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Decision 90-12-026 December 6, 1990

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
PACIFIC BELL (U 1001 C), a corporation,)
for authority to increase intrastate)
rates and charges applicable to)
telephone services furnished within)
the State of California.)

And Related Matters.)

ORIGINAL

Application 85-01-034
(Filed January 22, 1985;
amended June 17, 1989
and May 19, 1986)

I.85-03-078
OII 84
Case 86-11-028

(See Appendix A for list of appearances.)

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OPINION ON TURN'S REQUEST FOR COMPENSATION
ON PHASE III MODERNIZATION ISSUES

I. Summary of Decision

Toward Utility Rate Normalization (TURN) requests compensation of \$13,502 plus interest from July 14, 1990, the 75th day following the filing of TURN's Phase III (Modernization Issues) request for compensation on April 30, 1990. In this decision, we find that TURN made a substantial but lesser contribution to the record on the subject of Modernization, and we award compensation of \$7,542.00 plus interest for its work on Modernization issues in Phase III of this proceeding.

II. Background

TURN filed its request for a finding of eligibility for compensation in this proceeding on March 2, 1985, and by Decision (D.) 85-06-028 dated June 5, 1985, the Commission determined that TURN was eligible to claim compensation under Article 18.7 of our rules, for its participation in these proceedings. In D.85-06-028, the Commission further determined that TURN is eligible to claim compensation for its participation in these proceedings "regardless of their duration beyond 1985, and in other proceedings where TURN participates during 1985."

For its past participation in these proceedings, the Commission, by D.87-07-033, awarded TURN compensation in the amount of \$47,960.51 for its contribution to various specific subject areas leading to record evidence supporting five decisions, namely: D.86-01-026, D.86-03-049, D.86-05-072, D.86-08-026, and D.86-12-099. TURN in its current request correctly pointed out that it is eligible to claim compensation for the "Modernization" phase of this proceeding.

The issue of prudence of expenditures made by Pacific Bell to modernize its telephone plant was raised initially in December 1985 by the Public Staff Division, predecessor of the Commission's Division of Ratepayer Advocates (DRA) during the course of its investigation and study of Pacific Bell's 1986 test year rate application (Application (A.) 85-01-034). In DRA's "Report on Plant Modernization of Pacific Bell" dated December 16, 1985 DRA recommended that Pacific Bell be penalized \$43 million annually until it improved its decision-making practices regarding modernization investments.

The Commission, with only a brief opportunity to consider DRA's December 16, 1985 report, by Decision (D.) 86-01-026 dated January 10, 1986, left these proceedings open to allow parties an opportunity to present testimony "on whether PacBell's modernization programs are in the best economic interests of ratepayers" along with several other unresolved issues. In doing so the Commission left Pacific Bell's revenues "subject to refund" pending completion of its consideration of the Modernization issues. Subsequently, on March 10, 1989, following extensive discovery of Pacific Bell by DRA and SRI International (SRI) numerous studies, and discovery of the work of SRI and DRA, Pacific Bell and DRA jointly filed a proposed settlement agreement, "to settle all claims related to or arising out of the modernization proceedings," as a part of Phase III of A.85-01-034.

Notice was also given as part of the Pacific Bell-DRA joint filing of March 10, 1989, that a settlement conference would be convened on "Wednesday, March 22, 1989, at 1:30 p.m. in the California Public Utilities Commission hearing room, 505 Van Ness Avenue, San Francisco...to afford to all parties the opportunity to discuss, pursuant to Rule 51.1 of the Commission's Rules of Practice and Procedure, Pacific's and the DRA's proposed settlement..."

Then, on March 29, 1989, counsels representing DRA and Pacific Bell jointly filed a "Motion to Adopt and Approve Settlement" and appended thereto a "Settlement Agreement" executed by them on that same date.

Objections to the settlement agreement were timely filed by the Center of Public Interest Law of the University of San Diego (CPIL) and TURN within the 30-day comment period set forth in Rule 51.4 of the Commission's Rules of Practice and Procedure.

While CPIL and TURN raised other concerns, the two significant objections that warranted further attention are:

1. The adequacy of the dollar amount of the proposed settlement (\$36 million in rate adjustments for a four-year period); and
2. The overall relationship between Pacific Bell, SRI, and DRA relative to future investment decisions and the adequacy of the evaluation process being proposed for review of those decisions.

Details of these issues were summarized on page 6 of CPIL's March 16, 1989 request for hearing on the settlement proposal as follows:

"PacBell and DRA propose to stipulate to conditions that avoid gathering the basic information absolutely necessary for the Commission to do its job competently. Instead, PacBell agrees to pay \$36 million in an annual revenue reduction in each of four years. This amount is not a significant percentage of gross revenues. PacBell agrees to negotiate with SRI (a private concern) in an 'interactive, nonadversarial process' (whatever that means) an 'evaluation' of appropriate modifications of Pacific's investment decisions in these areas:

- "1) Non-guideline driven investment justifications;
- "2) Engineering guideline justification;
- "3) Documentation standards and their enforcement;

"4) Training/professional development needs;
and

"5) Peer reviews including feedback process.

"Leaving aside the substanceless jargon to which professional consulting firms are addicted, this proposed procedure avoids the gathering or presentation or review of the basic information the regulator must have to evaluate a major investment: (1) What is its impact on the utilization of current fixed plant in the existing monopoly loop upon which ratepayers must rely and which is the most fundamental concern of the regulator? (2) What is the impact in terms of marketplace intrusion from monopoly power sourced financing?"

With those objections in mind the assigned administrative law judge (ALJ) awaited the issuance of D.89-10-031, on October 12, 1989 presenting the Commission's Interim Opinion on Phase II of Order Instituting Investigation (I.) 87-11-033. By that order the Commission established a new regulatory framework for Pacific Bell and GTE California Incorporated (GTEC).

That decision employed price caps and an indexing mechanism to establish a requirement for sharing of excess earnings with ratepayers, above a benchmark rate of return, in lieu of the traditional "Rate Base" method of determining allowable earnings (rate of return) on net utility investment. Thus, the settlement agreement would now apply in this new regulatory framework and would also be considered in making adjustments to the initial rates, and for developing the indexing mechanism established pursuant to that order.

Accordingly on October 12, 1989 the assigned ALJ, by ruling, set three days of hearings commencing November 20, 1989, to consider the issues and concerns of CPIL and TURN, and directed Pacific Bell and DRA to appear and present testimony on those limited issues. The ALJ ruling required that Pacific Bell and DRA serve their prepared testimony on the parties to this proceeding.

All other parties were invited to participate in the cross-examination of Pacific Bell and DRA witnesses at the hearings.

The hearings concluded on the first day, and yielded 163 pages of transcript, on the matters dealing with "Phase III Modernization Issues" of A.85-01-034. Testimony on the issues previously outlined in the ALJ ruling was taken from two witnesses, one for Pacific Bell and one representing DRA. Five exhibits were identified, three were received at the hearing, and two late-filed exhibits were to be distributed by December 1, 1989. CPIL and TURN were permitted to file further exceptions and comments on the proposed settlement, or before December 8, 1989 and Pacific Bell and DRA were given until December 22, 1989 to reply to CPIL and TURN's exceptions and comments. The record on the "Phase III Modernization Issues" of A.85-01-034 was submitted on December 22, 1989, upon receipt of the Pacific Bell and DRA replies to TURN's¹ exceptions and comments of December 8, 1989.

D.90-03-075 was issued on March 28, 1990, adopting the March 29, 1989 "Settlement Agreement" subject to two significant revisions:

1. Two pages of clarifying definitions were added as an appendix to the settlement agreement and made a part thereof.
2. Pacific Bell was ordered to instruct SRI to mail or otherwise distribute to the Director of the DRA copies of any and all documents, letters, studies, or any other materials routinely or irregularly provided to Pacific Bell under the "Settlement Agreement," simultaneously with its like provision of these materials to Pacific Bell.

¹ CPIL did not file further exceptions or comments on the settlement agreement before the due date of December 8, 1989.

D.90-03-075 also ordered Pacific Bell to implement a bill and keep surcredit of 1.1064% effective on May 1, 1990, applicable to exchange services and to file that surcredit as a part of its tariff schedule on billing surcharges. The surcredit was ordered to remain effective for a period of 48 months, unless modified by further order of the Commission in the new regulatory framework investigation (I.87-11-033).

III. TURN's Current Claim

TURN asserts that it contributed substantially² to the Commission's final decision (D.90-03-075) adopting the settlement on "Modernization Issues" in Phase III of A.85-01-034. TURN argues that, based exclusively on concerns raised by it and CPIL, the ALJ set the matter for hearing. TURN contends that the issues were "(1) the adequacy of the dollar amount of the settlement and the corresponding rate design for the refund, and (2) the relationship between Pacific, DRA, and SRI."

TURN claims that, at the hearing, it explored the history of SRI's involvement in this proceeding and its prior dealings with both Pacific Bell and the DRA. TURN refers to Late-Filed Exhibit (Exh.) 5-M as evidence of these prior relationships. TURN alleges that it further clarified, through cross-examination of Pacific Bell's and DRA's witnesses, DRA and SRI's roles under the

² "Substantial contribution" is defined in Rule 76.52(g) as follows:

"(g) Substantial contribution means that, in the judgment of the Commission, the customer's presentation has substantially assisted the Commission in the making of its order or decision because the order or decision has adopted in whole or in part one or more factual contentions, legal contentions, or specific policy or procedural recommendations presented by the customer."

settlement. TURN also refers to Late-Filed Exh. 4-M as setting the five areas upon which SRI will focus upon under the settlement.³

Following the November 20, 1989 hearing, TURN on December 8, 1989 filed its comments and recommendations pertaining to the relationship between Pacific Bell, DRA, and SRI. Basically TURN recommended that the settlement be approved with the following modifications:

1. A provision should be added to the settlement agreement that would require DRA or the Commission Advisory and Compliance Division (CACD) approval prior to disbursements of any funds to SRI under the provisions of the settlement agreement that require Pacific Bell and SRI to enter into a contract.
2. A provision should be added to the settlement agreement that would mandate that any contract between SRI and Pacific Bell should include a provision granting ownership of SRI's work product jointly to both Pacific Bell and DRA/CACD.
3. A provision should be added to the settlement agreement that clearly indicates DRA's and CACD's authority to hire SRI in related projects.
4. Phase I and Phase II of the settlement agreement should be amended to include DRA and/or CACD participation.
5. Phase III of the settlement agreement should be amended to require that DRA and/or CACD should be briefed on the implementation of the adopted work plans on a regular basis, at least every 6-8 weeks on an as-needed basis.

³ Late-filed Exhs. 4-M and 5-M were prepared by Pacific Bell.

6. Phase IV of the agreement should be amended to require DRA and/or CACD to file a report commenting on the quality of Pacific Bell's compliance while including suggestions for additional measures which should be taken by the utility. In addition these reports should then be offered to the public and intervenors for comment before the Commission signifies that Pacific Bell's work is complete.
7. All refunds should be through a surcredit mechanism which recognizes the disproportionate economic harm suffered by residential ratepayers.

On December 22, 1989 Pacific Bell and DRA replied to TURN's comments and recommendations asserting that:

"TURN's Comments must be evaluated in light of its extremely limited participation in the modernization issue raised in this proceeding. TURN did not conduct any discovery or present any testimony or other evidence related to the modernization issue in Phase II of this proceeding. Nor did TURN conduct any discovery or attend any prehearing conferences in Phase III of this proceeding prior to the one-day hearing on November 20, 1989. In fact, TURN asked to become a part of this proceeding only after Pacific and the DRA announced the Settlement. TURN's comments and recommendations reflect its lack of participation in the series of events leading up to the Settlement.

"In contrast Pacific and the DRA have participated in this issue from its genesis in early 1985. During the past five years these two parties have devoted considerable time and resources to exploring this issue. Not only did Pacific and the DRA investigate the issue themselves, they hired independent consultants, Arthur D. Little ('ADL') and SRI International, respectively, to assist them (Mr. McCreight (for Pacific) Exh. 2, pp. 3-4). Furthermore, they pursued their respective investigations in a highly adversarial manner. With this knowledge and background, these parties are in the best position to negotiate a settlement,

and the procedures for its implementation, which reflects the public interest.

"TURN's Comments also reflect TURN's desire to modify existing Settlement terms and add new terms, whether or not these modifications are necessary. Every writer knows that a certain idea can be expressed in a number of different ways. It is not surprising, therefore, that TURN can identify alternative ways of expressing points already addressed in the Settlement. But the mere fact that TURN can identify alternatives does not mean those alternatives are any better than the expressions already in the Settlement. In fact, the wording used by the DRA and Pacific reflects the fact that the DRA and Pacific have gained knowledge and expertise in the subject matter over the last five years and consequently were able to negotiate and craft a settlement that is workable and serves the public interest."

DRA in its December 22, 1989 reply also urged rejection of TURN's recommended changes as follows:

"While DRA recognizes the ratepayer concerns expressed by TURN in its comments and recommendations, we strongly urge the Commission to reject these recommendations and adopt the proposed settlement as submitted. We would remind the Commission that the proposed settlement represents the give and take of negotiations. We believe that it is a carefully crafted agreement which includes checks and balances that we feel protect the interest of both the ratepayers and the stockholders of Pacific. Not only do TURN's arguments supporting their recommendations lack an understanding of the intent of the agreement, but they also fail to present persuasive reasoning that should justify modification of the existing agreement. Finally, many of the concerns expressed by TURN were taken into consideration in negotiating the settlement."

TURN's claim for compensation contends that the Commission recognized the legitimacy of its concerns and the merits

of its recommendations. TURN cites in part D.90-03-075 at page 20 (mimeo.) as follows:

"..., we do not intend to categorically reject all of TURN's recommendations as urged by both it [Pacific Bell] and DRA."

TURN then argued that the Commission's order validated TURN's concerns by incorporating SRI's role into the agreement and by requiring Pacific Bell "to instruct SRI to submit all of its work materials to Pacific and DRA simultaneously." TURN then claims that these safeguards (including those set forth in Late-Filed Exh. 4-M) specifically and effectively satisfy TURN's objectives behind three of its recommendations (Nos. 2, 4, and 5).

TURN also claims credit for the adopted rate design, contending that it successfully argued that "residential customers should receive a disproportionate [higher] share of the refund." Even though TURN had recommended that 50% of the refund be earmarked for a "new residential customer billing base" it contends that the Commission effectively responded to TURN's request "...by directing the entire refund to the Exchange Billing base." TURN agreed that this was an effective compromise and countered arguments of AT&T Communications of California for distributing the refund across all three billing bases.

TURN argues that it clearly prevailed, at least in part, on both of the major [settlement] issues before the Commission in this limited phase of this proceeding.

TURN points to a finding in D.85-06-028 [Conclusion of Law 1] that participation without compensation will constitute a hardship to it, as required for an award of compensation under Rule 76.53(b).

As to "duplication" TURN contends that it raised a markedly different set of objections than those of CPIL who had earlier participated in this proceeding, citing the work of CPIL as involvement before the settlement and objections to the settlement

agreement, whereas TURN maintains that it offered particular recommendations for improving the settlement and for directing the refunds to residential customers.

TURN summarized its request for compensation as follows:

Attorney Fees:

Barmore - 94.75 hours⁴ x \$140 = \$13,265

Other Reasonable Costs:

Copying Expenses	=	169
Postage Costs	=	68

Total \$13,502

In this current compensation request, TURN also asks that Barmore's hourly rate be raised from the \$125 per hour granted in D.89-07-063 to \$140 per hour for this effort. TURN maintains that the higher rate reflects the nearly three years of added experience Barmore has gained before this Commission, as compared to that available for the referenced award.

TURN included, in Appendix B to its request, a nationwide "Billing Rate Survey" for legal firms. TURN used the survey to support a range of \$150 to \$225 per hour for "High Associates" and \$80 to \$225 per hour for "All Associates" listed in the survey for San Francisco.

TURN avers that it has met all the requirements of Article 18.7, and respectfully requests an award of compensation of \$13,502 plus interest after July 14, 1990 in accordance with Rule 76.58.

4 In Appendix A to its request, TURN provided a detailed breakdown of the time spent and related activities, by its attorney Mark Barmore.

IV. Pacific Bell's Response

On May 29, 1990, Pacific Bell responded to TURN's request asserting that TURN did not make a substantial contribution to the Commission's decision and therefore its request for compensation should be denied.

Pacific Bell pointed out that the Modernization issue was raised by the DRA in early 1985, and that up until February 1989 "DRA and Pacific were the principal parties pursuing this issue."⁵ Pacific Bell asserts that TURN had no involvement in the "Modernization" issue until March 1989, after the settlement was reached. Pacific Bell further asserts that D.90-03-075 approved the settlement proposed by it and the DRA with three changes, none of which was recommended by TURN.

Pacific Bell argues that "substantial contribution" means 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 recommendations presented by the customer." (Rule 76.52, emphasis added.) Pacific Bell contends that, "judged by standard, TURN did not make a substantial contribution to the Decision."

Pacific Bell further argues that the Commission modified the settlement agreement in only three ways:

- "(1) An exhibit was appended to the Settlement Agreement which contained five paragraphs describing the five areas in which Pacific and SRI will identify and implement improvements to Pacific's capital investment decision making process;

⁵ CPIL also participated during Phase II hearings and proposed that the Commission require Economic Impact statements for the modernization investments.

- "(2) Pacific was required to instruct SRI International to mail or otherwise distribute to the DRA copies of all documents provided to Pacific under the Settlement Agreement, simultaneously with SRI's provision of these materials to Pacific; and
- "(3) Pacific was required to establish a surcredit applicable to local exchange services to refund the \$36 million per year revenue reduction contained in the Settlement Agreement unless and until the surcredit was modified by the Commission in the supplement rate design portion of I.87-11-033, and none of these modifications was proposed by TURN."

Pacific Bell further takes issue that the surcredit applicable to local exchange service base skewed benefits to residential ratepayers as TURN had recommended. Pacific Bell claims that the exchange billing base yields approximately 46% of the refund to residential ratepayers whereas under TURN's proposal residential ratepayers would have received approximately 69% of the refund.

Pacific Bell summarizes its response by arguing that the intent of Rules 76.52 and 76.53 is "not to compensate an intervenor for merely participating in a Commission proceeding, but for making contentions or recommendations which the Commission adopts." Pacific Bell contends that TURN has not made a substantial contribution to the decision and its request should be denied.

TURN, on June 11, 1990 filed a reply to Pacific Bell's May 29, 1990 response to its request for compensation. In that reply TURN challenges Pacific Bell's reasoning by arguing that:

"Even though, these modifications (to the decision) were in direct response to TURN's concerns, and at least partially fulfill TURN's objectives, Pacific argues compensation is not warranted. Pacific conclusion is counter-intuitive, inequitable and contrary to Commission precedent."

TURN contends that under the definition of Rule 76.52(g) (see footnote 2 herein) there is no doubt that TURN has made a significant contribution and the procedural history and the final order reflect TURN's substantial contribution.

TURN concedes that the Commission only partly adopted its recommendations. However, TURN asserts that if Pacific's recommendations were used as a "litmus test" and taken to an extreme such a standard would forbid compensation anytime the Commission modified a consumer's recommendation. TURN then advanced the following argument:

"Such a limited view of substantial contribution would frustrate the objective behind the code: to encourage customer participation.

"Moreover, such a standard would lead to incongruous results. For example, a party could devote a hundred hours to the development of a particular issue. The Commission, upon consideration of the issue, could see merit in the party's arguments, but instead adopt another, perhaps better, means of solving the problem raised initially by the party. This scenario would seem to typify this quasi-judicial process at its best. The party has brought arguments and evidence to the ALJ's attention and he/she has used this information to formulate a better solution to the problem. To say that such a party has not substantially contribute to the outcome of the case is nonsensical."

V. Discussion

Pacific Bell's argument is persuasive relative to the degree of contribution made by TURN in this "Modernization Phase III" of the proceeding and also to the fact that TURN did not commence its earnest participation until a settlement of the issues was entered into by the principal parties (Pacific Bell and DRA).

However, TURN's intervention did focus attention to the need for clarity in the definition of SRI's work product and its

simultaneous and timely delivery to the principal parties (DRA and Pacific), as well as the need to carefully choose the appropriate base for distribution of the settlement refund. Accordingly, we conclude that TURN made a significant and substantial contribution which caused the ALJ and the Commission to take a closer look at the proposed settlement. That closer look led to a modified settlement which was clearly different from TURN's recommendations but which benefited from TURN's directed attention and concerns.

We also conclude that TURN's late participation took on a scattershot approach, initially raising some seven issues for modifying the settlement agreement. In view of the approach taken, as well as a review of TURN's detail of billed hours in Appendix A, to its request for compensation, we further conclude that a good portion of the time was spent reviewing the work of others namely DRA and CPIL, and in meetings and phone calls with these parties as contrasted to careful review of the proposed settlement agreement. Since its ultimate productive focus was on the latter item, it can only be reasoned that a good percentage of the early work was unproductive and otherwise could be described as "false starts." Lastly the small amount of time .75 hours logged in August, 1988 does not appear in any way related to the settlement issues of this modernization Phase III of the proceeding and thus not worthy of consideration. Accordingly, we will exclude all work performed prior to March 20, 1989, and include only 50% of the claimed hours from March 20 through December 26, 1989. The hours claimed for this period were 75.75 hours and 50% of those hours would equal 37.875 hours. We will round that amount to 38 productive hours.

The work performed during the period of February 13 through April 27, 1990 appears more closely associated with TURN's actual participation in this proceeding and does not lead to any impressions of unproductive work or overaccrual of hours. Accordingly, we will authorize compensation for all 18.25 hours of work recorded during that period.

On the question of hourly rates for the work performed, we arrive at a similar conclusion (e.g. that the work performed in 1989 could have been handled as well by a person with less qualifications than a "high associate" attorney. Whereas, the billed for work in February through April 1990 appears to have been accomplished on a timely basis and with the professional image of a highly competent attorney. On that basis, we will allow the higher rate of \$140 per hour for the billed work performed by Barmore in calendar year 1990 and use the lower rate of \$125 per hour for his work charged to this Modernization Phase III activity in 1989.

The other reasonable costs of copying (\$169) and postage (\$68) are acceptable and will be included in full.

VI. Recomputation of Reasonable Compensation

The resulting adjusted compensation for TURN in the "Modernization Phase III" of this proceeding is as follows:

<u>Work Activity</u>	<u>Amount</u>
Mark Barmore 38 hours for the period of 3/20/89 through 12/26/89 @ \$125	= \$4,750.00
Mark Barmore 18.25 hours for the period of 2/13/90 through 4/27/90 @ \$140	= 2,555.00
Copying Expenses	= 169.00
Postage	= <u>68.00</u>
Total	\$7,542.00

VII. Conclusion

We conclude that TURN's "Request for Compensation" on Modernization Phase III issues in A.85-01-034, et al., as modified and recomputed above, is reasonable.

TURN is, therefore, entitled to supplementary compensation in A.85-01-034, et al. in the amount of \$7,542.00.

This order will, consistent with various prior decisions, also provide for interest to accrue commencing on July 14, 1990, on this award of \$7,542.00, continuing until full payment of the award is made. This date represents the 75th day after the filing of TURN for compensation for its contributions to the Modernization Phase III of this proceeding.

This order should be made effective today to assure that TURN will receive this long-awaited compensation award before the end of calendar year 1990.

TURN is placed on notice it may be subject to audit or review by the Commission Advisory and Compliance Division. Therefore, adequate accounting records and other necessary documentation must be maintained and retained by the organization in support of all claims for intervenor compensation. Such record-keeping systems should identify specific issues for which compensation is being requested, such as the actual time spent by each employee, the hourly rate paid, fees paid to consultants, and other costs for which compensation may be claimed.

Findings of Fact

1. TURN has requested compensation totaling \$13,502.00 plus interest for its participation in the Modernization Phase III of this proceeding.

2. TURN was found eligible for compensation in D.85-06-028 for its participation in these proceedings, regardless of their duration beyond 1985.

3. TURN's participation in this Modernization Phase III of A.85-01-034 stimulated discussions which led to better definition and further clarification of the activities to be performed as well as the contemporaneous distribution of deliverables by SRI to Pacific Bell and the DRA under the adopted settlement.

4. TURN's participation also focused attention on the use of a reasonable revenue base for distribution of refunds to customers even though TURN's specific method was rejected.

5. An hourly rate of \$125 continues to be reasonable for Barmore's productive work as an associate counsel for TURN during calendar year 1989.

6. An hourly rate of \$140 is reasonable for Barmore's productive work as an associate counsel for TURN during calendar year 1990 based on the type and quality of the work performed by Barmore in this proceeding during 1990.

7. TURN's claim for participation on the Modernization Phase III of this proceeding as modified and adjusted herein is reasonable.

8. The other costs claimed in connection with TURN's participation in the Modernization Phase III of A.85-01-034 are reasonable.

Conclusions of Law

1. TURN made a significant and substantial contribution to the record in the Modernization Phase III of A.85-01-034.

2. Pacific Bell should be ordered to pay TURN \$7,542.00 plus interest accrued on and after July 14, 1990, for its contribution to the Modernization Phase III record of A.85-01-034.

3. This order should be made effective today to assure that TURN will timely receive this compensation award before the end of calendar year 1990.

O R D E R

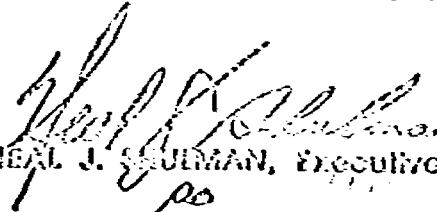
IT IS ORDERED that Pacific Bell shall pay Toward Utility Rate Normalization (TURN) \$7,542.00 within 15 days from the effective date of this order. Pacific Bell shall also pay TURN interest on this amount commencing on and after July 14, 1990. This interest shall be computed at the average three-month commercial paper rate as published in the Federal Reserve Bulletin until full payment of the award is made.

This order is effective today.

Dated December 6, 1990, at San Francisco, California.

G. MITCHELL WILK
President
FREDERICK R. DUDA
STANLEY W. HULETT
JOHN B. OHANIAN
PATRICIA M. ECKERT
Commissioners

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


NEAL J. SEIDMAN, Executive Director

APPENDIX A

List Of Appearances

Applicant: Daniel J. McCarthy, Jackie Holmes, and Greg Castle, Attorneys at Law, for Pacific Bell.

Respondents: Messrs. Davis, Young & Mendelson, by Jeffrey F. Beck and Sheila A. Brutoco, Attorneys at Law, for CP National, Citizens Utilities Company of California, Evans Telephone Company, GTE West Coast Incorporated, Happy Valley Telephone Company, Hornitos Telephone Company, Kerman Telephone Company, Pinnacles Telephone Company, Sierra Telephone Company, The Siskiyou Telephone Company, Tuolumne Telephone Company, The Volcano Telephone Company, and Winterhaven Telephone Company; Kim C. Mahoney, for CP National Corporation; and A. J. Smithson, for Citizens Utilities Company of California.

Interested Parties: Messrs. Cooper, White & Cooper, by E. Garth Black and Mark P. Schreiber, Attorneys at Law, for Roseville Telephone Company, Calaveras Telephone Company, California-Oregon Telephone Company, Ducor Telephone Company, Foresthill Telephone Company, and The Ponderosa Telephone Company; Randolph Deutsch, Attorney at Law, for AT&T Communications of California, Inc.; Robert Fellmeth and James Wheaton, Attorneys at Law, for Center for Public Interest Law; Graham & James, by Martin A. Mattes, Attorney at Law, and Janice Hill, Attorney at Law, for California Cable Television Association; William G. Irving, for County of Los Angeles; Jerry O'Brien and Diane Martinez, for API Alarm Systems; Kenneth K. Okel and Kathleen S. Blunt, Attorneys at Law, for GTE California Incorporated; Earl Nicholas Selby, Attorney at Law, for Bay Area Teleport; Cecil O. Simpson, Attorney at Law, for U.S. Department of Defense and all other Federal Executive Agencies; Sidney Webb, for himself; Alan Weiss and Pat Chow, Attorneys at Law, for MCI Telecommunications; Orrick, Herrington & Sutcliffe, by Robert J. Gloistein, Attorney at Law, for Contel of California, Inc.; Norman T. Stout, for Northern Telecom, Inc.; William S. Shaffran, Attorney at Law, for City of San Diego; Mark Barmore, Attorney at Law, for TURN; and August A. Sairanen, Jr., for California Department of General Services, Telecommunications Division.

Division of Ratepayer Advocates: Lionel B. Wilson, Attorney at Law, Louis Andregg, and David H. Weiss.

Commission Advisory and Compliance Division: Kevin P. Coughlan.

(END OF APPENDIX A)