

Decision 97-05-098

May 21, 1997

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the matter of Alternative)	
Regulatory Frameworks for Local)	1.87-11-033
Exchange Carriers)	(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
_____)	

ORDER ON REHEARING OF DECISION 95-08-051

On August 15, 1995, we issued Decision (D.) 95-08-051, which ruled on the requests of several parties for intervenor compensation in the implementation rate design (IRD) proceeding, the third phase of our investigation into the design of a new regulatory framework for GTE California Incorporated and Pacific Bell (the NRF proceeding). The American G.I. Forum and the Latino Issues Forum (jointly, LIF) was one of the parties whose request we considered.

D.95-08-051 determined that LIF qualified for compensation, but did not actually grant an award. Instead, our decision established the appropriate hourly rates for LIF's attorneys, legal assistants and expert witnesses, and ordered LIF to submit a supplemental report of 1) the hours devoted by its attorneys and the matters they addressed, keyed to the existing Request for Intervenor Compensation and to the

particular year the hours were expended, 2) the hours and expenses devoted to two motions not yet decided (which concerned then-Commissioner Shumway's press conference in the Commission's courtyard on the subject of multilingual services), including hours and expenses devoted to sanctions and reprimands, keyed to the existing Request, and 3) the hours and expenses devoted by its attorneys and legal assistants to those issues not yet determined (for which it would not receive compensation in this proceeding).

LIF filed a timely application for rehearing, alleging legal error in two particulars: the Commission erred in failing to set a proper hourly rate for its two primary attorneys, and the Commission should resolve the two pending motions and award compensation for the hours reasonably incurred related to these motions.

We are persuaded that the hourly fee of LIF's primary attorney, Mr. Robert Gnaizda, should be changed to \$250 per hour, and will grant limited rehearing to accomplish this. We do not find LIF's other arguments compelling, and will deny their application on these points.

Hourly Rate for Attorneys Gnaizda and Menocal. LIF argues first that these two attorneys should be awarded an hourly rate of \$325, because that is the going market rate for attorneys of their level of skill and experience. LIF contends that this is the only way the Commission can comply with Public Utilities Code § 1806, which provides:

"The computation of compensation awarded pursuant to section 1804 shall take into consideration the market rates paid to persons of comparable training and experience who offer similar services. The compensation awarded may not, in any case, exceed the comparable market rate for services paid by the commission or the public utility, whichever is greater, to persons of comparable training and experience who are offering similar services."

LIF argues that awarding Gnaizda and Menocal less than \$325 per hour deviates from the standards of section 1806, because the decision does not consider the relevant market of outside attorneys retained by the Commission or the relevant utilities. Rather, the decision looks for a definition of "similar services" to those services "directed to the labors of others who have selected a career which, while under compensated in terms of financial rate, derives considerable satisfaction from advocacy performed in the more noble aspirations of the legal profession." (Application for Rehearing at 3, quoting D.95-08-051 at 9.) LIF points out that the California Supreme Court has rejected just such an argument in Serrano v. Unruh (1982) 32 Cal.3d 621, 643 and n.40. LIF argues that the Commission should have considered the prevailing market rates that LIF's two attorneys normally command, and that furthermore, this novel and complex case involved risks and contingencies which private counsel normally do not and will not undertake.

We have previously been presented with the argument that an appropriate market rate for Mr. Gnaizda is \$325 per hour, and have not found it persuasive. We continue to hold that view here. However, we acknowledge that our discussion of public interest attorneys is not consistent with either Section 1806 or our usual practice in awarding fees, and will modify it accordingly.

LIF argues in the alternative that Mr. Gnaizda should be awarded the rate we awarded him in D.95-03-007, which preceded D.95-08-051 by only five months, and which applied to work Mr. Gnaizda did in 1993. Failure to at least do this, LIF argues, constitutes error in both fact and law.

LIF is correct that we awarded Mr. Gnaizda \$250 per hour only months earlier for work done in 1993. In D.95-03-007, which awarded intervenor fees for participation in the proceeding which considered Pacific Telesis Group's spinoff proposal, we compared Mr. Gnaizda's skill level to that of Ms. Kathleen O'Reilly, a "highly experienced attorney" representing TURN in that same proceeding, to whom we

had already awarded \$250 per hour in a prior proceeding because of her outstanding skill level and many years of experience.

We also note that in D.95-12-049, having found that we had previously incorrectly awarded Mr. Gnaizda \$210 per hour for work he did in 1993 on the proceeding which authorized AT&T to acquire indirect control of McCaw Cellular Communications, Inc., we corrected his award to \$250 per hour for that work. The Pacific Telesis spinoff case, the AT&T/McCaw case, and the IRD proceeding all rank equally in terms of complexity; therefore, we find no justification for awarding Mr. Gnaizda a lesser amount for his work in the IRD proceeding.

We are not similarly persuaded concerning the award to Mr. Menocal. LIF has not satisfactorily demonstrated that his services in the NRF proceeding should command the highest hourly rate we had awarded to date to only two attorneys, Ms. O'Reilly and Mr. Gnaizda. We will maintain his hourly rate at \$210 for work done prior to 1994, and \$215 for work done in 1994.

Undecided Motions and Related Compensation Request. LIF argues that it is error to leave undecided the two motions relating to Commissioner Shumway's press conference in our courtyard on the subject of multilingual services. LIF asks the Commission to simply rescind the reprimand of attorneys Edith Adame and Mark Savage in response to the Hispanic Parties' Petition for Reconsideration, and to award reasonable compensation for LIF's participation.

LIF presents no persuasive legal authority for its claim of legal error. Regardless, however, this issue is moot. President Fessler effectively rescinded the reprimand in his public apology made in December of 1996, and D.97-03-020, issued March 7, 1997, awards compensation to LIF both for its participation in the underlying NRF proceeding and its work relative to the motions.

Conclusion. We will grant limited rehearing to make the change in Mr. Gnaizda's hourly award. The basis for making this change is adequately contained in the

existing record, the application for rehearing, and the relevant Commission decisions discussed in this order; thus we need not send this case to further proceedings. We will, however, take official notice of D.95-03-007 and D.95-12-049. Based on the calculations made in D.97-03-020, the decision which awarded LIF compensation, the increased hourly rate for Mr. Gnaizda results in an increase of \$3,066.38 in LIF's compensation award.

IT IS ORDERED that:

1. Rehearing of Decision 95-08-051 is granted for the limited purpose of changing the hourly award to Mr. Gnaizda to \$250 per hour.
2. Decision 95-08-051 is modified as follows:
 - a. The two paragraphs beginning at the bottom of page 8 and continuing onto the top of page 10 are deleted and the following language substituted:

"The computation of a compensation award is governed by Section 1806 of the Public Utilities Code. In discharging our responsibilities, we honor the practice of the legal profession to base that calculation on the hours expended times an hourly rate. As amended by the California Legislature in 1992, in determining an hourly rate we are directed to 'take into consideration the market rates paid to persons of comparable training and experience who offer similar services. . . .' This calculation is capped at the higher of the rate for comparable services paid to lawyers retained by the utility or the Commission who have comparable training and experience and who offer similar services.

"In addition to considering market rates as directed by Section 1806, we have traditionally placed substantial significance on the hourly rates we have previously awarded to practitioners of comparable skill and experience, who have appeared before this Commission in similar contexts. Thus, consistent with the statute and with past practice, we conclude that the rate requested by TURN and previously approved by this Commission is the applicable market rate for this proceeding for work performed in 1994. Similarly,

for work performed for LIF before 1994, the rate allowed in D.94-11-055 should be our guide for this proceeding.

"There is one exception to this. In D.95-03-007, we awarded Mr. Gnaizda \$250 per hour for work he performed in 1993 in the proceeding considering Pacific Telesis Group's spinoff proposal. Further, in D.95-12-049, we also awarded him \$250 per hour for work performed in 1993 in the proceeding which authorized AT&T to acquire indirect control of McCaw Cellular Communications, Inc. We based this increase in Mr. Gnaizda's hourly rate on his outstanding skill level and years of experience, which we found comparable to that of Ms. Kathleen O'Reilly, a highly skilled and experienced attorney representing TURN in the Pacific Telesis spinoff proceeding. We had previously awarded Ms. O'Reilly \$250 per hour, and did so again in the Pacific Telesis case.

"We find that while the IRD proceeding is not of exactly the same nature as the two merger proceedings discussed above, it is of comparable complexity. We will, therefore, award Mr. Gnaizda \$250 per hour for work performed in the IRD proceeding during 1993 and 1994. He should be compensated \$210 per hour prior to 1993. For LIF's other attorneys, following our guide as stated above, the allowable compensation for attorneys Menocal, Schulkind, and Adame is set at \$215 per hour for 1994 and \$210 per hour prior to 1994. The rate for attorney Savage is \$190 prior to 1994 and \$215 per hour in 1994. The higher rate for 1994 is fully justified by his added experience in practicing before this Commission and his increased responsibility for this matter. The rate for attorney Castellano is reduced from \$165 to \$150 per hour, making it equal to the rate claimed by TURN's other attorney, Allen."

b. Finding of Fact 4 is modified to read:

"The market rate at the Public Utilities Commission for attorney Gnaizda is \$250 per hour for 1993 and 1994, and \$210 per hour prior to 1993. The market rate for attorneys Menocal, Schulkind, and Adame is \$215 per hour for 1994 and \$210 for prior years. The market rate for attorney Savage

is \$215 per hour for 1994 and \$190 per hour for prior years. The market rate for attorney Castellano is \$150 per hour. These rates are reasonable."

3. We take official notice of Decision 95-03-007 and Decision 95-12-049.
4. The increased hourly rate for Mr. Gnaizda results in an increased compensation award to LIF of \$3,066.38, based on the calculations made in Decision 97-03-020. This award shall be paid by Pacific. Any issues regarding apportionment or interest will be addressed in the order resolving LIF's application for rehearing of Decision 97-03-020.
5. No further proceedings are necessary since the basis for making the change in Ordering Paragraph 1 is adequately contained in the existing record, the application for rehearing, and Decisions 95-03-007 and 95-12-049.

6. In all other respects, rehearing of Decision 95-08-051 is denied.

This order is effective today.

Dated May 21, 1997, at Sacramento, California.

P. GREGORY CONLON
President
JESSIE J. KNIGHT, JR.
HENRY M. DUQUE
JOSIAH L. NEEPER
RICHARD A. BILAS
Commissioners