

Decision 91-11-065 November 20, 1991

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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation instituted on the
Commission's own motion into the
operations, practices and regulation
of coin and coinless customer-owned
pay telephone service.

) I.88-04-029
) (Petition for Modification
) filed March 4, 1991)

And Related Matters.

) Case 85-02-051
) (Filed February 21, 1985)
) Case 85-07-048
) (Filed July 17, 1985)

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Even though TURN did not seek a finding of eligibility in I.88-04-029, such a finding is not necessary. This is because, by definition, the consolidation of these complaint cases into the investigation combines the complaint case record, including TURN's finding of eligibility, into the investigation record. TURN is eligible to claim compensation in this consolidated proceeding.

No party disputes Consumer Action's eligibility. In D.90-06-018 Consumer Action was found eligible to claim compensation for its participation in these consolidated complaint cases and investigation.

4. Timely Filings

Pursuant to Rule 76.56 TURN and Consumer Action were provided 30 days from the issuance of our final order to file their respective requests for compensation. Since the final order in this proceeding was mailed on June 11, 1990, compensation requests were due on July 11, 1990. TURN's July 11, 1990 request was timely filed. However, Consumer Action's August 15, 1990 request was late by 31 days. Consumer Action, recognizing that its request was late, filed a motion to accept its late-filed compensation request.

5. Consumer Action's Motion

In its motion, Consumer Action explains that it filed its compensation request late because it believed that this proceeding was still open, and that the proceeding would not close until after the workshops ordered by Ordering Paragraph 2 of the decision were completed and the workshop recommendations were considered by the Commission.

Consumer Action further explains that it is not familiar with Commission rules and regulations because it does not retain an attorney on staff and because this is Consumer Action's first Commission proceeding. Consumer Action assures us that it will exercise greater care in the future to insure that its filings conform to all rules.

Awards for compensation were authorized by a 1984 statute.² The purpose of this statute, is to provide compensation for reasonable advocate's fees, reasonable expert witness fees, and other reasonable costs to public utility customers of participation or intervention in any Commission hearing or proceeding for the purpose of modifying a rate or establishing a fact or rule that may influence a rate (Public Utilities (PU) Code §1801).

In D.87-02-031, San Diego Gas & Electric Company's holding company application, we interpreted the purpose of the awards program to be improving the quality of Commission decisions by encouraging participation by a broad range of interests in Commission proceedings. In keeping with the intent of the compensation statute and to encourage intervenor participation, recognizing that this is Consumer Action's first Commission proceeding and that no objection to Consumer Action's motion was filed, we will grant Consumer Action's motion for this proceeding only and will consider its late-filed compensation request for a monetary award. However, Consumer Action is expected to conform to all other compensation award rules.

6. Review of Compensation Requests

Rule 76.53 requires an intervenor to meet the following criteria before it can be awarded compensation:

- a. Its participation without an award of fees or costs imposes a significant financial hardship.

² Stats. 1984, Ch. 297, Sec. 2.

b. It made a substantial contribution³ to the adoption of a Commission decision.

c. Its participation did not materially duplicate the contribution or presentation of any other party to the proceeding.

The first requirement, financial hardship, has been met by both TURN and Consumer Action in the granting of their respective eligibility requests. Therefore, this requirement need not be addressed further.

7. TURN's Request

TURN seeks a \$31,980.00 compensation award for the following costs and expenses:

Attorney Fees @ \$140 per hour	\$31,220.00
Reproduction	565.00
Postage	164.00
Telephone	31.00
Total	\$31,980.00

The \$140 hourly attorney fee represents 223 hours of attorney Barmore's time devoted to this proceeding during the last three years: 67.5 hours were incurred in 1988, 138.75 hours in 1989, and 16.75 hours in 1990. A daily listing of the specific tasks performed in connection with the requested time is attached to TURN's compensation request. However, the hours are not identified by issue because of the unusual circumstances surrounding this case.

TURN explains that all of the claimed hours were spent either in workshops, settlement negotiations leading to two

³ Rule 76.52(g) defines substantial contribution to mean, in the judgment of the Commission, the intervenor'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 intervenor.

settlement agreements, or arguing for issues such as the 25-cent non-sent-paid (NSP) pay station charge and competition.

TURN believes that Barmore's three years of experience before the Commission and five years of legal experience as a member of the California Bar justify the granting of a \$140 hourly rate.

To substantiate this request, TURN presented an analysis of 1989 billing rates for San Francisco law firms showing that the requested hourly rate places Barmore's five years of legal experience on the low end of the firms' "High Associate" category with comparable experience. We note that the "High Associate" as used in the study is not defined.

GTE California Incorporated (GTE California) also addressed the reasonableness of Barmore's \$140 hourly rate in its August 7, 1990 response to TURN's compensation request. GTE California does not believe that Barmore's hourly rate authorized in other compensation awards should be increased from \$125 to \$140.

However, the requested hourly rate is comparable to the rate we granted TURN for Barmore's 1990 work activity and is \$15 higher than the \$125 hourly rate we granted for his 1989 work activity, as explained in D.90-12-026 of Application (A.) 85-01-034. Having resolved Barmore's hourly rate in another proceeding, it is not necessary to revisit this issue. Therefore, we will apply the \$140 hourly rate to his 1990 time and the \$125 hourly rate to his 1989 and 1988 time found reasonable for his work in this proceeding.

The reproduction and postage costs relate exclusively to TURN's written pleadings in this proceeding, and the telephone costs relate to calls placed in connection to this proceeding.

7.1 Substantial Contribution

TURN asserts that it made a substantial contribution within the meaning of Rule 76.52(g) to the numerous consumer benefits being guaranteed by D.90-06-018. TURN explains that its

contribution is evidenced by its signature on the March 1989 stipulated agreement (stipulated agreement) and by its refusal to sign the May 1989 agreement (amended stipulated agreement).

TURN spent more than a year attempting to resolve the issues set forth in this investigation with other members of the COPT Task Force consisting of consumer groups, local exchange companies, customer-owned pay telephone operators, and other interested parties. This task force met on numerous occasions to debate issues such as minimum COPT service standards, COPT rate levels, and means of enforcement. TURN believes that the success of this effort is measured by the stipulated agreement signed by all parties, except for Pacific Bell, and by the issuance of D.90-06-018 which adopted every enforcement safeguard and measure developed and refined in the stipulated agreement.

Although the amended agreement incorporates all of the consumer safeguards identified in the original agreement, TURN opposed the amended settlement because it provided for an anti-competitive arrangement which would preclude operator and billing service competition within Pacific Bell's exchange territory and would impose restrictions on alternative operator service traffic.

TURN also opposed the amendment giving COPT operators a 10-cent payment for every completed NSP call originating from a COPT instrument because there was no record on why the payment should be increased from the 6-cent level authorized in D.88-11-051 to 10 cents.

TURN summarizes that its active participation in this proceeding enhanced consumer COPT protection and precluded anti-competitive conditions from existing in Pacific Bell's exchange territory.

7.2 Duplicative Participation

TURN acknowledges that it and Consumer Action offered a variety of similar ideas and perspectives during the course of the

proceeding. For example, both TURN and Consumer Action advocated lowering the pay station charge for NSP calls to 25 cents, as noted in D.90-06-018. However, each organization offered different arguments for its position. In another obvious example, TURN did not sign the supplemental stipulated agreement; however, Consumer Action did. TURN summarizes that both it and Consumer Action, which made distinctive and substantial contributions to this proceeding, were necessary critical parties to this proceeding.

7.3 Responses to TURN's Request

Pacific Bell and GTE California filed responses to TURN's request for an award. Of the four reasons that Pacific Bell provided for a denial of TURN's requests, one, the eligibility issue, has been resolved and will not be discussed further. This leaves for discussion Pacific Bell's assertions that TURN failed to:

- a. Intervene in a proceeding that impacts a rate or establish a fact or rule that may influence a rate.
- b. Make a substantial contribution.
- c. Make a presentation that did not materially duplicate the contribution or presentation of any other party to this proceeding.

7.3.1 Rate Proceeding Intervention

Pacific Bell asserts that Rule 76.51 limits compensation to intervention in proceedings to "modify a rate or establish a fact or rule that may influence a rate." Since the pay phone investigation is not a rate case proceeding, Pacific Bell asserts that TURN's compensation request related to consumer safeguards and competition in operator services should be denied. Similarly, Pacific Bell asserts that TURN's claim related to the realignment of COPT prices should also be denied because the realignment will most likely result in a net rate increase. Therefore, Pacific Bell

concludes that TURN should not receive any award for participation in this proceeding.

In support to its conclusion, Pacific Bell cites D.85-07-085 in which the Commission stated that "we view P.U. Code Section 1801 as clearly confining us to awarding compensation for participation that directly modifies or at least implicitly lowers the revenue requirement or a rate.... We believe that the Legislature's intent was that before ratepayers bear the costs of compensation awards for intervenor participation in our proceedings, there must be established a direct connection with benefits which will flow to them." (18 CPUC 2d 416, 420.)

In its August 21, 1991 reply comments, TURN disputes Pacific Bell's claim that this proceeding did not affect rates. On the contrary, TURN asserts that this proceeding impacts millions of consumers who use pay telephones daily. Further, TURN asserts that the Commission has long recognized that a case need not be a "rate case" in order to affect rates. TURN supports this assertion with citations to D.87-02-031 and D.87-10-078, which authorized Utility Consumers' Action Network fees for participating in San Diego Gas & Electric Company's holding company application and Public Advocates compensation for its efforts on the women and minority business issue, respectively.

TURN's first citation, D.87-02-031, identifies the type of Commission proceedings that meet the intent of PU Code § 1801 and concludes that an interested party in San Diego Gas & Electric Company's request to form a holding company may receive compensation. General rate proceedings and the usual expense and ratebase offset proceedings are identified as proceedings which meet the Legislative intent of proceedings that modify a rate. Any proceeding which may impact rates, even though no specific rate effect is identifiable at the time, meets the Legislative intent of proceedings that may establish a fact or rule that may influence a rate. D.87-02-031 concluded that § 1801 should be interpreted more

broadly in cases whose influence on rates is potentially of greater magnitude or more widespread. TURN's second citation, D.87-10-078, provides a specific example of the grant of an award for participation in a proceeding which establishes a fact or rule that may influence a rate. Although this decision granted Public Advocates, Inc. (Public Advocates) a compensation award for participating in a rate proceeding, Public Advocates also received compensation for participation in establishing and modifying Female/Minority Business Enterprise eligibility criteria which did not directly impact rates.

Clearly, this pay phone proceeding impacts millions of pay phone users and influences future rates. Not only does the pay phone decision require COPT providers to reduce their charge for a local call from 25 cents to 20 cents, it standardizes pay phone service, requires public pay phones to be subsidized by all pay phone providers, and establishes store and forward pay phone competition between local exchange companies and independent pay phone operators.

Further, this proceeding is an extension of two complaint cases in which TURN was previously granted an award for its participation. By D.86-01-045 TURN was granted a \$7,316.65 award, paid by Pacific Bell, for protecting the general ratepayer's interest in making pay phone policy recommendations. Pacific Bell does not, in its response to TURN's motion, explain why we should effectively change course in the same proceeding. This proceeding meets PU Code § 1801's criteria for compensation awards.

7.3.2 Substantial Contribution

Pacific Bell contends that Rule 76.53 requires TURN to make a substantial contribution to the adoption of an "issue" in the proceeding before we can find that TURN made a substantial contribution in this proceeding.

However, because the issues raised by TURN, such as reducing the coin local rate to 20 cents, creating a pay station service charge for NSP calls, and promoting consumer safeguards, were adopted in the settlement agreement, TURN's position never reached the "issue" stage. Accordingly, Pacific Bell asserts that we cannot conclude that TURN made a substantial contribution in this proceeding.

We are not persuaded by Pacific Bell's procedural argument that the adoption of a settlement agreement eliminates all issues and therefore, by definition, precludes a substantial contribution finding. In this instance, the stipulated agreements required hours of diligent effort addressing issues specifically identified in the investigation.

We recognize that to attain a stipulated agreement it was necessary for parties to compromise on various aspects of the settlement agreement. Given the affiliation of parties involved in this proceeding, we can only conclude that, absent the presence of the Division of Ratepayer Advocates (DRA), TURN, and other intervenors in the negotiation process, the ratepayers' interest would not have been adequately represented by the adopted settlement agreement.

Further, absent the settlement, a substantial amount of additional hearing time and effort would have delayed a reasonable compromise of the issues at hand, resulting in substantial cost increases to all involved.

7.3.3 Duplicative Participation

Pacific Bell, again citing Rule 76.53, states that in order for TURN to receive a compensation award, TURN's presentation must not materially duplicate the contribution or presentation of any other party to the proceeding. Pacific Bell asserts that the compensation to which TURN is entitled to receive must be reduced in proportion to the amount of the duplicative effort.

Pacific Bell asserts that TURN's efforts were duplicative on all matters because DRA and the California Payphone Association

(CPA) took the lead on establishing the pay station service charge, Intellicall took the lead on the competitive issues, and DRA took the lead on the consumer safeguard issues. Believing that TURN's influence was negligible, Pacific Bell asserts that TURN should be denied any compensation in this proceeding. However, if we award TURN compensation, Pacific Bell asserts that TURN's requested award should be reduced to reflect TURN's secondary role with respect to all of the issues for which it claims compensation.

8. Consumer Action's Request

Consumer Action seeks a \$44,582.10 compensation award for the following costs and expenses:

Advocate's Fees @ \$125 per hour	\$43,312.50	Good
Reproduction	389.76	
Postage	223.35	
Transportation	656.49	
Total	\$44,582.10	

The \$43,312.50 advocate's fee represents a \$125 hourly compensation rate for the 346.5 hours of work that Consumer Action's advocate McEldowney spent on this proceeding. Of the 346.5 hours claimed for McEldowney 169.5 hours were spent in 1988, 127.75 hours in 1989, and 49.25 hours in 1990. The claimed hours were not separated by issue because Consumer Action asserts that all of its claimed hours were spent either in workshops, negotiations that led to two settlement agreements, preparation, or direct work on issues on which Consumer Action prevailed. Consumer Action explains that in a proceeding involving workshops and settlement negotiations it is impossible to separate out the hours spent on one issue from another.

Consumer Action claims that the requested \$125 hourly rate is reasonable because it is at the lower end of compensation recently approved for intervenor advocates participating in similar proceedings. Further, McEldowney has been Consumer Action's executive director for the past 10 years. In the context of this proceeding, with no attorneys on Consumer Action's staff or on the pro-

retainer, McEldowney performed the functions of an advocate in the negotiations, cross-examination, and preparation of briefs.

Consumer Action concludes that given McEldowney's level of experience and type of participation in this proceeding, the requested \$125 hourly rate is reasonable.

A realistic measurement of the hourly rate applicable for McEldowney's services, according to GTE California, should be the hourly rate typically paid to Commission and public utility staff persons of comparable training and experience. To put this in perspective, GTE California explains that it pays its own employees with training and experience comparable to McEldowney approximately \$50.00 an hour, on a loaded hourly basis. This is \$75 lower than the requested rate.

There is no dispute about McEldowney's claimed hours in this proceeding. However, GTE California disputes the reasonableness of McEldowney's requested hourly rate. GTE California does not believe that McEldowney has the comparable training and experience of those attorneys who have earned the \$125 hourly rate for their participation in Commission proceedings or the comparable training and experience of its own attorneys who earn an average loaded hourly rate considerably less than the requested \$125 rate.

As GTE California argues, PU Code § 1806 requires us to consider the compensation paid to persons of comparable training and experience who offer similar services. The code further requires that the compensation awarded may not, in any case, exceed the market value of services paid by the Commission or the public utility, whichever is greater, to persons of comparable training and experience who offer similar services.

By Consumer Action's own statement, McEldowney is not an experienced attorney and has not previously participated in a Commission proceeding. Although McEldowney has 10 years of experience as Consumer Action's executive director, Consumer Action has not

explained how McEldowney's 10 years of experience compares to the experience of attorneys who participate in Commission proceedings and entitles McEldowney to an hourly rate comparable to other attorneys representing other parties in the case.

PU Code § 1804 precludes us from awarding Consumer Action a \$125 hourly rate for McEldowney's services in this proceeding.

However, we are precluded from awarding Consumer Action the \$50 hourly rate recommended by GTE California for the same reason. GTE California did not document the experience level of its employees used for the \$50 hourly benchmark rate.

Consumer Action asserted that its requested \$125 hourly rate for McEldowney is at the lower end of compensation rates recently approved for intervenor advocates participating in similar proceedings. Consumer Action did not attempt to substantiate its \$125 hourly rate in its filing. Again, this shows the lack of Consumer Action's experience and indicates the need to award an hourly rate below the lower end of a selected range.

We have granted parties compensation in the \$40 to \$120 per hour range for expert witness and advocate work performed in 1990 and 1991. Similarly, we granted parties compensation in the \$75 to \$200 range for attorney work performed in 1990 and 1991, the majority of which did not involve a stipulated proceeding.

Consumer Action is seeking an \$125 hourly rate for work predominately performed prior to 1990. Of its 346.5 claimed hours, McEldowney incurred over 49% of his work in 1988 and over 37% in 1989. Therefore, it is not appropriate to compare Consumer Action's work performed in 1988 and 1989 with hourly rates granted witnesses, advocates, and attorney's for work performed up to two years later in 1990 and 1991.

In granting TURN a \$140 hourly rate for Barmore's services in 1990 and \$125 in 1988 and 1989 we recognize Barmore's three years of experience before the Commission, and five years of legal experience as a member of the California Bar. The current

\$140 hourly rate represents the mid-range of the billing rates for San Francisco law firms which employ associates at the high level and low level as summarized in the July 1989 of "Of Counsel," a national publication which includes a survey of attorney billing rates through the country.

The July 1989 Of Counsel issue shows that the lowest level associate's billing rates for San Francisco attorneys averages \$89 per hour. Although not explained in the publication, the lowest level associate level generally encompasses the services of a new attorney or an attorney with little experience.

Again, based on Consumer Action's own statement, Consumer Action has no attorney on staff or retainer, therefore we must conclude that McEldowney has little prior legal training or experience. Further, Consumer Action is not familiar with Commission rules and procedures. This is substantiated by Consumer Action's failure to file a timely request for an award. At the same time, we recognize that a legal associate would be considered a novice in Commission proceedings and apt to make the same procedural errors that consumer action did in this proceeding. Accordingly, Consumer Action should be granted an hourly rate equal to the hourly legal associate salary range for the San Francisco area. Based on the subject matter involved in this proceeding, the negotiation of a settlement agreement amended twice, and Consumer Action's uncertainty of when the proceeding was closed and when it should file its compensation requests, we conclude that a \$89 hourly rate is reasonable for McEldowney's time found reasonable for his work in this proceeding.

Consumer Action explains that its other claimed costs, consisting of reproduction, postage, and transportation costs, are directly associated with this proceeding.

8.1 Substantial Contribution

Consumer Action's formal involvement began with the opening of this investigation to address COPT service. Since that

date Consumer Action has spent several hundred hours working to achieve reach agreement on a settlement that would provide consumer safeguards, adjust rates, and create an environment in which public and private and public pay telephones could compete on a more equal footing.

Consumer Action actively participated in workshops which led to the publication of a August 19, 1988 workshop report.³ Consumer Action believes that the most important section of the workshop report was the recommended adoption of a comprehensive set of consumer safeguards. It elaborates that the recommended consumer safeguards were the same safeguards that Consumer Action initially proposed and fought for during the four-month period leading to the issuance of the report.

Consumer Action believes that its second major contribution was insuring that there not be a sharp reduction in the number of public policy pay telephones⁴. Although the number and funding of such phones was an issue between Pacific Bell and the CPA, Consumer Action would not agree to any solution that would reduce the number of public policy phones. A compromise was reached in the workshop resolving Pacific Bell's and CPA's concerns while at the same time insuring a high level of public policy phones.

The workshop report evolved into a March 21, 1989 settlement agreement signed by all parties except Pacific Bell. As elaborated by Consumer Action, the settlement codified the workshop results. It adopted consumer safeguards, established an enforcement program framework, stabilized local coin rates, raised some operator surcharges while lowering others, and adopted an interim method to cap local exchange company commission payments to low

4 Public policy pay telephones are pay phones installed by the local exchange companies in unprofitable locations to serve the health and safety needs of the public.

prevent cross-subsidization. According to Consumer Action, it, along with TURN, played a major role in negotiating and creating the environment in which disparate parties could reach agreement.

Subsequently, on May 11, 1989 a revised settlement agreement was reached. This time Pacific Bell signed the agreement. However, TURN and the smaller independent telephone companies did not sign. This revised agreement provided for the instrument implemented operator services and billing functions (operator-in-the-box) to be implemented in General Telephone Company of California's territory with a consumer monitoring program. Such operator services were not permitted in any other local exchange company's territory.

Consumer Action signed this revised agreement because it believed that the agreement was a good compromise and because it would continue to provide protection to the consumer. Further, Consumer Action believed that any settlement without Pacific Bell's participation would have little value. Consumer Action again asserts that it had a significant role in the development of the compromise that resulted in the second settlement.

Intellicall, a minor participant in the workshops according to Consumer Action, opposed the preclusion of operator-in-the-box competition within Pacific Bell's territory and requested evidentiary hearings. Intellicall's request was granted.

Consumer Action explains that it cross-examined Intellicall's witnesses in detail to confirm that their existing private pay phones would violate the proposed consumer safeguards and existing Federal Communications Commission regulations. It became clear to Consumer Action that Intellicall's current system would not provide rate information, branding calls or convenient access to the local exchange company operators. Therefore, Consumer Action stressed in its brief that the consumer safeguards identified in the May 11, 1989 agreement had to accompany any introduction of the Intellicall technology. It further argued that

any introduction of Intellicall technology must be closely monitored to insure adequate consumer protection.

Consumer Action also asserted that consumers would consider a 30-cent surcharge for NSP calls an unjustified reward for providing poor service. It argued that a lesser surcharge of 20 cents to 25 cents should be adopted. Absent the lesser surcharge, Consumer Action believed that the full 30-cent rate should be effective only after the consumer safeguards specified in the agreement are in place.

In summary, Consumer Action believes that in addition to the arguments made above, it has made substantial contribution in the area of introducing store and forward technology and the pay station service charge.

8.2 Duplicative Participation

Consumer Action asserts that it and TURN were the only independent consumer representatives that were parties to this proceeding. Consumer Action asserts that the two organizations acted independently and often took opposing positions. Consumer Action believes that their varying viewpoints contributed to the final resolution of the broad range of issues identified in the investigation.

Further, Consumer Action asserts that having two independent voices for the consumer interest was extremely important in the workshop and negotiation environment to counter and interact with the other parties representing various public and private pay phone interests.

8.3 Response to Consumer Action's Request

The only response to Consumer Action's request for an award came from GTE California regarding McEldowney's hourly rate, as identified in our discussion of Consumer Action's request.

Although Pacific Bell opposes TURN's requested award, it filed no opposition to Consumer Action's award request.

9. Discussion of Substantial Contribution Issue:

Rule 76.53 of the Commission's Rules requires that an intervenor seeking compensation for participation in a Commission proceeding must demonstrate that it provided a substantial contribution to a Commission decision.

The record is clear that both TURN and Consumer Action played an active role in negotiating the stipulated agreement and expressed for a reasonable resolution of this investigation in the ratepayers' interest. In the discussion of Pacific Bell's opposition to TURN's claim of substantial contribution we have already concluded that DRA, TURN, and Consumer Action have made substantial contributions to the adopted settlement, and therefore, need not reiterate this discussion. Therefore, we find that TURN and Consumer Action did make a substantial contribution to the settlement D.90-06-018, and conclude that both TURN and Consumer Action are entitled to an award of compensation for their efforts in this regard.

10. Discussion of Duplication Issue:

We recognize that TURN and Consumer Action offered a variety of "similar ideas and perspectives" during the course of this proceeding, as stated by TURN in its compensation request. This could be construed as duplicative participation. However, recognition should be given to the workshop and negotiation process that led to the stipulated agreements and ultimate adoption of the final agreement with minor modification.

It was in this workshop and negotiation mode that TURN and Consumer Action acted independently. Much of the process incorporated opinions from TURN and Consumer Action, as well as from other participants. TURN and Consumer Action may have taken similar positions on an issue but offered different arguments for their positions, and at times took opposing positions. As cited by Consumer Action, it was important to the process in having two independent voices looking after the ratepayer interest in an

environment involving up to 20 other parties representing the public and private pay phone interests.

Because TURN and Consumer Action presented similar ideas and perspectives during the course of this proceeding, duplication in the form of a secondary or supportive role occurred. However, we find that supportive roles were beneficial and necessary to the issuance of D.90-06-018. Therefore, consistent with Pacific Bell's recommendation, to the extent that supportive efforts existed, any compensation to which the party would otherwise be entitled will be reduced in portion to the amount of its supportive efforts.

Neither TURN nor Consumer Action reflected the impact of supportive efforts in determining their respective legal and advocate's hours devoted to this proceeding. Also, not recognized in their compensation filings was the impact that DRA, a ratepayer advocacy division of the Commission, played in this proceeding to negotiate a settlement in the interest of balancing ratepayer and utility interests.

We have reviewed the itemization of hours submitted by TURN and Consumer Action, and because the hours claimed for their experts could not be detailed by issue and because supportive roles existed among TURN, Consumer Action, and DRA, we conclude that all three ratepayer interest groups contributed equally to the final decision. It would be improper to award TURN and Consumer Action full compensation for their requested attorney's and advocate's time spent in this proceeding upon a finding that TURN, Consumer Action, and DRA equally contributed in the final order of this proceeding and in the interests of ratepayers. To reflect a balanced contribution in this proceeding, each party should be authorized to claim a third of its requested hours for legal and advocacy fees. Accordingly, we find that TURN and Consumer Action should be allowed to recover the following hours as part of their

compensation award, resulting in an award of \$10,321.50⁵ in legal fees for TURN and \$10,279.50⁶ in advocacy fees for Consumer Action.

Year TURN Consumer Action

1988	22.5 Hours	56.5 Hours
1989	53.8	42.6
1990	5.6	16.4
Total	81.9 Hours	115.5 Hours

10.1 Other Costs

TURN and Consumer Action presented an itemization of costs for reproduction, postage, telephone, and travel. TURN's costs for these activities total \$760.00 and Consumer Action's \$1,269.60. These amounts do not appear to be in dispute, and will be adopted as reasonable given their minor significance in relation to the totality of these claims. The addition of these other costs to the attorney fees and advocate's fees granted to TURN and Consumer Action results in a total award of \$11,081.50 to TURN and \$11,549.10 to Consumer Action.

5 The award for legal recovery is derived by multiplying the hours determined reasonable for TURN's participation by the hourly rate determined to be reasonable for Barmore's services as follows:

<u>Year</u>	<u>Hours</u>	<u>x</u>	<u>Rate</u>	<u>=</u>	<u>Total</u>
1988	22.5		\$125.00		\$ 2,812.50
1989	53.8		125.00		6,725.00
1990	5.6		140.00		784.00
Total					\$10,321.50

6 The advocacy award is derived by multiplying the 115.5 hours determined to be reasonable for Consumer Action's participation by the \$89.00 hourly rate determined to be a reasonable rate for McEldowney's services.

10.2 Interest

Consumer Action has requested that interest be added to its award if a decision is not issued within 75 days of its August 15, 1990 compensation filing.

In previous compensation awards, such as D:86-07-009, we have authorized the payment of interest beginning from the 75th day following the filing of an intervenor's initial compensation request. We see no reason to treat the awards granted by the decision any different. Therefore, TURN should be awarded interest on its \$11,081.50 award, calculated at the three-month commercial paper rate, commencing on September 24, 1990 and continuing until payment of the award is made. Consumer Action should be awarded interest on its \$11,549.10 award, calculated at the three-month commercial paper rate, commencing on October 29, 1990 and continuing until payment of the award is made.

11. Payment of Award

Both GTE California and Pacific Bell conclude that, pursuant to Rule 76.61, any award made under the intervenor compensation rules must be paid by the public utility which is the subject of the hearing, investigation, or proceeding, as determined by the Commission. Consistent with this rule Pacific Bell believes that any compensation award should be spread among the large telephone companies and the independent telephone companies equitably because all participated in this proceeding.

Contrary to the compensation payment rule, GTE California believes that who are not public utilities parties, such as CPA, should be required to pay a share of the awards. GTE California takes this position because this proceeding was opened to address the numerous complaints, both formal and informal, received from consumers confused about the absence of uniform standards for pay phone service, and the numerous consumer complaints about COPT service; and the COPT providers' and local exchange companies' service.

dissatisfaction with the current regulation of COPTs resulted in this investigation to evaluate COPT regulation.

We concur with GTE California's reason for requiring the COPT providers to pay the compensation awards. But, because the COPT providers are not public utilities we are precluded from directly requiring these non-utility entities to pay such awards.

We could prorate the awards among all the telephone companies as proposed by Pacific Bell. However, it would not be cost-effective or efficient to derive a common allocation factor for some 23 telephone companies or to require these telephone companies to pay their proportional shares. Therefore, we will require the two largest telephone companies, Pacific Bell and GTE California, to pay the awards. Pacific Bell should be responsible for paying half of the total award and GTE California should be responsible for paying the other half of the total award.

In recognition that this proceeding impacts the current regulation of COPTs, Pacific Bell and GTE California should be allowed to recover their share of the award payments from their COPT enforcement fund, as discussed in Article V(E)(5)(e) of the settlement agreement.

Findings of Fact

1. TURN filed a \$31,980 compensation request on July 11, 1990.

2. Consumer Action filed a \$44,582.10 compensation request with a concurrent motion to accept a late-filed compensation request on August 15, 1990.

3. TURN has been found eligible to file a compensation request in 1985 for participation in consolidated case (C.) 85-02-051 and C.85-07-048 by D.85-11-057.

4. TURN is eligible to claim compensation for its participation in these consolidated complaint cases and investigation.

5. Consumer Action has been found eligible for its off-peak participation in these consolidated complaint cases and consumer action investigation pursuant to D.90-06-018.

6. Consumer Action filed a motion to accept its late-filed compensation request.

7. The purpose of compensation awards is to provide some financial compensation for reasonable advocate's fees, reasonable expert witness fees, and other reasonable costs to public utility customers of participation in a Commission proceeding.

8. The intent of the compensation statute is to encourage intervenor participation.

9. TURN and Consumer Action have met Rule 76.53's significant financial hardship requirement.

10. D.90-12-026 granted TURN an \$125 hourly rate for 1989 and \$140 an hour for productive work performed by Barmore in 1989 and \$140 an hour for productive work performed in 1990.

11. A \$140 hourly rate is reasonable for Barmore's 1990 productive work activity and a \$125 hourly rate for his 1989 and 1988 productive work activity.

12. TURN substantially contributed to D.90-06-018 in the areas of enhanced consumer COPT protection and in anticompetitive COPT conditions.

13. TURN and Consumer Action offered a variety of similar ideas and perspectives during the course of the proceeding.

14. To attain a stipulated agreement it was necessary for the parties to compromise on various aspects of the agreement.

15. Absent the presence of DRA, TURN, Consumer Action, and other intervenors in the negotiation process of this proceeding, the ratepayers' interest would not be adequately represented.

16. Consumer Action has no attorney on its staff or on retainer.

17. Consumer Action is not familiar with Commission rules and procedures.

18. The lower end of the hourly legal associate salary range for San Francisco area attorneys in 1989 was \$89.00 per hour.

19. A \$89 hourly rate is reasonable for Consumer Action's proffered McEldowney's productive time.

20. Consumer Action substantially contributed to D.90-06-018 in the area of enhanced consumer COPT protection and in the area of anticompetitive conditions.

21. Both TURN and Consumer Action took supportive roles to each other throughout this proceeding.

22. Neither TURN nor Consumer Action reflected the impact of supportive efforts in determining their respective attorney's and advocate's hours devoted to this proceeding.

23. TURN, Consumer Action, and DRA contributed equally to the issuance of a final decision in this proceeding.

24. Compensation requests for reproduction, postage, telephone, and travel are not in dispute.

25. Consumer Action requests that interest be added to its award if a compensation decision is not issued within 75 days of its compensation filing.

Conclusions of Law

1. Consumer Action's motion to accept its late filed compensation request should be granted.

2. TURN and Consumer Action should be compensated for their substantial contributions to D.90-06-018 in the COPT area, consistent with the preceding discussion and Findings of Fact.

3. Pacific Bell and GTE California should each be ordered to pay TURN \$5,540.75 and Consumer Action \$5,774.55 as compensation for TURN's and Consumer Action's substantial contribution to D.90-06-018 consistent with the preceding discussion.

4. Pacific Bell and GTE California should be allowed to recover their share of the award payments from their COPT enforcement program fund.

ORDER

IT IS ORDERED that:

1. Pacific Bell shall pay Toward Utility Rate Normalization (TURN) \$5,540.75 within 15 days, as compensation for TURN's substantial contribution to Decision (D.) 90-06-018. Pacific Bell shall also pay TURN interest on the \$5,540.75 principal amount, calculated at the three-month commercial paper rate, commencing on September 24, 1990 and continuing until payment of the award is made.

2. Pacific Bell shall pay Consumer Action \$5,774.55 within 15 days, as compensation for Consumer Action's substantial contribution to D.90-06-018. Pacific Bell shall also pay Consumer Action interest on the \$5,774.55 principal amount, calculated at the three-month commercial paper rate, commencing on October 29, 1990 and continuing until payment of the award is made.

3. GTE California Incorporated (GTE California) shall pay TURN \$5,540.75 within 15 days, as compensation for TURN's substantial contribution to D.90-06-018. GTE California shall also pay TURN interest on the \$5,540.75 principal amount, calculated at the three-month commercial paper rate, commencing on September 24, 1990 and continuing until payment of the award is made.

4. GTE California shall pay Consumer Action \$5,774.55 within 15 days, as compensation for Consumer Action's substantial contribution to D.90-06-018. GTE California shall also pay Consumer Action interest on the \$5,774.55 principal amount, calculated at the three-month commercial paper rate, commencing on October 29, 1990 and continuing until payment of the award is made.

FORWARDED BY MAIL REGISTERED
EVGSA 881 182 CIVIL RIGHTS DIVISION
WASHINGTON, D.C. 20535

[Handwritten signature]
FORWARDED BY MAIL REGISTERED
EVGSA 881 182 CIVIL RIGHTS DIVISION
WASHINGTON, D.C. 20535

5. Pacific Bell and GTE California shall recover their share of the award payments from their Customer Owned Pay Telephone enforcement program fund, as provided in Article V(E)(5)(e) of the settlement agreement attached to D.90-06-018.

This order is effective today.

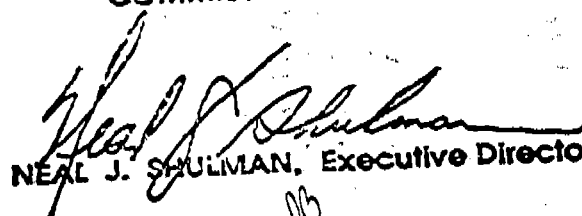
Dated November 20, 1991, at San Francisco, California.

PATRICIA M. ECKERT
President

DANIEL Wm. FESSLER
NORMAN D. SHUMWAY
Commissioners

Commissioner John B. Ohanian,
being necessarily absent, did
not participate.

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


NEAL J. SHULMAN, Executive Director