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Decision 96-11-040 November 26, 1996

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Rulemaking on the Commission's
Own Motion to Govern Open Access
to Bottleneck Services and
Establish a Framework for Network
Architecture Development of
Dominant Carrier Networks.

ORIGINAL
R.93-04-003
(Filed April 7, 1993)

Investigation on the Commission's
Own Motion into Open Access and
Network Architecture Development
of Dominant Carrier Networks.

(Filed April 7, 1993)

INTERIM OPINION GRANTING COMPENSATION TO THE UTILITY
REFORM NETWORK FOR ITS CONTRIBUTION TO DECISION 95-12-016

This decision grants The Utility Reform Network (TURN) \$75,934.51 of the \$91,321.68 TURN has requested in compensation for its contribution to Decision (D.) 95-12-016.¹

Background

TURN's request for compensation arises out of work it did between May 1993 and February 1996 in this Commission's Open Access and Network Architecture Development (OANAD) proceeding, which seeks to "unbundle" local exchange networks as a means of promoting competition for telecommunications services. The decision to which TURN's request relates, D. 95-12-016, adopted a Total Service Long Run Incremental Cost (TSLRIC) methodology for use by Pacific Bell (Pacific) and GTE California Incorporated (GTEC) in preparing cost studies for various services on their respective networks.

Although TURN filed opening comments on the issues raised by D. 95-12-016, it did not file reply comments.

¹ Prior to November 13, 1996, The Utility Reform Network was known as Toward Utility Rate Normalization. The acronym TURN applies to both the old and the new name of this consumer advocacy organization, as appropriate.

This proceeding has a long and complex procedural history, and it has been a vehicle for considering issues beyond those for which TURN is seeking compensation. It is therefore useful to review this procedural history before considering the details of TURN's compensation request.

This Commission expressed support in principle as early as 1989 for "unbundling, nondiscriminatory access, and rate setting based on underlying cost structures" as a means of encouraging competition in the local exchange market. However, it was not until April 7, 1993, when the Commission issued this Rulemaking, that formal policies for bringing about unbundling were proposed. The Rulemaking set forth a proposed set of procedures for handling unbundling requests, and requested comment from affected parties on these proposals. After a series of extensions of time, opening comments on the proposed rules were filed on February 8, 1994, and reply comments on March 31, 1994. TURN was one of the parties that filed both opening and reply comments.

Shortly after this docket was opened, we issued D.93-08-026, which dealt with expanded interconnection and local transport restructuring. We concluded in D.93-08-026 that these topics should be part of our OANAD proceeding, and that with appropriate modifications to reflect the rules for pricing flexibility by local exchange carriers (LECs) set forth in D.89-10-031 we should adopt interconnection and local transport rules in parity with those of the Federal Communications Commission (FCC). All affected parties were invited to file comments on the expanded interconnection and local transport proposals set forth in D.93-08-026. After a series of extensions of time, opening comments were filed on November 18, 1993, and reply comments on December 16, 1993. Although TURN filed opening comments on the issues raised by D.93-08-026, it did not file reply comments.

Prior to November 13, 1993, the Utility Reform Network was known as Toward Utility Rate Normalization. The acronym TURN applies to both the old and the new name of this consumer advocacy organization, as appropriate.

2 D.89-10-031, 33 CPUC2d 43, 120 (1989).

Due to the resources that had to be devoted during most of 1994 to the Implementation Rate Design (IRD) phase of I.87-11-033, et al., we were unable to address until late in the year the issues raised by either the parties' unbundling comments or their expanded interconnection and local transport comments. However, after the issuance of the IRD decision, D.94-09-065, we asked for comments from the parties in this and other major telecommunications proceedings about how we should coordinate the proceedings in order to achieve the goals set forth in the 1993 Infrastructure Report.³ We also held an en banc hearing on December 15, 1994 to consider these coordination issues.

The result of the comments and en banc hearing was a course of D.94-12-053, which set forth a timetable and "roadmap" for achieving the goals of the Infrastructure Report. Under the timetable, the parties were given 90 days within which to reach "agreement on how and when local exchange competition, presubscription, unbundling and reform of the New Regulatory Framework (NRF), can be achieved." (Mimeo at 2, emphasis supplied.) In the event these settlement discussions were unsuccessful, we announced how we would proceed in the various telecommunications dockets. We stated that in OANAD, we would issue a decision on expanded interconnection and local transport restructuring early in 1995. After the issuance of that decision and the conclusion of settlement discussions, we would issue an order setting forth a cost methodology for conducting cost studies.

After identification of the network elements that would be the subject of the cost studies, we expected to order that the studies be performed in mid-1995. (Id. at 4.)

3 Enhancing California's Competitive Strength: A Strategy For Telecommunications Infrastructure (Report to the Governor, November 1993.)

Although there has been some slippage from the target dates announced in D.94-12-053, the Commission has generally adhered to the OANAD workplan set forth therein. A draft decision on expanded interconnection and local transport issues was made available pursuant to Public Utilities (PU) Code §31195 on February 10, 1995, and after circulation of a revised draft, D.95-04-073 was issued on April 26, 1995. On June 22, 1995, Assigned Commissioner Henry M. Duque issued an Assigned Commissioner's Ruling (ACR) setting forth a proposed TSLRIC methodology for consideration by the parties, who were invited to file comments and participate in a workshop concerning the methodology.⁵ The workshop, again which TURN was a participant, was held over the course of 11 days in July and August of 1995, and resulted in an agreement by all active participants on a set of Consensus Costing Principles, which were filed in this docket on August 23, 1995. The decision, that is the basis for TURN's request here, D.95-12-016, approved these Consensus Costing Principles, resolved cost methodology issues on which the workshop participants had been unable to agree, and set a schedule for the preparation and review of cost studies.

Two petitions for modification have been granted in connection with D.95-04-073. The first was in D.95-08-037, which allowed Pacific to file interconnection rates below direct embedded cost in order to maintain parity with Pacific's interconnection rates at the FCC. The second petition was granted in D.95-12-020, which accepted a settlement arrangement under which Pacific and GTEC would use the same local transport rate structure as at the FCC, but with a network interconnection charge substituted for the FCC's higher residual interconnection charge.

Assigned Commissioner's Ruling Proposing Cost Study Methodology And Scheduling Workshop And Prehearing Conference Thereon.

Requirements for Awards of Compensation

Intervenors who seek compensation for their contributions in Commission proceedings must file requests for compensation pursuant to PU Code §§ 1801-1812. Section 1804 (a) requires an intervenor to file a notice of intent (NOI) to claim compensation within 30 days of the first prehearing conference (PHC) in the proceeding, or by a date established by the Commission. The NOI must present information regarding the nature and extent of the work for which compensation will be sought, and it may request a finding of eligibility.

Other code sections address requests for compensation filed after a Commission decision is issued. Section 1804 (c) requires an intervenor requesting compensation to provide "a detailed description of services and expenditures and a description of the customer's substantial contribution to the hearing proceeding." Section 1802 (h) defines "substantial contribution" as follows:

"Substantial contribution means that 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 or more factual contentions, legal contentions, or specific policy or procedural recommendations presented by the customer. Where the customer's participation has resulted in a substantial contribution, even if the decision adopts that customer's contention or recommendations only in part, the commission may award the customer compensation for all reasonable advocate's fees, reasonable expert fees, and other reasonable costs incurred by the customer in preparing or presenting that contention or recommendation."

Section 1804 (e) requires the Commission to issue a decision which determines whether or not the customer has made a substantial contribution and the amount of compensation to be paid;

The level of compensation must take into account the market rate paid to people with comparable training and experience who offer similar services, consistent with § 1806 of the Public Utility Code. TURN's Notice Of Intent And Request For Compensation filed its NOI on January 13, 1995, less than 30 days after the en banc hearing that resulted in D.94-12-053. Based on this NOI, TURN was found eligible for compensation in this proceeding in an ALJ Ruling dated February 15, 1995.⁶ The same ruling found that TURN had demonstrated significant financial hardship, but noted that under PU Code § 1804(b)(2) an actual award of compensation could be made only after the issuance of a "final order or decision".

The "final order or decision" upon which TURN bases its compensation request is, of course, D.95-12-016, which was issued on December 6, 1995. Although the OANAD docket remains open for other purposes, D.95-12-016 constitutes a "final order" or "decision" for purposes of section 1804(c), since it adopted a TSLRIC methodology to be used by Pacific and GTEC in preparing their cost studies, resolved methodological issues on which the parties could not agree, and adopted a schedule for completing and evaluating the cost studies.

It is clear that TURN's Request For Compensation (Request) is timely. The Request was filed on February 5, 1996, within 60 days after the issuance of D.95-12-016. Responses to the Request were filed on March 6, 1996 by both Pacific and GTEC. As discussed below, neither Pacific nor GTEC opposes an award of reasonable compensation for TURN's work, but both believe that competitive local carriers should have to pay part of the award.

Section 1804(e) requires the Commission to issue a decision which determines whether or not the customer has made a 6 Administrative Law Judge's Ruling Concerning TURN's Request For Finding Of Eligibility For Compensation.

TURN filed a reply to the Pacific and GTEC responses on March 20, 1996.⁷

Did TURN Make A "Substantial Contribution" To D.95-12-016?

TURN argues that it made a "substantial contribution" to D.95-12-016, as showing required by PU Code s 1804(b), in three respects. First, with regard to its early work in the proceeding, TURN argues that its "early and consistent call for new and comprehensive cost studies was influential in shaping the course of the proceeding." (Request, p. 5.)

Second, TURN argues that it made a substantial contribution to D.95-12-016 because, in its capacity as a member of the California Telecommunications Coalition (Coalition), TURN "contributed to the shaping and adoption of the Consensus Document, which is in essence an all-party settlement on the issue of cost study methodology." (Id. at 3.) TURN alleges that it "analyzed the implications of the cost study principles contained in the Consensus Document from the perspective of residential and small business customers, and determined that adoption of the principles would adequately safeguard the interests of those customers." (Id.) Without divulging the precise positions it took during negotiations within the Coalition, TURN argues that it contributed substantially to the final form and wording of the following Consensus Costing Principles (which are set forth in Appendix C to D.95-12-016): 2 (importance of cost causation to incremental costing), 3 (increment studied shall be the entire quantity of demand), 4 (all functions have associated costs), 7 (TSLRIC studies

⁸ TURN also points to our approving reference in D.95-12-016 to TURN's participation in the negotiations that led to the Consensus Costing Principles.

7 On March 21, 1996, with the permission of the assigned Administrative Law Judge (ALJ), the Division of Ratepayer Advocates (DRA) also filed a reply to Pacific's and GTEC's responses.

DRA is the predecessor of the Commission's Office of Ratepayer Advocates, which was created on September 10, 1996.

shall be forward-looking) and 9. (TSLRIC methodology applies to all services).⁸

Finally, TURN argues that it contributed substantially to D.95-12-016 because its position on access to cost studies covering Pacific's hybrid fiber coaxial (HFC) system was adopted. (Request at 6-7.) In the ALJ's Proposed Decision, mailed on October 19, 1995, access to these studies was restricted to Commission staff and "any independent consultants retained to assist our staff." TURN and other parties argued in their October 31, 1995 comments on the PD that all parties willing to sign an appropriate nondisclosure agreement should be given access to the HFC studies and that without such access, it was less likely that the Commission could be sure the studies had been performed correctly. D.95-12-016 granted access to the HFC studies to all parties who negotiated an appropriate nondisclosure agreement with Pacific (Mimeo. at 50-51.)

We agree that TURN has made a sufficiently substantial contribution to D.95-12-016 to entitle it to compensation under PUI Code S 1804. After the issuance of Commissioner Dugue's ACR on June 22, 1995, TURN joined with other Coalition members in commenting on the TSLRIC methodology proposed in the ACR and it

substantially to the final form and wording of the following Consensus Costing Principles (which are set forth in Appendix D to D.95-12-016): 2 (importance of cost causation to incremental costing); 3 (incremental studies shall be the entire quantity of demand); 4 (all functions have associated costs); 7 (TSLRIC studies

⁸ TURN also points to our approving reference in D.95-12-016 to TURN's participation in the negotiations that led to the Consensus Costing Principles:

Finally, we take comfort from the fact that all Administrative Law Judge (ALJ) parties -- including DRA and TURN, (both of whom represent residential ratepayers -- have signed this document. Accordingly, we will approve the Consensus Document (Mimeo. at 7)

participated fully in the workshops that led to the Consensus and Costing Principles.⁹ We also conclude that TURN made a sufficiently broad and substantial contribution to work in this docket during 1993 and 1994 to justify compensation for most of the time it claims was spent by its attorney and analyst in those years. Prior to the issuance of our "roadmap" ruling D.94-12-053, the manner of implementation for the unbundling policies set forth in the April 7, 1993 Rulemaking had not been defined. A review of the comments TURN filed in this docket during 1994 and in L.87.11.033 immediately prior to the December 15, 1994 en banc hearing supports TURN's contention that it was one of the parties whose early and consistent call for new and comprehensive cost studies was influential in shaping the course of

9 In its March 6 response to TURN's compensation request, Pacific argues that TURN should be required to segregate its work "solely for the benefit of ratepayers" from its work "to promote the competitive interests of Coalition members" since PU Code §§ 1801 et seq. is not intended to require us and our ratepayers to pay for efforts to advance the interests of AT&T, MCI, cable companies, and other competitors." (Response, p.3)

We reject this argument for the same reasons stated in D.96-06-029:

"GTEC states that TURN's efforts are inseparable from those of other Coalition members, thus making it impossible for the Commission to accurately determine what work of TURN is eligible for compensation. We disagree. We have routinely awarded intervenors compensation for their time devoted to settlements and work products jointly sponsored with other parties. We see no greater difficulty in determining TURN's substantial contribution when it is through the Coalition than when it is through a settlement or other joint work products." (Mimeo at 10)

the proceeding. (Request, p. 5.) For example, TURN's February 8, 1994 comments in this docket urged that the new cost studies should be forward-looking, based on the entire quantity of demand for a service (or function), and should cover most LEC services and related functions. TURN also suggested that a workshop might be the best method for reaching agreement on a final costing methodology.¹⁰ These ideas ultimately found their way into the June 22, 1995 ACR and D.95-12-016.¹¹

Reasonableness of TURN's Requested Compensation
TURN's Request seeks the following compensation for its substantial contribution to D.95-12-016. The request is broken down by year, for each attorney, analyst or consultant who worked on OANAD. The rates requested are alleged to be in line with those adopted in previous Commission decisions, and to reflect "market rates paid to persons of comparable training and experience who offer similar services," as required by PU Code § 1806:

Attorneys	Hours	Rates	Fees
T. Long (1993)	4.75	\$200	\$950.00
T. Long (1994)	23.75	215	5,106.25
T. Long (1995)	47.50	230	10,925.00
T. Long (1996)	4.00	230	920.00
P. Allen (1996)	25.25	185	4,671.25

10 Comments Of Toward Utility Rate Normalization On The Order Instituting Rulemaking And Order Instituting Investigation (February 8, 1994), p. 11-14.

11 Although TURN is correct that D.95-12-016's position on access to Pacific's HFC cost studies was consistent with the position taken by TURN in its October 31, 1995 comments, we do not rely on this for our finding that TURN has made a "substantial contribution" to D.95-12-016. The overriding issues in D.95-12-016 were whether to adopt and how to apply the Consensus Costing Principles; access to the HFC studies was an incidental issue.

<u>Analyst</u>	However, Pacific	requested by TURN is excessive.
R. Costa (1993)	106.75	125
R. Costa (1994)	193.50	125
R. Costa (1995)	207.00	130
<u>Consultant</u>		
R. Gabel (1995)	14.00	100
Fee Subtotal		\$88,413.75

<u>Other Costs</u>	We have concluded that TURN's request is excessive and must be reduced. We reach this conclusion for three reasons. It is apparent from the time entries that the time spent on local transport issues has been removed from its compensation request. Second, it seems very likely that in preparing its comments on unbanding and participating in the	
Photocopying		1,901.80
Postage		331.56
Telephone and Fax		8.57
Travel and Meals (R. Gabel)		666.00
TOTAL		\$2,907.93
		\$91,321.68

In compiling these totals, TURN states that it has not allocated time by issue "because (D.95-12-016) addresses only one issue cost studies." (Request, p. 10.) Accordingly, TURN is not requesting any compensation for its work on the local transport issues decided in D.95-04-073, and TURN has removed from this compensation request all of its hours associated with local transport." (Id. at 10, fn. 7.)

B. Pacific's Response
 In the Response it submitted to TURN's request on March 6, 1996, Pacific stated that "while we do not oppose TURN receiving some compensation for its efforts in this proceeding, we do request that the Commission consider whether the amount

In its March 6, 1996 Response, GTRC took no position on whether the amount of compensation requested by TURN was reasonable. DRA's March 20, 1996 Response also took no position on this issue.

requested by TURN is excessive."¹² However, Pacific continued, it could not be more specific in its recommendation, because TURN's failure to provide a breakdown of costs by issue meant that "other parties to the proceeding cannot adequately judge whether to oppose an award of full compensation." (Pacific Response, pp(0142)) Pacific therefore recommended that TURN be required to submit a breakdown of its time by issue.

C. Discussion

We have concluded that TURN's request for compensation is excessive and must be reduced. We reach this conclusion for three reasons. First, it is apparent from the time entries for Mr. Long and Ms. Costa that, contrary to TURN's representation, not all of the time that TURN spent on local transport issues has been removed from its compensation request. Second, it seems very likely that in preparing its comments on unbundling and participating in the cost methodology workshops, TURN duplicated work by other parties. In view of this duplication of effort, a reduction in the amount of compensation claimed is appropriate. Third, we think the rate awarded for Mr. Long's work in 1995 should be the same as in D.96-06-029.

The time entries that clearly relate to local transport issues are for November of 1993. In that month, Mr. Long logged 3.75 hours between November 10 and November 19, and Ms. Costa logged 46.5 hours between November 2 and November 18. Although a September 29, 1993 ALJ ruling had directed that comments be filed on November 18 concerning both unbundling and local transport issues, that ruling was superseded by one issued on October 26,

¹² In its March 6, 1996 Response, GTEC took no position on whether the amount of compensation requested by TURN was reasonable. DRA's March 20, 1996 Response also took no position on this issue.

1993. The October 26 ruling directed that the November 18, 1993 filing should address only local transport issues and that opening comments on unbundling would not be due until January 27, 1994. In view of the October 26 ruling, the November 1993 time entries for preparing and reviewing comments can reasonably relate only to local transport.¹³ Compensation for this work must be disallowed, because TURN did not file a request for compensation for its work on local transport issues within 60 days after the issuance of D.95-04-073, as required by PU Code §1804(o). The total amount of the disallowance comes to \$6,712.50.

We have also decided that, as in other recent compensation decisions, it is appropriate to reduce TURN's compensation award because of likely duplication of other parties' efforts. Although TURN argues that its compensation should not be reduced merely because it was a member of the Coalition and filed joint pleadings with other Coalition members, we think that the following observation from D.96-06-029 -- our recent decision awarding compensation to TURN for its work on Local Competition issues -- applies here:

"Our concern with TURN's participation is that it may have duplicated to some extent the contributions of other parties. As stated in [PU Code §] 1801.3(f), intervenor compensation should be administered in a manner that avoids unproductive or unnecessary participation that

13. This is apparent from Ms. Costa's time entry for November 18, 1993, which refers to "filing OANAD comments" for attorney Peter A. Costa. (See D.95-11-027, at 19.) This sum includes .75 hour logged by Mr. Long on August 19, 1993 for "reviewing CPUC order." We assume the order referred to is D.93-08-026, since no other OANAD decisions were issued during this period. If TURN can demonstrate that the entry relates to some other OANAD decision and the preparation of TURN's unbundling comments, TURN may file a petition for modification concerning the August 19 disallowance.

(Footnote continues on next page)

1993, 181 duplicates the participation of similar interests otherwise adequately represented. Generally, where evidentiary hearings are held, duplication of effort is simpler to identify. However, where no evidentiary hearings were held... and where parties, such as the Coalition, submit joint pleadings, duplication is less apparent.

"In the past, when the level of duplication was difficult to ascertain, we applied a 'duplication discount factor' of 10% to 26% to the hours claimed by intervenors. In this case, we will similarly discount by 10% the compensation requested by TURN. Given that many of the Coalition members may have advocated positions similar to those of TURN, and that the Coalition's positions overlapped to some extent those of other parties such as DRA, we believe that this relatively small adjustment is appropriate. (Mimeo. pp. 11-12)

Just as in the Local Competition proceeding, no hearings were held in connection with the Consensus Costing Principles, and several parties besides TURN argued that the cost study methodology should be some variant of TSLRIC. In view of this high potential for duplication, we think the 10% discount we are applying to TURN's compensation award is eminently reasonable. With one exception, we will approve the hourly rates that TURN has requested. The one exception is for Mr. Long, who

15: As TURN notes in its Request, the \$185 hourly rate requested for attorney Peter Allen has been approved by us, and applied to the preparation of compensation requests. (See D.95-11-057, mimeo. at 23, 15; D.95-11-036, mimeo. at 4.) This sum includes... We also think that the \$100 hourly rate requested for Richard Gabel, TURN's consultant on telecommunications costs, is reasonable. As TURN points out in its Request (at pp. 4-15) this

(Footnote continues on next page)

requests an hourly rate for 1995 and 1996 of \$230. In D.96-06-029, we approved a 1995 hourly rate of \$225 for Mr. Long, partly to maintain parity with another attorney who worked on the Local Competition proceeding. (Mimeo. at 18.) We will apply the same rate here, but will allow \$230 per hour for Mr. Long's work in this docket in 1996.

Award

We will award TURN compensation of \$75,934.51 for its contribution to D.95-12-016. The difference between this sum and what TURN has requested (\$91,321.68) is accounted for by the disallowance for time spent on local transport issues, the 10% discount for duplication of effort, and the small reduction in Mr. Long's hourly rate for 1995. The computation is as follows:

Who Should Be Required To Pay TURN's
Intervenor Compensation Awards

As noted above, the principal issue raised by Pacific and GIRC in their responses to TURN's compensation request is not the amount of compensation requested, but who should be required to pay the award. Both Pacific and GIRC argue that competitive local carriers (CLCs), as well as themselves, should be required to pay a proportionate share of it.

In its response, Pacific proposes no specific allocation formula, but argues that "since CLC's will be affected by TURN's participation in the proceeding as much as GIRC and we are, they should pay for a portion of TURN's costs." (Pacific Response, pp. 3-4.)

GIRC's recommendations are more specific. After noting that PU Code 2 1807 requires the "public utility which is the

subject" of the proceeding to pay intervenor compensation awards (Footnote continued from previous page) appears to be less than the usual hourly rate for a consultant of Mr. Gabel's experience, which dates back to the 1940s.

Finally, the photocopy, telephone, and other miscellaneous costs claimed by TURN appear reasonable.

request an hourly rate for 1995 and use of \$230. In D.93-04-002 we approved a 1995 hourly rate of \$230 for TURN. Local carriers who worked on the local competition proceeding (Misco) will not be allowed to work on Mr. Long's work in 1995, but will allow \$230 per hour for Mr. Long's work in 1995.

Fee Subtotal Claimed by TURN	\$88,413.75
LESS Disallowance for Local Transport Work	6,712.50
LESS Reduction In Long's 1995 Rate	237.50
PLUS Other Costs Claimed By TURN	2,907.93
SUBTOTAL	\$84,371.68
LESS 10% Discount for Duplication of Effort	8,437.17
TOTAL	\$75,934.51

The computation follows:

Who Should Be Required To Pay TURN's Intervenor Compensation Award?

As noted above, the principal issue raised by Pacific and GTEC in their responses to TURN's compensation request is not the amount of compensation requested, but who should be required to pay the award. Both Pacific and GTEC argue that competitive local carriers (CLCs), as well as themselves, should be required to pay a proportionate share of it.

In its Response, Pacific proposes no specific allocation formula, but argues that "since CLC's will be affected by TURN's participation in the proceeding as much as GTEC and we are, they should pay for a portion of TURN's costs." (Pacific Response, pp. 3-4.)

GTEC's recommendations are more specific. After noting that PU Code § 1807 requires the "public utility which is the subject" of the proceeding to pay intervenor compensation awards, GTEC states: "The interexchange (IXCs) and competitive access providers (CAPs) who, as (CLCs), will be the primary and most immediate beneficiaries of local exchange competition are as much - if

not more than the 'subject' of this proceeding (as) are the LECs. It is time for these parties to carry their share of the burden of supporting the public policy behind intervenor participation in these exceptional cases.

"Apportionment of any intervenor compensation award based on the participating companies' proportionate share of California intrastate regulated service revenues would be fair and reasonable under these circumstances." (GTEC Response, pp. 2231)

TURN and DRA both oppose GTEC's suggested formula. TURN argues that Pacific and GTEC alone should pay, because they are the

"subject" of the proceeding. TURN also emphasizes the unwieldiness of making intervenors collect from many different entities:

"TURN is quite concerned that the LEC position would make collection of fee awards an administrative nightmare for intervenors, who would be forced to attempt collection of small fragments of awards from numerous firms, most of whom may not even be providing local service yet... If the Commission is inclined to order the apportionment of any intervenor compensation award among a broader class of parties (than the LECs), TURN urges that such apportionment be limited, at the maximum, to the largest six or eight parties of the identified class. (TURN Reply, p. 5.)"

DRA notes that while "in principle, requiring all carriers in a competitive market to contribute to intervenor compensation is more equitable than requiring only one or two carriers to bear that responsibility," local exchange competition in California is so embryonic that it is not yet reasonable to require LECs to pay part of the award. (DRA Reply, p. 3.) DRA also finds GTEC's proposed allocation formula "puzzling":

"If the basis for determining who should help pay intervenor compensation awards is whether a carrier is authorized to offer local exchange service, then the appropriate apportionment of a carrier's contribution should be the carrier's share of the local exchange market,

not the carrier's share of all intrastate regulated services (Id. at 4.)

We believe that the comments of Pacific, GTEC, TURN and DRA all raise interesting issues about who should pay intervenor compensation awards, but this is not the appropriate decision in which to resolve them. We have reached this conclusion because we agree with TURN and DRA that while this case is an important vehicle for bringing about local exchange competition in California, the extent of such competition is so limited at present that it would be premature to require some or all CLCs to pay part of the instant compensation award.

In this case, we will adhere to the same allocation approach we have used in D.96-06-029 and other recent decisions. Under this approach, TURN's intervenor compensation award will be apportioned between Pacific and GTEC based upon the average number of access lines for each utility.

However, Pacific, GTEC and DRA have all raised an important issue of equity, and it is an issue that we will have to resolve in the near future. As we stated in D.96-06-029:

"Our decision (here) does not mean that CLCs, once they receive a CPCN, may forgo the public policy burden inherent in Article 5 of the PU Code. GTEC may again recommend that CLCs pay a portion of intervenor compensation awards (and parties may respond) for matters arising after CLCs are certificated." (Mimeo. at 25.)

Because the issue of how intervenor compensation awards should be allocated among LECs and CLCs has now been raised in connection with several compensation requests, we think the best vehicle

allocation formula "passing" "If the basis for determining who should help pay intervenor compensation awards is whether a carrier is authorized to offer local exchange

16 In addition to TURN's request here, the allocation issue has been raised in connection with the requests that resulted in D.95-08-051 and D.96-06-029.

for resolving these issues is to solicit comments in one of our "roadmap" telecommunications proceedings. Such an approach seems preferable to engaging in piecemeal adjudication in individual compensation decisions. We expect to issue a request for such comments in the near future.

Conclusion

As in other intervenor compensation decisions, TURN, on notice, that its records related to this award may be subject to audit by the Commission's Telecommunications Proceedings Division.¹⁷ Thus, TURN must make and retain adequate accounting and other documentation to support all claims for intervenor compensation. Moreover, as we stated in D.96-06-0299, we believe that TURN must improve its record-keeping for compensation requests. We have therefore instituted a requirement that TURN and other intervenors file a "matrix" in telecommunications roadmap proceedings. (Mimeo at 26-27.) In particular, TURN's daily time records need to identify the issues on which time has been spent. If TURN had done that here, it could have saved itself the embarrassment of a disallowance for time spent on local transport issues.¹⁸

17 TURN requests an hourly rate of \$230 for Mr. Allen's work in 1993 and 1994, and \$130 for her work in 1992. These hourly rates were adopted in D.96-06-029 and are reasonable. TURN requests an hourly rate of \$125 for Mr. Allen's work in 1993 and 1994.

18 In prior compensation decisions, we have stated that intervenor compensation records are subject to audit by the Commission Advisory and Compliance Division (CACD). On September 10, 1996, the telecommunications functions of CACD were absorbed into the newly created Telecommunications Division.

18 We are pleased to note, however, that a comparison of the compensation request here with the one ruled upon in D.96-06-029 shows that TURN is not seeking double recovery for the time it spent preparing comments and participating in the en banc hearing that led up to the "roadmap" decision, D.94-12-053.

Consistent with previous Commission decisions, we will also order that interest be paid on the amount of the award, calculated at the three-month commercial paper rate commencing on the 75th day after February 5, 1996 (the date TURN filed its compensation request), and continuing until Pacific and GTEC make full payment of their respective shares of the award.

Findings of Fact

1. TURN is eligible for intervenor compensation in this proceeding.

2. TURN filed a timely request seeking \$917,321.68 compensation for its substantial contribution to D:95-12-016 and

3. Through its advocacy of cost studies reflecting TSLRIC principles, TURN contributed substantially to D:95-12-016 and

4. Some of the attorney and analyst hours for which TURN seeks compensation in connection with D:95-12-016 relate to other expanded interconnection and local transport restructuring issues.

5. TURN requests hourly rates of \$200 and \$215 for Mr. Long's work in 1993 and 1994, respectively. These hourly rates were adopted in D:96-06-029 and are reasonable.

6. TURN requests an hourly rate of \$230 for Mr. Long's work in 1995 and 1996.

7. TURN requests hourly rates of \$125 for Ms. Costa's work in 1993 and 1994, and \$130 for her work in 1995. These hourly rates were adopted in D:96-06-029 and are reasonable.

8. TURN requests an hourly rate of \$185 for Mr. Allen's work in preparing the compensation request. This rate was adopted in D:95-11-036 and D:95-11-057 and is reasonable.

9. TURN has requested an hourly rate for consultant Richard Gabel of \$100, which is less than the market rate for individuals with comparable training and experience.

10. The amount requested by TURN for other costs such as copying, telephones and travel is reasonable.

11. Some duplication of effort by parties is likely during settlement, negotiations or collaborative efforts such as TURN's participation in the Coalition.

Conclusions of Law

1. TURN has fulfilled the requirements of sections 1801-1812 which govern awards of intervenor compensation

2. TURN's request for compensation for time spent on expanded interconnection and local transport restructuring should be disallowed.

3. A ten per cent (10%) discount should be applied to the amount of intervenor compensation awarded to TURN in order to account for duplication of effort by other parties.

4. TURN should be compensated at an hourly rate of \$225 for Mr. Long's work in 1995, and \$230 for his work in 1996.

5. TURN should be compensated at an hourly rate of \$100 for Mr. Gabel's work in 1995.

6. TURN should be awarded \$75,934.51 for its substantial contribution to D.95-12-016.

7. This order should be effective today so that TURN may be compensated without unnecessary delay.

8. The issues raised by Pacific's and GTEC's proposal that all CLCs should pay a proportionate share of intervenor compensation awards in proceedings that benefit CLCs by promoting local exchange competition, should be resolved on a generic basis rather than through individual compensation decisions.

INTERIM ORDER

IT IS ORDERED that:

1. The Utility Reform Network (TURN) is awarded \$75,934.51 in compensation for its substantial contribution to Decision (D.) 95-12-016.

2. Pacific Bell (Pacific) and GTE California Incorporated (GTEC) shall each pay, within 30 days of the effective date of this order, a proportionate share of the above-noted award, calculated according to the respective number of access lines that each of them serves. Pacific and GTEC shall also pay interest on their respective shares of the award at the rate earned on prime, three-month commercial paper, as reported in Federal Reserve Statistical Release G-13, beginning on April 22, 1996, and continuing until full payment is made.

This order is effective today.

Dated November 26, 1996, at San Francisco, California.

MR. GREGORY CONLON, President
MR. DANIEL W. FESSLER, Commissioner
MR. JESSIE J. KNIGHT, JR., Commissioner
MR. JOSIAH L. NEPPER, Commissioner

Commissioner Henry M. Duque, being necessarily absent, did not participate.

The issues raised by Pacific and GTEC's proposal that all CIGs should pay a proportionate share of intervenor compensation awards in proceedings that benefit CIGs by protecting local exchange competition, should be resolved on a generic basis rather than through individual compensation decisions.

INTERIM ORDER

IT IS ORDERED that:
1. The Utility Reform Network (URN) is awarded \$25,934.51 in compensation for its substantial contribution to Decision (D.).