

FEB 20 1997

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Decision 97-02-043 February 19, 1997

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the
Commission's Own Motion Into
Competition for Local Exchange
Service.

R.95-04-043
(Filed April 26, 1995)

Order Instituting Investigation
on the Commission's Own Motion
into Competition for Local Exchange
Service.

I.95-04-044
(Filed April 26, 1995)

ORIGINAL

O P I N I O N

Background

On August 5, 1996, Public Advocates (PA)¹ filed a Petition for Modification of Decision (D.) 96-06-029. In this decision, the Commission granted an intervenor compensation award to PA, and Toward Utility Rate Normalization (TURN) and also imposed certain supporting documentation requirements prospectively on all subsequent intervenor compensation requests in telecommunications "roadmap" proceedings.

We adopted these reporting requirements in response to concerns that intervenors' requests for compensation need to allocate costs to specific issues for which the intervenor claims credit. It is also important that compensation be properly allocated among issues which are dealt with in two or more different "roadmap" proceedings.

¹ Public Advocates is the legal counsel representing the following parties: Southern Christian Leadership Conference, National Council of La Raza, Korean Youth and Community Center, Filipinos for Affirmative Action and Filipino Civil Rights Advocates.

Because of the close relationship among the various issues sometimes dealt with in the "roadmap" proceedings, we expressed concern in D.96-06-029 that we may unwittingly award compensation twice for the same costs. In order to ensure that compensation was awarded based on proper allocation of costs, D.96-06-029 adopted requirements for the reporting of certain matrix breakdowns of compensation claims.

Specifically, the decision required the following:

- a. A listing of all telecommunications "Roadmap" 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 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.
- e. An allocation and breakdown of the intervenor's total costs in the same manner as a. through d. above.

Parties' Positions

PA petitions to modify the decision to eliminate these documentation requirements. PA argues that these requirements are extraordinary, and are extraordinarily burdensome. PA is aware of no other court or administrative agency which requires them. Because of the magnitude of multiple roadmap proceedings and issues

involved, PA contends that preparing and completing the required matrix, would require numerous hours.

PA acknowledges that the articulated purpose underlying the matrix requirement, on the other hand, is reasonable. D.96-06-029 notes that, with interrelated proceedings, issues sometimes cross the artificial boundaries between proceedings. The same or similar cost issues arise in the Universal Service Proceeding and in the OANAD Proceeding. Redlining and multi-lingual service issues arise in both the Local Competition and Universal Service Proceedings. Moreover, because a proceeding like the Local Competition Proceeding contains many decisions within the proceeding, intervenors must file many separate requests for compensation for substantial contributions throughout.

PA argues, however, that a more simple and effective approach exists to ensure that the Commission does not compensate a party twice for the same hours. PA asserts that intervenor's counsel, as officers of the court and members of the State Bar of California, assume this obligation throughout their representation of their clients before this Commission and every other administrative and judicial body. PA's counsel asserts that he would be breaching professional standards by undertaking to double-bill hours in different proceedings or in different requests for compensation within the same proceeding. PA asserts that this professional standard is so clear, that it never occurred to counsel to state the obvious point, in his declaration under penalty of perjury, that he has not sought compensation for the same hours anywhere else. Nonetheless, to satisfy the Commission's concern, it could adopt a standing requirement that all counsel disclose any duplication in requests and state in their verified request or sworn declaration that the particular request for compensation does not duplicate any hours requested elsewhere.

PA argues that the Commission's matrix requirement to prevent such double-billing fails to obtain the very information

necessary to make this determination. Nowhere does the required matrix disclose, for all of its complexity and apparent comprehensiveness, whether any hour in one proceeding is also reflected in another proceeding, according to PA. A simple sentence in the verified petition or sworn declaration--"No hours listed in this request for compensation have been included in any other request before this Commission."--would address simply and completely the Commission's concern, whereas this intricate matrix does nothing to address the Commission's fundamental concern according to PA.

PA further states that modification of the decision would be necessary for several lesser reasons as well. At some points the decision suggests that this requirement is limited to the current telecommunications proceedings. At other points, the decision appears to apply the requirement to all current and future proceedings. In its text, the decision requires this information of all intervenors "participating in the telecommunications Roadmap proceedings." (D.96-06-029 at 27.) The Commission's ordering paragraph (OP) repeats the reference to "all telecommunications 'Roadmap' proceedings." (*Id.* at 33 § 8(a).) Yet in the opening sentence of OP 8, as well as in Conclusion of Law 18, the decision refers to "all future requests for compensation." (*Id.* at 32 § 18, 33 § 8.)

In summary, PA argues that the requested matrix does not answer anywhere the Commission's key question, whether hours are being submitted in more than one request. Being so burdensome and unnecessary, PA further believes the requirement is also inconsistent with the Commission's articulated value of simplifying requests for compensation and the time necessary to prepare them. PA proposes instead that counsel merely swear that no duplication of hours exists, or identify all hours that have been included in other requests.

TURN filed a response on September 4, 1996 in support of PA's Petition for Modification. TURN argues that the major impact of the matrix is to consume large chunks of valuable time. TURN agrees with PA that the matrix fails to show whether hours have been double counted.

TURN also notes that certain overhead costs do not lend themselves to meaningful allocation by issue. TURN argues that it lacks the resources to keep such meticulous records, and that a requirement to separately allocate such costs is unreasonable.

Discussion

Sections 1801-1812 of the Public Utilities Code provide a process whereby eligible intervenors may be compensated for reasonable costs of participation in Commission proceedings. As a basis for determining whether particular costs are reasonable, the intervenor must submit appropriate documentation with its request for compensation. Section 1804(c) provides in part that: "The request shall include at a minimum a detailed description of services and expenditures and a description of the customer's substantial contribution to the hearing or proceeding." The issue raised by PA's Petition is whether the requirements imposed in D.96-06-029 are appropriate in order to ensure that the costs being approved are reasonable.

The explicit requirements for hourly allocations of intervenor costs adopted in D.96-06-029, in part, grew out of concerns expressed over many years with deficiencies in the documentation of intervenor requests, particularly those of PA. While we have approved compensation requests for PA over several years, we have repeatedly noted in past decisions that an issue-by-issue allocation of its claimed costs was lacking. On pages 21-22 of D.96-06-029, we cite examples from several such decisions. Despite these repeated admonitions, PA continually ignored the requirement that costs be allocated by issue. In those decisions, while we directed PA to properly allocate costs, we did not impose

upon its specific instructions as to how to track and report costs on an issue-by-issue basis. We chose to leave these details to the discretion of the intervenor. Yet, PA repeatedly disregarded this requirement for cost allocation in its intervenor compensation request. Finally, faced with yet another example of PA's disregard for this requirement in this proceeding and unwillingness to develop its own system of allocating costs by issue, we concluded in D.96-06-029 that more formalized reporting requirements must be imposed externally.

The Local Competition Rulemaking is only one of several proceedings involved with opening telecommunications markets to competition. We have collectively referred to these multiple dockets as the "roadmap" proceedings. The need for allocation of costs by issue is all the more important in connection with the "roadmap" proceedings where the same or closely related issues may be dealt with in more than one proceeding. Without an accounting of costs attributed to each issue addressed in a given Commission decision, proper determination of intervenor awards becomes more problematic. Accordingly, to assist us in keeping track of compensation requests which may relate to parallel issues which may span multiple proceedings at different points in time, we required that an accounting be provided of intervenors' requests for compensation in other roadmap proceedings. Accordingly, we formally adopted the documentation requirements in D.96-06-029 which are now being contested by PA.

In its Petition for Modification, PA fails to address the Commission's concern regarding the need to accurately allocate intervenor costs and hours to the pertinent issues for which a substantial contribution is claimed. PA focuses on double counting as the only concern which the Commission sought to address in adopting these requirements. Yet, the need for allocation by issue goes beyond the concern over double counting. Cost allocation by issue is particularly important where an intervenor is awarded

compensation only for some, but not all, of the issues for which it claims credit. Without an allocation of costs and hours by issue, the Commission lacks requisite information with which to quantify the monetary award for those specific issues eligible for compensation.

PA proposes to satisfy the Commission's concerns by merely having the intervenor's counsel state in its sworn declaration that its compensation request does not duplicate hours requested elsewhere. While the sworn declaration of counsel attesting to the truth of the filing is important in assuring the overall integrity of the intervenor compensation process, the Commission must exercise its oversight responsibilities to require reasonable documentation of claimed costs and complete an independent review of the filing before approving an intervenor award of compensation. It does not matter whether claimed costs are truthfully presented, if the costs are not allocated in a manner enabling the Commission to match issues with related costs and to compute an accurate compensation award for each separate proceeding.

We have now had an opportunity to observe the usefulness as well as the administrative burden related to the additional documentation requirements of D.96-06-029. As part of the support for their recent intervenor compensation requests for decisions in the Local Competition Proceeding subsequent to D.95-07-054, both PA and TURN prepared and submitted the allocation matrix information in response to administrative law judge (ALJ) rulings pursuant to D.96-06-029. While submitting these matrices, both PA and TURN complained of the burdensomeness of the requirement and disputed the usefulness of the resulting information.

We have considered the arguments of PA and TURN and weighed the value of the matrix information against the time and cost involved in preparing the additional information. We shall address the necessity for the matrix information in terms of two

categories: (1) those hours and costs on issues for which compensation is currently being sought; and (2) those hours and costs which have been incurred related to work in other roadmap proceedings or earlier phases of the same roadmap proceeding which have been or will be sought in separate compensation requests.

With respect to the first category, we conclude that an issue-by-issue breakdown of hours currently being requested for compensation is appropriate. We shall thus continue to require that each intervenor present an allocation breakdown of each person's claimed hours and associated costs for each issue for which compensation is being requested within that filing. For the reasons outlined above, we believe such information is necessary to accurately compute an award for each respective issue. This requirement has been repeatedly stressed in past decisions, as cited above. In addition to the OP 8 requirements, we have formally required an issue-by-issue breakdown in OP 6 of D.96-06-029.

We shall consider any intervenor request in a telecommunications roadmap proceeding which does not provide this issue-by-issue allocation to be deficient. We agree with TURN, however, that certain costs do not lend themselves to meaningful allocation by separate issue category. Examples of such costs include overhead items such as postage, photocopying, mail and telephone charges. We shall not require separate issue allocation of such common costs.

We also decline to grant that portion of the Petition to Modify relating to the requirement for matrix information in the second category, namely, hours related to work in all other roadmap proceedings. We continue to be concerned that costs be properly allocated among the various roadmap proceedings, particularly where the same issue may cross over proceeding boundaries, and still believe the filing of the detailed matrix requested in D.96-06-029

for every roadmap proceeding in which the intervenor participated is the proper solution.

Upon review of the matrices provided by PA and TURN in their most recent requests for compensation in this proceeding, we conclude that the time and cost required to compile the comprehensive information sought in D.96-06-029 applicable to past and future compensation requests does not outweigh its usefulness in quantifying the compensation award. We shall thus deny the Petition to Modify D.96-06-029.

Moreover, the concern over duplication of compensation awards involving work on the same issue in different proceedings is paramount. With respect to Public Advocates this is further assured to some extent in OP 7 of D.96-06-029. In OP 7, we required PA to identify any costs it incurred for the same issues within R.95-01-020 (Universal Service) and R.95-04-043. PA did not seek to eliminate this requirement in its Petition for Modification. In addition, we leave it to the discretion of the assigned ALJ reviewing compensation requests to make further inquiry of an intervenor, if necessary, as to potential duplication of claims for compensation involving issues related to more than one roadmap proceeding.

However, we recognize that the requirements of D.96-06-029 impose some burden on intervenors and that the purpose of these requirements is to allow the commission to be confident that it is fairly and reasonably compensating intervenors for their efforts during a time when the commission was working in a myriad of proceedings to implement our telecommunications infrastructure strategy. As time passes, the concerns raised in D.96-06-029 regarding the overlap of issues among the proceedings will likely lessen. Therefore it is reasonable to have the provision of OP 8 "sunset" for work performed by intervenors after June 30, 1998. If at that time the commission desires to retain some or all of the requirements it may do so, but failing an explicit action by the

commission these requirements will lapse. In addition, the commission recently issued R.97-01-009 to examine rule changes with respect to the Commission's intervenor compensation program. The commission could remove these requirements as a result of that proceeding prior to June 30, 1998.

Findings of Fact

1. D.96-06-029 adopted reporting requirements for intervenor compensation requests in telecommunications roadmap proceedings as set forth in OP 8 of that decision.

2. Public Advocates (PA) filed a Petition for Modification of D.96-06-029 seeking to have these reporting requirements eliminated.

3. The adopted reporting requirements called for intervenors claiming compensation in telecommunications roadmap proceedings to provide an allocation by issue area of all costs and hours for each roadmap proceeding in which they participated.

4. The intent of the filing was to assist the Commission in accurately allocating costs to issues for which compensation was granted and to avoid misallocating or granting duplicate compensation for issues which were dealt with in more than one roadmap proceeding.

5. Both PA and TURN prepared the requested matrix of intervenor cost allocation as called for in OP 8 of D.96-08-029.

6. The time and cost required to compile the information sought in D.96-06-029 applicable to past and future compensation requests do not outweigh its usefulness in reviewing and verifying the compensation award.

7. The requirements of D.96-06-029 should be temporary in nature and should not apply for work performed after June 30, 1998.

Conclusions of Law

1. The Petition for Modification of D.96-06-029 should be denied.

2. The potential for duplicate compensation to an intervenor among telecommunications roadmap proceedings is a legitimate concern given that common issues may be dealt with in more than one roadmap proceeding.

3. Intervenor costs sought in compensation requests should be allocated on an issue-by-issue basis to enable the Commission to properly compute the amount of compensation by issue area.

4. The requirements of D.96-06-029 pertaining to an issue-by-issue allocation of hours and related costs for issues for which intervenor compensation is sought are reasonable and should be retained.

5. The existing requirements contained in D.96-06-029, OP 8 should not be modified.

6. The requirements contained in D.96-06-029, OP 8 should not apply to compensation requests for work performed after June 30, 1998.

O R D E R

IT IS ORDERED that:

1. The Petition for Modification of Decision (D.) 96-06-029 is denied.

2. Ordering Paragraph 9 is added to D.96-06-029 and should state:

9. The requirements of Ordering Paragraph 8 shall not apply to requests for compensation for work performed after June 30, 1998.

This order is effective today.

Dated February 19, 1997, at San Francisco, California.

P. GREGORY CONLON
President
JESSIE J. KNIGHT, JR.
HENRY M. DUQUE
JOSIAH L. NEEPER
RICHARD A. BILAS
Commissioners