

ALJ/KCM/sid

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Decision 99-02-021 February 4, 1999

**ORIGINAL**

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

In the Matter of the Application of Pacific Bell (U 1001 C), a corporation, for approval of rate reductions to offset the explicit subsidy support in Decision 96-10-066.

Application 97-03-004  
(Filed March 6, 1997)

### **OPINION AWARDING COMPENSATION**

This decision grants The Utility Reform Network (TURN) an award of \$74,400.38 in compensation for its contribution to Decision (D.) 98-07-033.

#### **Background**

In D.98-07-033, we adopted \$305.2 million in price ceiling reductions for Pacific Bell (Pacific) as a permanent offset for its receipt of universal service funds from the California High Cost Fund (CHCF-B). In D.96-10-066, we afforded the five large and mid-size local exchange carriers (LECs) participating in the CHCF-B the opportunity to request a permanent rate reduction offset rather than using the surcredit mechanism we adopted. Pacific is the first LEC to make such a request. Pacific and other parties presented six proposals for permanent offset. The proposals differed as to which services were recommended for reduction, and the amount and structure of the reduction for each service.

A synopsis of the procedural history follows. On March 6, 1997, Pacific filed its application requesting that the estimated \$305.2 million it will receive each year from the universal service fund be offset by \$297.8 million in permanent reductions to residential and business toll ceiling prices and \$7.4 million in reductions to switched access ceiling prices. On March 11, 1997, Pacific amended its application to include a proposed scoping memo pursuant to

Experimental Rule 3.a. All interested parties submitted prehearing conference (PHC) statements addressing Pacific's proposal. A PHC was held on April 24, 1997, and additional PHC comments were filed by parties on May 5, 1997.

Evidentiary hearings were held in San Francisco on October 14 through November 5, 1997. Closing oral argument was held on October 28, 1997.

Opening briefs were filed on January 9, 1998 and reply briefs on February 20, 1998, at which time the matter was submitted. TURN participated during all stages of the proceeding. The proposed decision was mailed to all parties, and comments and reply comments were filed by TURN and other parties.

D.98-07-033 made several changes to the proposed decision based on parties' comments. No application for rehearing of D.98-07-033 was filed.

By a request timely filed on September 8, 1998, TURN presents a claim for compensation for substantial contributions to D.98-07-033. No party filed a response to TURN's request for compensation.

#### **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 PHC 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,

"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.

#### **NOI to Claim Compensation and Request**

TURN timely filed its NOI after the first PHC and was found to be eligible for compensation in this proceeding by a ruling dated June 25, 1997. The same ruling found that TURN had demonstrated significant financial hardship in this proceeding. Within the allowed 60 days, TURN filed its Request. Therefore, it was timely.

#### **Contributions to Resolution of Issues**

TURN argues that its contributions to D.98-07-033 were substantial and warrant an award of the full costs of participation, even though it did not prevail on all of its recommendations and contentions. It correctly notes that it participated in all phases of the case. It provides citations to the decision and record to support its claimed contributions.

With regard to the scoping phase of the proceeding, TURN claims that it made substantial contributions. (Request, p. 3.) During the scoping phase, GTE California Inc. (GTEC) filed a protest arguing that Pacific should not be permitted to reduce its competitive toll rates until after it increased its basic residential rates to cover a substantially higher percentage of its actual costs of providing residential service. In response to GTEC's protest, TURN argued that the Commission's purpose in this proceeding was to reduce rates to prevent Pacific from recovering a windfall from the high cost fund, and that proposals to increase rates were outside the scope of the proceeding. The Assigned Commissioner agreed with TURN, and ruled that the issue raised by GTEC would not be considered. (Assigned Commissioner's Ruling and Scoping Memo, July 11, 1997.) We agree that TURN made a substantial contribution in the scoping phase of the proceeding.

TURN argues that it made substantial contributions on the issue of the rate reductions adopted by the Commission. (Request, pp. 3-9.) TURN notes examples of arguments that it presented that were relied upon in the Decision. On the issue of how to distribute the rate offsets, TURN recommended using all of the \$305.2 million available to reduce rates for local usage and ZUM calling services. As TURN points out, at the outset of the proceeding it was the only party to recommend reductions to local usage and ZUM calling services. The Office of Ratepayer Advocates (ORA) subsequently sponsored a proposal for ZUM and local usage reductions totaling \$78 million, and reduced its recommended toll reductions. In D.98-07-033 the Commission agreed that local usage and ZUM should receive significant rate reductions. (D.98-07-033, mimeo, pp. 25, 42.) A review of the record and the decision supports TURN's contention that it made a substantial contribution to the decision on this issue. TURN's participation was not duplicative of that of ORA. It was TURN's testimony that

first raised the proposal for local usage and ZUM rate reductions. It is possible that without TURN's participation, no party would have sponsored such a proposal.

Additionally, in adopting local usage and ZUM reductions, the Commission relied on TURN's arguments to reject various claims by opposing parties. The Commission found merit in TURN's arguments opposing Pacific's contention that local usage rates should not be reduced because measured access lines are currently priced below cost. (D.98-07-033, mimeo, p. 25.) The Commission rejected MCI's argument that local usage revenues may have been used in D.96-10-066 to reduce the amount of funding from the high cost fund that Pacific needs to provide Universal Service. The Commission did not agree with TURN that the record was conclusive on this point, but did adopt a conclusion consistent with TURN's position. (D.98-07-033, mimeo., p. 25; TURN Reply Brief, pp. 12-14.) Additionally, the Facilities-Based Carriers (FBC) opposed the reduction of local usage and ZUM rates because it would discourage competitive entry in local service markets. The Commission stated that based upon TURN's testimony it found that rate reductions to local usage and ZUM will still leave sustainable prices for new competitive entrants. (D.98-07-033, mimeo., p. 36.) TURN's participation provided a substantial contribution to the Commission's decision on the foregoing arguments of Pacific, MCI, and FBC.

TURN contends that in addition to making substantial contributions with regard to local usage and ZUM reductions, the Commission also relied extensively on TURN's analysis with regard to proposals for switched access reductions. (Request, p. 6.) In witness Long's testimony, on cross-examination, and in briefs, TURN argued that the bulk of offsets should not be used to reduce switched access rates because of uncertainty about the way long distance carriers would pass through their switched access reductions to end-users. The

Commission's conclusion reflects the concerns raised by TURN. The Commission stated that the IXCs did not provide adequate details to establish that their pledges can be effectively implemented, monitored, and verified by the Commission, and it was therefore cautious in applying CHCF-B funds to reduce switched access services. (D.98-07-033, mimeo., p. 25.) The Commission's order establishing an implementation and verification process requiring the IXCs to submit implementation plans and verification reports reflects the concerns raised by TURN regarding pledges by the long-distance carriers to pass through benefits of rate reductions adopted by the Commission. We agree that TURN made a substantial contribution on these issues.

Lastly, TURN argues that it made a substantial contribution by helping convince the Commission to reject the proposal of the FBC for a permanent equal percentage surcredit. (Request, p. 8.) TURN points out that it argued that an across-the-board surcredit could force some services below cost, as well as that a permanent surcredit would make it harder for consumers to determine the actual price of services they are buying. The Commission rejected the FBC proposal for the reasons advocated by TURN, as well as because application of an across-the-board reduction would apply rate reductions to services that no party demonstrated were providing an implicit subsidy to universal service. (D.98-07-033, mimeo., p. 26.) We agree with TURN that it made a substantial contribution to the conclusion of the Commission to reject the FBC proposal.

#### **Duplication of Effort**

The intervenor compensation governing statutes state an intent that the program be administered in a manner that avoids "unnecessary participation that duplicates the participation of similar interests." (PU Code § 1801.3(f).) The governing statutes envision some participation that is duplicative may still make a substantial contribution. They also envision that participation which is

duplicative may be unnecessary and therefore not compensable at all. (See discussion in D.98-04-049, mimeo., p. 49.)

TURN argues that no reduction in compensation for duplication of effort is warranted in this case. Both TURN and ORA recommended reductions in local usage and ZUM calling services. However, TURN correctly points out that ORA made its recommendation only after reviewing TURN's testimony. Without TURN's participation, it is possible that ORA would not have arrived at its position for reductions in local usage and ZUM calling services. Additionally, as discussed above, TURN successfully defended local and ZUM rate reductions against policy arguments by Pacific, the long-distance carriers, and the FBC. As discussed above, the decision relies on or closely tracks key aspects of TURN's analysis. Any duplication of effort between TURN and ORA was minor, and no reduction in compensation on this issue is warranted.

On the subject of switched access reductions, there is some overlap in the testimony of TURN and other parties. As noted in D.98-07-033, Pacific, FBC, ORA, and TURN argued that rate reductions to switched access services will not be completely flowed through to the IXCs' customers and that the reductions that are flowed through will be in the form of discounts to large volume customers and special promotional offers to new customers. (D.98-07-033, p. 24.) However, we agree with TURN's claim that it provided important analysis of the IXCs' pass-through pledges, emphasizing that the pledges lacked sufficient detail, would not ensure a broad-based pass-through, and would be difficult to verify and enforce. The governing statute provides that participation by a customer that materially supplements, complements, or contributes to the presentation of another party may be fully eligible for compensation if the participation makes a substantial contribution to a Commission order. (See PU Code § 1802.5.)

Applying this standard, we find that TURN's participation on this issue made a substantial contribution to the decision, and it is eligible for full compensation.

#### **Customer Interests Represented by TURN**

D.98-04-059 provides that the NOI shall contain information that enables the presiding officer to make a preliminary assessment of whether an intervenor will represent customer interests that would otherwise be underrepresented. Additional assessment of this issue is to occur in response to any Request for Compensation. If the intervenor is a "customer" representing interests that would otherwise be underrepresented, who meets the significant financial hardship criteria, that customer may be eligible for an award of compensation. (D.98-04-059, mimeo., pp. 27-28; Finding of Fact 13.) TURN argues that it represented the interests of small customers who rely heavily on local phone services, and who do not make a lot of toll calls, and that these interests would have been underrepresented in this proceeding if TURN had not participated. We agree with TURN's contention. As discussed above, TURN was the only party to recommend local usage and ZUM rate reductions at the commencement of the proceeding. ORA supported these reductions, but only after reviewing TURN's testimony. TURN also addressed policy arguments of other parties made against local usage and ZUM reductions. TURN's efforts contributed substantially to the Commission's decision to adopt \$80.5 million in rate reductions that would have otherwise been allocated to other services.

#### **Benefits To Ratepayers of TURN's Participation**

In D.98-04-059, Finding of Fact 42, we indicated that compensation for a customer's participation should be in proportion to the benefit ratepayers receive as a result of that participation. We recognized that "monitizing" the benefits accruing to ratepayers as the result of a customer's substantial contribution may be difficult, but making such an assessment of whether the requested



compensation is in proportion to the benefits achieved is a means of ensuring that ratepayers receive value from compensated intervention, and that only reasonable costs are compensated. (D.98-04-059, p. 73.) TURN argues that the benefits to ratepayers of its participation in this proceeding far outweigh the costs. We agree. As discussed above, as a result of TURN's participation we used \$80.5 million of available offsets to reduce rates for local usage and ZUM services that would likely have otherwise been allocated to other services. Therefore, the benefits to customers who use local usage and ZUM services far outweigh the amount of compensation claimed by TURN.

**The Reasonableness of Requested Compensation**

TURN requests compensation in the amount of \$74,400.38 as follows:

**Attorney's/Advocate's Fees**

**Thomas J. Long**

1997	(132.5 hours at \$250/hr.) =	\$33,125.00
1998	(6.25 hours at \$250/hr.) =	1,562.50

**Paul Stein**

1997	(154 hours at \$170/hr.) =	\$26,180.00
1998	(49.25 hours at \$170/hr.) =	8,372.50
	(10 hours at \$85/hr.) =	850.00

**Regina Costa**

1997	(9.5 hours at \$140/hr.) =	\$ 1,330.00
	Subtotal =	\$71,420.00

**Other Costs**

Photocopying	=	\$ 2,329.29
Postage	=	486.35
Telephone	=	\$ 1.18
Fax	=	26.00
On-Line Research Services	=	137.56

Subtotal = \$ 2,980.38

Total Compensation Requested \$74,400.38

**Hours Claimed**

TURN apportions its efforts as follows: 10% -- criteria the Commission should consider in deciding which rates to reduce; 40% -- issues pertinent to proposed local usage and ZUM rate reductions; 10% -- issues pertinent to proposed toll rate reductions; 35% -- issues pertinent to proposed switched access reductions; 5% -- issues pertinent to proposals for a proposed permanent surcredit.

In Attachment 1, to its request for compensation, TURN provides a detailed breakdown of the hours spent on various tasks, which include research, preparation of filings and testimony, attendance at prehearing conferences, hearings, and oral argument, and preparation of fee request. The total number of hours claimed is substantially below the 900 hours that were estimated to be spent in TURN's NOI. In accordance with our direction in D.98-04-059, TURN requests compensation at half the hourly rate for the 10 hours spent by attorney Paul Stein in preparation of the compensation request. The hours claimed by TURN appear reasonable for the effort that TURN contributed to resolving the issues in this case.

### Hourly Rates

TURN is claiming an hourly rate of \$250 for work performed by Mr. Long in 1997 and 1998, based upon his experience as TURN's senior telecommunications attorney. In D.98-09-032, the Commission previously approved this rate for work performed by Mr. Long in 1997. (TURN states that it does not waive its right to seek a higher hourly rate for 1998 for Mr. Long at an appropriate time.) We find the hourly rate claimed reasonable.

TURN is claiming an hourly rate of \$170 for work performed by staff attorney Paul Stein in this proceeding in 1997 and 1998. The Commission approved this requested hourly rate in D.98-08-016. (TURN states that it does not waive its right to seek a higher hourly rate for 1998 for Mr. Stein at an appropriate time.) We find the hourly rates claimed reasonable. The hourly rate for Mr. Stein's preparation of the compensation request has been reduced by 50% to \$85 per hour. This reduction is consistent with our direction in D.98-04-059.

TURN seeks compensation for telecommunications analyst Regina Costa at the hourly rate of \$140 for work performed in 1997. In D.98-05-056, the Commission approved this rate for work performed in 1996. (TURN states that it does not waive its right to seek a higher rate for 1997 for Ms. Costa at an appropriate time.) We find the hourly rate claimed reasonable.

### Other Costs

TURN requests compensation for \$2,980.38 for miscellaneous expenses. The majority of these expenses were associated with copying and mailing TURN's pleadings and testimony in this proceeding. A detailed breakdown of TURN's expenses is contained in Attachment 1 of its compensation request. TURN's request for other costs appears reasonable.

### **Award**

We award TURN \$74,400.38 for its contributions to D.98-07-033, 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 November 22, 1998 (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.

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to PU Code Section 311(g)(2), the otherwise applicable 30-day period for public review and comment is being waived.

### **Findings of Fact**

1. TURN has made a timely request for compensation for its contribution to D.98-07-033.

2. TURN contributed substantially to D.98-07-033 during the scoping phase of this proceeding, and by providing analysis that led to adoption of \$80.5 million in rate reductions for local usage and ZUM services that otherwise would have been allocated to other services. TURN also made substantial contributions to the

conclusions reached regarding proposals for reduction of switched access rates and for an equal percentage surcredit.

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

4. TURN represented the interests of small customers who rely heavily on local phone services, who do not make a lot of toll calls. These interests would have been underrepresented in this proceeding if TURN had not participated.

#### **Conclusions of Law**

1. The benefits of TURN's participation to customers who use local usage and ZUM services far outweigh the amount of compensation claimed by TURN.

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

3. The miscellaneous costs incurred by TURN are reasonable.

### **O R D E R**

#### **IT IS ORDERED that:**

1. The Utility Reform Network (TURN) is awarded \$74,400.38 in compensation for its substantial contribution to Decision 98-07-033.

A.97-03-004 ALJ/KCM/sid

2. Pacific Bell (Pacific) shall pay TURN \$74,400.38 within 30 days of the effective date of this order. Pacific 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 22, 1998, and continuing until full payment is made.

This order is effective today.

Dated February 4, 1999, at San Francisco, California.

RICHARD A. BILAS

President

HENRY M. DUQUE

JOSIAH L. NEEPER

Commissioners