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Decision 98-09-032 September 3, 1998

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Joint Application of GTE California Incorporated (U-1002-C), a corporation, and Contel of California, Inc. (U-1003-C), a corporation, for approval of elimination of charges for Nonpublished/Nonlisted services and offsetting increase of rates for residential flat and measured services.

ORIGINAL

Application 96-12-045
(Filed December 26, 1996)

OPINION

This decision grants The Utility Reform Network (TURN) an award of \$12,310 in compensation for its contribution to Decision (D.) 97-11-020. The award is \$27.50 higher than the amount requested by TURN because a recent Commission decision increased the rate of compensation for one of TURN's attorneys who participated in the case. TURN made a substantial contribution to D.97-11-020 that was not significantly duplicative of contributions made by other parties.

1. Background

On December 26, 1996, GTE California Incorporated (GTEC) and Contel of California Inc.¹ filed the instant application with the Commission requesting to

¹ Contel merged with GTEC on January 1, 1997, and no longer exists as a separate legal entity. In this opinion "GTEC" is used to refer to both parties.

eliminate tariffed rates for nonpublished/nonlisted services with an offsetting increase in other rates as provided for under Public Utilities (PU) Code § 2893(e).²

On January 29, 1997, TURN filed a protest to GTEC's application. On March 27, 1997, the Office of Ratepayer Advocates (ORA) filed a motion to file a late protest to GTEC's application. ORA's motion was granted on April 22, 1997.

At a prehearing conference on May 6, 1997, the Administrative Law Judge (ALJ) agreed to bifurcate the proceeding, with the Commission first addressing the meaning of the term "competitive" as used in § 2893(e). Both TURN and ORA argued that GTEC operated in a competitive market, and thus did not qualify under § 2893(e) to eliminate its charges for unpublished/unlisted services. GTEC contended that its market was not competitive for the purposes of applying § 2893(e).

On November 7, 1997, the Commission issued D.97-11-020 (hereinafter "the decision"). The decision addressed the meaning of the term "competitive" as used in § 2893(e), which stipulates that a telephone company cannot charge subscribers for unlisted numbers "[u]ntil the market for local telephone service is competitive." The decision found that GTEC's service market was competitive within the terms of § 2893(e).

On January 6, 1998, TURN filed a Request for Compensation (Request) for its contribution to the decision. It seeks \$12,283.

2. 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 prehearing conference or by a date

² Hereafter, all references to code sections will be to the PU Code unless otherwise stated.

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,

"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(c) 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 and Request

TURN timely filed its NOI after the first prehearing conference and was found to be eligible for compensation in this proceeding by a ruling dated June 20, 1997. The same ruling found that TURN had demonstrated significant financial hardship. Within the allowed 60 days, TURN filed its Request. Therefore it was timely.

4. Contributions to Resolution of Issues

The central issue in the decision is determining the proper interpretation of the term "competitive" in § 2893(e). TURN contends that in reaching its conclusion about the meaning of the term "competitive," the decision "relied heavily on TURN's legal analysis . . . and agreed with TURN that the application should be dismissed." (Request, p. 2.)

TURN notes five examples where the decision substantially relied on or closely tracks arguments and analysis presented in TURN's Opening and Reply Briefs. First, TURN maintains that the decision closely tracks the analysis of the anti-competitive nature of GTEC's application presented in TURN's Opening Brief. Second, TURN notes that the decision adopts its assessment that "GTEC's interpretation of Section 2893(e) would prevent price competition for unlisted services from even getting started." (Request, p. 3.) Third, the decision cites the same cases illustrating the Commission's past application of § 2893(e) that TURN cites in its Opening Brief. Fourth, TURN contends that the rationale in the decision for rejecting GTEC's broad interpretation closely tracks TURN's rationale in its Reply Brief. Fifth, the decision's conclusion that § 2893(e) had an "effective life" notwithstanding the Legislature's intent to open all telecommunication markets to competition relied on the analysis in TURN's Reply Brief.

A review of TURN's Opening and Reply Briefs and the decision supports TURN's conclusion that it made a substantial contribution to the decision. In the sections that TURN notes, the decision does rely on or closely track TURN's analysis and legal reasoning. In its briefs, TURN argued that GTEC's application did not comport with the concept of competition that the Legislature intended when it enacted § 2893(e), and GTEC's concept of competition contradicted broad, Commission policy objectives promoting competition in

telecommunications markets. The decision draws substantially the same conclusions.

ORA, however, presented similar analysis and reasoning. TURN contends that its efforts were not duplicative of ORA's because the two organizations put forward different interpretations of the term "competitive."³ While TURN and ORA offered somewhat different approaches to the concept of competition under § 2893(e), they made similar arguments. Further, the concept of competition that the decision adopts is most similar to that proposed by ORA. TURN acknowledges that the decision did not adopt its interpretation of competition, but argues instead that the decision adopted its analysis. Thus TURN implies that its analysis, not its interpretation, constitutes its substantial contribution to the decision. This implication undercuts the argument above that TURN's and ORA's effort were not duplicative because their interpretations of competition differed.

TURN also argues that its efforts were not duplicative of ORA's because only TURN argued that "GTEC's proposed interpretation would improperly impose rate regulations on local carries." (Request, p. 5.) This argument is not made by ORA, and the argument constitutes an important element in the reasoning supporting the finding in the decision. Further, while TURN and ORA made similar arguments, the scope and structure of these arguments differed, and these difference contributed to a fuller assessment of the meaning of the term

³ TURN argued that the term competitive in § 2893(e) means "open to competition," whereas ORA argued that the term "competitive" in § 2893(e) is unambiguous because the Commission has already made a preliminary determination that local telecommunication markets are competitive. The difference in interpretation appears to be more approach than substance.

"competitive" as used in § 2839(e).¹ Thus any duplication of effort between TURN and ORA was minor.

The decision does not adopt TURN's argument that "competitive" means "open to competition;" instead, the decision found that GTEC's market was competitive within the terms of PU Code § 2893(e). The effect in this case, however, was the same—denial of GTEC's application. TURN's contention that the decision relied or closely tracks key aspects of TURN's analysis presented in its briefs is reasonable and supported by the record. Therefore, we conclude that TURN made a substantial contribution to D.97-11-020 and any duplication of effort between TURN and ORA was minor.

5. The Reasonableness of Requested Compensation

TURN requests compensation in the amount of \$12,283 as follows:

Attorney's Fees

Thomas Long	(23.50 hours at 250/hr)	\$5,875	
Paul Stein	(36.75 hours at 160/hr)	\$5,880	
Attorney's Fees Subtotal			\$11,755

Other Costs

Photocopying	\$169	
Postage	\$ 20	
Computerized Legal Research	\$339	
Other Costs Subtotal		\$ 528

Total Compensation Requested	\$12,283
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¹ For example, TURN's Opening Brief provides a more technically oriented definition of competitive than ORA's Opening Brief. ORA, on the other hand, places more emphasis on how the Commission has interpreted the term "competitive."

5.1. Hours Claimed

TURN explains that because the proceedings dealt with only a single issue—the interpretation of “competitive”—it has not provided a breakdown of hours by issue, and that to do so “would serve little purpose” in this case. (Request, pp. 6-7.) TURN claims that the bulk of its hours were spent on the statutory interpretation issue, with a small amount of time spent on scoping the case at the outset of the proceedings. In Attachment 1, TURN provides a detailed breakdown of the hours spent on each task, which includes research, preparing briefs, discussing settlement options with the other parties, and preparing the request for compensation. The hours claimed by TURN appear reasonable for the effort that TURN contributed to resolving the issue in this case.

5.2. Hourly Rates

TURN is claiming an hourly rate of \$250 for work performed by Mr. Long in 1997 based on his experience as TURN’s senior telecommunications attorney. The Commission applied a rate of \$240 for Mr. Long’s work during 1996. (D.97-10-049.) A 4% increase for 1997 is reasonable given Mr. Long’s experience.

TURN is claiming an hourly rate of \$160 for Mr. Stein’s 1997 work based on the Commission’s previous decision (D.96-06-047), granting the same rate for another TURN attorney with similar background and experience. In D.98-08-016, while this request was pending, the Commission approved a rate of \$170 per hour for work performed in 1997 by Mr. Stein. This previously-adopted rate will be applied here.

The Commission further finds that preparation of the intervenor compensation request did not require a person of Mr. Stein’s experience. The legal argument it contains supporting hourly rate increases are the same arguments presented in the requests which lead to the decisions approving the

increases, cited above. Thus the rate for this task (four hours of effort) has been reduced by 50 percent to \$85 per hour.

5.3. Other Costs

TURN requests \$528 for photocopying, postage, and Lexis research charges. TURN provides a breakdown of these expenses in Attachment 1. TURN's request for other costs appears reasonable.

6. Award

We award TURN \$12,310, calculated as described above.

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 December 21, 1997 (the 75th day after TURN filed its compensation request) and continuing until the utility makes its full payment of award.

As in all intervenor compensation decisions, we put TURN on notice that the Commission's Telecommunication's Division may audit TURN records related to this award. Thus, TURN must make and retain adequate accounting and other documentation to support all claims for intervenor compensation.

TURN 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. TURN has made a timely request for compensation for its contribution to D.97-11-020.

2. TURN contributed substantially to D.97-11-020 by providing analysis that was applied by the Commission in making its determination of the proper meaning of the term "competitive" in PU Code § 2893(e).

3. Any duplication of effort between TURN and ORA was minor and does not warrant a reduction in the award.

4. TURN has requested hourly rates for attorneys and experts that have been previously adopted by the Commission and are no greater than the market rates for individuals with comparable training and experience.

5. The miscellaneous costs incurred by TURN are reasonable.

Conclusions of Law

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

2. The rate of compensation for Mr. Stein's effort (four hours) in preparing the application for compensation should be reduced by 50 percent.

3. TURN should be awarded \$12,310 for its contribution to D.97-11-020.

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

5. All pending matters having been resolved, this proceeding should be closed.

O R D E R

IT IS ORDERED that:

1. The Utility Reform Network (TURN) is awarded \$12,310 in compensation for its substantial contribution to Decision 97-11-020.

2. GTE California Incorporated (GTEC) shall pay TURN \$12,310 within 30 days of the effective date of this order. 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 December 21, 1997 and continuing until full payment is made.

A.96-12-045 ALJ/BAR/tcg *

3. This proceeding is closed.

This order is effective today.

Dated September 3, 1998, at San Francisco, California.

RICHARD A. BILAS

President

P. GREGORY CONLON

JESSIE J. KNIGHT, JR.

HENRY M. DUQUE

JOSIAH L. NEEPER

Commissioners