

MAR 14 1997

ORIGINAL

Decision 97-03-020 March 7, 1997

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of Alternative Regulatory Framework for Local Exchange Carriers.

1.87-11-033
(Filed November 25, 1987)

And Related Matters.

Application 85-01-034
Application 87-01-002
1.85-03-078
Case 86-11-028
1.87-02-025
Case 87-07-024

OPINION ON INTERVENOR COMPENSATION

Summary

Intervenor compensation of \$282,999.65 is awarded to Latino Issues Forum and American G. I. Forum (LIF) for participation in this proceeding.

Background

In Decision (D.) 95-08-051 we determined that LIF was entitled to intervenor compensation for its participation in this proceeding. We further determined the hourly compensation for each attorney and expert employed by LIF. Compensation was not actually awarded to LIF. Instead LIF was instructed to file a supplemental report showing the hours devoted by its attorneys and the matters they addressed, keyed to the existing request for intervenor compensation. LIF was also directed to make clear the hours and expenses devoted to issues in motions not decided in D.94-09-065.

Discussion

LIF filed its supplemental report on September 14, 1995, along with an application for rehearing challenging the hourly rates accorded its attorneys. This application is pending. Attached to LIF's supplemental report is a matrix listing an attorney or expert, the aggregate hours worked in a particular year, and the rate of compensation awarded by the Commission in D.95-08-051. What the matrix does not provide is a breakdown of the matters addressed by these attorneys and the time spent on each issue. LIF was warned of this defect by D.95-08-051, p. 12:

"We have no means of determining what the precise amount of time should have been for each attorney on each matter addressed. Similarly, no justification for the amount of time spent on each subject was provided by LIF. The hours logged by the attorney were merely listed, and we are asked to accept them. This is not acceptable."

Some information is summarized for various attorneys as to "Pending Motions" not decided in D.94-09-065. However, even that information is not in such form as to permit evaluation of the time spent on any individual matter. No attempt was made to match the time claimed with the matter being addressed.

Our dissatisfaction with the supplemental report should come as no surprise to LIF. In D.92-04-030, the decision declaring LIF eligible for intervenor compensation, the Commission looked at the proposed budget submitted by LIF pursuant to Public Utilities (PU) Code § 1804(a)(2)(A)(ii) and stated:

"We are extremely skeptical of the reasonableness of this budget." (Id. at 656.)

In D.95-08-051, pp. 6-7, we clearly showed our concern that the already suspect budget for attorneys had been significantly exceeded. Furthermore, LIF was cautioned that "...we do believe that the ratepayers are being asked to pay for more hours than have been justified." (pp. 11-12.) What we were unable to reconcile in the original request for intervenor compensation remains unreconciled.

There are several options presently open to us. We could find that the supplemental report did not meet the requirements of D.95-08-051 and withhold further action until an acceptable report is filed. We could accept the report, waiving the documentation expected to be filed in D.95-08-051. A third solution is to strike a balance between the budget estimate filed by LIF and the hours claimed in its request for compensation. Taking into consideration our desire to compensate LIF for the work it performed in this proceeding and LIF's difficulty in presenting a claim organizing the hours devoted by each attorney to each subject, we choose the last alternative.

In its proposed budget LIF estimated that it would devote 750 attorney hours to this proceeding. The request for compensation listed hours of a completely different magnitude for these same attorneys. We highlighted this discrepancy in D.95-08-051, p. 7, and asked LIF to show us where their hours were utilized. LIF chose not to do so. LIF's supplemental report shows attorney hours devoted to all matters

other than "Pending Motions" of 1,551.12, which is approximately double the hours submitted in its already suspect budget.

In arriving at an allowable number of hours that can reasonably be charged to ratepayers for compensation, we do not deny that attorney work was performed. Our task is made difficult by the fact that LIF has not demonstrated how much time was devoted by which attorney to what issue. Indeed, if a utility had submitted a request for reimbursement of expenses with a similar lack of basic explanation, we would expect LIF to vigorously oppose such an allowance, and they would be right in so doing.

The approximate middle ground between the budget estimate and the supplemental report is 1,150 hours of attorney time, excluding that devoted to Pending Motions. This is almost three-fourths of the hours claimed by LIF in its supplemental report. We shall adopt this as the hours for compensation. To determine the actual compensation for the attorneys shown in LIF's matrix, it is appropriate to multiply the column labeled "Fee" by .75, with exceptions discussed below. A chart showing this result is attached to this decision.

As noted in D.95-08-051, p. 7, the estimated budget hours for LIF's experts was greater than the amount actually listed in the supplemental report. Therefore, we shall allow all of the hours claimed by LIF in its supplemental report for experts at the hourly compensation rate shown in the report.

Finally, we come to the allowance for attorneys in the category of "Pending Motions." As in the previous instance of attorney claims, there has been no categorization of what issues the attorneys worked on or how many hours each spent on a particular issue. Therefore, we shall apply the same ratio to these claims as to the other attorney claims. The one exception is the hours of attorney Schulkind. As was previously explained in the first request for compensation, her hours were exclusively devoted to representation of LIF attorneys Savage and Adame regarding a Commissioner's Ruling of reprimand. These hours appear to be reasonable. Her hours and the rate of compensation shown will be accepted and rewarded in full.

It should be obvious that the determination made in this decision has not been an easy one. When an intervenor in one of our proceedings merits compensation for the contribution it has made, we wish to have the compensation reach that intervenor as quickly as possible. On the other hand, the ratepayers must be assured that we are dispensing their money wisely. LIF's filings for compensation, after

guidance and warnings, did not permit adequate assurance. We trust that in future proceedings it will take greater care with its submittals.

Attached to this decision will be a portion of the table submitted in LIF's supplemental report showing each individual for whom compensation is claimed, the total claimed for that individual, and the amount we shall award for that individual.

Findings of Fact

1. D.95-08-051 found that LIF was entitled to intervenor compensation for participation in this proceeding.
2. D.95-08-051 indicated the Commission's inability to determine attorney hours devoted to individual issues in LIF's claim for compensation and provided LIF with the opportunity to file a supplemental report curing those deficiencies.
3. The supplemental report filed by LIF did not associate the attorney hours for which compensation was claimed to the work performed during those hours.
4. In its proposed budget LIF estimated that it would require 750 attorney hours for this proceeding.
5. In its request for compensation LIF claimed 1,551.12 attorney hours, not including hours expended on "Pending Motions."
6. The attorney hours claimed for work categorized as "Pending Motions," with the exception of those of Schulkind, were equally lacking in guidance as to what issues the attorney was working on.
7. The attorney hours claimed for Schulkind were fully explained in LIF's original request for compensation.
8. The hours requested for LIF's experts were less than estimated in its proposed budget.
9. The Commission is mandated by PU Code § 1803 to award reasonable compensation to intervenors who qualify for such.
10. Compensation paid by utilities to intervenors is chargeable to the ratepayers pursuant to PU Code § 1806.

Conclusions of Law

1. Without some reference of the attorney hours to the subject matter on which they were expended, there is no ability to objectively determine whether the hours billed are reasonable or not.

2. Comparison of the budget estimate of needed hours with the hours claimed for compensation causes us concern in adopting the claimed hours without knowing their attribution.

3. It is the obligation of the claimant to present a claim that can be reviewed and evaluated.

4. Because there is no doubt that substantial work was performed, even though the actual hours of attorney work have not been related to a particular issue, and because of the substantial delay since the time of filing the supplemental report, we conclude that it is appropriate to make an award to LIF at this time.

5. An award that is at the approximate mid-point between the attorney hours estimated in its budget and the hours actually claimed would be equal to approximately 75% of the hours claimed by LIF.

6. LIF's claim for attorney hours eligible for compensation should be reduced to 75% of its claim, except for the hours of attorney Schulkind.

7. Schulkind's hours were all associated with a specific identifiable issue and were reasonable for that issue. They should be allowed in full.

8. Since it is not possible for us to relate the work performed by an individual attorney to a particular issue, we shall reduce all attorney hours, other than that of Schulkind to 75% of the hours claimed.

9. LIF's request for compensation for its experts should be approved in full.

10. LIF's request for expenses should be approved in full.

O R D E R

IT IS ORDERED that:

1. Latino Issues Forum and American G. I. Forum is awarded compensation in the amount of \$282,999.65.

2. Pacific Bell shall pay this award, as directed by Ordering paragraph 6 of D.95-08-051.

This order is effective today.

Dated March 7, 1997, at San Francisco, California.

P. GREGORY CONLON
President
JESSIE J. KNIGHT, JR.
RICHARD A. BILAS
Commissioners

I will file a written dissent.

/s/ HENRY M. DUQUE
Commissioner

I will file a written dissent.

/s/ JOSIAH L. NEEPER
Commissioner

<u>Individuals and Expenses</u>	<u>Fee Claimed</u>	<u>Fee Allowed</u>
Carmela Castellano	\$52,060.00	\$39,045.00
Robert Gnaizda	94,937.50	71,203.13
Armando Menocal III	3,066.00	2,299.50
Mark Savage	100,143.70	75,107.78
 <u>Settlement</u>		
Robert Gnaizda	13,394.50	10,045.88
Mark Savage	2,795.00	2,096.25
 <u>Advice Letter</u>		
Robert Gnaizda	580.50	435.38
Mark Savage	5,850.15	4,387.61
Expenses	5,583.81	5,583.81
Subtotal	278,411.16	210,204.34
 <u>Latino Issues Forum</u>		
Edith Adame	12,763.80	9,572.85
Subtotal	12,763.80	9,572.85
 <u>Experts</u>		
Tom Hargadon	28,750.00	28,750.00
John Gamboa	7,041.25	7,041.25
Juan Gonzales	875.00	875.00
Subtotal	36,666.25	36,666.25
 <u>Pending Motions</u>		
Edith Adame	1,935.50	1,451.63
Carmela Castellano	787.50	590.63
Robert Gnaizda	7,203.00	5,402.25
Mark Savage	8,857.80	6,643.35
Laura Schulkind	11,917.50	11,917.50
Expenses	550.85	550.85
Subtotal	31,252.15	26,556.21
 Total	 \$359,093.36	 \$282,999.65

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COMMISSIONER HENRY M. DUQUE, DISSENTING:

My decision on this matter has been a difficult one. Participation by intervenors in our proceedings is essential to ensuring that diverse viewpoints are heard. However, it is the responsibility of the intervenor to provide adequate documentation, consistent with our guidelines, to allow the Commission to reach a determination on the amount of compensation. In this particular case, Latino Issues Forum and American G. I. Forum (LIF) were given multiple opportunities to remedy deficiencies, including illegible timesheets, in their filing. LIF failed to take advantage of those opportunities. As the adopted decision states:

“ratepayers must be assured that we are dispensing their money wisely. LIF’s filings for compensation, after guidance and warnings, did not permit adequate assurance.”

The adopted decision merely splits the difference between the requested and budgeted attorney hours; this approach does not remedy the documentation deficiencies.

For these reasons, I must dissent.

/s/ HENRY M. DUQUE
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Commissioner

San Francisco, California

March 10, 1997

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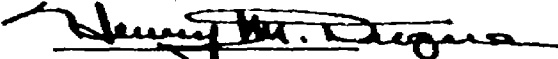
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Henry M. Duque
Commissioner

San Francisco, California

March 10, 1997

Commissioner Josiah L. Neeper Dissenting

I dissent from the majority decision because of the arbitrary way it arrives at the amount of compensation it awards Latino Issues Forum. There is no question in mind that LIF made useful contribution in the IRD proceeding that warrant an reasonable award. But persistently, LIF failed to comport with our requirements to clearly justify its claims; and by failing to meet our requirements, it made our efforts in estimating its compensation unreasonably difficult. The majority decision fails to recognize and correct the flaw in the process employed in determining intervenors compensation award in this case.

At the outset, let me say that it is unfortunate that this application has taken much too long to see the light of day. There have been numerous factors for this delay; part of the responsibility falls on the Commission's process due to the irregularities of the IRD proceeding. However, I note that although the irregularities of that proceeding is in part to blame, there is an important and intractable factor that falls squarely on the applicant.

In April of 1992, the Commission determined that LIF was entitled to intervenor compensation for its participation in the IRD proceeding; however, it expressed a well founded concern about LIF's budgeted number of hours and particularly raised the issue of "overlawyering" LIF's participation in that case in the light of limited issues LIF would address. This warning and skepticism should have alerted LIF that we would scrutinize its claim. Subsequently, in August 1995, the Commission issued a decision awarding compensations to other intervenors in the IRD proceeding. In the case of LIF, however, the Commission found the issues were more difficult to resolve and noted the "dramatic disparity" between the estimated budget and the claimed attorney hours actually claimed by LIF. Because

of these difficulties, the Commission again ordered LIF to provide a breakdown of the issues addressed by each attorney and time spent on each issue.

LIF filed a report in September of 1995 and provided a listing of attorney hours and their respective hourly compensation. However despite the repeated warnings and directives, LIF did not provide a breakdown of the claim by hours and issues for each attorney as required. Today, nearly five years later, what was unreconciled in 1992 still remains unreconciled.

It is in the light of the above that the majority decision, in a sleight of hand manner, attempts to "strike a balance" between budget estimate and supplemental report amount to award LIF about 75% of the claimed hours. This legerdemain calculation, however, does not resolve the deficiencies with the range of proposed hours which LIF has failed to adequately justify. In rejecting this approach, I should note that what is being questioned in this case is primarily the process and our statutory obligations that we ensure ratepayers not pay anything more than what can be reasonably justified. LIF's contributions to the IRD proceeding are not questioned. As the previous decisions in this case noted, LIF should be commended for its advocacy of the economically disadvantaged with its particular focus on California's Hispanic population. This has been an important element in the universal service related issues of the IRD proceeding. However, despite repeated warnings and orders, LIF has made our task of assessing its compensation more difficult than other cases.

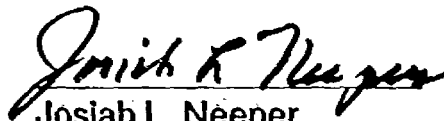
My dissatisfaction of LIF's claim is simply a consequence of a reexamination of the claims LIF made and a reflection of its insufficient compliance with the Orders of the Commission that requested it to supply specific information on its claim. This by no means is intended to belittle LIF's contribution in that proceeding but rather is intended to send a message to LIF and other intervenors that an unsatisfactory claim should be met with what intervenors will perceive as a

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less than satisfactory award. In this sense, this case is perhaps somewhat instructive to other cases as well.

For all the above reasons, I dissent.



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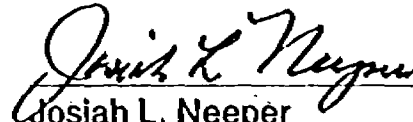
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