

l/cip

MAIL DATE

2/9/98

Decision 98-02-042 February 4, 1998

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the
Commission's Own Motion into
Competition for Local Exchange
Service

R.95-04-043
(Filed April 26, 1995)

Order Instituting Investigation on the
Commission's Own Motion into
Competition for Local Exchange
Service

1.95-04-044
(Filed April 26, 1995)

ORDER DENYING REHEARING

On July 8, 1996 a coalition of Southern Christian Leadership Conference, National Council of La Raza, Korean Youth and Community Center, Filipinos for Affirmative Action, and Filipino Civil Rights Advocates ("Intervenors") filed an application for rehearing of Decision (D.) 96-06-029. D.96-06-029 awarded Intervenors \$52, 694 for their substantial contribution to D.95-07-54, which adopted certain interim rules in the local competition proceeding (R.95-04-043, 1.95-04-044.). Intervenors' application challenges D.96-06-029's reduction of its award by 10% as an estimate of the amount of the request attributable to the issues of redlining and bilingual outreach.

We have considered all the allegations of error presented by Intervenors and are of the opinion that good cause for rehearing has not been demonstrated. We are therefore denying Intervenors' application.

Intervenors argue that D.96-06-029 is in error because contrary to the decision's analysis, Intervenors never requested compensation for a separate

redlining and bilingual outreach "category," but rather they requested compensation for their work on redlining and bilingual outreach as those issues pertained to the other categories which were compensated. Intervenors claim that the 10% reduction in their award may be based on factual errors about whether the redlining and bilingual outreach category existed, and whether redlining was addressed in D.95-07-054. Intervenors' arguments are unconvincing.

At the outset, we note that we have repeatedly directed Public Advocates, Intervenors' counsel, to provide adequate information in its compensation requests. In D.96-06-029, we expressly stated that the information provided was inadequate since it there was no allocation of costs by issue area. In arriving at our conclusions concerning the 10% reduction we used our best judgment based on the information available to us. Intervenors cannot now claim that we should have known information which they failed to place before us.

We find no factual errors in D.96-06-029. Intervenors' September 25, 1995 Request for Compensation (RFC) clearly mentions redlining and bilingual outreach as matters for which compensation is requested. Therefore, based on the information before us, we were justified in considering this a category. In addition, D.96-06-029 correctly states that D.95-07-054 does not address redlining and bilingual outreach. It does not rule upon whether or not those issues are pertinent to the decision's conclusions.

Intervenors also argue that the fees for their expert, Hargadon, should not have been reduced by 10% since he did not work on the redlining and bilingual outreach issues. The reduction, however, was an estimate of the percent of Intervenors' total award which was attributable to redlining and bilingual outreach. It could well have been more for some personnel and not for others. Again, we used our best judgment based on the limited information provided to us.

Finally, Intervenors suggest that it is legal error for the Commission to disallow a portion of the compensation simply because one part of its

recommendation is not adopted. Intervenors fail to support this contention. If this argument were correct the Commission could never allocate compensation by issue. Awarding compensation by contention or recommendation is clearly contemplated by the intervenor compensation statute (Pub. Util. Code § 1802 (h)), and has been supported by years of Commission authority.

Therefore, **IT IS ORDERED** that:

1. Rehearing of D.96-06-029 is hereby denied.

This order is effective today.

Dated February 4, 1998, at San Francisco, California.

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