

ALJ/BAR/jva

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Decision 98-07-075 July 23, 1998

**ORIGINAL**

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Investigation of the Commission's Own Motion  
into the Regulation of Cellular Radiotelephone  
Utilities.

Investigation 88-11-040  
(Filed November 23, 1988;  
Petition for Modification  
filed September 13, 1996)

And Related Matters.

Application 87-02-017  
(Filed February 6, 1987)

Case 86-12-023  
(Filed December 12, 1986)

**OPINION AWARDING COMPENSATION**

This decision grants, in part, the Request for Compensation of The Utility Reform Network (TURN) for its substantial contribution to the resolution of issues addressed in Decision (D.) 97-06-109. TURN is awarded \$10,630 from the \$11,290 it requested.

**Background**

In D.97-06-109, we resolved the petition filed by AirTouch Cellular (AirTouch) and certain of its affiliates<sup>1</sup> to modify D.90-06-025, 36 CPUC2d 464 (1990). In D.97-06-109, we allowed AirTouch and its affiliates, and a local exchange carrier selected by it, to enter into contracts that would permit a market trial of Caller Pays (CP) service, but we conditioned this authority. We

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<sup>1</sup> The petition states that AirTouch is the managing general partner of these affiliates, which consist of the Los Angeles SMSA Limited Partnership, the Sacramento-Valley Limited Partnership, and Modoc RSA Limited Partnership. Hereinafter, references to AirTouch include these affiliates as well as AirTouch Cellular.

agreed with the argument made by the Office of Ratepayer Advocates (ORA) and TURN in their respective protests that there is still a need to educate consumers about the change AirTouch was proposing. Moreover, we stated that we thought the method of consumer education proposed by AirTouch – principally a recorded announcement to the calling party that he or she must hang up in three seconds or be charged for the call at unspecified cellular rates – was inadequate. Accordingly, we concluded that the most appropriate way to test “Caller Pays” was to authorize a limited market trial of this new service. We stated that once this trial has been conducted and analyzed, the local exchange carrier (LEC) that conducts the trial (and AirTouch) would be free to file an application seeking permanent authority to implement “Caller Pays”.

On August 25, 1997, TURN filed a Request for Compensation for its stated substantial contribution to D.97-06-109. This decision was mailed on June 26, 1997, so TURN’s request, filed within 60 days of issuance, was timely. AirTouch filed a timely response to the request. TURN filed a reply to AirTouch’s response within the allowed 15 days.

#### **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.<sup>2</sup> 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. Eligible intervenors are customers for whom participation presents a significant financial hardship.

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<sup>2</sup> All future citations are to the PU Code unless otherwise stated.

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,

"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 on 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.

#### ***Notice of Intent***

TURN filed its Notice of Intent concurrent with the filing of its Request for Compensation on August 25, 1997. TURN's first participation in this proceeding was the filing on October 15, 1996, of its protest to AirTouch's Petition. It states that no prehearing conference was held subsequent to the filing by AirTouch of the Petition for Modification, and the Commission did not establish an alternative date for the filing of NOIs, as provided in § 1804(a) and Rule 76.74.

We agree with TURN that there has been no event triggering the imposition of a deadline for submitting a NOI. Under these circumstances, we regard TURN's NOI, filed concurrent with its Request, timely.

In its NOI and Request, TURN has stated the nature and extent of its participation and provided an itemized assessment of the compensation that it requests. It has met the requirements of § 1804(a)1-2(A).

TURN also included a showing that participation in the proceeding poses a significant financial hardship. It relies on a finding of significant financial hardship, made in D.88-07-035, which created a rebuttable presumption of eligibility for compensation in I.88-11-040, for this investigation was commenced within one year of the date of that finding. No party rebutted TURN's presumption of eligibility. TURN has met the requirements in § 1804(b)(1).

***Contribution to Resolution of Issues***

As noted above, protests to the petition for modification were filed by both ORA and TURN. TURN's participation is distinguished from ORA's in that TURN maintained that before any market trial of CP is authorized, three deficiencies in the AirTouch proposal must be addressed: inadequate notice of rates in the AirTouch proposed "preamble"; insufficient notice and education regarding CP service for the benefit of landline customers, including non-English speakers; and failure to address the feasibility of blocking CP calls from landline telephones. TURN recommended that the Commission require AirTouch to file a formal application before granting it permanent authority to provide CP service.

TURN acknowledges that the Commission did not adopt each of TURN's recommendations "to the letter" but rather addressed and incorporated each of the concerns in the conditions it placed on the approval of AirTouch's petition. TURN cites specific passages in the decision where its position was relied upon by the Commission in establishing the conditional approval of AirTouch's

petition. AirTouch argues that TURN overstates its contribution and that, given ORA's protest, TURN's contribution was not independently substantial.

We find that TURN made a substantial contribution in that we were persuaded not to allow AirTouch to obtain permanent authority for CP service through the advice letter process because of the concerns TURN raised about the need to educate landline customers as to the cost of calling cellular customers with CP service. Further, the authority granted in the decision adopted, in part, two of the three specific recommendations TURN presented regarding authority to conduct a market trial.

It is clear from the decision that absent TURN's participation, the Commission may not have become aware of the content of the AirTouch preamble, and thereby the need to direct AirTouch to modify it before commencing with the market trial. The Commission directed AirTouch to modify the preamble in two ways, including to provide better notice of the rate for which the landline customer may be responsible if he or she permits the call to be completed, an issue raised by TURN. The Commission declined to require AirTouch to offer blocking options to customers participating in the market trial, but we did require AirTouch to discuss the costs and technical feasibility of implementing blocking options in any application for permanent authority to implement CP service that it may file. We also declined to require the preamble used in the market trial to educate non-English speaking call recipients, and relied instead on the previously-established multi-lingual notice requirements set forth in the Market Trial guidelines. TURN's argument on this specific concern did not result in any new condition applied to the market trial or to the ultimate application for permanent authority that may be filed. It did, however, contribute to our urging AirTouch, the LEC, and the Advanced Intelligent Network provider to offer the prompt method in the market trial so that calls

would not be completed absent an affirmative response from the landline customer.

We do not find convincing AirTouch's argument that TURN's award should, at a minimum, be substantially reduced because of duplication with the participation of ORA. ORA's and TURN's protests were complementary, not duplicative. As stated in the decision, TURN's protest went much further than ORA's, and its contribution, as described above, was distinct from ORA's contribution.

### **Reasonableness of Requested Compensation**

TURN seeks an award of \$11,290 as follows:

#### **Advocate's Fees**

|                |   |   |          |
|----------------|---|---|----------|
| Thomas J. Long | 23.25 hours X \$240   | = | \$ 5,580 |
|                | (5.50 hours preparing Request and NOI, 7.5 hours preparing Reply) |   |          |
| Mark Shostak   | 30.50 hours X \$170   | = | \$ 5,185 |

#### **Other Costs**

|                             |   |        |
|-----------------------------|---|--------|
| Photocopying                | = | \$ 416 |
| Postage                     | = | \$ 66  |
| Computerized Legal Research | = | \$ 23  |
| Telephone                   | = | \$ 20  |

|              |   |                 |
|--------------|---|-----------------|
| <b>Total</b> | = | <b>\$11,290</b> |
|--------------|---|-----------------|

#### **Hours Claimed**

AirTouch argues that the hours spent by TURN on its protest are excessive and therefore unreasonable for two reasons. First, AirTouch believes it is inappropriate for preparation of the request to be compensable; it argues that there is no sound public policy reason for a carrier to ever pay for the cost of TURN to prepare a bill for its advocacy services. Second, AirTouch objects to the use of multiple counsel by TURN, claiming that time spent in counselor meetings and Mr. Shostak's time to research and draft TURN's protest were excessive largely due to his inexperience with California utility regulation.

AirTouch's first argument ignores the plain language of the statute. In § 1802(a), compensation is defined to include the fees and costs of obtaining an award.

We are not troubled by TURN's use of a senior and associate counsel. From the time records, it is clear that Mr. Long took the lead on discovery and supervised the drafting of the protest while Mr. Shostak devoted most of his time to researching and preparing the protest. Had Mr. Long worked alone, his greater degree of experience may have shortened the total hours spent researching and preparing the protest, but at a considerably higher hourly rate. As TURN points out in its reply, the approach it took to dividing its labors is consistent with the approach taken by many law firms in meeting their clients' needs.

We also find the total hours devoted by TURN to research, discovery and preparation of its protest to be appropriate, especially given the importance to consumers of the issues presented by the Petition. Absent the CP service billing approach AirTouch advocated, many landline customers have very little or no interest or concern about wireless rates. The approximately six days TURN devoted to reviewing the Petition, conducting research and discovery, and preparing its eight-page protest are reasonable.

#### ***Hourly Rates***

TURN seeks an hourly rate of \$240 for Mr. Long's advocacy work in this proceeding, most of which took place during 1996. This rate was found reasonable and applied to Mr. Long's advocacy work during 1996 in D 97-10-049. We will apply it here.

TURN seeks an hourly rate of \$170 for Mr. Shostak's advocacy work during 1996. TURN states that Mr. Shostak is a 1990 graduate of law school with membership in the Massachusetts, Pennsylvania, and California Bars. He

represented utility consumers as a consumer advocate for the Pennsylvania Office of Consumer Advocate, where he worked for four years. TURN argues that his experience qualifies Mr. Shostak for compensation at the level of at least an experienced associate, well-schooled in matters of utility regulation, comparable to others for whom we have approved an hourly rate of \$185. TURN explains that, in light of the fact that Mr. Shostak was new to California utility regulation when he worked on this project, it elected to request only \$170 per hour.

Given his experience, as compared to other persons of comparable training and experience providing similar services, we find an hourly rate of \$170 for Mr. Shostak reasonable.

AirTouch argues that the preparation of the NOI and Request should not require the direct involvement of a highly compensated attorney, citing to Commission decisions where time spent on preparing a compensation request was reduced by one half. We agree that the preparation of the NOI and Request in this proceeding did not require the skill of an attorney to prepare and will apply one-half the attorney rate to those hours, which total 5.5.<sup>3</sup> However, we will compensate TURN at the full attorney rate for the 7.5 hours it spent preparing its Reply to AirTouch.

#### ***Other Costs***

TURN's other costs, as detailed above and totaling \$525, are reasonable.

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<sup>3</sup> Contrary to TURN's assertions, such a reduction, when appropriate, has been our standard practice for a number of years now. (See D.93-06-022, mimeo., at 6; D.93-09-086, mimeo., at 9; and D.98-04-059, mimeo., at 51, including citations.)

### **Award**

TURN should be awarded \$10,630 for its substantial contribution to D.97-06-109. The award should be paid by AirTouch who initiated this portion of the proceeding and who, pursuant to § 1807, is the "public utility which is the subject of the...proceeding." AirTouch raises the argument that it, as a player in a competitive industry, should not be required to pay intervenor compensation awards since it is less likely in such an environment that the cost of an award can be recovered through price changes. While we agree that recovery of the cost of an award through a rate increase is at the discretion of utility management, we disagree that that fact nullifies the statutes' applicability. AirTouch should be directed to pay the award.

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 November 8, 1997 (the 75<sup>th</sup> day after August 25, 1997) and continuing until the utility makes full payment of the award.

As in all intervenor compensation decisions, we put TURN on notice that the Commission's Telecommunication 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. There has been no event subsequent to the filing of the Petition for Modification triggering the imposition of a deadline for submitting a Notice of Intent.

2. TURN made a substantial contribution to D.97-06-109.
3. The hours claimed by TURN for its participation in this proceeding are reasonable.
4. We found reasonable and applied the hourly rate of \$240 for Mr. Long's advocacy work during 1996 in D.97-10-049. We will apply it here.
5. Given Mr. Shostak's experience, as compared to other persons of comparable training and experience providing similar services, we find an hourly rate of \$170 for his advocacy work reasonable.
6. The preparation of the Notice of Intent and Request in this proceeding did not require the skill of an attorney to prepare. It is therefore reasonable to apply one-half the attorney rate to those hours, which total 5.5.
7. TURN's other costs, which total \$525, are reasonable.

#### **Conclusions of Law**

1. TURN's Notice of Intent, filed concurrent with its Request for Compensation, was timely.
2. TURN has met the requirements of Sections 1801-1812 which govern awards of intervenor compensation.
3. TURN should be awarded \$10,630 for its substantial contribution to D.97-06-109.
4. The award to TURN should be paid by AirTouch who initiated this portion of the proceeding and who, pursuant to § 1807, is the "public utility which is the subject of the...proceeding."
5. This order should be effective today so that the intervenor awarded compensation herein may be compensated without unnecessary delay.
6. All outstanding issues in these proceedings having been resolved, these proceedings should be closed.

**O R D E R**

**IT IS ORDERED that:**

1. The Utility Reform Network (TURN) is awarded \$10,630, with interest, for its substantial contribution to Decision 97-06-109.

2. AirTouch Cellular and its affiliates, Los Angeles SMSA Limited Partnership, Sacramento-Valley Limited Partnership, and Modoc RSA Limited Partnership shall, within 30 days of the effective date of this order, pay \$10,630 to TURN and 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 November 8, 1997 and continuing until full payment is made.

3. These proceedings are closed.

This order is effective today.

Dated July 23, 1998, at San Francisco, California.

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