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Decision 91-11-070 November 20, 1991

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of Alternative Regulatory Frameworks for Local Exchange Carriers.	I.87-11-033 (Filed November 25, 1987)
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.	Application 85-01-034 (Filed January 22, 1985; amended June 17, 1985 and May 19, 1986)
Application of General Telephone Company of California (U 1002 C), a California corporation, for authority to increase and/or restructure certain intrastate rates and charges for telephone services.	Application 87-01-002 (Filed January 5, 1987)
And Related Matters.	I.85-03-078 (Filed March 20, 1985) OII 84 (Filed December 2, 1980) C.86-11-028 (Filed November 17, 1986) I.87-02-025 (Filed February 11, 1987) C.87-07-024 (Filed July 16, 1987)

(See Appendix A in Decision 88-08-024, Attachment D in Decision 89-10-031, and Appendix A in Decision 90-04-023 for appearances.)

I N D E X

O P I N I O N

1. Decision Summary

Center for Public Interest Law (CPIL) and Toward Utility Rate Normalization (TURN) have requested compensation in the amounts of $123,912.26 and $80,765.50, respectively, in connection with their participation in these consolidated proceedings.[1]

We find that CPIL made a substantial contribution to the Order Instituting Investigation 87-11-033 (the OII) and to the Phase II Decision, and award CPIL compensation in the amount of $48,851.64. We also find that TURN made a substantial contribution to the Phase II Decision and to D.90-04-031 which modifies the Phase II Decision, and award TURN compensation in the amount of $55,527.17.

2. Requirements for Compensation

These requests for compensation are made pursuant to Article 18.7 of the Commission's Rules of Practice and Procedure, whereby we may provide compensation for reasonable advocate's fees, expert witness fees, and other costs of participation in certain Commission proceedings.

We may award compensation upon a showing that the customer's participation made a substantial contribution to a Commission order or decision. Rule 76.52(g) defines "substantial contribution" as follows:

> "...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

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1 CPIL and TURN have both been found eligible to claim compensation for their participation in these proceedings. (See Decision (D.) 85-07-023, D.89-10-031 (the Phase II Decision), and D.88-07-035.)

> contentions, or specific policy or procedural recommendations presented by the customer."

Following issuance of a "final order or decision" (defined by Rule 76.52(h) as an order or decision that resolves the issue(s) for which compensation is sought), a customer who has been found to be eligible may file a request for compensation within 30 days. Rule 76.56 contains filing requirements for such requests.

The Commission has made numerous compensation awards under Article 18.7 and over time has clarified certain terms and conditions under which compensation may be awarded. Of particular relevance to the instant requests for compensation is D.89-09-103, which awarded compensation to intervenors in the Diablo Canyon ratemaking proceeding. In that decision, we clarified that in certain exceptional proceedings the Commission may find, in order to encourage intervenor participation, that a party has made a substantial contribution in the absence of adoption of any of its recommendations:

> "1) an extraordinarily complex proceeding, requiring technical or legal skills not demanded by the majority of Commission proceedings, such that the cost of participation by counsel or the presentation of expert testimony in such a case is significantly greater than the norm, and
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> "2) a case of unusual importance, either as a precedent for a significant ratemaking policy change or because of the extraordinary financial impact of the case on rates or on the fiscal health of the utility." (D.89-10-103, Revised p. 4 modifying D.89-03-063.)

If these two conditions are met, the Commission may also take into account whether there was a proposed settlement which was negotiated and filed by fewer than all the parties to a proceeding. The Commission found that, in such a situation, a less restrictive evaluation of contribution is appropriate in order to encourage

intervenors who were not parties to the settlement to participate in its review.

TURN submits that Investigation (I.) 87-11-033 falls within the D.89-09-103 guidelines for circumstances in which an intervenor can be found to have made a substantial contribution even though the Commission did not adopt any of the intervenor's recommendations. TURN points out that this multi-year investigation has examined virtually every policy consideration affecting telephone service and that the Phase II Decision fundamentally changed the face of telephone rate regulation in California. CPIL makes a similar argument, emphasizing the unique procedural history of its participation in these consolidated proceedings (see Section 3.2.1 below).

In its response to TURN, Pacific Bell (Pacific) argues that Phase II of I.87-11-033 does not meet the criteria in D.89-09-103 for compensation in exceptional proceedings. Pacific submits that Phase II was arguably less complex than a general rate case and, further, that the technical and legal skills required were no greater than those required in a rate case and certainly were not nearly as demanding as those required in the Diablo Canyon proceeding. Finally, Pacific argues that it appears that the D.89-09-103 criteria apply only in proceedings that end in negotiated settlements signed by fewer than all parties.

Since identifying the appropriate criteria for a finding of substantial contribution is a threshold issue which could affect our evaluation of both CPIL's and TURN's compensation requests, we will address this issue before examining the specifics of the two parties' requests.

As an initial point, we wish to emphasize the purpose underlying our determination in D.89-09-103 that in certain exceptional circumstances a party may make a substantial contribution to a Commission decision even though none of its recommendations were adopted in whole or in part in the final

decision. We recognized that in certain cases a strong public policy exists to encourage intervenor participation. In the Diablo proceeding, we found such a situation, partly because there was a contested settlement and we wanted to ensure that intervenors' input, which was not present during the negotiations, was not lost. (D.89-09-103, revised p. 4 modifying D.89-03-063.)

Pacific does not dispute that Phase II of I.87-11-033 meets the second of the two criteria established in D.89-09-103, i.e., that it is a case of unusual importance. Since we fundamentally revamped the decades-old method of regulating not only Pacific and GTE California Incorporated (GTEC) but also all intraLATA telecommunications services in California, we agree that this portion of the two-pronged test is met.

Counter to Pacific's view, we also find that I.87-11-033, with its three phases and the planned implementation rate design proceeding (see Section 3.1 below), is an unusually complex proceeding. While the length of Phase II (61 days of evidentiary hearings) was perhaps comparable to a general rate case,[2] the breadth of policy issues and particularly the degree to which the issues are interrelated go far beyond the scope of a typical rate case. The technical and public policy issues in Phase II were far different than those encountered in general rate cases; as a result, we could not reasonably expect intervenors such as TURN to possess in-house expertise on these issues. Since in Phase II the fundamental form of utility regulation was reexamined in light of unprecedented conditions in the industry, we would expect that intervenors would be required to engage consultants at considerable

2 We do not consider Pacific's 1986 general rate case, with its multiple phases and spin-off proceedings, to be a typical rate case.

expense if they are to make a meaningful contribution on the major issues considered.

We conclude that Phase II of I.87-11-033 meets the two criteria set forth in D.89-09-103 for an exceptional proceeding.[3] Because of the unprecedented nature of this proceeding and the fundamental effect it has had on regulation of intraLATA telecommunications in California, we find an overriding interest in encouraging participation of intervenors in this proceeding. Because of this interest, we conclude, as in D.89-09-103, that intervenors may be found to meet the "substantial contribution" test even if their specific recommendations are not adopted by the Commission.

We emphasize that this conclusion does not provide a carte blanche opportunity for intervenors to claim compensation regardless of the quality of their participation or the degree to which their participation may be inefficient or duplicative of others' efforts. Rather, in evaluating whether intervenors make substantial contributions in extraordinary proceedings such as this, we will continue to place emphasis on factors such as the degree to which the intervenor contributed to the development of a full record through, e.g., bringing issues to our attention or fleshing out issues to which this Commission should give full consideration (even if ultimately rejecting the intervenor's position) in order to make a fully informed decision.

3. CPIL Request for Compensation

On December 4, 1989, CPIL filed its request for intervenor compensation (Request) based on its contribution to the

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3 Contrary to Pacific's suggestion, D.89-09-103 in no way limits the applicability of a less restrictive standard for substantial contribution to proceedings with contested settlements. Instead, the existence of a settlement is merely an additional condition which the Commission may consider.

Phase II Decision in I.87-11-033 and the consolidated Pacific 1986 general rate case proceeding Application (A.) 85-01-034. Because the October 17, 1989 earthquake substantially dislocated CPIL's San Francisco office, we accept this Request for filing though CPIL did not comply with the 30-day filing requirement.

GTEC and Pacific filed oppositions to CPIL's Request on December 19, 1989 and December 28, 1989, respectively, and CPIL filed a Reply in Support of Request for Compensation (Reply) on January 22, 1990.

3.1 Procedural Background

CPIL describes its participation in this consolidated proceeding as "tortured." In 1986, CPIL witness Fellmeth presented concerns about Pacific's modernization investments in Phase 2 of A.85-01-034. CPIL's Economic Impact Statement (EIS) proposal was first named in Fellmeth's rebuttal testimony. The Commission addressed certain Phase 2 issues in D.87-12-067 but deferred modernization issues, stating its intent to issue a later policy-related decision based on the Phase 2 record to assist in framing issues for a more comprehensive review which was to occur in Phase 3. (D.87-12-067, p. 288.)

Following an en banc hearing on alternatives to cost-of-service regulation for local exchange carriers held in September 1987, the Commission initiated I.87-11-033 to consider alternative regulatory frameworks for Pacific and GTEC. In Phase I, which addressed regulatory treatment of services subject to competition, CPIL submitted prepared testimony which reiterated its views regarding utility modernization investments. However, Phase I was resolved on an interim basis through adoption of a settlement which did not address CPIL's concerns.

Phase II of I.87-11-033 reevaluated the regulatory framework for all local exchange carrier services, including those services covered by the interim Phase I settlement. At a

December 16, 1988 prehearing conference (PHC), it was decided that the issue of Commission review of Pacific's and GTEC's modernization budgets as well as their decisions to offer new services would be addressed in Phase II of I.87-11-033 rather than in Phase 3 of A.85-01-034. (A.85-01-034 PHC, RT 481.) As a result, in addition to prepared Phase II testimony, certain other material was incorporated by reference in the Phase II record: Fellmeth's prepared and oral testimony in Phase 2 of A.85-01-034, related Phase 2 testimony of Pacific witnesses Meyer and Perl, and Fellmeth's prepared Phase I testimony. No party asked that Fellmeth appear to testify in Phase II. CPIL did not file Phase II briefs but did file comments on the proposed decision of the administrative law judge (ALJ).

In the Phase II Decision, the Commission adopted an incentive-based regulatory framework for Pacific and GTEC centered around a price cap indexing mechanism for adjusting rates, with sharing of excess earnings above a benchmark rate of return. The Commission also ordered an extensive monitoring program of the new regulatory framework. Phase III, which addresses intraLATA competition, is now underway.

In the meantime, Phase 3 of A.85-01-034 proceeded. On March 10, 1989, Pacific and the Division of Ratepayer Advocates (DRA) jointly filed a settlement agreement which proposed a $144 million ratepayer refund for past modernization expenditures and a program whereby Pacific, with input from DRA, would improve its investment decision-making process. CPIL objected to the settlement agreement on the grounds that it would not require that needed information be gathered or that major investments be reviewed by this Commission. (D.90-03-075, p. 8.) The Phase 3 proceeding culminated in D.90-03-075 adopting the settlement agreement with certain revisions.

3.2 Positions of the Parties

3.2.1 CPIL

CPIL states that its overall position has been that an EIS procedure should be used to ensure that data is gathered in two critical areas as part of the decision-making process for modernization investments: (1) the impact of modernization and traffic changes on utilization of fixed plant, including central station equipment and outside plant, and (2) the competitive impact of modernization on cross subsidies and pricing, including impacts on both Pacific and its competitors. (Request, p. 3.)

CPIL asserts that the entangled procedural history of A.85-01-034 and I.87-11-033 precludes any effort to identify the source of a single concept, idea, or sentence contained in the Phase II Decision (Request, pp. 6-7) and, as a result, that some departure from the usual assessment of "substantial contribution" is called for.

CPIL submits that the Phase II Decision makes clear that the Commission shares CPIL's concerns, citing the regulatory goals of full utilization of local exchange networks and avoidance of cross subsidies and anticompetitive behavior. CPIL also argues that the adopted categorizations of utility services, the granted pricing flexibility, and particularly the defined monitoring framework all incorporate CPIL's concepts. (Request, pp. 8-10.)

Because of the procedural history in which portions of the record from A.85-01-034 was incorporated into I.87-11-033, CPIL submits that compensation for all of its work in the related matters should be addressed in a single decision. However, to reflect Commission rejection of portions of CPIL's EIS proposal, CPIL recognizes that a "significant but not punishing" reduction in the total compensation reward would be appropriate, and suggests a disallowance of 25 percent of the total hours spent by the two attorneys involved. On this basis, CPIL seeks a total award of $123,912.26, broken down as follows:

	Hours	Amount
Professor Robert C. Fellmeth ($175/hour)	727.1	$127,242.50
James R. Wheaton ($150/hour)	226.3	33,945.00
Costs		3,021.64
		$164,209.14
Less 25% of attorneys' fees		- 40,296.88
Total Compensation Sought		$123,912.26

3.2.2 GTEC

GTEC submits that CPIL's claim of $123,912.26 is totally unjustified in light of what it views as CPIL's very limited contribution to Phase II of I.87-11-033. Further, in GTEC's view, CPIL improperly inflates its compensation request by including expenses related to work performed in A.85-01-034.

GTEC asserts that, contrary to our compensation rules, CPIL fails to demonstrate that the Commission adopted any of CPIL's factual contentions, legal contentions, or specific recommendations.[4] GTEC submits that CPIL opposed adoption of a price cap indexing mechanism and that, while CPIL proposed a form of service categorization between monopoly and competitive services, GTEC and DRA proposals regarding service classifications were much closer to the adopted structure. Further, the Commission rejected CPIL's proposal that the Commission scrutinize utility investments according to its so-called EIS. The Commission also rejected CPIL's proposals regarding prevention of predatory

4 GTEC incorrectly cites Rule 76.26 as applicable here. "Substantial contribution" is defined in Rule 76.52(g) for proceedings initiated on or after January 1, 1985.

pricing, adopting instead use of embedded direct costs as the cost floors for flexibly priced services (as proposed by GTEC and Pacific) and use of Federal Communications Commission Part 64 cost allocation rules (as advocated by DRA) to allocate costs between service categories.

3.2.3 Pacific

Pacific joins GTEC in asserting that CPIL did not make a substantial contribution to this proceeding.

Pacific states that CPIL apparently bases its request for compensation on the fact that the EIS was a monitoring proposal and the Commission adopted certain monitoring requirements. Pacific submits, however, that monitoring is an extremely broad topic and that CPIL admits that it cannot "claim that it is the source of [the adopted] concepts." (See Request, p. 6.) Pacific also points out that the Commission stated that reporting needs stop "somewhat short of...an Economic Impact Statement as proposed by CPIL" (Phase II Decision, p. 309) and further that:

> "CPIL's monitoring proposal would be overly burdensome in light of the limited purposes of the monitoring under the new regulatory framework." (Phase II Decision, p. 372, Finding of Fact 183.)

Pacific also attacks Fellmeth's technical evaluation of Pacific's economies of scale, pointing to testimony by three Pacific witnesses in A.85-01-034 that Fellmeth's statistical regression analyses lacked professionalism and were not useful. Pacific points out that the Commission did not address whether Fellmeth's analyses were valid.

Pacific further argues that, if the Commission decides to award CPIL some compensation, the amount should be substantially reduced because the claimed number of hours is excessive. Pacific opposes compensation for any work prior to CPIL's introduction of its EIS proposal, noting that CPIL seeks compensation dating back to April 1984, over two years before the EIS proposal surfaced in

A.85-01-034. Pacific also asserts that CPIL seeks compensation for time spent on general rate case issues such as the audit of Pacific's joint ventures, strategic alliances, and research and development projects, as well as time related to the Phase 3 settlement hearing in A.85-01-034.

In Pacific's view, an award of compensation for time spent on Phase I of I.87-11-033 would be inappropriate at this time. Pacific also opposes compensation for Fellmeth's time during Phase II of I.87-11-033, since CPIL presented no live testimony, did not cross-examine witnesses, and did not file briefs. Pacific recognizes that CPIL filed comments on the ALJ's proposed decision, but asserts that these comments did nothing to assist the Commission in reaching the Phase II Decision. Finally, Pacific asserts that CPIL appears to seek compensation for time spent working on Phase III testimony, and argues that CPIL cannot receive compensation for such work at this time.

3.2.4 CPIL Reply

CPIL recognizes that "a certain humility must accompany the effort to designate precisely how and where CPIL's averments did or did not make their way through the course to the final decision" (Reply, pp. 2-3), but asserts that the standard for substantial contribution requires only that the intervenor bring something useful to the proceeding, however it is incorporated in the Commission decision.

CPIL asserts that it has pressed a single, focused position: the need for the Commission to monitor certain kinds of capital investment decisions to ensure that they are not uneconomic and do not rely on cross subsidies. CPIL submits that no other party has focused on this issue, and reiterates its position that substantially each of its concerns was adopted in the Phase II Decision.

CPIL also emphasizes that the Phase II Decision is the "final decision" for its entire compensation request, since a decision addressing CPIL's position was never issued in A.85-01-034. CPIL believes that the Phase II Decision makes explicit that CPIL could request compensation for all of the activity and contribution extending back into A.85-01-034. CPIL also points to the PHC at which it was determined that CPIL's proposal from A.85-01-034 would be incorporated into Phase II of I.87-11-033.

CPIL also asserts that most of Pacific's arguments regarding Fellmeth's technical presentation attack regression analyses which Fellmeth prepared for DRA. CPIL submits that it carefully segregated work performed solely for DRA and has not included that work in its request for compensation.

3.3 Discussion

3.3.1 Determination of Final Decision

GTEC and Pacific contest CPIL's inclusion in its Request of expenses related to Phase 2 of A.85-01-034 and Phase I of I.87-11-033. Because the Commission incorporated relevant material from Phase 2 of A.85-01-034 and Phase I of I.87-11-33 in the Phase II record, we agree with CPIL that the Phase II Decision is the "final order or decision" as defined by Rule 76.52(h) for assessing contribution of CPIL's showing related to the incorporated material. We will, however, exclude the 16 hours spent on preparation of CPIL's comments on the Phase I settlement. The "final decision" for purposes of requesting compensation for those hours would have been D.88-09-059, in which we adopted a modified version of the Phase I settlement.

CPIL also includes hours related to the Commission's en banc hearing. Because the en banc hearing led to the OII (see OII, p. 6), we conclude that participation in the en banc hearing is compensable under Article 18.7. In this instance, for example, a substantial contribution could be made if the Commission adopted in

the OII a party's procedural recommendations made through the en banc process. Because the Phase II Decision addressed CPIL's proposal, we find that it is appropriately considered the "final decision" for purposes of assessing CPIL's contribution through the en banc hearing to the OII.

As Pacific and GTEC note, CPIL also includes hours spent on Phase 3 of A.85-01-034 and Phase III of I.87-11-033. We will exclude the 23.7 hours spent on Phase 3 of A.85-01-034 after the PHC at which it was decided that CPIL's proposal would be considered in Phase II of I.87-11-033.[5] We will also exclude the 16.6 hours spent on Phase III of I.87-11-033.[6]

3.3.2 CPIL's Substantial Contribution

We look first at CPIL's contribution to the OII. In establishing the scope of the phased investigation, we referenced CPIL's comments filed in response to the Notice of En Banc Hearing and asked parties to indicate in Phase I how suitable cost information should be obtained. (OII, p. 9, ftn. 1.) Because CPIL's comments assisted us in defining the scope of I.87-11-033, we conclude that CPIL made a substantial contribution to the OII.[7]

We look next at CPIL's contribution to the Phase II Decision. In Fellmeth's prepared testimony in Phase II,[8] CPIL urged three basic propositions: the Commission should

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5 D.90-03-075 would have been the "final decision" for purposes of requesting compensation for those hours.

6 A "final decision" has not yet been rendered in Phase III.

7 This conclusion is consistent with the Commission's assessment that TURN contributed to I.86-06-005. (See D.89-03-018, p. 9.)

8 Fellmeth's prior testimony in Phase 2 of A.85-01-034 and Phase I of I.87-11-033 was largely subsumed within his Phase II testimony, and is not summarized separately here.

differentiate monopoly loop and competitive sector operations in investment decisions for modernization; the Commission should monitor for anticompetitive abuses within a framework which allows pricing flexibility only in geographic areas where there is unavoidable excess capacity in existing fixed plant; and the utilities and DRA should collect and evaluate cost and usage data through an EIS process prior to any major modernization investment for competitive services. (Exhibit A-119, pp. 8-11.)

In Fellmeth's reply testimony, CPIL broadened its recommendations to cover other aspects of a regulatory framework. CPIL took the position that standard rate of return analyses should be used to set revenue requirements once every six years, with cost updates in intervening years obtained through sophisticated regression formulas. In addition, CPIL would have the Commission assess utility performance relative to benchmark indices based on other local exchange carriers' performances, with a rate of return premium or penalty assessed appropriately. (See Exhibit A-120.)

As CPIL recognizes, the regulatory framework adopted in the Phase II Decision is different from CPIL's proposals in most respects.

In the Phase II Decision, we divided services in three categories based largely on their degree of competitiveness. Pacific and GTEC have no pricing flexibility for basic monopoly (Category I) services; are allowed limited pricing flexibility for partially competitive (Category II) services, with floors based on direct embedded costs; and would have the maximum pricing flexibility allowed by law for services found to be fully competitive (Category III services).[9] As Pacific notes, the adopted flexibility is similar to that recommended by GTEC and DRA

9 Category III also includes those services for which there has been federal preemption of Commission authority over pricing.

and bears little resemblance to CPIL's proposal that flexibility be allowed only in geographic areas with underutilized capacity and that floors be based on short-run marginal cost. As a result, we cannot find that CPIL made a substantial contribution to this aspect of the Phase II Decision.

Another important facet of the Phase II Decision is the method whereby rates are updated: Category I rates and Category II floors and ceilings are updated via price cap indices based on a measure of nationwide inflation. Again, this runs counter to CPIL's proposal that a modified general rate case and attrition mechanism be continued, and we find no substantial contribution.

We also adopted an unbundling principle whereby the local exchange carriers are required to impute the tariffed rate of any function deemed to be a monopoly building block in rates for any bundled tariffed service which includes that monopoly function. This principle closely resembles a proposal made by MCI Telecommunications Corporation (MCI) and seconded by parties such as AT&T Communications of California, Inc. (AT&T), DRA, and others. While CPIL did not address unbundling explicitly, this principle is consistent with CPIL's emphasis that cross subsidies and predatory pricing must be avoided. However, the breadth of support for this concept as well as the fact that several other parties presented detailed unbundling proposals similar to that adopted lead us to conclude that CPIL did not make a substantial contribution in this area.

Contrary to CPIL's recommendation, we largely eliminated any requirement that investments be justified in regulatory proceedings. We concluded that flexibility to make investment decisions without regulatory scrutiny (combined with a pricing mechanism which protects ratepayers and competitors) is desirable because it encourages Pacific and GTEC to aggressively pursue new technologies and services while placing them at risk for their investment decisions.

The Phase II Decision did however impose the requirement that Pacific and GTEC receive approval before installing fiber facilities in the local loop beyond the feeder system, because of the magnitude of investment needed and because of possible technical issues. (Phase II Decision, p. 328.) This approach was adopted in response to concerns raised largely by California Cable Television Association (CCTA) regarding the possibility of cross subsidized fiber facilities. We conclude that CPIL did not make a substantial contribution to this portion of the Phase II Decision.

We also required in the Phase II Decision that existing monitoring of Pacific's and GTEC's operations be continued and expanded in order to provide prompt signals if potential problems arise with the new regulatory framework adopted for the two local exchange carriers. (Phase II Decision, p. 305.) The Commission defined a comprehensive monitoring framework and provided for workshops to detail the specific tracking and reports which would be needed. (Phase II Decision, pp. 305-306.)

The defined monitoring program requires collection of information in several areas of utility operations covered by CPIL's EIS proposal, e.g., productivity measurements, demand growth, plant utilization measurements, and service costs. As Pacific and GTEC point out, the adopted monitoring program explicitly stops short of an EIS as proposed by CPIL. We also note that, in addition to CPIL, DRA and TURN stressed the need for a comprehensive monitoring program. DRA and TURN, however, did not flesh out their recommendations to the level of detail provided by CPIL.

Because CPIL helped develop a full record on the types of information which should be obtained through monitoring, we find that CPIL's participation assisted the Commission in defining the monitoring program even though CPIL's EIS proposal was not adopted. Based on our determination that a less restrictive standard for substantial contribution is appropriate in Phase II of I.87-11-033,

we conclude that CPIL made a substantial contribution to this portion of the Phase II Decision and as a result that CPIL should be awarded compensation for this contribution.

3.3.3 Compensable Hours

We have found that CPIL made a substantial contribution to the OII. CPIL seeks compensation for 78.35 hours which Fellmeth and Wheaton devoted to the September 1987 en banc hearing. Because these hours appear reasonable in light of the substantial contribution which CPIL made to the OII, we conclude that compensation should be awarded for the entirety of CPIL's hours spent on the en banc hearing.

While CPIL made a substantial contribution to the Phase II Decision, we find that CPIL's compensation should be significantly less than requested because of the Commission's limited reliance on CPIL's showing.

GTEC and Pacific claim that CPIL failed to break down its compensation claim by issue as required by Rule 76.26 (see footnote 4). CPIL submits, however, that its attorneys' hours in this proceeding cannot be segregated by issue since CPIL participated in only one matter, the proper measure and monitoring of investment decisions made for modernization and competition. (Request, p. 17.)

Despite CPIL's assertion, our review of the record reveals that CPIL addressed other issues as well. Throughout the phased proceedings CPIL recommended localized rate flexibility in areas with excess capacity. And in Phase II, CPIL sponsored a broad regulatory proposal. However, we agree that CPIL emphasized its investment concerns and that most of CPIL's efforts were

focused on its EIS proposal.[10] As a result, we will not require that CPIL allocate time by issue as requested by Pacific and GTEC but instead will reflect the breadth of issues addressed by CPIL through a reduction in compensation from the number of hours requested.

CPIL's Request does provide enough detail to allow isolation of certain portions of CPIL's efforts which did not make a substantial contribution to the Phase II Decision. We will exclude those hours before considering the remaining portions.

First, we note that CPIL requests compensation for Fellmeth's statistical regression analyses of Pacific's economies of scale. While CPIL's Reply implies otherwise, CPIL's Request identifies and requests compensation for at least 69.9 hours which Fellmeth spent on this statistical study. As Pacific notes, the Commission did not reference or rely on any of Fellmeth's statistical analyses in the Phase II Decision. Because of this, we will not award compensation for the hours which CPIL identified as directly related to the regression studies.[11] In addition, it is clear that a significant portion of the time spent on other activities such as discovery, testimony preparation, cross-examination, and briefing were also related to the regression analyses. Since CPIL did not separate such time spent on the regression studies from other hours, we consider the lack of reliance on this portion of Fellmeth's testimony in assessing additional reductions which should be made.

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10 Contrary to Pacific's assertions, it appears that the hours CPIL claimed for A.85-01-034 were devoted to witnesses whose primary topics were investment-related.

11 This exclusion eliminates all but 4.5 hours which Fellmeth claimed prior to the time A.85-01-034 was filed.

We also will not award compensation for the 20.9 hours which Fellmeth and Wheaton spent reviewing other parties' filed comments on the ALJ's proposed Phase II decision. Since CPIL did not file reply comments, its review of other parties' comments clearly did not contribute in any way to the Phase II Decision.

CPIL recognizes that the adopted monitoring plan is not based solely on CPIL's proposal. CPIL admits that it cannot "claim that it is the source of [the adopted monitoring] concepts" (Request, p. 6), that it "harbors no illusions about the rejection of the EIS qua the EIS" (Request, pp. 13-14), and that the "timing and form proposals" in the EIS proposal "were clearly rejected by the Commission, and CPIL does not venture to pretend otherwise" (Request, p. 12).

Because we crafted the adopted monitoring plan based on testimony from several parties, because we rejected the key components of CPIL's EIS proposal, and because CPIL addressed several issues in addition to its EIS proposal, we conclude that CPIL should be compensated for one-third of the remaining hours spent by Fellmeth and Wheaton for which compensation is requested.

In summary, we find that CPIL should be compensated in total for 228.2 hours spent by Fellmeth and 92.8 hours spent by Wheaton which contributed to the OII and to the Phase II Decision, determined as follows:

		Fellmeth	Wheaton
a.	En Banc Hearing	37.2	41.15
b.	Other Hours Claimed	689.9	185.15
	Adjustments:		
	Phase I of I.87-11-033	(16.0)	-
	Phase 3 of A.85-01-034	(4.5)	(19.20)
	Phase III of I.87-11-033	(7.5)	(9.10)
	Regression Analyses	(69.9)	-
	Comments on Proposed Decision	(19.0)	(1.90)
	Subtotal	573.0	154.95
c.	1/3 of Subtotal	191.0	51.65
	Total (a + c)	228.2	92.80

3.3.4 Hourly Rate of Compensation

CPIL seeks fees of $175 per hour for Fellmeth and $150 per hour for Wheaton. CPIL states that Fellmeth has previously been awarded $150 per hour for work performed in a nonlegal capacity during 1984 through 1986 in D.87-05-030 and was also awarded $150 per hour in 1988. CPIL seeks an enhancement to $175 per hour on the basis that Fellmeth served in a dual capacity as attorney and expert in this proceeding. Recognizing that Wheaton was awarded $125 per hour in D.88-12-050, CPIL seeks an hourly rate of $150 per hour for Wheaton on the basis that the Commission has awarded $150 per hour to other attorneys. (See D.87-07-042, D.87-05-030, and D.86-12-053.)

We reject CPIL's request for increases in the hourly fees for both Fellmeth and Wheaton. CPIL does not substantiate that Fellmeth has served in a dual capacity (in these or earlier proceedings) or that any such dual service resulted in efficiencies in CPIL's participation. Indeed, since both Fellmeth and Wheaton usually attended the evidentiary hearings, CPIL's assertion if anything raises questions regarding the efficiency of CPIL's presentation. (See D.86-04-012.) For these reasons, we conclude that a fee enhancement for Fellmeth is not justified and that an hourly fee of $150 is appropriate.

As CPIL notes in its request for a fee increase for Wheaton, we have awarded hourly fees of $150 in a number of instances. Hourly rates awarded recently for attorneys vary from $110 (see D.90-08-035 and D.89-09-103) to $165 (see D.91-03-018) and are based on both the time during which the service was rendered and the attorney's experience. Because over 85 percent of Wheaton's work for which compensation is granted today occurred during 1986 and 1987, we see no justification for increasing Wheaton's fee above the $125 per hour which D.88-12-085 found to be reasonable for his work in a 1988 general rate case. We conclude that $125 is the appropriate fee for Wheaton in this case.

3.3.5 CPIL's Compensation Award

CPIL requests compensation for $3,021.64 in costs, which we find to be reasonable in light of CPIL's substantial contribution to the OII and the Phase II Decision.

In accordance with the preceding discussion, CPIL is entitled to compensation of $48,851.64. The components of this award are as follows:

Fellmeth compensation 228.2 hours x $150 =	$34,230.00
Wheaton compensation 92.8 hours x $125 =	11,600.00
Other costs	3,021.64
Total	$48,851.64

3.3.6 Payment of CPIL's Award

GTEC submits that any compensation awarded based on CPIL's participation in A.85-01-034 must be paid for solely by Pacific's customers, arguing that they are the only customers who benefited, if at all, from CPIL's input. GTEC asserts that consideration of the entirety of CPIL's claim in I.87-11-033 would clearly be unfair and unreasonable and deny GTEC of its right to legal due process.

Because relevant portions of the A.85-01-034 record were incorporated into Phase II and were an integral part of CPIL's showing which made a substantial contribution to the Phase II decision, we conclude that GTEC's customers benefited and as a result that GTEC as well as Pacific should compensate CPIL for development of the A.85-01-034 record. Since GTEC was given full opportunity to respond to the incorporated material through cross-examination, rebuttal witnesses, and the briefing process, we find that GTEC's due process rights are not violated by such a requirement.

Consistent with D.90-09-080, we conclude that it is reasonable to require that the award of compensation for CPIL's participation in these proceedings be divided equally between Pacific and GTEC.

4. TURN Requests for Compensation

TURN filed its Request for Compensation (Initial Request) on November 16, 1989, claiming substantial contribution to the Phase II Decision. TURN also filed a Supplemental Request for Compensation (Supplemental Request) on May 3, 1990, for its substantial contributions to the Phase II Decision and to D.90-04-031 in recognition of its successful petition to modify the Phase II Decision. Both the Request and the Supplemental Request were timely filed.

4.1 Positions of the Parties

4.1.1 TURN Initial Request

Although TURN recognizes that the Commission did not adopt TURN's major policy proposals in the Phase II Decision, TURN submits that it was the only active intervenor representing residential ratepayers, that its witness Bolter brought a nationwide perspective to this proceeding that most of the other witnesses lacked, and that TURN's participation was critical for development of the adopted new regulatory framework.

TURN claims contribution for several reasons. In TURN's view, perhaps its greatest contribution arose from its evidence regarding Pacific's forecasted performance under Pacific's proposed California Plan for Rate Stability (CPRS).[12] TURN submits that it

12 Pacific's CPRS was a package proposal which would have frozen basic residential rates through 1992 while increasing certain business rates, expanding local calling areas, and providing Touch Tone service to residential customers without charge. Other CPRS components included pricing flexibility, a profit-sharing mechanism, and authorization for certain network modernization expenditures.

was the only supporter of Pacific's proposal for free Touch Tone service and expanded local area calling and that Pacific conceded that both these recommendations were at least partially in response to TURN's history of support for these items.

TURN submits that the three service categories adopted in the Phase II Decision closely resemble the three categories Bolter recommended. TURN also argues that it introduced relevant data concerning GTEC's reorganization plans and further that specific data it introduced helped shape the numerical parameters of the framework ultimately adopted. According to TURN, its policy and legal arguments helped persuade the Commission to maintain a public forum for ratepayers and to fortify its monitoring provisions. TURN submits that the Commission agreed with TURN regarding the potential dangers of loosening the reins on local exchange carriers' capital structure and depreciation rates, and as a result emphasized in the Phase II Decision that it will not allow Pacific and GTEC to diminish sharing by changes in depreciation schedules and will rescind utility flexibility over capital structure if such discretion is used to disadvantage ratepayers.

The following is a summary of TURN's requested compensation in this proceeding:

Attorney Barmore 435 hours at $125 per hour	$54,375
Witness Bolter and Associates	21,340
Copying Expenses	1,644
Postage Costs	613
Total	$77,972

TURN submits that Barmore's hours have been segregated by issue where feasible and that hours devoted to issues where TURN made little if any contribution have been excluded. TURN is

claiming only those hours devoted to witnesses Schmitt, Harris, McCallion, and Bolter. This allocation captures about three-quarters of Barmore's time spent on Phase II.

TURN requests an hourly rate for Barmore of $125, stating that Barmore was previously awarded this hourly rate in D.89-07-063 and that the complexity of this proceeding warrants an hourly fee of at least this amount. TURN requests an hourly fee of $110 for Boltor's services, less a 25 percent discount which Bethesda Research Institute provided because TURN is a consumer organization, and lesser amounts for Bolter's associates. In TURN's view, this is a reasonable fee since Bolter is a telecommunications expert with a national reputation (see Exhibit A-112, Appendix A).

TURN submits that the other costs included in its compensation request are minimal and well within the range of reasonableness.

4.1.2 TURN Supplemental Request

TURN states that in the Commission's reconsideration of the Phase II Decision (D.90-04-031), TURN clearly prevailed regarding reporting requirements when Pacific or GTEC requests that a service be reclassified to Category III.

The following is a summary of TURN's Supplemental Request:

Attorney Barmore 18.5 hours at $125 per hour	$2,312.50
Copying Expenses	384.00
Postage Costs	97.00
Total	$2,793.50

TURN states that Barmore devoted less than half of TURN's petition for modification to the issue on which it prevailed and that the Supplemental Request reflects this division of labor.

4.1.3 Pacific Response

Pacific filed a response (Pacific Response) to TURN's Initial Request on December 18, 1989, but did not respond to TURN's Supplemental Request.

Pacific asserts that throughout this proceeding TURN steadfastly argued that traditional rate-of-return regulation should be retained, a position which the Phase II Decision clearly rejected. Pacific concludes that the basic thrust, if not the entirety, of TURN's showing was not adopted, in whole or in part. Pacific submits that TURN does not demonstrate that it meets the Rule 76.52(g) criteria for "substantial contribution" but instead relies on its "accomplishments" in this proceeding. (Pacific Response, p. 3, citing TURN Initial Request, p. 2.)

Pacific submits that mere support for Pacific's proposal for free Touch Tone service and expanded local area calling is not a valid basis for claiming compensation. Moreover, Pacific points out that its proposal was influenced in part by "a number of other consumer groups" in addition to TURN (Schmitt (for Pacific), 15 RT 1332). As a result, Pacific asserts that any compensation awarded for contribution regarding these issues must be reduced significantly in recognition of the fact that there was duplication of effort (see Rule 76.53(c)).

4.2 Discussion

4.2.1 TURN's Substantial Contribution

TURN's basic position in Phase II was that a rate-of-return regulatory structure should be continued, with certain changes to make it more responsive to competition and new technologies. TURN recommended that rates be constrained between long-run incremental costs and stand alone costs, with services divided into three categories (depending on the amount of

competition) for purposes of setting rates and establishing limits of rate flexibility. TURN also recommended that the Commission adopt what it termed an "equity interest" mechanism whereby ratepayers would be compensated for their alleged investment in new services and in existing regulated services if they are subsequently detariffed or deregulated.

As TURN recognizes, the adopted regulatory framework did not adopt TURN's primary recommendations. However, there are several areas in which TURN's participation contributed to the Phase II Decision.

We agree with TURN that there are similarities between Bolter's recommended service categorizations and the three service categories adopted in the Phase II Decision, though Bolter's proposal was not as detailed in this respect as that of other parties, e.g., GTEC and DRA.

While TURN's primary recommendation was that rate-of-return regulation be continued, TURN also recommended that certain steps be taken to make an alternative regulatory framework more palatable from its perspective if such were chosen. TURN expressed concerns that service quality could suffer, and emphasized that a new regulatory framework would make accurate and up-to-date monitoring more important. The Commission heeded TURN, CPIL, and DRA and defined a comprehensive monitoring framework.

TURN and others, e.g., DRA, the Dun & Bradstreet Companies, and CENTEX Telemanagement, viewed general rate cases as an invaluable forum to review overall utility operations. These parties feared that, without rate cases, ratepayers and competitors would be without an adequate avenue to pursue issues such as marketing abuses and modernization of the network. Pacific and GTEC, on the other hand, argued that the existing complaint, investigation, and rulemaking procedures provide adequate protection and that no change or addition to these existing regulatory mechanisms would be needed if the general rate case

forum were eliminated. We disagreed with the utilities, and provided for a separate investigation docket in which parties would be allowed to file petitions for Commission consideration of certain types of issues which do not fit within other proceedings or procedural options. (Phase II Decision, p. 336.)

As TURN points out, it was a vocal opponent of Pacific's proposed CPRS, arguing that Pacific's plan to freeze basic residential rates would ignore substantial cost savings which should be shared with ratepayers. TURN concluded that, while free Touch Tone for residential customers and expanded local calling areas were long overdue, the CPRS package would exact too high a price for these concessions. (See TURN Opening Brief, pp. 27-28.) DRA and other parties shared TURN's concerns about CPRS, though only TURN supported separate approval of the Touch Tone and local calling area changes. In the Phase II Decision, we agreed with TURN's view, and rejected most of CPRS while adopting elimination of the Touch Tone charge for residential customers and expansion of local calling areas.

Finally, TURN took the position that utility productivity levels should be higher and rates of return should be lower than those recommended in the ALJ's proposed decision. We agreed with TURN (and certain other parties) and in the Phase II Decision adopted a 4.5 percent productivity differential (rather than the 4 percent recommended by the ALJ) and a 12.5 percent benchmark rate of return (rather than 12.75 percent).

In summary, TURN helped develop the record in ways that contributed to the Phase II Decision in at least the following areas: service categorization for pricing purposes, the need for an alternative regulatory forum in the absence of general rate cases, expansion of the monitoring program, elimination of Touch Tone charges for residential customers, expansion of local calling areas, rejection of CPRS, productivity, and rate of return. TURN's contribution to each of these issues, taken individually, may not

meet the usual standards for "significant contribution," e.g., because other parties took similar positions. However, in recognition of the fact that TURN was the only active intervenor representing residential ratepayers and in keeping with our finding that the standard for substantial contribution should be less restrictive for this exceptional proceeding, we find that TURN made a substantial contribution to the Phase II Decision and should receive compensation.

Looking at D.90-04-031, TURN clearly prevailed in convincing us to require that the utilities provide market power information when requesting service reclassifications. (D.90-04-031, pp. 13, 25.) As a result, we find that TURN made a substantial contribution to D.90-04-031 and should receive compensation.

4.2.2 TURN's Compensation Award

For its contribution to the Phase II Decision, TURN seeks compensation for 435 hours spent by attorney Barmore in addition to its consultant fees, copying expenses, and postage costs. Because of the Commission's limited reliance on TURN's showing, we find that TURN's compensation should be less than requested. Since we rejected TURN's major policy proposals in Phase II and since most of the issues regarding which TURN made a contribution were resolved based on testimony from several parties, we conclude that TURN should be compensated for two-thirds of Barmore's time and two-thirds of TURN's consultant fees. While TURN's major policy proposals were rejected, we make only a one-third reduction because TURN made a positive contribution to the Phase II record on a broad range of other issues.

TURN also seeks compensation for 18.5 hours of Barmore's time spent on its petition to modify the Phase II Decision. Because these hours appear reasonable in light of TURN's substantial contribution to D.90-04-031, we conclude that compensation should be awarded for the full 18.5 hours.

TURN seeks fees of $125 per hour for Barmore, and Pacific does not contest this hourly rate. Consistent with D.89-07-063, we find an hourly rate of $125 to be reasonable for Barmore.

We agree with TURN that the hourly rates charged by Bethesda Research Institute are reasonable in light of the qualifications of TURN's expert witness and the overall quality of his presentation. However, as noted above, we will compensate TURN for only two-thirds of TURN's consultant fees.

We find TURN's requested copying expenses and postage costs to be reasonable in light of TURN's substantial contribution to the Phase II Decision and to D.90-04-031.

In accordance with the preceding discussion, TURN is entitled to compensation of $55,527.17. The components of this award are as follows:

Attorney Barmore:		
Phase II Decision	290 hours at $125/hour	$36,250.00
D.90-04-031	18.5 hours at $125/hour	2,312.50
Witness Bolter and Associates:		
2/3 of $21,340		14,226.67
Copying Expenses:		
Phase II Decision		1,644.00
D.90-04-031		384.00
Postage Costs:		
Phase II Decision		613.00
D.90-04-031		97.00
Total		$55,527.17

Consistent with our treatment of CPIL's compensation request, it is reasonable to require that this award of compensation for TURN's participation in Phase II of I.87-11-033 be divided equally between Pacific and GTEC.

5. Conclusion

As in previous Commission decisions, this order will provide for interest commencing on the 75th day after the requests for compensation were filed and continuing until full payment of the award is made.

CPIL and TURN are placed on notice that they 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 organizations in support of all claims for intervenor compensation. Such recordkeeping systems should identify the specific proceeding in which costs are incurred, 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. Such records shall be complete and legible.

Findings of Fact

1. CPIL filed its Request for Leave to Late File Request for Intervenor Compensation on December 4, 1989, in which it requests $123,912.26 in compensation for its participation in A.85-01-034 and I.87-11-033.

2. The October 17, 1989 earthquake substantially dislocated CPIL's San Francisco office.

3. CPIL was found eligible for compensation in A.85-01-034 in D.85-07-023 and was found eligible for compensation in I.87-11-033 in the Phase II Decision.

4. TURN requests $77,972 in compensation for its contribution to the Phase II Decision and $2,793.50 for its contribution to D.90-04-031 modifying the Phase II Decision.

5. TURN was found eligible for compensation in I.87-11-033 in D.88-07-035.

6. In D.89-09-103, the Commission found that in certain exceptional proceedings which meet two criteria, the Commission may find, in order to encourage intervenor participation, that a party has made a substantial contribution in the absence of adoption of any of its recommendations.

7. Phase II of I.87-11-033 meets the second criterion in D.89-09-103 (as a case of unusual importance) because the Commission fundamentally revamped the method of regulating intraLATA telecommunications in California.

8. Phase II of I.87-11-033 meets the first criterion in D.89-09-103 (regarding an extraordinarily complex proceeding) because of the multiple phases and because of the breadth of interrelated policy issues which go far beyond the scope of a typical rate case.

9. Because of the unprecedented nature of the Phase II proceeding and the fundamental effect it has had on regulation of intraLATA telecommunications in California, there is an overriding interest in encouraging participation of intervenors in this proceeding. Because of this interest, intervenors may make a substantial contribution even if their specific recommendations are not adopted by the Commission.

10. Because the Commission incorporated relevant material from Phase 2 of A.85-01-034 and Phase I of I.87-11-033 in the Phase II record, the Phase II Decision is the "final order or decision" as defined by Rule 76.52(h) for assessing contribution of CPIL's showing related to the incorporated material.

11. The "final decision" for purposes of requesting compensation for hours spent on the Phase I settlement is D.88-09-059.

12. The "final decision" for purposes of requesting compensation for hours spent on the settlement in Phase 3 of A.85-01-034 is D.90-03-075.

13. A "final decision" has not yet been rendered in Phase III of I.87-11-033.

14. CPIL made a substantial contribution to the OII because CPIL's comments assisted the Commission in defining the scope of I.87-11-033.

15. CPIL made a substantial contribution to the Phase II Decision because it helped develop a full record on the types of information which should be obtained through monitoring.

16. CPIL did not allocate its attorneys' time by issue.

17. The Commission did not reference or rely on any of Fellmeth's statistical analyses in the Phase II Decision.

18. CPIL did not file reply comments on the ALJ's proposed Phase II decision.

19. It is reasonable to reduce CPIL's request, and award it compensation for 191.0 hours of Fellmeth's time and 51.65 hours of Wheaton's time for their contribution to the Phase II Decision, because the monitoring plan was based on testimony from several parties, because the key components of CPIL's EIS proposal were rejected, and because CPIL addressed several issues in addition to its EIS proposal.

20. Fellmeth has previously been awarded $150 per hour compensation in D.87-05-030 and D.88-12-050.

21. CPIL does not substantiate that Fellmeth has served in a dual capacity or that any such dual service resulted in efficiencies in CPIL's participation.

22. Wheaton has previously been awarded $125 per hour compensation in D.88-12-085 for work performed in 1988.

23. CPIL's request for $3,021.64 in costs is reasonable in light of CPIL's substantial contribution to the OII and the Phase II Decision.

24. TURN made a substantial contribution to the Phase II Decision because it helped develop the record in at least the following areas: service categorization for pricing purposes, the

need for an alternative regulatory forum in the absence of general rate cases, expansion of the monitoring program, elimination of Touch Tone charges for residential customers, expansion of local calling areas, rejection of CPRS, productivity, and rate of return.

25. TURN made a substantial contribution to D.90-04-031 because it convinced us to modify the Phase II Decision to require the utilities to provide market power information when requesting service reclassifications.

26. It is reasonable to award TURN compensation for 290 hours of Barmore's time and two-thirds of TURN's consultant fees for their contribution to the Phase II Decision, because TURN's major policy proposals were rejected and because most of the issues regarding which TURN made a contribution were resolved based on testimony from several parties.

27. It is reasonable to award TURN compensation for 18.5 hours of Barmore's time because of TURN's substantial contribution to D.90-04-031.

28. Barmore has previously been awarded $125 per hour compensation in D.89-07-063.

29. TURN's request for $2738.00 in copying expenses and postage costs is reasonable in light of TURN's substantial contribution to the Phase II Decision and D.90-04-031.

Conclusions of Law

1. CPIL's late-filed request for intervenor compensation should be accepted for filing because the October 17, 1989 earthquake prevented its timely filing.

2. Compensation should not be awarded for the 16 hours which CPIL spent on the Phase I settlement.

3. Compensation should not be awarded for the 23.7 hours which CPIL spent on Phase 3 of A.85-01-034 after the PHC at which it was decided that CPIL's proposal would be considered in Phase II of I.87-11-033.

4. Compensation should not be awarded at this time for the 16.6 hours which CPIL spent on Phase III of I.87-11-033.

5. CPIL should be awarded compensation for the 78.35 hours it devoted to the September 1987 en banc hearing because these hours appear reasonable in light of the substantial contribution which CPIL made to the OII.

6. CPIL should not be awarded compensation for the 69.9 hours which Fellmeth spent on his statistical study, because the Commission did not rely on this study.

7. CPIL should not be awarded compensation for the 20.9 hours spent reviewing parties' comments on the ALJ's proposed decision, since this review did not contribute to the Phase II Decision.

8. CPIL should be awarded compensation for 191.0 hours of Fellmeth's time and 51.65 hours of Wheaton's time for their contribution to the Phase II Decision.

9. CPIL's request for hourly attorney fee rates of $175 per hour for Fellmeth and $150 per hour for Wheaton is unreasonable and should not be adopted.

10. As previously determined by the Commission, hourly rates of $150 per hour for Fellmeth and $125 per hour for Wheaton should be awarded in this case.

11. CPIL should be awarded compensation for $3,021.64 for incurred costs.

12. The awards of compensation to CPIL and TURN should be divided equally between Pacific and GTEC.

13. TURN should be awarded compensation for 290 hours of Barmore's time and two-thirds of TURN's consultant fees because of TURN's substantial contribution to the Phase II Decision.

14. TURN should be awarded compensation for 18.5 hours of Barmore's time because of TURN's substantial contribution to D.90-04-031.

15. As previously determined by the Commission, an hourly rate of $125 per hour for Barmore should be awarded in this case.

16. TURN should be awarded compensation for $2738.00 for copying expenses and postage costs.

O R D E R

IT IS ORDERED that:

1. Center for Public Interest Law's (CPIL) request for leave to late file its request for intervenor compensation is granted and CPIL's request for compensation is accepted for filing.

2. CPIL's request for compensation for its participation in Application (A.) 85-01-034 and Investigation (I.) 87-11-033 is granted in the amount of $48,851.64.

3. The request for compensation of Toward Utility Rate Normalization (TURN) is granted in the amount of $55,527.17.

4. Pacific Bell (Pacific) and GTE California Incorporated (GTEC) shall, within 15 days of the effective date of this order, each remit to CPIL $24,425.82, plus interest calculated at the three-month commercial paper rate from February 17, 1990 until full payment is made.

5. Pacific and GTEC shall, within 15 days of the effective date of this order, each remit to TURN $27,763.59, plus interest calculated at the three-month commercial paper rate from January 31, 1990 until full payment is made.

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

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