

ALJ/KLM/epg

ORIGINAL Mailed 7/22/99

Decision 99-07-045 July 22, 1999

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Bell Communications for a Certificate of Public Convenience and Necessity to Provide InterLATA, IntraLATA and Local Exchange Telecommunications Services Within the State of California

Application 96-03-007
(Filed March 5, 1996)

O P I N I O N

This decision grants The Utility Reform Network (TURN) an award of \$63,293.71 in compensation for contributions to Decision (D.) 99-02-013. That decision addressed the application of Pacific Bell Communications (PBCom) for approval of its proposal to provide interLATA and long distance calling in California.

1. Background

PBCom's application in this proceeding requested authority to offer local exchange, interLATA and long distance calling services in California. PBCom is a subsidiary of Pacific Bell's holding company, Pacific Telesis. This application raised a number of issues regarding the potential effects of PBCom's entry into various markets on market competitiveness, Pacific Bell's rates and service quality.

TURN filed this request for compensation on April 12, 1999 following issuance of D.99-02-013, which resolved outstanding issues in this proceeding. No party opposed TURN's request.

2. Requirements for Awards of Compensation

Intervenors who seek compensation for their contributions in Commission proceedings must file requests for compensation pursuant to Pub. Util. Code §§ 1801-1812. Pub. Util. Code § 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,

"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 that 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 filed an NOI to claim compensation in this proceeding as required by § 1804(a). The assigned Administrative Law Judge (ALJ) issued a ruling on July 9, 1996 finding TURN eligible for compensation in this proceeding.

4. Contributions to Resolution of Issues

A party may make a substantial contribution to a decision in various ways.¹ It may offer a factual or legal contention upon which the Commission relied in making a decision.² Or it may advance a specific policy or procedural recommendation that the Commission adopted.³ A substantial contribution includes evidence or argument that supports part of the decision even if the Commission does not adopt a party's position in total.⁴ The Commission has provided compensation even when the position advanced by the intervenor is rejected.⁵

In this proceeding, TURN presented testimony addressing state and federal law and the implications of PBCom's request on residential and small commercial customers. TURN argued that granting PBCom's request would

¹ Pub. Util. Code § 1802(h).

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ D.89-03-96 (awarding San Luis Obispo Mothers For Peace and Rochelle Becker compensation in Diablo Canyon Rate Case because their arguments, while ultimately unsuccessful, forced the utility to thoroughly document the safety issues involved).

provide competitive advantages to PBCom, compromise customer control of private information, and provide incentives to Pacific Bell to reduce investment in its network and reduce the level of service quality to small customers. TURN recommended a number of mitigation measures.

TURN observes that the final order in this proceeding adopted TURN's view that PBCom's entry into local exchange markets could cause substantial harm to Pacific Bell's customers. In so doing, the final order also stated that it would have adopted TURN's recommendation to regulate PBCom as a dominant carrier. (PBCom had withdrawn its request for authority to offer local exchange service.)

On the issue of intraLATA toll authority, the final order did not adopt TURN's recommendation to regulate PBCom as a dominant carrier but did cite TURN's analysis in adopting some restrictions on PBCom's operations.

D.99-02-013 rejected TURN's recommendation for a separate marketing staff although the ALJ's proposed decision relied heavily on TURN's analysis in this regard. TURN observes that the Commission has found that contributions to a proposed decision may provide additional support for a finding that an intervenor contributed to a final decision. TURN also points out that D.99-02-013 included a table presented by TURN with regard to the competitive advantages of PBCom and other carriers, suggesting the Commission's reliance on TURN's contributions to the record. Finally, TURN states the Commission adopted its recommendations with regard to audit requirements.

In sum, the Commission adopted TURN's position with regarding to several major issues and likely influenced the decision of PBCom to abandon its proposal to offer local exchange service. We therefore find that TURN has demonstrated that it made a substantial contribution to D.99-02-013.

5. The Reasonableness of Requested Compensation

TURN requests compensation in the amount of \$63,293.71

T. Long, Attorney:

32 hours @ \$260 (1998)	\$8,320.00	
105 hours @ \$250 (1997)	26,250.00	
91 hours @ \$240 (1996)	21,840.00	
Total	\$56,410.00	
Minus 25%	<u>\$14,102.50</u>	\$42,307.50

R. Costa

159 hours @ \$140 (1996-1999)	\$22,260.00	
Minus 20%	<u>\$ 4,452.00</u>	\$17,808.00

P. Stein

10 hours @ \$85 (1999)		\$850.00
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Telephone, copying, postage \$ 2,328.21

Total **\$63,293.71**

5.1 Hours Claimed

TURN discounts the hours of R. Costa and T. Long in recognition that the Commission did not adopt all of its recommendations. With these adjustments, the hours TURN claims are reasonable. As TURN observes, the Commission has granted TURN compensation for all of its claimed costs even in cases where the Commission did not adopt all of TURN's recommendations. D.93-10-074 found that full compensation was justified because TURN allowed the Commission to consider "a broad range of well-developed policy options necessary to make a fully informed decision." For the same reason, we find TURN's request to be a conservative one in this case.

TURN also appropriately breaks down time spent on various issues and activities.

5.2 Hourly Rates

Section 1806 requires the Commission to compensation eligible parties at a rate that reflects the "market rate paid to persons of comparable training and experience who offer similar services."⁶ TURN seeks funding for the work of two attorneys and its Telecommunications Research Director.

T. Long. With one exception, TURN seeks compensation for T. Long at hourly rates for each year which have been approved by the Commission in past decisions. For 1998, TURN refers to a pending request in Rulemaking 94-02-003 in which TURN seeks a rate of \$260 for Mr. Long. The amount is 4% increase over the rate the Commission approved for Mr. Long's work in 1997. TURN supports the increase with surveys of San Francisco attorneys' rates. We agree that the 1998 rate requested for Mr. Long is reasonable and adopt it. The requested rates are reasonable for purposes of this request.

R. Costa. TURN seeks an hourly rate for R. Costa that was approved in D.98-05-056. We adopt it here for the award requested.

P. Stein. TURN seeks an hourly rate of \$170 for P. Stein, an amount which the Commission approved in D.98-08-016. Because Stein's work was dedicated to the preparation of this fee request, TURN discounts the rate by half, consistent with our policy.

⁶ Pub. Util. Code § 1806.

5.3 Other Costs

TURN claims \$2,328.21 for costs relating to photocopying, postage and related administrative activities, a reasonable sum which we adopt here.

6. Award

We award TURN \$63,293.71 for contributions to D.99-02-013. 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 this compensation request and continuing until the utility makes full payment.

7. Allocation of Award Among Utilities

The entire award granted today should be paid by PBCom because it is the only utility affected by TURN's participation in this proceeding.

Waiver of Comment Period

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

Findings of Fact

1. TURN timely requests compensation for contributions to D.99-02-013 as set forth herein.
2. TURN requests hourly rates for its attorney and consultant that have already been approved by the Commission or which are reasonable under the circumstances.
3. The miscellaneous costs incurred by TURN in this proceeding are reasonable.

Conclusions of Law

1. TURN has fulfilled the requirements of Pub. Util. Code §§ 1801-1812, which govern awards of intervenor compensation.
2. TURN should be awarded \$63,293.71 for contributions to D.99-02-013 in this proceeding.
3. This order should be effective today so that TURN may be compensated without unnecessary delay.

O R D E R

IT IS ORDERED that:

1. The Utility Reform Network (TURN) is awarded \$63,293.71 as set forth herein for substantial contributions to Decision 99-02-013.
2. Pacific Bell Communications shall, within 30 days of this order, pay TURN \$63,293.71 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 June 26, 1999 and continuing until the full payment has been made.
3. This proceeding is closed.

This order is effective today.

Dated July 22, 1999, at San Francisco, California.

RICHARD A. BILAS
President
HENRY M. DUQUE
JOSIAH L. NEEPER
JOEL Z. HYATT
CARL W. WOOD
Commissioners