

Decision 98-05-056 May 21, 1998

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Rulemaking on the Commission's Own Motion into Universal Service and to Comply with the Mandates of Assembly Bill 3643.

R.95-01-020
(Filed January 24, 1995)

Investigation on the Commission's Own Motion into Universal Service and to Comply with the Mandates of Assembly Bill 3643.

I.95-01-021
(Filed January 24, 1995)

ORIGINAL

O P I N I O N

This decision grants The Utility Reform Network (TURN), formerly known as Toward Utility Rate Normalization, an award of \$232,225 in compensation for its contribution to Decision (D.) 96-10-066.

1. Background

The Commission initiated the above-captioned rulemaking (OIR) and investigation (OII) on January 24, 1995. This proceeding was opened as part of the Commission's comprehensive review of how regulatory policies regarding universal service need to be revised as a result of the opening of monopoly telecommunications markets to competition. Initial comments on the questions raised in the OIR/OII were filed in March 1995. As a result of those initial comments, the Commission issued D.95-07-050. That interim decision described and set forth a proposed set of universal service rules. Opening and reply comments to the proposed rules were solicited by the Commission in the fall of 1995. A series of public participation hearings were also held throughout the state regarding the proposed rules.

Evidentiary hearings were held in late April and early May of 1996 on issues regarding the cost proxy models. After the filing of briefs, the proposed decision of the assigned Administrative Law Judge (ALJ) was mailed on August 5, 1996. Comments on

the proposed decision were filed in late August and early September, and an en banc oral argument was held on August 27, 1996.

A revised proposed decision was mailed to the parties for comment on October 9, 1996. Comments were reviewed, and appropriate changes were made. This process culminated in the issuance of D.96-10-066, and the adoption of the universal service rules.

On January 3, 1997 TURN filed its Request for Compensation.¹ GTE California (GTEC) filed a response on January 31, 1997² and TURN replied on February 18, 1997.³ As pointed out by TURN, the only specific supported issue raised by GTEC in its response concerns allocation of the award.

2. Requirements for Awards of Compensation

Intervenors who seek compensation for their contributions in Commission proceedings must file requests for compensation pursuant to Public Utilities (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 prehearing conference or by a date established by the Commission. The NOI must present information regarding the nature and extent of compensation and 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 or proceeding." Section 1802(h) states that "substantial contribution" means that:

¹ Request Of The Utility Reform Network For An Award Of Compensation, TURN, January 3, 1997.

² Response Of GTE California Incorporated (U 1002 C) To Request For An Award Of Compensation By The Utility Reform Network Regarding Decision 96-10-066, GTEC, January 31, 1997.

³ Reply Of The Utility Reform Network To GTE California's Response To Request For Compensation, TURN, February 18, 1997.

"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.

3. NOI to Claim Compensation

TURN was found to be eligible for compensation in this proceeding by an ALJ's ruling dated August 21, 1996. The same ruling found that TURN had demonstrated significant financial hardship.

4. Contributions to Resolution of Issues

TURN represents that it made a substantial contribution as follows:

a. Proxy Costs for the California High Cost Fund-B (CHCF-B)

In its analysis of the proxy cost models, TURN focused its efforts on the issue of the shared and common costs that should be allocated to basic service. TURN contended that Pacific Bell (Pacific) exaggerated the shared costs that should be assigned to basic service. The decision agrees with TURN.

With respect to common costs, the decision agrees with TURN's analysis that Section 254(k) of the Telecommunications Act of 1996 (TA '96) limits the portion of common costs that can be allocated to basic service. As a result, the decision significantly reduced the common costs that Pacific had attempted to include in the Cost Proxy Model (CPM).

b. Funding for Non-Primary Lines

The decision adopts TURN's recommendation that the CPM only fund a household's primary line. In addition, the decision agrees with TURN that a self-certification procedure should be used to prevent excessive claims on the CHCF-B.

c. Benchmark Issues for the CHCF-B

The decision adopts TURN's recommendation to fund the gap between Pacific's revenues attributable to basic service and the statewide average cost which serves as the benchmark for determining whether a region is a high cost area. The decision notes that funding the gap would alleviate some of the pressure to increase basic rates, which was precisely why TURN advocated that outcome.

In addition, at TURN's urging, the decision (as well as rulings on TURN's motions to strike during the hearings) rejects efforts by a variety of parties to commit the Commission to a policy of increased basic exchange rates (or increased rate ceilings).

d. General Issues With Respect to the CHCF-B

One of the significant issues in this proceeding was the extent to which the new high cost fund would rely on virtual vouchers as compared to auctions. Affirming the Commission's proposed determination in D.95-07-050, the decision utilizes a virtual voucher approach at the outset of the CHCF-B, supplemented by auctions in the event that no carrier wishes to serve as the carrier of last resort (COLR) for a given area. This was the position of the California Telecommunications Coalition (Coalition), in which TURN took a lead role with respect to universal service policy issues.

In response to the OII, TURN and the Coalition submitted comments opposing the deaveraging of basic exchange rates. Consistent with TURN's recommendation, the decision makes no determination that rate deaveraging will be necessary.

Following the issuance of the decision, the Commission convened a workshop to fashion a bill insert to inform customers regarding the new CHCF-B and the California Teleconnect Fund. The ALJ's ruling determining the final text for the bill insert agrees with TURN's recommendation with respect to two issues of controversy—

whether there should be information about the Commission ordered surcredit and whether there should be a toll free contact number regarding the California Teleconnect Fund. Consistent with TURN's suggestions in its November 26, 1996 comments on the workshop, the ALJ's ruling decides both issues in the negative.

e. Offsets to LEC Draws from the CHCF-B

The decision adopts the position of TURN (and some other parties) that revenues from the federal Carrier Common Line Charge (CCLC) and the federal Universal Service Fund (USF) should be used to offset draws from the CHCF-B.⁴

In addition, the decision adopts TURN's position that the revenues from usage associated with measured service should be counted towards a carrier's basic exchange revenues.

The decision does not adopt the position of TURN and the Coalition that profits from Yellow Pages directories should be used as an offset. However, the decision does not disagree with the core of TURN's position, that such profits must be taken into account in the setting of basic exchange rates. The decision concludes that the establishment of the CHCF-B does not constitute ratesetting. Consequently, although TURN was not fully successful with respect to this point, it achieved partial success in reminding the Commission of the role of Yellow Pages profits in setting rates.

f. Funding Base for the CHCF-B

The decision adopts TURN's position that services of cellular carriers should be included in the funding base for the CHCF-B. In addition, in response to TURN's comments on the revised proposed decision, the decision clarifies that the exclusion of contracts from the billing base applies only to contracts executed on or before the IRD decision, D.94-09-065.

⁴ The decision erroneously attributes the testimony of witness Dr. Nina Cornell on this point solely to AT&T and MCI. In fact, TURN also sponsored that portion of Dr. Cornell's testimony and worked closely with Dr. Cornell in its preparation.

g. Consumer Information

TURN worked with the Utility Consumer's Action Network (UCAN) to propose the form of a matrix that could be used to facilitate price and service comparisons among carriers. The decision adopts a matrix substantially similar to the TURN/UCAN matrix.

h. Basic Service Issues

The decision adopts most of TURN's recommendations regarding the basic service issues. Those recommendations were set forth in the various rounds of comments submitted by the Coalition, in which TURN took the lead role with respect to policy formulation. For example, the decision adopts a definition of basic service substantially similar to the Coalition proposals both before and after D.95-07-050. The essential thrust of the Coalition proposals, and of the Commission's adopted definition, is to "codify" the level and features of basic service that California consumers have come to expect, including the choice of flat or measured rate options.

With respect to the review of the basic service definition, the decision adopts a rule that is substantially similar to the Coalition proposals made before and after D.95-07-050. The adopted provisions for a Universal Service Working Group closely conform to the recommendations that TURN developed for the Coalition after multiple meetings with interested consumer and community organizations. In addition, the decision adopts the Coalition recommendation not to use income as the sole criterion for assessing telephone subscribership levels.

i. Implementation Costs

TURN was partially successful with respect to Pacific's effort to recover implementation costs incurred before and after the decision. TURN opposed any such recovery on the grounds that the request was untimely and outside the record. The decision determined that only prospective recovery would be permitted, and then only upon an appropriate showing at a later time.

J. Schools and Libraries Issues

The decision adopts TURN's recommendation to have the 50% discount for eligible services obtained by schools and libraries apply to the negotiated rate in the event that the parties negotiate a rate lower than the tariffed rate. The Commission has since clarified this outcome in D.96-11-050.

k. Other Issues

The contributions to the issues described above represent the majority of the hours that TURN devoted to this proceeding. There were other issues where TURN was not successful.

Even where TURN was not successful in convincing the Commission to adopt its position, the Commission found TURN's analysis and contributions important in the Commission's decisionmaking process. The most notable example is the issue of the appropriate funding mechanism for the CHCF-B and the California Teleconnect Fund. Although the Commission adopted an end user surcharge rather than the carrier funding approach that TURN advocated, the Commission acknowledged that both methodologies have advantages and disadvantages.

PU Code § 1802(h) permits the Commission to award compensation to an intervenor who has made a substantial contribution for its entire participation even if the decision adopts that customer's contention or recommendation only in part. In this proceeding we believe that TURN made a substantial contribution overall and will award compensation for all issues.

5. The Reasonableness of Requested Compensation

TURN requests compensation in the amount of \$238,065 as follows:

Advocates Fees:

T. Long

236.00 hours X \$225 (1995) = \$53,100

513.25 hours X 240 (1996) = 123,180

Plus: 20% efficiency adder to 103.50 hours devoted to the HCF-Proxy issue in 1996

103.50 hours X \$240 X 20% = 4,968

R. Costa

210.75 hours X \$130 (1995) = 27,398

155.50 hours X 160 (1996) = 24,880

Other Reasonable Costs:

Photocopying expenses = 3,556

Postage Costs = 676

Fax Costs = 128

Overnight mail expenses = 45

Telephone charges = 134

Total = \$238,065

We will allow the 20% efficiency adder as requested for Mr. Long because he served as both an attorney and an expert witness. This is reasonable since this avoided the more costly alternative of hiring a separate expert witness.

TURN utilized 26.75 hours of Mr. Long's time to prepare the request for intervenor compensation. As has been our practice, we will only allow half of the usual hourly rate for this task.

In its reply to GTEC's response to its request for compensation, TURN seeks an additional \$480 for two hours of Mr. Long's time to prepare the reply. We will grant this request.

5.1 Hours Claimed

TURN documented the claimed hours by presenting a daily breakdown of hours for each attorney, by issue, with a brief description of each activity. The breakdown presented by TURN reasonably documents its claim for total hours.

The matrices filed with TURN's request for compensation in compliance with D.96-06-029 were out of date. TURN's attorney, Mr. Long, offered to update the matrices. The ALJ assigned to this intervenor compensation request, after conversations with Mr. Long, was satisfied that the compensation requested herein is not duplicated in another request. Therefore, no updating of the matrices were required. TURN has agreed that this oversight will not be repeated.

5.2 Hourly Rates

For Thomas Long, TURN requests hourly rates of \$225 and \$240 for 1995 and 1996, respectively. The \$225 rate for 1995 has been previously approved (e.g. D.96-06-029) and will be used here. For 1996, TURN cites as an example, Mark Savage, an attorney for Public Advocates. He has less experience as an attorney and in practice before the Commission. However, he was granted a rate of \$235 for 1996 (D.96-12-029). The \$240 rate for Mr. Long is reasonable for an attorney of his experience.

For Regina Costa, TURN requests hourly rates of \$130 and \$160 for 1995 and 1996, respectively. The \$130 rate for 1995 has been previously approved (e.g. D.96-06-029). We have approved an increase of \$15 per hour for Mr. Long who functions as an attorney and as an expert witness. Given the increases in the market rates for telecommunications experts referred to in the declarations included in TURN's filing, we will increase Ms. Costa's rate to \$140 for 1996.

5.3 Other Costs

TURN requests \$4,539 for other costs (e.g. copying, postage, fax). Given the complexity, duration, and number of parties in this proceeding, these costs are not disproportionate to the hours charged.

6. Award

We award TURN \$232,225 calculated as follows.

Advocates Fees:

T. Long

236.00 hours X \$225 (1995) = \$ 53,100

486.5 hours X 240 (1996) = 116,760

26.75 hours X \$120 (1996) = 3,210 (Request preparation)

2.00 hours X 240 (1996) = 480 (Reply preparation)

Plus: 20% efficiency adder to 103.50 hours devoted to the HCF-Proxy issue in 1996

103.50 hours X \$240 X 20% = 4,968

Subtotal = 178,518

R. Costa

210.75 hours X \$130 (1995) = 27,398

155.50 hours X 140 (1996) = 21,770

Subtotal = 49,168

Other Reasonable Costs:

Photocopying expenses = 3,556

Postage Costs = 676

Fax Costs = 128

Overnight mail expenses = 45

Telephone charges = 134

Subtotal = 4,539

Total Award = \$232,225

7. What Carriers Should Have To Pay The Award Of Compensation

The only filing responding to TURN's request for compensation was filed by GTE California Incorporated (GTEC). GTEC asserts that any award of compensation in this proceeding should be recovered from all telecommunications utilities authorized to offer local exchange service in California. In support of GTEC's position, it cites Section

1807, which states in part: "Any award made under this article shall be paid by the public utility which is the subject of the hearing, investigation, or proceeding, as determined by the commission...."

GTEC contends that the subject of universal service is broad, and far reaching, and impacts all carriers providing telephone service in California. GTEC further argues that once a competitive local carrier receives a certificate of public convenience and necessity, it cannot avoid having to pay a share of the intervenor compensation award if that carrier was included among the carriers who are the subject of the proceeding. Thus, any award to TURN should be paid for in an equitable manner by allocating the costs among all the carriers, rather than just GTEC and Pacific.

On April 23, 1998 we issued D.98-04-059 in R.97-01-009 and I.97-01-010. In this decision we revised our intervenor compensation program. We adopted principles that we will use "as a guide in considering future requests for compensation." (O. P. 1.)³

The practical and historical method of allocation is to allocate the awards between the telephone utilities according to the number of access lines served. This method of allocation has usually resulted in the awards being paid for by GTEC and Pacific. Those two carriers are the largest local exchange carriers in California, and are likely to remain so until true local competition develops. Accordingly, the compensation awarded to TURN should be allocated among GTEC and Pacific in proportion to the number of access lines each serves.

³ On May 1, 1998, under Resolution ALJ-166 Pacific noted an error in the Agenda Item document, circulated as H-1. Resolution ALJ-166 allows persons who discover obvious inadvertent errors or omissions in Agenda Item documents to bring such errors to the attention of the Chief Administrative Law Judge prior to the Commission meeting. However, Pacific also raised a broader question as to the applicability of the new policy that intervention be funded by all participating utilities in quasi-legislative proceedings. This substantive concern is beyond the scope of issues that may be addressed through Resolution ALJ-166 and is more appropriately raised in a formal challenge to D.98-04-059, the Opinion Revising the Intervenor Compensation Program (Resolution ALJ-166, Ordering Paragraph 2).

Consistent with previous Commission decisions, we will order that interest be paid on the award amount (calculated at the three-month commercial paper rate), commencing on February 16, 1997 (the 75th day after TURN filed its compensation request) and continuing until the utilities make full payment of the award.

As in all intervenor compensation decisions, we put TURN on notice that the Commission's Telecommunications Division may audit TURN's records related to this award. Thus, TURN must make and retain adequate accounting and other documentation to support all claims for intervenor compensation. TURN's records should identify specific issues for which it requests compensation, the actual time spent by each employee, the applicable hourly rate, fees paid to consultants, and any other costs for which compensation may be claimed.

Findings of Fact

1. In an August 21, 1995 ALJ's ruling, TURN was found eligible for an award of compensation.
2. On January 3, 1997, TURN filed a timely request for compensation for its contribution to D.96-10-066.
3. On January 31, 1997, GTEC filed a response to TURN's request for compensation.
4. On February 18, 1997 TURN replied to GTEC's response.
5. TURN contributed substantially to D.96-10-066.
6. The hourly rate for Regina Costa for 1996 should be increased by \$10 over the previously approved \$130 rate for 1995.
7. Hourly rates for Thomas Long and Regina Costa, as modified above, are no greater than the market rates for individuals with comparable training and experience.
8. The miscellaneous costs incurred by TURN are reasonable.

Conclusions of Law

1. TURN has fulfilled the requirements of §§ 1801-1812 which govern awards of intervenor compensation.
2. TURN should be awarded \$232,225 for its contribution to D.96-10-066.

3. Since the award of compensation was not paid by February 16, 1997, interest should accrue as of that date until full payment is made.

4. The award of compensation in this decision should be allocated between GTEC and Pacific in proportion to the number of access lines each serves.

O R D E R

IT IS ORDERED that:

1. The Utility Reform Network (TURN) is awarded \$232,225 in compensation for its substantial contribution to Decision 96-10-066.

2. Pacific Bell (Pacific) and GTE California Incorporated (GTEC) shall together pay TURN \$232,225 within 30 days of the effective date of this order. The award payment shall be allocated between Pacific and GTEC based on the number of access lines served. Pacific and GTEC shall also pay interest on the award at the rate earned on prime, three-month commercial paper, as reported in Federal Reserve Statistical Release G.13, with interest, beginning February 16, 1997, and continuing until full payment is made.

This order is effective today.

Dated May 21, 1998, at San Francisco, California.

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