pacific Bell's gross revenue requirement, would effect a better sharing of Investment Tax Credit (ITC) benefits between investors and ratepayers.

11. TURN made a substantial contribution to D.87-12-067 by persistently raising the issue of interest synchronization and attempting to have the matter heard, both in Phase 1 and Phase 2 of this proceeding.

12. TURN made a substantial contribution by formulating the interest synchronization policy issues, informing the Commission of the issuance of final IRS regulations, and successfully challenging Pacific Bell's efforts to minimize the impacts of the interest synchronization adjustment. TURN's efforts in these areas overlapped the similar efforts of other parties, but no reduction

of TURN's compensation award to account for duplication is merited, given the singular importance of TURN's efforts in initially raising the interest synchronization issue and pursuing it despite initial setbacks.

13. Given TURN's substantial contribution on the interest synchronization issue, we will allow compensation for 116 advocate hours, as requested.

14. TURN's Supplemental Request covers work performed during 1985-1987; we have used a \$125/hour rate for staff counsel Elliott's 1985 hours, consistent with other decisions covering the 1985 time frame and a \$135/hour rate for Elliott's 1986-1987 hours, consistent with decisions covering the 1986 and 1987 time frame.

15. Given the nature and extent of TURN's efforts in connection with the interest synchronization issue, its expense figure of \$727.28 appears reasonable and entirely allowable.

16. In its Supplemental Request, TURN has submitted an expert witness billing statement totalling \$36,366.77 premised on 359.13 hours at \$100/per hour, plus expenses totalling \$453.44. Pacific Bell believes the number of hours claimed is unreasonable and that the billing statement lacks sufficient detail.

17. There is no challenge to the expert witness' \$453.44 expense figure, which is properly allowable; however, Pacific Bell's criticism of the billing statement's lack of detail has merit, because the format of the statement fails to provide any information about the activities for which compensation is claimed; this problem coupled with our independent assessment that the claim for 359.13 hours is excessive, justifies a one-third reduction of compensable hours.

18. The \$100/hour rate billed by TURN's expert witness appears reasonable given the witness' extensive and lengthy public utilities background, and is not challenged by Pacific Bell.

19. TURN has requested compensation totalling \$14,203.31, in connection with its participation in certain remedial activities and penalty aspects of the marketing abuse issue decided in D.87-12-067.

20. TURN's Amendment to Supplemental Request is timely, although filed beyond the 30-day time frame set forth in Rule 76.56, because TURN reasonably did not believe that D.87-12-067 had "finally" resolved the CNP, CMOC and Ratepayer Education Trust issues, within the terms of Rule 76.56. In addition, no party challenges the timeliness of TURN's filing.

21. D.87-12-067 ordered Pacific Bell to (1) develop and test further informational and corrective customer notification/refund measures and to undertake a second Customer Notification Plan (CNP) campaign; (2) report on the results of the second CNP campaign; (3) set aside \$16.5 million to establish a Ratepayer Education Trust; (4) revise its Tariff Rule 12; and (5) develop a proposal for implementing itemized billing of its business customers. D.87-12-067 also provided for continuation of the workshop/CNP mechanism and establishment of the Customer Marketing Oversight Committee (CMOC). Finally D.87-12-067 denied TURN's motion for an order finding Pacific Bell in contempt of D.86-05-072.

22. TURN's recommendation that DRA's \$49.5 million penalty recommendation be increased to \$100 million based on Pacific Bell's 611 referral and branded directory actions subsequent to issuance of the cease and desist order was not adopted; however, TURN successfully negotiated with Pacific Bell to achieve distribution of a corrective bill insert on the branded directory issue.

23. TURN's recommendation that a Customer Advocate Trust Fund be created was not adopted.

24. Several parties, including TURN, recommended that the CNP/workshop mechanism be continued; this recommendation was adopted.

25. TURN made a substantial contribution to the resolution of certain marketing abuse issues decided in D.87-12-067. More specifically, it negotiated a successful resolution of the "branded directory" issue and actively participated in the ongoing CNP workshops; there is no justification, on the basis of the pleadings before us, or our independent review of these issues, for finding any duplication of effort.

26. Given TURN's substantial contribution on the marketing abuse issue, we will allow compensation as requested for 86 advocate hours and for 13 advocate hours associated with preparation of the Amendment to Supplemental Request.

27. For purposes of TURN's Amendment to Supplemental Request covering work performed during 1986-1987, we have used a \$135/hour rate for staff counsel Elliott's hours, consistent with decisions for that time period.

28. For purposes of TURN's Amendment to Supplemental Request, covering work performed during 1988, we have used a \$90/hour rate for staff counsel Barmore, consistent with D.88-11-025.

29. Given the nature and extent of TURN's compensable efforts in connection with the marketing abuse issues decided in D.87-12-067, its expense figure of \$263.31 appears reasonable and entirely allowable.

Conclusions of Law

1. TURN should be compensated for its substantial contribution to D.87-10-075, the decision which required Pacific Bell to file a 1988 attrition year advice letter.

2. Pacific Bell should be ordered to pay TURN the sum of \$2,329.56 as compensation for TURN's substantial contribution to D.87-10-075.

3. TURN should be compensated for its substantial contribution to development of the interest synchronization issue decided in D.87-12-067.

4. Pacific Bell should be ordered to pay TURN the sum of \$40,397.72 as compensation for TURN's substantial contribution to development of the interest synchronization issue decided in D.87-12-067.

5. TURN should be compensated for its substantial contribution to development of certain marketing abuse issues decided in D.87-12-067, consistent with the preceding findings of fact.

6. Pacific Bell should be ordered to pay TURN the sum of \$13,043.31 as compensation for TURN's substantial contribution to development of certain marketing abuse issues decided in D.87-12-067.

ORDER

IT IS ORDERED that:

1. Pacific Bell shall pay Toward Utility Rate Normalization (TURN) \$2,329.56 within 15 days from today, as compensation for TURN's substantial contribution to D.87-10-075; Pacific Bell shall also pay TURN interest on the principal amount of \$2,329.56, calculated at the three-month commercial paper rate, commencing on February 8, 1988, and continuing until payment of the award is made.

2. Pacific Bell shall pay TURN \$40,397.72 within 15 days from today, as compensation for TURN's substantial contribution to development of the interest synchronization issue decided in D.87-12-067; Pacific Bell shall also pay TURN interest on the principal amount of \$40,397.72, calculated at the three-month commercial paper rate, commencing on April 12, 1988, and continuing until payment of the award is made.

3. Pacific Bell shall pay TURN \$13,043.31 within 15 days from today, as compensation for TURN's substantial contribution to certain marketing abuse issues decided in D.87-12-067; Pacific Bell

shall also pay TURN interest on the principal amount of \$13,043.31, calculated at the three-month commercial paper rate, commencing on July 5, 1988, and continuing until payment of the award is made.

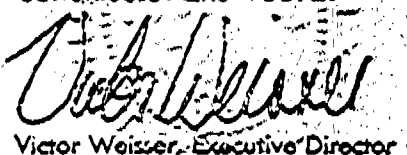
This order is effective today.

Dated ~~DEC 19 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 Weisser, Executive Director