

L/mal

MAIL DATE

4/13/98

Decision 98-04-031

April 9, 1998

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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

ORIGINAL

I.87-11-033

And Related Matters.

A.85-01-034

A.87-01-002

I.85-03-078

C.86-11-028

I.87-02-025

C.87-07-024

**ORDER MODIFYING AND DENYING REHEARING
OF DECISION 97-03-020**

On August 15, 1995, the Commission issued Decision (D.) 95-08-051, which ruled on the requests of several parties for compensation in our implementation rate design (IRD) proceeding, including the American G.I. Forum and the Latino Issues Forum (jointly LIF). D.95-08-051 determined that LIF qualified for compensation, but did not actually grant an award. Instead, the decision established the appropriate hourly rates for LIF's attorneys, legal assistants and expert witnesses, and ordered LIF to submit a supplemental report detailing how these individuals had allocated the time claimed for participation.¹ LIF filed this report on September 14, 1995.

¹ LIF also filed an application for rehearing of D.95-08-051, arguing that 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 concerning then-Commissioner Shumway's press conference in the Commission's courtyard on the subject of multilingual services. D.97-05-098 granted limited rehearing to increase the hourly rate for Robert Gnaizda consistent with what he had most recently been awarded.

Subsequently, on March 7, 1997, the Commission issued D.97-03-020 (the Compensation Decision), which actually awarded LIF compensation. However, the Compensation Decision ruled that because LIF's supplemental report was still inadequate, and because there was such a great discrepancy between the budget LIF had submitted and the hours it ultimately claimed, compensation to LIF would essentially split the difference. In practical terms, this was accomplished by dividing the total fee claimed by .75, with several exceptions.

LIF has filed an application for rehearing of D.97-03-020, contending that we have committed legal and factual error in concluding that LIF's supplemental report, and for that matter LIF's original request for compensation, is deficient. LIF also argues we have inadvertently erred in not awarding interest on the award, in accord with the Commission's practice for awards issued more than 75 days from the date of filing the request for compensation.

In addition, Pacific Bell (Pacific) has filed a response to the application for rehearing as well as a petition for modification, both of which address only the issue of allocation of payment of the compensation award between Pacific and GTE of California, Inc. (GTEC). D.95-08-051 had provided that both companies should pay the award in proportion to their respective number of access lines, as noted in an earlier decision, D.94-09-065. The Compensation Decision orders only Pacific to make the payment, and Pacific requests that this situation be corrected.

We have considered all of the allegations of legal error set forth by LIF, and are of the opinion that none of them merits granting rehearing. We will, however, modify the Compensation Decision to award interest to LIF, and to correctly allocate payment of the award between Pacific and GTEC consistent with our directive in D.95-08-051.

Although we are denying rehearing, we do believe some additional clarification is in order. LIF makes much of the fact that in D.95-08-051, we were extremely laudatory toward LIF and its high level of participation. In one form or another, this is a key element in its arguments that we have committed legal error in reducing its award.

We reiterate that LIF made an important contribution to our IRD decision. This is not, however, an excuse for failing to provide us with the kind of documentation we have always required, and in fact are bound to insist on, in order to award full compensation to intervenors which ratepayers of this State must thereafter pay for. We would be shirking our responsibility toward those ratepayers if we unquestioningly accepted anything less. We believe we were very clear in D.95-08-051 that the compensation request LIF submitted was not sufficiently verifiable and thus not acceptable to warrant full compensation, and we gave LIF an opportunity to correct this problem through submittal of a supplemental report. As we explained in D.97-03-020, the report LIF submitted did not correct the problem. We determined at that point that on balance, the best course of action was to go ahead and make a compensation award, albeit somewhat less than what LIF had requested.

We stand by our Compensation Decision. We believe it is fair to LIF and a proper exercise of our discretion.

We note that LIF's argument on the award of interest is correct; we did inadvertently fail to provide for interest in the Compensation Decision and will correct that in this order. As stated in D.95-08-051, interest will be tolled between the date of that decision and the date LIF's supplemental report was filed. We will also provide that payment of the award be allocated between Pacific and GTEC, as required by D.95-08-051.

THEREFORE, IT IS HEREBY ORDERED that Decision 97-03-020 is modified in the following respects:

1. Ordering Paragraph 1a is added to read:

"Consistent with our practice in intervenor compensation decisions, LIF should be awarded interest on its award, including the augmentation to its award of \$3,066.38 made in Decision 97-05-098, calculated at the three-month commercial paper rate as reported in the Federal Reserve Statistical Release G.13, for the period January 30, 1995 (the 76th day after its compensation request was filed) to August 11, 1995 (the date D.95-08-051 was issued). Interest at the above rate shall also be provided for the period September 15, 1995 (the day after LIF's supplemental report was filed) to the date the award is fully paid to LIF.

2. Ordering Paragraph 2 is modified to read:

"Pacific Bell and GTEC shall pay this award, allocated between them as directed by Ordering Paragraphs 5 and 6 of Decision 95-08-051. To the extent Pacific Bell has already paid the award, Pacific Bell shall be reimbursed by GTEC to the extent of GTEC's allocation."

IT IS FURTHER ORDERED that rehearing of Decision 97-03-020, as modified herein, is denied.

This order is effective today.

Dated April 9, 1998, at San Francisco, California.

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