

Decision 00-04-033 April 6, 2000

**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.

Rulemaking 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.

Investigation 95-01-021  
(Filed January 24, 1995)

**OPINION AWARDING COMPENSATION**

This decision grants The Utility Reform Network (TURN) an award of \$7,681.48 in compensation for contributions to Decision (D.) 98-01-023, D.98-04-068, and D.99-05-013.

**1. Background**

This proceeding was instituted for the two-fold purpose of complying with Assembly Bill (AB) 3643 and developing rules to ensure ubiquitous and affordable telephone service. In D.98-01-023, we instructed telecommunications carriers to place the California High Cost Fund-B (CHCF-B) and California Teleconnect Fund (CTF) surcharge revenues they are collecting into interest-bearing accounts, and to remit the interest earned to the CHCF-B and CTF. Applications for rehearing of D.98-01-023 were filed by several parties.

In D.98-04-068, we granted limited rehearing. We rejected the contention that D.98-01-023 violated Public Utilities Code Section 1705.<sup>1</sup> We found that the decision did violate Section 1708 by not providing carriers with an opportunity to be heard on the matter of whether they should be required to remit any interest they had earned on CHCF-B and CTF surcharge revenues prior to D.98-01-023. We granted limited rehearing to permit carriers to request a hearing on this issue. Parties were permitted to file written comments on this issue. In D.99-05-013, we ordered telecommunications carriers to remit to the CHCF-B and CTF any interest earned on CHCF-B and CTF surcharge revenues prior to the effective date of D.98-01-023.

By a Request for Award of Compensation (Request) timely filed on July 12, 1999, TURN presents a claim for compensation for substantial contributions to D.98-01-023, D.98-04-068, and D.99-05-013. No response in opposition was filed by any party.

## **2. Requirements for Awards of Compensation**

Intervenors who seek compensation for their contributions in Commission proceedings must file requests for compensation pursuant to Sections 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 (PHC) or by a date established by the Commission. The NOI must present information regarding the nature and extent of planned participation in the proceeding, and an itemized estimate of compensation that the customer expects to request. The NOI may also request a finding of eligibility.

---

<sup>1</sup> All section references are to the Public Utilities Code.

Other 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 Section 1806.

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

TURN was found eligible for compensation in this proceeding in D.98-05-056, in which TURN was awarded compensation for its contributions to D.96-10-066. Pursuant to Rule 76.76, TURN remains eligible for compensation for its participation in this same proceeding. (Rule 76.76 of the Rules of Practice and Procedure.) Within the 60 days allowed following issuance of D.99-05-013

resolving the application for rehearing of D.98-01-023, TURN filed its timely Request (Section 1804(c)).

#### **4. Contribution to Resolution of Issues**

In its Request, TURN details the contributions that it claims it made to D.98-01-023, D.98-04-068, and D.99-05-013. We have reviewed TURN's contentions and concur with TURN that it made a substantial contribution to each of the three decisions at issue.

In the phase of the proceeding that led to the issuance of D.98-01-023, TURN argued that carriers should be ordered to deposit surcharge revenues into interest-bearing accounts. TURN also argued that carriers should be required to remit any interest already earned on surcharge revenues to the CHCF-B fund. In D.98-01-023, we referenced TURN's opposition to the position of the Cellular Carriers Association of California (CCAC) that carriers should not have to pay interest on surcharge revenues. (D.98-01-023, p. 6.) We agreed with the position of TURN, and ordered carriers to treat funds and interest accordingly.

D.98-04-068 granted limited rehearing of D.98-01-023. On rehearing, it was argued that D.98-01-023 violated Section 1705 by concluding, without evidence in the record, that carriers would reap a "windfall" if they were allowed to keep the interest earned on surcharge revenues. TURN filed a response in opposition to the application for rehearing in which it argued that the Commission's conclusion was based upon common sense and did not require further evidentiary support. In D.98-04-068, we agreed with TURN that D.98-01-023 did not violate Section 1705. We did, however, grant limited rehearing on the basis that carriers had not been provided with notice and an opportunity to be heard on the issue of whether they should be required to remit any interest they earned prior to D.98-01-023.

D.99-05-013 was issued following review of comments on the issues outlined in D.98-04-068. TURN filed opening and reply comments. In its comments, TURN argued that carriers should be required to remit interest prior to D.98-01-023. It rebutted a number of arguments raised by carriers opposing the remittance of interest. In D.99-05-013, we agreed with TURN that carriers were never intended to reap a "windfall" from the collection of surcharge revenues. We also agreed with TURN that an exemption should not be granted to small carriers. Our decision is consistent with TURN's arguments that the remittance of interest is not ratemaking and thus the rule on retroactive ratemaking is not violated. TURN's procedural recommendation was adopted requiring carriers to submit sworn declarations regarding interest earned on surcharge accounts, and prohibiting carriers from receiving any funding from the CHCF-B and CTF until any interest collected has been remitted.

##### **5. Customer Interests Represented and Duplication of Effort**

In a decision in which we generically reviewed many of our policies on intervenor compensation, we directed that an NOI must 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" who represents interests that would otherwise be underrepresented, and who meets the significant financial hardship criteria, the intervenor may be eligible for an award of compensation. (D.98-04-059, pp. 27-28, Finding of Fact 13.) TURN submits that it represented the interests of residential and small business customers that would otherwise have been underrepresented. We agree. Though some of TURN's positions on issues in this proceeding were similar to those of other

parties, TURN played an important role in bringing the interests of the customers whom it represented to the attention of the Commission. TURN's reasoning on the issues on which it made a substantial contribution played an important role in our decision making.

The intervenor compensation statutes express an intent that the program be administered in a manner that avoids "unnecessary participation that duplicates the participation of similar interests." (Section 1801.3(f).) The governing statutes envision some participation that is duplicative may still make a substantial contribution and therefore be compensable. (See D.98-04-049, p. 49.) We agree with TURN that no discount to the award we grant TURN should be made for duplication. TURN made a number of contributions that were distinct from the efforts of other parties. These included analyses regarding why D.98-01-023 did not violate certain statutory requirements. Additionally, TURN offered unique arguments in opposition to the small carriers' request for an exemption, and in support of prohibiting carriers from receiving CHCF-B or CTF funding until they have submitted the required declarations and remitted any earned interest. While some of TURN's positions were substantially similar to those of the Office of Ratepayer Advocates (ORA), we find that the areas of duplication fall within the category of participation that materially supplements the presentation of another party and is thus compensable under Section 1802.5. We are further persuaded that no discount for duplication of effort is warranted given our express adoption of TURN's positions and arguments in several instances.

## **6. Benefits to Ratepayers**

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 putting a dollar value on the benefits accruing to ratepayers as the result of a customer's substantial contribution may be difficult. However, an assessment of whether the requested compensation is in proportion to the benefits achieved helps ensure that ratepayers receive value from compensated intervention, and that only reasonable costs are compensated. (Id., p. 73.)

It is not possible to quantify precisely the benefits to ratepayers of TURN's participation in this proceeding. TURN's contribution centered on the treatment of interest earned on CHCF-B and CTF surcharge revenues collected by carriers. We noted in D.98-04-068 that hundreds of millions of dollars in surcharge revenues are collected. Interest earned on these revenues is likely to be substantial. An award of \$7,681.48 to compensate TURN for its efforts to ensure that ratepayers benefit from interest earned on the surcharge revenues is a reasonable investment by ratepayers.

### **6.1 The Reasonableness of Requested Compensation**

TURN requests compensation in the amount of \$7,681.48 as follows:

#### Advocates Fees

T. Long, Attorney

6.75 hours @ \$250/hr. (1997)	=	\$1,687.50
13.00 hours @ \$260/hr. (1998)	=	\$3,380.00

P. Stein, Attorney

6.25 hours @ \$170/hr. (1998)	=	\$1,062.50
4.00 hours @ \$85/hr. (1999)	=	\$ 340.00
Subtotal	=	\$6,470.00

Other Costs

Telephone and Facsimile	=	\$ 2.70
Copies	=	\$ 910.20
Postage	=	\$ 298.58
Subtotal	=	\$1,211.48
Total	=	\$7,681.48

**6.2 Hours Claimed**

TURN has segregated its hours by activity in accordance with Commission guidelines. No allocation of participation by issue was necessary because TURN's participation was not directed to multiple issues. TURN's participation related to the treatment of interest on surcharge revenues. The time spent by Stein devoted to preparation of the intervenor compensation request is charged at one half of his approved hourly rate. This is consistent with our direction in D.98-04-059. The hours billed by TURN are reasonable and fully compensable.

**6.3 Hourly Rates**

TURN claims the following hourly rates for work performed by Long: \$250 for work performed in 1997; \$260 for work performed in 1998. The Commission previously approved these rates for the years in question in D.98-09-032 and D.99-07-045. We apply these rates in this proceeding.

The hourly rate claimed for Stein is \$170 for work performed in 1998. The Commission previously approved this rate in D.98-08-016. We apply this rate in this proceeding. TURN has properly reduced the hourly rate for Stein's work in preparing the compensation request by 50% to \$85.

**6.4 Other Costs**

TURN requests \$1,211.48 for miscellaneous expenses. The majority of these expenses are for copying and mailing of pleadings. The expenses are fully itemized in the Request. The expenses are reasonable and fully compensable.



## 6.5 Award

We award \$7,681.48 to TURN for its contributions to D.98-01-023, D.98-04-068, and D.99-05-013. The award is calculated as follows:

Advocate Fees	\$6,470.00
Other Costs	\$1,211.48
<u>Total Compensation Award</u>	\$7,681.48

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 the 75th day after TURN filed its compensation request and continuing until full payment is made.

As in all intervenor compensation decisions, we put TURN on notice that the Commission's staff may audit TURN records related to this award. Thus, TURN must make and retain adequate accounting and other documentation to support its claim 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 is claimed.

## 7. Allocation of Award Among Utilities

In D.00-01-020, we addressed the issue of the payment of intervenor compensation awards in quasi-legislative rulemaking proceedings affecting an industry or multiple industries. We stated our intent that no later than July 1, 2001, awards in quasi-legislative rulemaking proceedings where no specific respondents are named will be paid from an intervenor compensation program fund. The details of this funding method are set forth in D.00-01-020. We clarified that in the interim period, prior to implementation of the user fee

funding program, we will continue our practice of requiring those larger utilities participating in a rulemaking proceeding to pay any compensation awards. Only those utilities that have entered an appearance in the proceeding will be required to pay. Membership in an association that entered an appearance does not constitute "participation" that obligates a utility to pay compensation awards. (D.00-01-020, p. 11, Ordering Paragraph 2.) We also clarified that our order in D.00-01-020 became effectively immediately and is to be applied to future compensation awards in certain pending matters, as well as in future quasi-legislative proceedings. (*Id.* at p. 2.)

In this rulemaking proceeding, the larger utilities that filed appearances are AT&T Communications, GTE California Incorporated, MCI Telecommunications Corporation, Pacific Bell, and Sprint Communications Company. Consistent with prior Commission decisions, payment of the compensation award shall be allocated among these utilities in proportion to the number of access lines each company served as of May 13, 1999.

#### **8. Section 311(g)(2)--Uncontested Decision Grants Relief Requested**

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

#### **Findings of Fact**

1. TURN has previously been found eligible for compensation in this proceeding in D.98-05-056.
2. TURN has made a timely request for compensation for its contributions to D.98-01-023, D.98-04-068, and D.99-05-013.
3. TURN made substantial contributions to D.98-01-023, D.98-04-068, and D.99-05-013.

4. Any duplication of effort between TURN and ORA does not warrant a reduction in the amount of the award. TURN represented customer interests that would otherwise have been underrepresented.

5. The benefits to customers of TURN's participation outweigh the costs of funding TURN's participation.

6. The hourly rates requested for work performed by attorneys are consistent with rates previously approved by the Commission.

7. The miscellaneous other costs incurred by TURN in this proceeding are reasonable and fully compensable.

### **Conclusions of Law**

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

2. TURN should be awarded \$7,681.48 for its contributions to D.98-01-023, D.98-04-068, and D.99-05-013.

3. This order should be effective today so that TURN may be compensated without undue delay.

## **O R D E R**

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

1. The Utility Reform Network (TURN) is awarded \$7,681.48 as set forth herein for substantial contributions to Decision (D.) 98-01-023, D.98-04-068, and D.99-05-013.

2. The award shall be paid by AT&T Communications (AT&T), GTE California Incorporated (GTEC), MCI Telecommunications Corporation (MCI), Pacific Bell (Pacific), and Sprint Communications Company (Sprint). Payment of

the compensation award shall be allocated among these utilities in proportion to the number of access lines each utility served as of May 13, 1999.

3. AT&T, GTEC, MCI, Pacific and Sprint shall, within 30 days of this order, pay to TURN their respectively allocated shares of \$7,681.48 plus interest at the rate earned on prime, three-month commercial paper as reported in the Federal Reserve Statistical Release G.13, with interest beginning on September 25, 1999, and continuing until the full payment has been made.

This order is effective today.

Dated April 6, 2000, at San Francisco, California.

LORETTA M. LYNCH

President

HENRY M. DUQUE

JOSIAH L. NEEPER

RICHARD A. BILAS

CARL W. WOOD

Commissioners