

ALJ/TRP/sid

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FAX/TELEX 140-40-281, 840-40-281  
NOV 7 1996

Decision 96-11-020: November 6, 1996, Docket No

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA  
NOTICE OF MOTION FOR HEARING

Order Instituting Rulemaking on )  
the Commission's Own Motion into the case number 95-04-043 and 95-  
Competition for Local Exchange (Filed April 26, 1995)  
Service.

**ORIGINAL**

Order Instituting Investigation on )  
the Commission's Own Motion into )  
Competition for Local Exchange (Filed April 26, 1995)  
Service.

On August 30, 1995, Docket No 95-04-043 and 95-04-044

**OPINION GRANTING INTERVENOR COMPENSATION**

By this decision, we grant intervenor compensation to Toward Utility Rate Normalization (TURN) in the amount of \$114,165 for its contributions to Decision (D.) 96-03-020 and D.96-04-052.

**1. Procedural Background**

On March 13, 1996, the Commission issued D.96-03-020 instituting the resale of local exchange service by competitive local carriers (CLCs) in California within the market territories of Pacific Bell (Pacific) and GTE California, Inc. (GTEC). The decision required Pacific and GTEC to offer a broad range of services for resale and established wholesale rates for these services. The decision resolved issues designated as Phase II of these proceedings.

Public Utilities Code unless otherwise specified.

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R.95-04-043, I.95-04-044 ALJ/TRP/sid  
DRC V VOH

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On April 10, 1996, we issued an interim opinion, Docket D.96-04-052, implementing our policy of accomplishing service provider interim number portability (INP). This decision ordered Pacific and GTEC to file tariffs for the wholesale provision of INP based on rates and terms established in the decision, and also ordered CLCs to offer INP service to Pacific, GTEC and to other CLCs under the same terms and conditions.

On May 20, 1996, TURN filed a request for compensation (RFC) in the amount of \$112,605 for its contributions to Docket D.96-03-020 and D.96-04-052. On August 30, 1996, TURN filed a supplemental filing increasing its total request to \$117,008.

## 2. Requirements for Awards of Compensation

Intervenors who seek compensation for their costs of participation in Commission proceedings must file an RFC pursuant to the California Public Utilities Code §§ 1801-1812.<sup>1</sup> Intervenors are eligible for compensation of reasonable advocate's fees, expert witness fees and other costs of preparation for and participation in hearings or proceedings. Compensation is only available if the customer's presentation makes a substantial contribution to the Commission's decision and if failure to award costs would impose a significant financial hardship on the customer. (§ 1803.)

To qualify for costs, intervenors must establish that they have incurred a reasonable amount of expenses for services rendered to the customer. The expenses must be directly related to the preparation and presentation of the intervenor's case before the Commission. Expenses for services rendered by intervenors to the customer prior to the filing of the RFC are not compensable.

<sup>1</sup> All code section references herein are to the California Public Utilities Code unless otherwise specified.

An intervenor must file a notice of intent (NOI) to claim compensation within 30 days after the prehearing conference or by a date established by the Commission (§ 1804(a)(1)). The NOI must indicate the nature and extent of the customer's planned participation and include an itemized estimate of the amount of compensation anticipated (§ 1804(a)(2)(A)(i)). Within 60 days after a final decision of the Commission is issued, an intervenor requesting compensation must file an RFC. At a minimum, the RFC must include a detailed description of services and expenditures and a description of the customer's substantial contribution to the hearing or proceeding (§ 1804(c)). Within 75 days of the filing of a request for compensation, the Commission should issue a decision which determines whether or not the customer has made a substantial contribution and the amount of compensation to be paid (§ 1804(e)).

### 3. Timeliness of TURN's Filings

On September 11, 1995, TURN filed its NOI in proceeding R.95-04-043/I.95-04-044. Because this NOI was filed within 30 days of the first prehearing conference in these proceedings on August 11, 1995, it was timely under § 1804(a)(1). In a decision dated June 6, 1996, we found TURN to be eligible for compensation in these proceedings (D.96-06-029, slip op. at 5). An intervenor "found eligible for an award of compensation in one phase of a proceeding remains eligible in later phases." (CAL.

CODE REGS. tit. 20, art. 18.8, § 76.76 (1996)). TURN, therefore, is eligible for compensation in each of the two decisions considered here.

(c)(4) Following issuance of a final order or decision, by the commission, an intervenor may file within 60 days a request for an award; see § 1804(d). Because the term "issuance" of a final order, is not defined in § 1801 et seq. of the PU Code,<sup>1</sup> (the section which deals with intervenor compensation), we have in previous decisions looked for guidance to Chapter 9, Article 2, which deals with rehearings.<sup>2</sup> The PU Code there provides a time limit of 30 days from the "date of issuance" of a decision in which to file an application for rehearing.<sup>3</sup> That relevant section contains the following definition:<sup>4</sup> For purposes of this article, "date of issuance" means the date when the commission mails the order or decision to the parties to the action, or proceeding; see § 1731(b).<sup>5</sup> In such proceedings, the date of issuance is the date on which the two decisions presented for consideration were mailed.

For the limited purpose of determining the timeliness of TURN's filing in the instant case, we will define "date of issuance" as the date on which the two decisions presented for consideration were mailed.

D.96-03-020 was issued on March 13, 1996 and mailed on March 19, 1996. TURN filed its RFO relative to this decision on May 20, 1996, two days after the statutory 60-day period for filing had expired.<sup>6</sup> Although we may deny compensation to non-intervenors who do not comply with filing deadlines,<sup>7</sup> we decline to do so in this case, finding that the intervenor, based on a proceeding before a public authority, is eligible to file a petition for review.<sup>8</sup>

1 See e.g., D.95-02-018, slip op. at 3. See also D.91-08-014, D.91-06-005 and D.89-03-034. To be eligible for compensation in each case, see note 2.

2 See e.g. 90-09-080 denying compensation to TURN for failure to timely file it NOI.

to do so here. In this case, a two-day delay in filing does not prejudice any party. Section 1801.3 charges this Commission with administering the rules of intervenor compensation in such a manner as to encourage the effective and efficient participation of all stakeholders. We find that the two-day delay in filing here should not bar TURN from seeking compensation for its contribution to our decision.

On April 10, 1996, this Commission issued D.96-04-052. This decision was mailed on April 12, 1996. TURN's RFC related to D.96-03-020 included the hours sought for D.96-04-052 and was timely filed on May 20, 1996.

On June 19, 1996, Pacific Bell filed a response to TURN's RFC. This response does not object to the amount requested by TURN, but rather suggests apportioning any compensation awarded among all CLCs as well as Pacific and GTEC. TURN filed a reply to Pacific's response on July 3, 1996. The issue raised by Pacific is discussed in section 8.3, *infra*.

#### 4. Substantial contribution

A request for compensation by an intervenor must include, at minimum, "a detailed description of services and expenditures and a description of the customer's substantial contribution to the hearing or proceeding." (§ 1804(c).)

Section 1802(h) states that:

A "substantial contribution" exists where, in the judgment of the commission, the customer's presentation has substantially assisted the commission in the making of its order or decision because the order or decision has adopted in whole or in part one

for which (or more) factual contentions, legal contentions, or of specific policy or procedural recommendations presented by the customer.

In turn, it has been TURN's position to point out that certain of the information contained in its opposition to the two decisions for which it requests compensation, summarized in the following sections:

#### 4.1 D.96-03-020 - Phase II

In its RFC, TURN claims to have made a substantial contribution to D.96-03-020 on several issues;

Geographic Deaveraging. TURN claims that its opposition to geographic deaveraging resulted in the postponement of its implementation until after appropriate pricing studies are concluded. (TURN's RFC at 2.)

#### Resale Discount for Residential Basic Exchange Services.

TURN asserts that its arguments resulted in approval of an avoided cost discount for the resale of LEC residential local exchange service. (Id. at 3.)

LEC Recovery of Implementation Costs. TURN maintains that, its position against the approval of the LEC's projected costs of implementation resulted in the Commission's subsequent decision to not allow recovery of costs until the LECs had demonstrated that the costs were reasonable and provide consumer benefits. (Id. at 4.)

vi. Rating Area Consistency. TURN claims that through the filing of the California Telecommunications Coalition (the Coalition), it opposed the requirement that CLCs open a separate NXX code in each rate center. TURN claims that its position is reflected in the decision of the Commission in Id. at 5, 6, 8, 10.

vii. LEC Pricing Flexibility. TURN argued independently, and as part of the Coalition, that there should be different local pricing rules and degrees of regulation between LECS and various CLCs commensurate with their market power. TURN claims that the decision adopted this view of Id. at 5, 6, 8, 10, notwithstanding its CLC Pricing Policies. Finally, TURN asserts that the Commission agreed with the position taken by TURN and the Coalition that CLCs should not be subject to the same cost study and pricing restrictions as the LECS. (Id. at 6, 8)

Nonetheless, however, and perhaps notably, in its brief to the Commission, TURN readily admits that its contributions on some of the above referenced issues were made in conjunction with members of the Coalition. (Id. at 7) However, participation by a non-customer that materially supplements the presentation of another party may nonetheless be eligible for reimbursement if their active participation makes a substantial contribution to the decision. To § 1802.5:

In this case, even though TURN often worked with and even on rigorous legal briefs prepared on behalf of the Coalition, it nevertheless participated in decisions in which the Coalition did not participate.

4. The California Telecommunications Coalition, during the decisions in question, included AT&T Communications of California, Inc.; the California Association of Long Distance Telephone Companies, the California Cable Television Association, the California Payphone Association, Teleport Communications Group, Time-Warner Axs of California, L.P., and TURN.

within the Coalition, we find that many of the views advocated by TURN were adopted by the Commission and that its efforts resulted in a substantial contribution to D-96-03-020 as defined by § 1802(h), either as it stood or as it was modified after those in A-2. D-96-04-052 and INR 100-613, by analogy, fall under the last

4.2. D.96-04-052-<sup>+</sup>INP to OIC re: letter to members of the Coalition  
in D.96-04-052-<sup>+</sup>INP. In the INP phase of this proceeding, testimony was  
served by Pacific, GTEC, the Commission's Division of Ratepayer  
Advocates, (DRA), MCI Telecommunications Corp. a (MOI) and the  
Citizens Utilities TURN contributed solely through its OIC  
participation in the Coalition. The Coalition did not serve  
testimony but participated by filing a single brief in support of  
the position taken by MCI in D.96-04-052-<sup>+</sup>INP slip opn at 6. In  
support of its contribution to D.96-04-052-<sup>+</sup>INP, TURN claims that it  
worked with the Coalition in developing and advocating the  
Coalition position opposing the "onerous recurring and  
nonrecurring charges that the LECs sought to impose for INP."

(TURN's RFC at 6).<sup>1</sup>) In TURN claims the adoption of rates far lower than those sought by the LECs for INP confirms their (so) effort to contribution.<sup>2</sup> Further, TURN asserts that the Commission agreed with the Coalition regarding the need for INP in the development of local competition; it did not oppose a merger involving bus 871 in contrast to other parties to this phase of the proceeding, TURN made no individual filings. Although we have previously found no difficulty in determining TURN's substantial contribution when it is solely through the Coalition, such participation has resulted in an apparent duplication of contribution. (D.96-09-029, slip op. at 11.) In the instant case, TURN's filing appears to duplicate contributions made by the Coalition.

case, we find that TURN, through its efforts in the Coalition, made a substantial contribution to D#96-04-0522V. However, we find that this contribution duplicated to some degree the efforts of all other parties to this proceeding and that a reduction in the total amount awarded to TURN is reasonable. 80-3881 45000

#### **5. Reasonableness of Hourly Rates**

10. (D.96-05-053) Computation of compensation must take into account consideration the market rates paid to persons of comparable training and experience who offer similar services. (§ 1806.) In no case may the compensation awarded exceed the rate paid for comparable services by the Commission or the public utility, of whichever is greater. (Id.) The burden of proof in favor of a compensation request lies with the party seeking compensation. (D.94-09-059. In the absence of carrying that burden, the said Commission may set a rate. (D.96-05-053), slip op. at 5.)

**5.1.00 D.96-03-020 - Phase II** begins after off to drogue in mesh bag.

TURN has requested the following hours and rates for the participation of its attorneys and staff in D.96-03-020:

described in footnote 2, due to the point to M. Böhlmann's suggestion that the  
dissociations considered in this paper may be better represented as

The 1938 issue of Mr. Paul and Mrs. Costa's to those who have been  
performed here. This section should be as ready to limit  
in 1938 even though a significant amount of their work was  
A TURN did not reduce increased popularity rates for the audience

and filed on 11/20/96 at 10:00 AM by Plaintiff TURN, Inc. on 10/26/96  
Name Year(s) Rate/Hr. Hours Total Extension  
Long 1995-96 \$225.00 134.80 \$30,217.50 <sup>10%</sup>  
Weston 1995-96 \$175.00 206.75 \$36,181.25 <sup>10%</sup>  
Costa 1995-96 \$130.00 269.25 \$35,002.50 <sup>10%</sup>  
Eleftherakis 1996 \$ 40.00 15.85 \$234.00 <sup>10%</sup>

**Total Attorney and Expert Fees** to be awarded **\$101,635.25**

Ordering to awarding of legal fees based on the following:  
D.9081. In prior decisions, we have had the opportunity to set establish appropriate hourly rates for Mr. Long and Ms. Costa. We have found that hourly rates of \$225 and \$130 are reasonable for the work of Mr. Long and Ms. Costa (respectively) in 1995 (Opn. (D.96-06-029, slip opn at 18). Because we have previously found these rates to be reasonable, we apply them here. D.880-80-80.1

We have not before set a rate for the work of Mr. Weston. In support of the requested hourly rate of \$175, TURN,<sup>2</sup>

for attorney fees argued that such rates are reasonable and that  
footnote 5 Total hours for Mr. Long include 19.8 hours representing 90% of the hours worked preparing the Supplemental Filing of 8/30/96. The other 10% are allocated to D.96-04-052 in the percentage suggested by TURN. (TURN's Supplemental Filing of 8/30/96 at 4, n.4.)

6 The hours of Ms. Eleftherakis are apportioned between the two decisions considered in this opinion in the same manner as described in footnote 5, *supra*.

7 TURN did not request increased hourly rates for its advocates in 1996 even though a significant amount of their work was performed that year. This decision should not be read to limit the 1996 rates of Mr. Long and Ms. Costa to those approved here.

submits that Mr. Weston is a 1980 graduate of the Ohio State University College of Law, that he worked from 1980 to 1992 as the Telecommunications Counsel for the Office of Consumer Protection Counsel for the State of Ohio and has been in private practice since 1992.<sup>8</sup> In recognition of Mr. Weston's limited experience with California telecommunications regulation, TURN has requested an hourly rate lower than what it has requested for Mr. Long.<sup>9</sup>

While TURN has presented no statistics for hourly rates of attorneys in Ohio, TURN has acknowledged that Mr. Weston's S.C. hourly rates should be discounted relative to California market rates, as TURN's request for an hourly rate for Mr. Weston (roughly 22% below that requested for Mr. Long) is appropriate. We expect that an out-of-state attorney, unfamiliar with California telecom regulatory issues and practices, will devote more hours to issues in our proceedings than would a local attorney of similar nodal experience. Although we might adjust for this "inefficiency" by reducing the number of hours approved for compensation, a sensible reduction in the hourly rate requested accomplishes the same objective.

iii. (b) Compensation of attorneys is limited to the market rate. ((S. 1806.) The relevant market is the location where the attorney has his or her regular practice. ((D(96-05-053, slip op. at 5.) In response to market forces, rates billed by attorneys

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<sup>8</sup> Mr. Long has been a member of the California Bar for approximately 10 years. Prior to joining TURN, he was a litigation associate with Morrison & Foerster in San Francisco. D.94-09-022, slip op. at 6.

vary widely from city to city and state to state. In our finding D.96-05-053, we set a rate for an attorney of \$110 per hour (79% of the \$140 per hour requested), because the advocate's relevant market was San Diego, not San Francisco. A similar deduction is appropriate for Mr. Weston.<sup>9</sup> TURN's discount of Mr. Weston's rate by 22%, incorporates an appropriate deduction for market differences. We conclude that a \$175 hourly rate is reasonable for the work of Mr. Weston in the instant case.<sup>10</sup> D.96-04-052

5.2. D.96-04-052 INReghofwenzel and INRUT, oido ni ayon nito sa Jokrek. TURN has requested the following hours and rates for the participation of its attorneys and staff in D.96-04-052, based roughly on the following (which will not be compared with valid SSS).

Name	Year(s)	Rate/Hr	Hours	SSS Extension
Long	1995-96	\$1225	203	\$265,720.00
Weston	1995	\$175	6130.00	\$103,900.00
Costa	1995-96	\$130.00	132.00	\$17,600.00
Eleftherakis	1996	\$140.00	65.00	\$9,100.00

Total Attorney and Expert Fees in this year: \$10,246.00

INRUT requests identical rates in this decision for its personnel as it requests for their work towards D.96-03-020. For the reasons set forth in section 5.1(<sup>supra</sup>), we find the rates requested to be reasonable. See footnote 10, fn. 3 of

9 See footnotes 7 and 8, <sup>supra</sup>.  
10 See footnote 10, <sup>supra</sup>.

050-03-08.D.L.E.

## 6. Reasonableness of Hours

In support of its request for compensation, TURN has provided transcriptions of the contemporaneously recorded time sheets of its advocates during these proceedings. (TURN's RFC (D) Attachment A.) These time sheets indicate the type of work performed and, when possible in TURN's opinion, an indication of the general issue addressed. TURN's original RFC relating to DAB D.96-03-020 and D.96-04-052 did not include a summarization of its fees and expenses by issue, or by decision. In an ALJ ruling dated August 2, 1996, TURN was directed to provide such a breakdown. TURN's analysis, provided in a supplemental filing of August 30, 1996, is summarized as follows:

20-40-00, G, S. A.

Ed 3 of the 68-28 hours spent on P-100-64-083 were therefore  
due to the cause of higher berthing tariff. The remaining 5.28 hours  
belonged to TURM, a deduction for compensation. A deduction in  
accordance with section 4.8., supra, TURM, a compensation of this deduction was  
made solely within the definition.

originating for Mr. Gorga, and an unexpatriated US joint differences in the notes units) and an unexpatriated US joint differences in the notes  
the number of points redenomination for Mr. Ford (see Section 6A,  
URN's RBC). The difference is due to a 1.2 point discrepancy in  
11. Total losses shown here do not reflect the strong reduction in  
aggressiveness, e.g., return of little and condition lessening.  
same and which do not only depend on the number of loans  
by "base," since the three major TURN countries not affected by

6.1. D.96-03-020

Issue	Hours	Amount	Reason
<u>Allocated</u>	<u>Actual</u>	<u>Requested</u>	<u>Actual</u>
Base <sup>10</sup> Hours	129.00	21.00	\$23,173.75
CLC Pricing	3.88	63	\$591.65
Geog. Deaveraging	140.69	22.91	\$22,789.45
Implement. Costs	58.42	9.51	\$8,890.25
LEC Price Flex.	95.38	15.53	\$14,583.50
Rating Area Review	46.76	7.61	\$7,216.80
Resale Discount	90.61	14.75	\$13,953.45
Total	<u>614.14</u>	<u>100.00</u>	<u>\$101,231.50</u>
Req For Compensation	<u>49.40</u>	<u>8.04</u>	<u>\$10,032.75</u>
	<u>614.14</u>	<u>100.00</u>	<u>\$100,000</u>

6.2. D.96-04-052

63 of the 65.85 hours spent on D.96-04-052 were related to the issue of number portability. The remaining 2.85 hours are assigned to TURN's request for compensation. As discussed in section 4.2., *supra*, TURN's contribution to this decision was made solely through the Coalition.

10 "Base" hours are those which TURN considers not allocable by issue and which do not vary based on the number of issues addressed, e.g., review of filings and coalition meetings.

11 Total dollars shown here do not match the amount requested in TURN's RFC. The difference is due to a 1.5 hour discrepancy in the number of hours requested for Mr. Long (see Section 6.4, *infra*) and an unexplained 1/2 hour difference in the hours claimed for Ms. Costa.

Section 1801.3(f) requires that intervenor compensation be administered in a manner that avoids unproductive or inefficient unnecessary participation that duplicates the participation of other similar interests otherwise adequately represented or to prevent participation that is not necessary for a fair determination of the proceeding.<sup>12</sup> In previous decisions, we have reduced the amount of compensation awarded due to duplication of mutual mega contributions by intervenors.<sup>13</sup> No TURN argues that less money to fund it did not duplicate any party's efforts by working with the ECO Coalition, and that the Commission benefitted by not receiving separate documents containing redundant proposals and aggregated arguments.<sup>14</sup> (TURN's RFC at 8.) In TURN, further asserts that a reduction in their compensation solely because their contribution was made through the Coalition "would strongly discourage the continued involvement of TURN and other customer representatives in many E.O. Commission proceedings" and "would discourage coalition building." See, *id.*, at 97. We also note that No TURN is quoted as follows:

"We are charged with administering the rules of the law of intervenor compensation in a way which avoids duplication of compensation" (§ 1801.3(f)). TURN's argument that the separate Commission benefits by not receiving separate documents from each intervenor implies that if its contributions had been made more individually rather than within the Coalition, we would approve new full compensation resulting in an aggregate increase in awards to intervenors. See, e.g., D.88-12-085; D.91-12-055; D.93-06-022; and D.96-06-029.

<sup>12</sup> See, e.g., D.88-12-085; D.91-12-055; D.93-06-022; and D.96-06-029.

intervenors. On the contrary, it is clear that if TURN's contributions significantly duplicated those of other parties we would apply an appropriate discount to the hours it claims. Moreover, although participation in a coalition may, as TURN itself suggests, avoid the submission of separate documents and thereby redundant arguments, it also produces a greater number of hours spent communicating and meeting with coalition members for which intervenors seek full compensation.<sup>12</sup> We cannot simply assume that coalition participation in our proceedings always produces a net reduction in the number of intervenor hours billed to California ratepayers for every issue. In other words, coalition participation

D.96-06-029 Duplication of contribution is to be discouraged irrespective whether that duplication takes place within a coalition or occurs between individual intervenors in our proceedings. In D.96-06-029, we reduced TURN's compensation by a duplication discount factor of 10% because TURN's contribution may have duplicated that of other members of the Coalition. D.D.96-06-029, slip op. at 11. Intervenors may decide to participate in our proceedings solely through coalitions and we do not intend to discourage such joint participation. (Nonetheless,) joint participation with other parties does not relieve an intervenor from demonstrating that it made a substantial contribution which was not merely duplicative of other parties' work. It is survivable of course we find here that although TURN made a substantial contribution through the Coalition towards D.96-04-052, portions of its contribution appear to have been duplicated by other

12 See, e.g., D.88-13-082; D.91-13-022; D.93-06-023; and D.96-06-029.

members of the Coalition. We find that TURN's award should be discounted by 10% to reflect this partial duplication.

6.3. Preparation of Request for Compensation

TURN seeks compensation for time spent in preparation of its RFC. In its original RFC filed May 20, 1996, TURN failed to allocate its hours by decision number. In addition, TURN did not provide a summary total of its hours by issue by decision date. This information was requested by the assigned ALJ. TURN was also requested to complete the matrixes that are required in all requests for compensation filed after the effective date of Order D.96-06-029 providing for the preparation of the said RFC.

a. A listing of all telecommunications "Roadmap" cases and proceedings in which the intervenor has participated. This information should be provided for the current year and all applicable previous calendar years.

b. A breakdown, by proceeding, of the intervenor's total hours incurred to participate in all Commission level proceedings listed in a. above. This should be further broken down by each calendar year and by person.

c. The hours listed for each proceeding in b. above should be further subdivided as follows: (1) hours already claimed and awarded; (2) hours claimed but still pending; and (3) eligible hours incurred, not yet claimed. This information should also be broken down by person.

d. A breakdown of all the information in c. above by issue area, i.e., "in preparation for any hearing" or "preparation of the record."

e. An allocation and breakdown of the intervenor's total costs in the same manner as a. through d. above.

TURN has claimed 49.4 hours for time spent in the preparation of its Request for Compensation, representing 8% of its total claim. A significant portion of TURN's preparation time was involved in complying with the matrix allocation requirements of D.96-06-029.1. TURN spent 28.5 hours of attorney and staff time responding the ALJ Ruling. At TURN's suggestion, these hours are apportioned 90% to D.96-03-020 and 10% to D.96-04-052. Because TURN had not previously been required to provide the matrixes requested, we find these hours to be only reasonable. In the past, we have discounted the hourly rate applied to time spent preparing compensation requests on the basis that senior level staff could delegate this task to lower-paid assistants.

Because of the additional complexity involved in originating the matrix layout of hours, we recognize that senior level staff involvement was necessary. Accordingly, we will not discount the hourly rate for preparation of the compensation request in this instance. Now that the matrices have been developed by TURN, however, we fully expect that future requests for compensation will show far fewer hours spent and less senior staff effort on their completion.

#### 6.4. Excluded Hours

Compensable hours are limited to those reasonably spent on "preparation for and participation in" our proceedings.

(§ 1802(a).) We find certain hours billed by TURN to be uncompensable. In particular, a large number of hours were spent in the course of preparing for the hearing. (See also § 180-00-08.0.)

TURN has provided copies of the time records of its legal advocates as support for its hours claimed. These time sheets show two columns, "Time Spent" and "Billable". Hours for which TURN does not seek compensation are excluded from the "Billable" total. TURN's RFC for Mr. Long contains an apparent error as it uses the "Time Spent" total of 115.5 hours rather than the 0-00-0 "Billable" total of 114. Our conclusion that the 114 hour figure is correct is confirmed by TURN's own use of this figure when allocating Mr. Long's hours by issue. (TURN's Response of August 8/30/96 app. A). Consequently, we deduct 1.5 hours from Mr. Long's total hours requested in order to correct this minor error.

We also deduct 1.5 hours for an apparent duplication of billing for work performed on preparation of a "letter re DRs" on September 26, 1885. TURN's records show the same 1.5 hour entry twice.

We disallow .75 hours for media interviews by Mr. Long on March 13, 1996. Communication with the media does not constitute participation in our proceedings. (D.96-06-029, slip op. at 18.)

Finally, we deduct 3.5 hours spent by Mr. Long travelling to and testifying in Sacramento. The Legislature has made it clear that "proceedings" covered by the compensation provisions are formal proceedings before the Commission or on alternative dispute resolution procedure in lieu of such formal proceedings. (PUC Code Sections 1801, 1802(f)(a)) We certainly acknowledge that Legislature activities may be related to matters for compensation, but have no legislative function for compensation.

pending before the Commission but, at least at this time, they are not compensable. The costs cannot yet be broken down by date because TURN's time sheets do not indicate to which order decision the hours billed are applicable; we deduct all 17.25% of the disallowed hours of Mr. Long from the amount we approve for D.96-03-020 until further notice. We will report "open" until we receive the bill.

7. **Other Costs** are not mentioned in the ALJ Ruling or the Bill of Costs.

TURN requests reimbursement of the following costs in these proceedings:

	D.96-03-020	D.96-04-052	Total
Copying*	\$ 2,061.00	\$ 229.00	\$ 2,290.00
Postage	\$ 949.50	\$ 105.50	\$ 1,055.00
Overnight Mail	\$ 126.00	\$ 14.00	\$ 140.00
Phone and Fax	\$ 758.70	\$ 84.30	\$ 843.00
Travel/Meals	\$ 719.10	\$ 79.90	\$ 799.00
<b>Total</b>	<b>\$ 4,614.30</b>	<b>\$ 512.70</b>	<b>\$ 5,127.00</b>

\*Other reasonable costs are defined by statute as "reasonable out-of-pocket expenses directly incurred by a customer that are directly related to the contentions or defenses made by the customer in the proceeding."

In its response to the ALJ Ruling of August 2, 1996, TURN notes that its May 20, 1996 RFQ inadvertently contained a request for \$1,050 in copying and postage fees which should have been recorded for the Franchise Impacts phase of these proceedings. We have deducted this amount from TURN's request for copying charges related to D.96-03-020. TURN assures us that this error would not have resulted in a duplicative claim for compensation.

recommendations made by the customer that resulted in a "substantial contribution" to § 1802(d). We note that this award does not include  $\checkmark$  The expenses presented by TURN for copying and postage appear reasonable. They total only 2.9% of the aggregate award requested by TURN in these proceedings. We are concerned however regarding TURN's reliance on overnight mail services for delivery of documents  $\checkmark$  When we have found this practice to be excessive, we have previously reduced/requested reimbursements for these costs by 50%. (D.95-03-007, slip op. at 10) We do so again in this case, cutting TURN's award for overnight mail costs to \$70, even though  $\checkmark$  Travel and meal expenses represent the costs incurred by TURN's attorney, Mr. Weston, who because he lives in Ohio,  $\checkmark$  was required to temporarily relocate to San Francisco during all hearings. In prior decisions, we have allowed travel expenses for experts who were required to travel from other states in order to participate in our proceedings. For example, we have previously allowed TURN to recover \$1,009 in expenses relating to the air travel, taxi, lodging and meal expenses of an expert from the state of Rhode Island. (D.93-10-045, slip op. at 23) Likewise, we have awarded \$1,240.25 in compensation to the Economic and Technical Analysis Group (ETAG) representing airfare and computer service expenses for its expert from Seattle, Washington.

When awarding costs, we should carefully consider the reasonableness of an intervenor's decision to hire out-of-state experts and attorneys. The effect of this practice is to increase the miscellaneous costs which intervenors seek to

recover. In addition to travel expenses, overnight mail costs and phone and fax charges are inflated by hiring individuals who reside outside of California. As ratepayers ultimately must bear these expenses, we should be certain that any increased costs are adequately offset by the enhanced efficiency of, or lower hourly rates charged by, the out-of-state expert or attorney. In this case, we cannot find with certainty that the ratepayers of our state have received a net benefit from TURN's hiring an attorney from Ohio (rather than one residing in California). Noting, also, however, that the amount of travel expenses claimed by TURN is modest in comparison to the amounts we have approved in previous decisions, we find TURN's travel expenses to be reasonable in this case. If the amount of expenses requested by TURN were larger, we might require a stronger showing of their claimed reasonableness.

Consequently, with the exception of \$70 in overnight/air mail costs, we find the miscellaneous costs claimed by TURN to be reasonable, as to expense item by item, except for the

8. Awards in the gifts (\$10,000.00) which should be made to the state of Rhode Island for the benefit of the poor.

Incorporating the adjustments to rates, hours claimed and expenses claimed *supra*, we award TURN fees and costs in these proceedings in the amount of \$114,085 as follows:

After adjusting costs, we should consider the reasonableness of an attorney's decision to hire out-of-state experts and attorneys. The effect of this practice is to increase the miscellaneous costs which, in turn, lead to

R.95-04-043, I.95-04-044 ALJ/TRP/sid/MA 100-00-000, 100-00-000, R

8.1. D.96-03-020 - Phase II of compensation. If it fits in

Name Year(s) Rate/Hr. Hours Cost Extension

Long, Michael 1995-96 \$1225 hrs 127.05 min \$128,586.25 cost

Weston, James 1995-96 \$175 hrs 206.75 min \$36,181.25 cost

Costa, Robert 1995-96 \$130 hrs 269.25 min \$35,002.50 cost

Eleftherakis, John 1996 \$140 hrs 5.85 min \$823.00 cost

Total Attorney and Expert Fees \$ 299,770.00 cost

Plus Expenses (\$1104.677.30) cost

Net Award \$104,447.30 cost

8.2. D.96-04-052 - INP

100-00-000, 100-00-000, R

Name Year(s) Rate/Hr. Hours Cost Extension

Long, Michael 1995-96 \$1225 hrs 13.20 min \$15,200.00 cost

Weston, James 1995-96 \$175 hrs 32.00 min \$5,600.00 cost

Costa, Robert 1995-96 \$130 hrs 30.00 min \$3,900.00 cost

Eleftherakis, John 1996 \$140 hrs 65 min \$8,400.00 cost

Total Attorney and Expert Fees \$10,220.00 cost

Less 10% for Duplication \$1,022.00 cost

Plus Expenses (\$1,519.70) cost

Net Award \$ 9,717.70 cost

100-00-000, 100-00-000, R

As with all intervenors seeking compensation, TURN is placed on notice that it is subject to audit or review by the Commission staff. Therefore, adequate accounting records and other necessary documentation must be maintained and retained in support of all claims for intervenor compensation. Such record keeping systems should identify specific issues for which compensation is requested, the actual time spent by each employee, attorney and expert witness, the hourly rate paid, fees paid to consultants and any other costs for which compensation may be claimed.

8.3. Allocation Among Utilities

981-880-40-88.d.8

In Pacific's response to TURN's request for compensation, Pacific recommends that any award should be allocated among all CLCs, in addition to Pacific and GTEC, on the basis of total intrastate revenues. (Pacific's Response at 2.) Pacific points us to language in our decision D.96-06-029 where, in granting compensation to TURN and to Public Advocates, Inc., we held that "requiring Pacific and GTEC to pay the intervenor compensation awarded by this decision does not mean that CLCs, once they receive a CPCN, may forgo the public policy burden inherent in Article 5 of the PU Code." (D.96-06-029, slip op. at 25.) Pacific suggests that each certificated CLC (or alternatively, that the three largest CLCs) should contribute to the awards. (Pacific's Response at 2.)<sup>14</sup> We decline to adopt

In reply, TURN notes that basing the allocation of awards on intrastate revenues would be difficult to administer, and recommends instead that we apportion awards based on the

number of access lines served by the various utilities? TURN's Reply at 3. (In previous decisions, we have allocated awards \$100 between telephone utilities in this manner. (See e.g., D.90-10-80.0 and D.96-06-029, (D.95-08-051) and (D.93-10-045.) In this proceeding, we will not depart from our historical method of allocation, i.e., relative to the number of access lines served by each utility. At this early stage in the implementation of local competition, the net effect of this holding allocation methodology is that the full award will be paid by Pacific and GTEC. As true local competition emerges in California, we will consider further the contribution of CLEs to awards of compensation in proceedings affecting the 850-40-88.0 of telecommunications industry. In this case, we will order that the compensation awarded to TURN be allocated among Pacific and GTEC, in proportion to the number of access lines each serves!

Findings of Fact: 850-80-88.0 in this case, no adverse party has argued

1. TURN requests \$117,008.25 for its contributions to D.96-03-020 and D.96-04-052, except for which it has filed a timely request for compensation.

2. TURN has previously been found eligible for compensation in these proceedings (in D.96-06-029, et al.), because a timely request for compensation was filed two days after the statutory 60-day filing period had expired.

3. TURN filed its request for \$106,249.55 for its contributions to D.96-03-020 two days after the statutory 60-day filing period had expired.

4. TURN made a timely request for \$10,758.70 for its contributions to D.96-04-052.

5. Our acceptance of TURN's late-filed requests for compensation related to D.96-03-020 prejudices no party.

16. No party filed a response opposing the amount of ~~turn~~ compensation requested by TURN related to D.96-03-020 or D.96-04-052 (i.e. 60%) payment right until after the unadjusted amount was proposed.

7. In proceedings leading to D.96-03-020, TURN advocated a number of positions which were adopted in our decision.

8. In proceedings leading to D.96-04-052, TURN worked with the California Telecommunications Coalition to advocate positions which were adopted in our decision, except to the extent that

9. TURN made substantial contributions to D.96-03-020 and D.96-04-052, according to the record of our D.96-04-052 Ruling.

10. The contribution made by TURN in the proceedings leading to D.96-04-052 was to some extent duplicative of positions already advocated by other members of the California Telecommunications Coalition, and was based on the basis of previous negotiations with

11. In response to an ALJ Ruling, TURN has complied with the reporting requirements set forth in D.96-06-029 for the portion of these proceedings considered by this decision by TURN.

12. TURN incurred additional expenses in responding to the ALJ Ruling of August 27, 1996 for legal fees and costs.

13. TURN's response, filed August 30, 1996, to the ALJ in Ruling of August 27, 1996, included a request for additional fees of \$4,405, producible until July 1, 1996, plus costs of D.96-03-020, countering the proposal to D.96-04-025.

14. Our previous decisions have apportioned awards between local telephone service providers based on the number of access lines each serves.

5. Our acceptance of TURN's face-lifted ledger for compensation relating to D.96-03-020 brings us no closer to

Conclusions of Law

1. TURN should not be barred from seeking compensation in D.96-03-020 merely because the filing of its request for compensation was delayed by two days or not accompanied by a motion.
2. TURN's award of compensation for its contribution to D.96-03-020 should be reduced by 10% to reflect duplication of contribution with other parties to this proceeding. THAT IS
3. The hourly rates requested by TURN for its attorneys and staff are reasonable.
4. The number of hours requested by TURN for its individual attorneys and staff, to the extent that they are adopted by this decision, are reasonable.
5. The other costs requested by TURN, to the extent that they are adopted by this decision, are reasonable.
6. TURN should be awarded \$104,447.30 for its contribution to D.96-03-020, plus interest at 8%, to be determined based on the date of filing.
7. TURN should be awarded \$9,717.70 for its contribution to D.96-04-052.
8. TURN is entitled to interest on the amounts awarded beginning 75 days from the date its request for compensation was filed.
9. Awards of compensation in this decision should be allocated between Pacific and GTEC in proportion to the number of access lines each serves.

and to another  
not having participated in **O R D E R** filed on Bureau MUR .

**IT IS ORDERED** that (i) all claims before 080-80-00.0

1. The requests for compensation filed by TOWARD UTILITY OF Rate Normalization (TURN) in these proceedings is granted to the extent set forth herein of \$01 and hundred and fifteen 080-80-00.0

2. TURN is awarded \$114,165 in compensation for its contributions to Decision (D.)-96-03-020 and D.96-04-052. Pacific Bell and GTE California, Inc. shall, within 30 days of the effective date of this order, each pay TURN their "share" of the amount awarded to TURN plus interest at the rate earned on prime three-month commercial paper as reported in the Federal Reserve Statistical Release G-13; such interest beginning August 3, 1996 and continuing until full payment is made. All payments are made non-judgmental. This order is effective today.

Dated November 6, 1996, at San Francisco, California.

Subscribed and sworn to before me on this day of November 1996.  
and acknowledged by the signers and others:

**GREGORY CONLON**, Attorney  
President, Bell  
**DANIEL Wm. FESSLER**  
and others whose names are not recalled or written at MUR .  
to whom copy of this document was given on this day of November 1996.  
**JESSIE J. KNIGHT, JR.**  
**HENRY M. DUQUE**  
**JOSIAH L. NEEPER**