

Mailed

JUN 20 1991

Decision 91-06-045 June 19, 1991

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
of Pacific Bell (U 1001 C), a )  
corporation, for approval of )  
COMMSTAR<sup>SM</sup> Features. )

**ORIGINAL**  
Application 90-11-011  
(Filed November 9, 1990)

In the Matter of the Application )  
of Contel of California, Inc. )  
(U 1003 C), a corporation, for )  
approval of Custom Calling Plus )  
Features. )

Application 90-12-065  
(Filed December 28, 1990)

In the Matter of the Application )  
of GTE California Incorporated )  
U 1002 C), a corporation, for )  
authority to provide SmartCall<sup>SM</sup> )  
Services. )

Application 91-01-039  
(Filed January 31, 1991)

OPINION ON ELIGIBILITY

On February 14, 1991 Consumer Action (CA) filed a "Request for Finding of Eligibility for Compensation" for its participation in this consolidated proceeding.<sup>1</sup> The request is made under Rule 76.54 of the Commission's Rules of Practice and Procedure.

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 proceeding was held on January 15, 1991.

1 CA filed its request only in Application (A.) 90-11-011 and A.90-12-065. However, the administrative law judge ruled that GTE California Incorporated's custom local area signaling services (CLASS) application would also be consolidated if filed by January 31, 1991.

Rule 76.54(a) sets out four requirements for a request for finding of eligibility:

- "(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; and
- "(4) A budget for the customer's presentation."

Significant Financial Hardship

CA maintains that it meets both requirements of significant financial hardship, as set forth in Rule 76.52(f):

- "(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 an 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."

A. Representing Residential Ratepayer Interests

CA asserts that it represents an interest--that of residential ratepayers--that would not otherwise be adequately represented in this proceeding; that while Toward Utility Rate Normalization (TURN) and Utility Consumers' Action Network (UCAN)

are appearing in this proceeding on the part of residential customers, the three organizations have unique perspectives and different members.

In addition to representing its own members, CA asserts it brings special insights to the proceeding because of its outreach to low-income and limited English-speaking consumers. CA has four outreach workers engaged in telecommunications education work with community organizations and social service agencies throughout the state. Its outreach workers speak English, Chinese, Spanish and Cambodian. Its educational materials are printed in those languages plus Korean, Laotian and Vietnamese. The agencies provide CA with valuable information on how recent immigrants and other low-income consumers view new telephone services and products.

CA maintains it has been very active both in California and nationwide on issues that must be considered by the Commission as it examines the applications by the local exchange companies (LEC) to provide the new CLASS services.

CA considers itself to be the leading consumer organization representing residential ratepayer interests on Commstar-type services at the national level. It has spoken on aspects of the new Commstar features at numerous trade and regulatory conferences over the last two years. CA is especially concerned with privacy, the education of consumers so that they can make an intelligent decision as to which of the new services they will get, and how the LECs will market the services.

CA believes that the complexities associated with this proceeding require that CA, TURN and UCAN all be active participants.

#### B. The Economic Interests of Ratepayers

Absent an award of compensation to CA, it asserts, residential consumers will not have adequate representation on the vitally important issues being considered by the Commission in this

proceeding. CA plays a leading role in raising concerns faced by ratepayers when these new features are introduced into the marketplace.

CA contends that its insights and recommendations will prove to be valuable in these proceedings and that not only would it not be cost-effective for its 2,000 members throughout the state to participate individually, they would lack the expertise and background on these issues that CA has developed over the past 19 years.

It is in the public interest that these applications be fully investigated and aired through our hearing process. Given the breadth and complexity of the issues presented and the potential impact on residential customers, we conclude that adequate representation requires the participation not only of our Division of Ratepayer Advocates, but also of other parties such as CA. Furthermore, it would not be cost-effective for individual residential ratepayers to bear the expenditures expected for participation in this proceeding. CA has met the requirement of Rule 76.54(a)(1).

Statement of Issues

Rule 76.54(a)(2) requires an organization seeking a determination of eligibility for funding to set forth a statement of issues to be raised in the proceeding. CA's initial concerns are:

1. Unlike other services, Caller ID is one that affects consumers even if they do not sign up for it. Thus, the LECs bear a great burden of insuring that nonsubscribers' interests are protected.
2. Per-call blocking does not adequately address the privacy concerns of the calling party.
3. Requiring callers to dial additional digits to insure confidentiality of their numbers represents a denigration of existing telephone service.

4. Per-call blocking should be mandated if a LEC wishes to offer Caller ID.
5. There is an overlap between many of the features of the old and new Commstar services that will make it extremely difficult for consumers to properly decide which services, if any, would serve their needs.
6. The addition of new Commstar features will make telephone service far too complex to be marketed to residential ratepayers primarily over the phone. The LECs should be required to provide potential customers with printed information on the various Commstar features prior to an order being final.
7. The Pacific Bell marketing sales abuse case revealed that low-income and limited English-speaking consumers were victimized far more than other parts of the population. This must be addressed as the Commission sets forth marketing and education outreach standards that will be ordered for Commstar features.
8. CA would oppose permitting discount packages of Commstar services. Such packages lay at the heart of the Pacific Bell marketing sales abuse case.
9. The LECs must address the special case of those consumers who now pay for unlisted or nonpublished telephone numbers. Caller ID reduces the value of such a service and the Commission should address whether a lower monthly fee would thus be required for unlisted and nonpublished numbers.

CA's recitation of issues to be addressed has satisfied the requirement set forth in Rule 76.54(a)(2).

Estimate of the Compensation

Rule 76.54(a)(3) requires an estimate of the compensation that will be sought. CA asserts that it intends to fully participate on all issues before the Commission in this proceeding,

and will seek full compensation for work on issues where it substantially contributes. It states that it is too early to know what those issues will be. In the circumstances the provision set forth in Rule 76.54(a)(3) has been satisfied.

Budget

Rule 76.54(a)(4) requires CA to submit a budget for the proceeding. CA maintains this is difficult to do, because no decision has been reached as to the length of the evidentiary hearings. Thus, CA's budget is preliminary and subject to significant change. Its preliminary budget assumes 25 days of hearings.

Preliminary Proposed Budget

Advocate Fees	
400 hours @ \$135 per hour	\$54,000
Consultant Fees	
100 hours @ \$100 per hour	10,000
Other reasonable fees and expenses at 10% or above	<u>6,400</u>
Total	\$70,400

Rule 76.54(a)(4) has been satisfied.

CA's Finances

Rule 76.54(a)(1) states that an organization seeking a determination of eligibility for compensation must file a summary of the finances of the customer, which shall distinguish between grant funds committed to specific projects and discretionary funds.

The Appendix to CA's request contains its balance sheet for the previous fiscal year and its budget for the coming year, and shows that only \$102,000 of CA's projected income of \$630,000 is not committed to specific projects. CA emphasizes that membership dues and donations are the source of its primary discretionary funds. This income must support membership and general public services such as: eight issues of CA NEWS, three statewide banking fee surveys, research and printing of a guide to

California complaint handling agencies, and staffing of a complaint and information switchboard in four languages.

CA contends that its discretionary funds are not adequate to support its ongoing work, and to adequately support its representation of residential ratepayers in this proceeding. As such, if denied eligibility for compensation, CA would suffer a significant financial hardship and would have to end its participation in these proceedings. CA acknowledges that it is able to front the money needed for participation, but needs to be able to recoup these funds at the end of the proceedings.

#### Common Legal Representative

Rules 76.55 and 76.59 allow for the possibility that the Commission may choose to designate a common legal representative, although to CA's knowledge no such designation has ever been made in any Commission proceeding. CA believes there is no information to indicate any need for such a designation in this proceeding, since while CA, TURN and UCAN are all participating, the organizations and their memberships, perspectives and emphases are different, and thus a common representative would not be appropriate.

It appears that CA has met the four requirements of Rule 76.54(a). In addition, no party has responded to its request nor raised the issue of the appropriateness of a common legal representative. We conclude that CA is eligible to claim compensation for its participation in this proceeding.

#### Findings of Fact

1. CA'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. CA's participation would pose a significant financial hardship as defined in Rule 76.52(f).

3. It is not necessary at this time to designate a common legal representative for the interests CA represents in this proceeding.

Conclusion of Law

CA should be ruled eligible to claim compensation for its participation in this proceeding.

ORDER

IT IS ORDERED that Consumer Action is eligible to claim compensation for its participation in this proceeding.

This order is effective today.

Dated June 19, 1991, at San Francisco, California.

PATRICIA M. ECKERT  
President  
G. MITCHELL WILK  
JOHN B. OHANIAN  
DANIEL Wm. FESSLER  
NORMAN D. SHUMWAY  
Commissioners

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

*Neal J. Shulman*  
NEAL J. SHULMAN, Executive Director

PB