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Decision 91-07-048 July 24, 1991

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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of AT&T Communications)
of California Inc. (U 5002 C) for)
Authority to Increase the Rate for)
Intrastate InterLATA Directory)
Assistance Service.)

ORIGINAL

Application 90-02-060
(Filed February 26, 1990)

(See Decision 91-03-016 for List of Appearances.)

OPINION ON TURN'S REQUEST FOR COMPENSATION

Pursuant to Rule 76.56 of the Rules of Practice and Procedure, Toward Utility Rate Normalization (TURN) requests an award of compensation for its contribution to Decision (D.) 91-03-016 denying the application of AT&T Communications of California, Inc. (AT&T) to increase rates for directory assistance calls in California. TURN already has been found eligible for compensation in this proceeding by D.91-03-035, and its request for an award of compensation is unopposed. TURN's request for compensation has been timely filed under Rule 76.56.

1. TURN's Contribution to the Decision

Rule 76.56 requires a substantial contribution as a condition for compensation, and Rule 76.52(g) defines substantial contribution as one that:

"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."

TURN states that its contribution in this proceeding satisfies these requirements. TURN states that at hearing and on brief, it successfully argued that:

- 1. The requested directory assistance rate increase should be denied because AT&T

failed to meet its burden of proof in justifying the increase;

2. The requested increase was not justified on the record by AT&T's costs;
3. There is not effective competition for the type of directory assistance service at issue;
4. There is customer confusion on the different directory assistance rates applicable to interstate, intrastate, and local exchange areas; and
5. AT&T was required to meet a higher burden of proof to prevail on its motion for interim relief.

1.1 Burden of Proof

As TURN notes, the major contested issue in this proceeding was whether AT&T had met the burden imposed by Public Utilities Code § 454(a) of showing that the proposed increase in the price of directory assistance calls was justified. TURN was the only party that argued from the start that AT&T had failed to show that its costs justified a rate increase. (Tr. Vol. 2, at 165.) While the Division of Ratepayer Advocates (DRA) also opposed the increase, it did so initially on the basis that other proceedings were likely to make the request moot.

AT&T's acknowledgement that its revenue shortfall was approximately a half-cent per call was brought out in TURN's cross-examination of AT&T's witness (Tr. Vol. 1, at 63-64). The decision's finding that AT&T's away-from-home free call policy imposed costs of this marketing strategy only on paying users of directory assistance was a point made by TURN's witness Karen L. Miller in her testimony. (Ex. 4, at 9-10.)

In addition, the decision refers to TURN's argument and testimony that there is not effective competition in directory

assistance service, thus reinforcing the need for regulatory review of pricing in this area. (Decision, at 20-21.)

The decision did not adopt TURN's proposal that AT&T permit two free directory assistance calls per month. However, the Commission noted that this proposal "was useful in assessing aspects of the reasonableness of [AT&T's] application." (Decision, at 22.) As part of this proposal, TURN developed evidence on customer confusion and on the subsidy involved in AT&T's away-from-home free call policy. This evidence contributed to the Commission's decision.

In sum, the decision reflects TURN's substantial contributions to the overall outcome and much of the supporting factual and legal analysis. While some of TURN's participation overlapped that of DRA, it is our judgment that TURN's presentation did not materially duplicate that of other parties to such a degree that a proportional reduction of the award under Rule 76.53(c) would be warranted.

2. Amount of Award

Having determined that TURN should be awarded compensation for its contributions to D.91-03-016, we proceed to examine the components of TURN's requested award of \$14,732.

Rule 76.56 requires a detailed description of an intervenor's services and expenditures for which compensation is sought. TURN has submitted detailed statements of the time spent by an attorney and an expert witness in preparing for and taking part in this proceeding. (See, Appendices A and B, TURN Request for Compensation.) In summary, the requested compensation includes:

Attorney Fees:

Thomas J. Long, Staff Attorney	54.25 hours x \$160/hour	\$ 8,680
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Witness Fees:

Karen L. Miller,

Telecommunications Analyst/Program Manager	50.75 hours x \$110/hour	5,583
<u>Other Costs:</u>		
Photocopying		320
Postage		<u>149</u>
	<u>Total</u>	\$14,732

2.1 Hours

TURN's attorney, Long, and its expert witness, Miller, maintained detailed records of the hours devoted to this case. Miller began work on the case in August 1990, preparing much of TURN's response to AT&T's motion for interim recovery pending a final decision. The bulk of her time came in November 1990 in preparation of the direct testimony presented at hearing.

Apparently because TURN was able to rely on Miller for much of the early preparation, Long did not begin billing time to this case until November 1990. His billing records show 28.5 hours devoted to preparation of cross-examination and closing argument, as well as the two days of hearing conducted on November 14 and 15, 1990. His remaining time on the case in 1991 included preparation of two sets of comments on the proposed decision, plus the preparation of this request for compensation.

2.2 Hourly Rates

TURN seeks an hourly rate of \$160 for Long, a rate that it states is well below the market rate for attorneys of his skill and experience. Long clerked for a year for a United States District Court judge. He then joined Morrison & Foerster in October 1986, devoting a substantial portion of his time to Morrison's pro bono representation of TURN in the Diablo Canyon prudency review proceeding. Long represented TURN before the Commission, and he briefed and argued TURN's challenge to the settlement in that proceeding. He joined TURN as a staff attorney in October 1990.

In D.91-04-054, decided on April 24, 1991, the Commission approved an hourly rate of \$160 for an experienced TURN lawyer, finding that this rate is justified and that it does not exceed the market value for attorneys of comparable training and experience.¹ We find the rate of \$160 to be reasonable for an attorney of Long's training and experience. We are persuaded that it does not exceed the market value for attorneys of comparable training and experience.

TURN requests a rate of \$110 per hour for Miller. Miller has been a telecommunications analyst for 7 years, 6 of them with the DRA, where she testified frequently as an expert witness.²

In D.90-09-049 and in D.91-04-054 the Commission compensated TURN for the services of a consulting expert at the rate of \$120 per hour. Miller not only testified but, because of her experience, was able to prepare documents that might otherwise have required the time of an attorney at a higher rate. We find that the rate requested for this witness is reasonable.

2.3 Other Costs

Rule 76.52(c) defines "other reasonable costs" as "reasonable out-of-pocket expenses incurred by a customer not exceeding 25% of the total reasonable advocate's fees and expert

1 In its request for compensation, TURN submits an affidavit from a Morrison & Foerster partner stating that Long's time would have been billed by the firm at \$175 an hour or more. Additionally, TURN submitted a June 4, 1990 article from the publication Of Counsel showing hourly rates for "high associates" in San Francisco law firms ranged from \$175 to \$215. (Ex. 1 to Declaration of Thomas J. Long.)

2 Supporting the rate request for Miller is a declaration of Terry L. Murray, a former director of DRA and now senior project manager with the consulting firm of Morse, Richard, Weisenmiller & Associates, Inc. Murray states that, given Miller's knowledge and experience, \$110 is a reasonable billing rate for her services. (Declaration of Terry L. Murray, TURN Request for Compensation.)

witness fees awarded." TURN seeks \$469 for copying and postage costs it incurred directly. This cost is reasonable and will be adopted.

2.4 Costs of Preparing Request for Compensation

In D.91-07-001, dated July 2, 1991, we stated that we will no longer authorize compensation for the cost of calculating and submitting a fee request. TURN's records in this case show that 15.25 hours of attorney time and 2.5 hours of witness time were devoted to preparing the eligibility and compensation requests. Pursuant to D.91-07-001, the resulting \$2,715 in claimed fees is disallowed.

3. Conclusion

TURN has substantially assisted the Commission in this proceeding, and is entitled to compensation of \$14,732. As discussed in previous Commission decisions, this order will provide for interest commencing after July 6, 1991 (the 75th day after TURN filed its request) and continuing until full payment of the award is made.

TURN is placed on notice that 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 recordkeeping systems should identify specific issues for which compensation is being requested, the actual time spent by each employee, the hourly rate paid, fees paid to consultants, and any other costs for which compensation may be claimed.

Findings of Fact

1. No response to TURN's request for compensation has been filed.
2. TURN timely requests \$14,732 in compensation for its participation in this proceeding.

3. TURN made a substantial contribution on the major issues in which it participated in this proceeding.

4. TURN's request for an hourly fee of \$160 for its attorney does not exceed the market value for attorneys of comparable training and experience.

5. The hourly rate requested for TURN's expert witness is reasonable.

6. TURN's counsel spent 15.25 hours and its expert witness spent 2.5 hours preparing the eligibility and compensation requests in this proceeding.

Conclusions of Law

1. TURN's presentation did not materially duplicate the presentations of other parties to such a degree that a proportional reduction of the award under Rule 76.53(c) would be warranted.

2. TURN's requested hourly rates for its attorney and expert witness are reasonable and should be adopted.

3. Because TURN made a substantial contribution on the major issues in which it participated, TURN's request for the full costs of general preparation is reasonable and should be granted.

4. TURN's request for \$469 for photocopying and postage costs is reasonable and should be granted.

5. TURN has substantially assisted the Commission in this proceeding.

6. Pursuant to D.91-07-001, a total of \$2,715 should be disallowed as time spent in preparing the eligibility and compensation requests in this proceeding.

7. TURN is entitled to compensation of \$12,017.

8. This order should be effective today to minimize delay in recovery of the compensation award.

ORDER

IT IS ORDERED that:

1. The request of Toward Utility Rate Normalization (TURN) for compensation is granted in the amount of \$12,017.

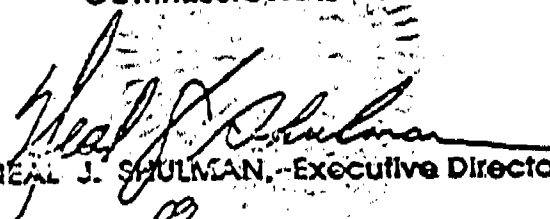
2. AT&T Communications of California, Inc., shall, within 10 days of the effective date of this order, remit to TURN \$12,017, plus interest calculated at the 3-month commercial paper rate, after July 6, 1991, until full payment is made.

This order is effective today.

Dated July 24, 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, Executive Director