

Decision 99-03-054 March 18, 1999

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.

Rulemaking 95-04-043
(Filed April 26, 1995)

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

Investigation 95-04-044
(Filed April 26, 1995)

O P I N I O N

This decision grants Public Advocates (PA) an award of \$15,593.70 in compensation for its contribution to Decision (D.) 96-10-076 on behalf of Southern Christian Leadership Conference, National Council of La Raza, Korean Youth and Community Center, Filipinos for Affirmative Action, and Filipino Civil Rights Advocates.

I. Background

On October 25, 1996, the Commission issued D.96-10-076, modifying rules set forth in D.95-07-054 and D.96-02-072. In these earlier decisions, we established requirements for competitive local carriers (CLCs) that wish to market telephone service to non-English-speaking customers.

On April 3, 1996, the California Telecommunications Coalition (Coalition) filed a Petition to Modify D.95-07-054 (Petition). The Coalition sought to eliminate the requirement that CLCs maintain all customer contacts in the

language in which the sale was made. PA, on behalf of 22 parties (Joint Parties)¹, responded in favor of expanded multilingual service.

In D.96-10-076, the Commission granted the Petition and incorporated compromise provisions negotiated at a workshop on multilingual outreach. Consequently, PA submitted its Request for Compensation (Request), dated December 29, 1996, on behalf of all 22 Joint Parties. Responses to the Request were filed which primarily addressed the issue of who should pay if an award is granted.

By letter dated February 6, 1998, and subsequent confirming Administrative Law Judge (ALJ) Ruling dated February 17, 1998, ALJ Hale notified PA of certain deficiencies in its Request. By permission of ALJ Hale, PA filed an amendment to its Request on February 17, 1998. (PA's amendment, among other things, stated that PA's Request sought compensation on behalf of only five parties: Southern Christian Leadership Conference, National Council of La Raza, Korean Youth and Community Center, Filipinos for Affirmative Action, and Filipino Civil Rights Advocates.)

¹ The 22 parties who jointly intervened and filed the instant request are: Southern Christian Leadership Conference; National Council of La Raza; Korean Youth and Community Center; Filipinos for Affirmative Action; Filipino Civil Rights Advocates; Association of Mexican-American Educators; California Association for Asian-Pacific Bilingual Education; California Association for Bilingual Education; California Rural Indian Health Board; Chicano Federation of San Diego County; Council for the Spanish Speaking; El Proyecto Del Barrio; Escuela De La Raza Unida; Foundation Center for Phenomenological Research; Hermandad Mexicana Nacional; Korean Community Center of the East Bay; Lawyers' Committee for Civil Rights of the San Francisco Bay Area; Motivating Adolescents to Succeed; Mountain View Community Health Center; Multicultural Area Health Education Center; Spanish Speaking Citizen's Foundation; and Spanish Speaking Unity Council. These parties will be referred to throughout this ruling as the Joint Parties.

The draft decision of ALJ Hale in this matter was mailed to the parties in accordance with Pub. Util. Code Section 311(g) and Rule 77.1 of the Rules of Practice and Procedure. Comments were filed on January 11, 1999. No reply comments were filed.

The Commission received only one set of comments filed by Public Advocates on behalf of Southern Christian Leadership Conference, National Council of La Raza, Korean Youth and Community Center, Filipinos for Affirmative Action, and Filipino Civil Rights Advocates. In its comments, PA requests that the Commission not adopt the ALJ draft decision and instead adopt an alternate decision awarding compensation with a small reduction not to exceed \$100.

In its opening comments on the ALJ draft decision, PA states three reasons why the Commission should grant its compensation request. First, PA argues that Southern Christian Leadership Conference, National Council of La Raza, Korean Youth and Community Center, Filipinos for Affirmative Action, and Filipino Civil Rights Advocates are all applicants eligible for compensation and thus, compensation should not be denied to these five applicants for joining with an additional 17 applicants in this proceeding that may not have been eligible for compensation. Moreover, PA asserts that since it incurred no more than an estimated \$100 in expenses for photocopies and postage in representing the additional 17 applicants that its compensation award should be reduced by no more than \$100.

Second, PA also argues that the ALJ draft decision erred in finding that PA's request for an award of compensation did not fully comply with the matrix requirements set forth in Decision 96-06-029.

Lastly, PA asserts that the conclusion in the ALJ draft decision that PA failed to "clearly support the total dollar amount sought with hours worked and claimed" is erroneous.

II. 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. Section 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 which 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.

III. NOI to Claim Compensation

In D.96-06-029, during an earlier phase of this proceeding, PA was found to be eligible for compensation on behalf of Southern Christian Leadership Conference, National Council of La Raza, Korean Youth and Community Center, Filipinos for Affirmative Action, and Filipino Civil Rights Advocates. Under Rule 76.76, a customer found eligible for compensation in an earlier phase of a proceeding remains eligible in later phases of the same proceeding. While these applicants were all represented by PA in the present case, PA's Request was also filed on behalf of 17 other applicants. PA has not filed an NOI for the 17 remaining Joint Parties nor has PA attempted to demonstrate a showing of significant financial hardship for these 17 intervenors.²

In instances involving inexperienced intervenors, the Commission may exercise its discretion and provide the inexperienced intervenor an opportunity to cure a deficiency after a matter has been submitted³. In this instance, in view of PA's substantial experience and also in light of the substantial notices given PA in the past, an opportunity to cure deficiencies is not warranted. Regardless, in a letter dated February 6, 1998, and subsequent confirming ALJ Ruling dated

² In D.96-12-029, the Commission awarded compensation to PA's 22 clients without a showing of financial hardship for the new additions. However, this Commission oversight does not exempt PA from the statutory requirement to make a showing of significant financial hardship.

February 17, 1998, ALJ Hale provided PA an opportunity to amend its application and cure its deficiencies.

The ALJ's draft decision found that PA's Request for compensation failed to meet the statutory eligibility requirements for compensation. In reviewing the ALJ draft decision, the record and the comments filed by PA, this decision finds that 17 of the applicants have failed to meet the statutory requirements for issuance of an award of intervenor compensation.

Pub. Util. Code §1803 states that:

"The Commission shall award reasonable advocate's fees, reasonable expert witness fees, and other reasonable costs of preparation for and participation in a hearing or proceeding to any customer who complies with Section 1804 and satisfies both of the following requirements:..." (Emphasis added.)

In particular, seventeen of the applicants failed to comply with Pub. Util. Code § 1804. PA's comments do not contest the finding in the ALJ draft decision that seventeen of the applicants do not meet the statutory requirements for compensation. In fact, PA's January 11, 1999 Opening Comments On ALJ's Proposed Decision state that "[t]hese seventeen community organizations did not file a notice of intent to request compensation pursuant to Cal. Pub. Util. Code § 1804." PA's admission could provide the Commission a basis to deny PA's compensation request in full.

In its opening comments on the ALJ proposed decision, PA relies on its February 17, 1998, amendment to seek compensation on behalf of only five of the 22 applicants. PA argues that it does not matter that 17 of the 22 applicants for

³ See Rule 2.6 of the Commission's Rules of Practice and Procedure.

compensation have not been found eligible for compensation, five applicants are eligible and thus those five groups should receive intervenor compensation.

In its February 1998 amendment, in addressing the issue of which organizations are seeking intervenor compensation, PA states that its "... request only seeks compensation on behalf of Southern Christian Leadership Conference; National Council of La Raza; Korean Youth and Community Center; Filipinos for Affirmative Action; Filipino Civil Rights Advocates..." (PA's February 17 1998, amendment at p. 4.)

PA's amendment states that PA's Request seeks compensation on behalf of only five applicants. This assertion is inconsistent with the language in PA's Request. PA's Request explicitly identifies as "intervenors" all 22 applicants. (PA's Request at p. 1.) PA's Request makes no distinction between the five intervenors previously found eligible to claim compensation and the 17 ineligible intervenors. PA's Request lacks notice to the Commission that 17 of the applicants identified as intervenors have not filed an NOI. PA's Request also lacks explicit notice to the Commission that PA only seeks compensation on behalf of five of the 22 applicants that PA has identified as intervenors. In fact PA's Request conveys the opposite impression. For instance, the cover sheet on the Request shows attorney Savage as representing all 22 applicants. Additionally, page one of the Request identifies all 22 applicants as intervenors. Furthermore, page 14 of the Request states that all 22 applicants are seeking compensation:

"Wherefore Southern Christian Leadership Conference, National Council of La Raza, Korean Youth and Community Center, Filipinos for Affirmative Action, Filipino Civil Rights Advocates, Association of Mexican-American Educators, California Association for Asian-Pacific Bilingual Education, California Association for Bilingual Education, California Rural Indian Health Board, Chicano Federation of San Diego County, Council for the Spanish Speaking,

El Proyecto del Barrio, Escuela de la Raza Unida, Foundation Center for Phenomenological Research, Hermandad Mexicana Nacional, Korean Community Center of the East Bay, Lawyers' Committee for Civil Rights of the San Francisco Bay Area, Motivating Adolescents to Succeed, Mountain View Community Health Center, Multicultural Area Health Education Center, Spanish Speaking Citizen's Foundation, and Spanish Speaking Unity Council **respectfully request that the Public Utilities Commission award them \$29,474.95** in attorneys' fees and \$3,559.80 in expenses for substantial contributions to the preservation of multilingual services for 7 million Californians, and to Decision 96-10-076, pursuant to section 1803 of the California Public Utilities Code." (PA's Request at p. 14. Emphasis added.)

Contrary to PA's amendment, the plain language of PA's Request does not support a finding that PA's Request only seeks compensation on behalf of five of the twenty-two applicants identified in PA's Request.

In its February 1998 amendment, PA cites to footnote one in PA's Request as support for its assertion that the Request only sought compensation on behalf of five applicants. Footnote one in PA's Request states:

"As Decision 96-12-029 noted, Intervenor's have already met the preliminary requirements for an award in this proceeding. Decision 96-12-029 at 3-4. That finding applies throughout the proceeding. Cal. Pub. Util. Code §1804(b)(1); Cal. Regs. Code tit. 20, §76.76 (customer eligible in one phase remains eligible in later phases).

Section 1804(c) directs that requests for compensation be filed within 60 days "[f]ollowing issuance of a final order or decision by the commission in the hearing or proceeding". Cal. Pub. Util. Code §1804(c). Traditionally, the "issuance" occurs on the date the Commission mails the final order or decision to the parties. See id. §1731 (b) (applications for rehearing); Cal. Regs. Code tit. 20, §1.1(d) (notices of ex parte communications); id. §85 (applications for rehearing). Decision 96-10-076 was dated October 25, 1996, and mailed October 30, 1996. Sunday December 29, 1996, is the sixtieth day following the Commission's issuance of the decision, and

therefore this request is timely filed." (PA's Request footnote 1 at p. 2.)

Footnote 1 of PA's Request lacks any explicit reference to Southern Christian Leadership Conference, National Council of La Raza, Korean Youth and Community Center, Filipinos for Affirmative Action or Filipino Civil Rights Advocates. Rather, the footnote refers to "Intervenors." The main text of PA's Request defines "Intervenors" as the twenty-two parties. Thus, in reading footnote one consistent with the definition of "Intervenors" given in the body of the text, footnote one rather than clarify that only five parties are seeking compensation, instead, creates the erroneous impression that all twenty-two intervenors have already met the preliminary requirements for an award in this proceeding. PA's amendment provides no satisfactory explanation for these discrepancies. Rather, PA's amendment inexplicably maintains the erroneous position that the Request "only seeks compensation" on behalf of five parties. PA's amendment makes no attempt to explain why Savage is shown as representing twenty-two parties, why all twenty-parties are identified as intervenors or why all twenty-two parties explicitly request compensation.

Additionally, in support of its request to be excused from the statutory requirements for eligibility, PA relies upon D.96-06-029. PA contends in its opening comments on the ALJ draft decision that:

"In the past, the Commission has awarded compensation for all hours reasonably incurred where a party for compensation has worked with and filed joint briefs with other parties not eligible for compensation. In Decision 96-06-029, for example, the Commission addressed the situation where The Utility Reform Network (TURN) requested compensation for its efforts in participation with a broader coalition. As TURN stated there, it reasonably believed that its participation in that coalition increased the likelihood that the Commission would adopt rules favorable to its positions. The Commission likewise did not require TURN to separately allocate or

total the hours incurred in discussions with other coalition members, and understandably agreed that TURN's efforts were reasonable and compensable. [cite omitted.] There, as here 'awards are paid to eligible intervenors who must justify the reasonableness of their costs whether or not they team up with another party. Our action today is not in conflict with the legislative intent of Article 5, ... but in furtherance of the Legislative intent that intervenors should participate in the most efficient and effective way possible.' [cite omitted.]

Likewise, there, as here eligible intervenors are not teaming up with ineligible parties in order to subsidize the ineligible parties participation in Commission proceedings at the utilities expense. (cite omitted.) By law, Intervenors' counsel is unable to charge its clients attorneys' fees for professional services and thus none of the ineligible parties was subsidizing any of the work covered by the request for compensation or any award by the Commission" (PA's January 11, 1999, opening comments on ALJ's proposed decision at pp. 8-9.)

The circumstances in D.96-06-029 are not the same as the present situation. In D.96-06-029, TURN requested compensation for itself, not for itself and other ineligible organizations. In the present situation, PA has filed a request for an award for eligible and ineligible organizations.

In D.96-06-029, the Commission stated that its concern with TURN's participation with Coalition members was that TURN "...may have duplicated to some extent the contributions of other parties." (66 CPUC 2d at 357.) Specifically, in D.96-06-029, the Commission referred to Pub. Util. Code Section 1801.3(f). The Commission stated:

"As stated in Section 1801.3(f), intervenor compensation should be 'administered in a manner that avoids unproductive or unnecessary participation that duplicates the participation of similar interests otherwise adequately represented' "(66 CPUC 2d at 357.)

The discussion that PA relies upon addresses the issue of duplication (Pub. Util. Code §1801.3(f)), not the issue of eligibility and financial hardship (Pub. Util. Code § 1804).

Moreover in D.96-06-029, the Commission described as a "peril" eligible intervenors teaming up with ineligible intervenors. Specifically, in D.96-06-029, the Commission noted that it did not see as a "peril that our action today will encourage eligible intervenors to team up with ineligible parties in order to subsidize the ineligible party's participation in Commission proceedings at the utilities expense." (66 CPUC2d at 357.) Despite the clear notice in D.96-06-029 that eligible intervenors should not team up with ineligible parties in submitting compensation requests, that is exactly what PA requested in this proceeding. Additionally, PA had warning in a prior decision that such requests are unacceptable.⁴

PA's comments on the draft ALJ decision also attempt to address the concern of eligible and ineligible intervenors teaming up by asserting that:

"...eligible intervenors are not teaming up with ineligible parties in order to subsidize the ineligible party's participation in Commission proceedings at the utilities expense. ... By law, Intervenor counsel is unable to charge its clients attorneys' fees for professional services..."

⁴ Moreover, the Commission's notice in D.96-06-029 was not the first time the Commission addressed PA's current situation. In D. 90-09-080, the Commission stated: "Despite our admonition that Public Advocates must meet the significant financial hardship test for clients not included in our earlier determination, Public Advocates added 17 new clients to its request for compensation without making any effort to show how these clients met the test. In the absence of such a showing, we cannot find that the 17 new clients are eligible for compensation." (D. 90-09-080, *slip op.* p. 9.) PA's failure to address this point in its current submission is a significant deficiency of its Request. A showing of significant financial hardship is a requirement for an award established in §§ 1803 and 1804 of the Pub. Util. Code.

PA's comments imply that the Commission should create a new eligibility standard for PA's clients. PA's request implies that since PA does not charge attorney fees to its clients, the Commission should disregard the financial hardship eligibility requirements. Despite the fact that PA may not charge its clients, under PA's novel new approach, it would still be able to meet and confer with ineligible intervenors and advocate on their behalf as long as such ineligible intervenors teamed up with eligible intervenors. PA's approach is inconsistent with statute, Commission rules and procedure.

In this instance, we shall accept PA's amendment to remove 17 of 22 applicants from PA's Request. However, as stated in D.96-06-029, the Commission does not look favorably upon eligible and ineligible intervenors teaming up. The Commission's acceptance of PA's amendment should not be viewed as creating a new eligibility standard or creating an exception. In the future, PA should file requests for intervenor compensation only on behalf of eligible intervenors. This decision should not be construed a precedent that similar noncompliance by PA with the basic statutory requirement to file an NOI shall be condoned in the future. Rather, this decision should be considered NOTICE that any future compensation request by PA that lacks an NOI for all parties may be denied for failure to meet the statutory requirement of Pub. Util. Code Section 1804(a).⁵

⁵ On December 26, 1996, PA filed a request for compensation for its contributions to D.96-10-066 and D.95-12-056. PA's December 26, 1996 request contains deficiencies similar to those contained in the present Request. We will not apply the notice given in this decision retrospectively to PA's December 26, 1996.

A. Significant Financial Hardship

Section 1803(b) authorizes the Commission to award compensation to a party if participation without an award of fees or costs imposes a significant financial hardship on the party. Section 1804(b)(1) states that once an ALJ has made a finding of significant financial hardship, there is created a rebuttable presumption of eligibility for compensation in other Commission proceedings commencing within one year of the date of that finding.

Section 1802(g) defines "significant financial hardship" to mean:

"either that the customer cannot afford, without undue hardship, to pay the costs of effective participation, including advocate's fees, expert witness fees, and other reasonable costs of participation, or that, in the case of a group or organization, the economic interest of the individual members of that group or organization is small in comparison to the costs of effective participation in the proceeding."

As indicated earlier, in D.96-06-029, during an earlier phase of this proceeding, PA was found to be eligible for compensation on behalf of Southern Christian Leadership Conference, National Council of La Raza, Korean Youth and Community Center, Filipinos for Affirmative Action, and Filipino Civil Rights Advocates. Under Rule 76.76, a customer found eligible for compensation in an earlier phase of a proceeding remains eligible in later phases of the same proceeding.

IV. Contributions to Resolution of Issues

PA believes that it has made a substantial contribution to D.96-10-076, contending that the Commission adopted the compromise recommendation put forth by Joint Parties and the California Telecommunications Coalition. PA points to the provisions of the compromise

agreement as well as the interim decision, D.96-08-027, in support of its claim of substantial contribution.

PA opposed the Petition which sought modification of multilingual rules requiring that customers be provided with a confirmation letter in the language in which the sale was made, as well as all billing and notices in that language. PA disputed claims that CLCs were unable to provide these services. Interim D.96-08-027 directed that a workshop be convened to address multilingual outreach and identify areas of agreement and possible solutions.

PA participated in the workshop, which led to a compromise agreement between PA and the Coalition. The Commission adopted this compromise in D.96-10-076. Under the modified rules delineated in D.96-10-076, customers ordering service in the preferred language from among any of seven designated languages will receive a confirmation letter in that preferred language, describing the service ordered and charges that will appear on the bill. An annual bill insert in the customer's preferred language will explain the bill, and all Commission-mandated notices will be provided in the designated languages. PA's participation made a substantial contribution to D.96-10-096.

V. The Reasonableness of Requested Compensation

The following is a summary of PA's requested compensation, as detailed in PA's Amended Exhibit One.

Attorney Fees

Mark Savage				
80.87 hours	X	\$235	=	\$19,004.45
Richard Dwyer				
39.70 hours	X	\$200	=	\$ 7,940.00
Stefan Rosenzweig				
3.30 hours	X	\$335	=	\$ 1,105.50
Yvonne Peters (law clerk)				
9.50 hours	X	\$95	=	\$ 902.50
Kelly Tilton (law clerk)				
5.50 hours	X	\$95	=	<u>\$ 522.50</u>
		Sub-Total		\$29,474.95

Other Costs

Messenger delivery costs	=	\$ 253.43
Photocopy charges	=	\$ 2,216.70
Postage	=	\$ 1,039.67
Telephone/Facsimile charges	=	<u>\$ 50.00</u>
	Sub-Total	= \$ 3,559.80

TOTAL = \$33,034.75

A. Hours Claimed

PA has extensively documented its activities by date, providing detailed listings of work performed and time expended. PA has made no attempt to allocate this time by issue. PA asserts that D.96-10-076 addresses only one issue and that all time was therefore spent on the single issue of multilingual outreach. The Commission's guidelines on issue allocation delineated in D.85-08-012 acknowledge that such allocation is not always possible or feasible, and the Commission has recognized that single-issue cases comprise such an instance. Therefore, since this proceeding addresses only one issue, the absence of any issue allocation for work performed pursuant to D.96-10-076 should not result in a reduction to the hours claimed by PA. However, as explained below, PA's Request should be reduced for documentation deficiencies.

B. Hourly Rates

Computation of compensation must take into consideration the market rates paid to persons of comparable training and experience who offer similar services. (§ 1806.) In no case may the compensation awarded exceed the rate paid for comparable services by the Commission or the public utility, whichever is greater. (Id.) Even when compensation is warranted and approved, the fees awarded for the work of a customer's advocates and expert witnesses are limited to those which are "reasonable." (§ 1802 (a).) "Reasonable" implies not only that the rate charged by the advocate is justified based on the rates earned by others in the field with similar experience and skill, but also that the level of expertise of the advocate or expert is appropriate for the task performed. The burden of proof in a compensation request lies with the party seeking compensation. (See D.94-09-059.) In the absence of carrying that burden, the Commission may set a rate. (D.96-05-053, mimeo., at 5.) Wherever

appropriate, the Commission uses rates previously approved by this Commission for the work of attorneys, expert witnesses, and staff members of the intervenor requesting compensation.

PA seeks an hourly rate of \$235 for work performed by Savage in 1996. In D.96-12-029, the Commission adopted an hourly rate of \$225 for Savage for work performed from 1995 to 1996. However, in D.98-04-025, the Commission compensated Savage at a rate of \$235 for participation in the latter part of 1996 and \$240 for participation in 1997. Rather than a split Savage's work in 1996 in two and compensate Savage's work at \$225 per hour for work performed in the first part of 1996 and compensate Savage's work at \$235 for the latter part of 1996, for this specific proceeding only, this decision sets Savages hourly rate for work performed in this proceeding at \$230 per hour.

PA seeks an hourly rate of \$335 for work performed by Rosenzweig in 1996. In D.96-12-029, the Commission adopted an hourly rate of \$260 for work performed by Rosenzweig in 1995. Similarly, in D.98-04-025 the Commission adopted an hourly rate of \$260 per hour for work performed by Rosenzweig in 1996. This decision follows both D.96-12-029 and D.98-04-025 and sets an hourly rate of \$260 for work performed by Rosenzweig in this proceeding.

PA requests an hourly rate of \$200 for Dwyer. In D.98-04-025, the Commission set an hourly rate of \$185 for work performed by Dwyer in 1996. This decision follows D.98-04-025 and uses an hourly rate of \$185 for work performed by Dwyer in 1996.

PA requests an hourly rate of \$95 per hour for each of two law clerks for work performed in 1996. The Commission has consistently awarded law clerks \$55 per hour. (See D.96-06-029, D.95-12-049.) However, in D.98-05-014, in a recent Commission decision awarding compensation for work by a law clerk, the Commission awarded an hourly rate of \$10 per hour as requested. PA's

requested hourly rate of \$95 for law clerks is excessive and should be reduced to an hourly rate of \$55 per hour which is consistent with those rates the Commission has approved in the past.

C. Matrix Requirements

In its initial Request, PA did not comply fully with requirements set forth in D.96-06-029, directing intervenors in Roadmap proceedings to submit the following information:

- a. A listing of all telecommunications Roadmap proceedings in which the intervenor has participated. This information should be provided for the current year and all applicable previous calendar years.
- b. A breakdown, by proceeding, of the intervenor's total hours incurred to participate in all Commission proceedings listed in a. above. This should be further broken down by each calendar year and by person.
- c. The hours listed for each proceeding in b. above should be further subdivided as follows: (1) hours already claimed and awarded; (2) hours claimed but still pending; (3) eligible hours incurred, not yet claimed. This information should also be broken down by person.
- d. A breakdown of all the information in c. above by issue area.
- e. An allocation and breakdown of the intervenor's total costs in the same manner as a. through d. above. (D.96-06-029, *slip op.* p. 27.)

This matrix is designed to reveal potential duplicate compensation for intervenors participating in multiple Roadmap proceedings. While PA provided such an allocation concerning the hours claimed in the current request, information on prior involvement in Roadmap proceedings was initially absent. PA, in referencing the requirements, cited prior filings in which it claimed "*much*

of the information" had been submitted, and incorporated the filings by reference. (Request, p. 8 (emphasis added).) This was insufficient.

In the future, PA should provide all supporting information in its requests for awards of intervenor compensation. Submission of complete filings enables the Commission to expeditiously process requests for awards of intervenor compensation and eliminates potential confusion regarding previously submitted documents. The burden is on the applicant, not the Commission to research and prepare requests for an award of intervenor compensation.

1. Allocation of Costs

ALJ Hale's February 6, 1998, letter and subsequent confirming ALJ Ruling dated February 17, 1998, identified deficiencies in PA's Request and allowed PA an opportunity to amend its request. PA provided a matrix in its amendment, but even it is incomplete. For example, it fails to provide the allocation and breakdown of costs required in subpart e. Also, it provides a breakdown by decision rather than by proceeding.

In this instance, it is possible to calculate the breakdown of costs by proceeding from the information submitted by PA, however, the burden to properly compile the required information rests upon the intervenor seeking compensation, not the Commission.

PA was given an opportunity to correct the deficiencies in its Request, and yet failed to submit the proper tables as required by D.96-06-029. We attribute PA's oversight to a lack of understanding of the Commission's requirements. Acceptance of PA's inadequate submission should not be considered an exception to the Commission's rules, rather NOTICE that the Commission will reject similar inadequate filings in the future.

In response to the observation in ALJ Hale's draft decision that PA's tables are incomplete, PA asserts in its opening comments to ALJ Hale's draft decision that:

"... Intervenor's request explained the difficulties of such an allocation and D.97-02-043 acknowledged those difficulties and has rescinded the requirement of allocating these costs. Decision 97-02-043 at 8. ..."

PA erroneously interprets D.97-02-043. In D.97-02-043, the Commission addressed PA's petition to modify D.96-06-029 by eliminating the matrix documentation requirements. In D.97-02-043, the Commission denied PA's request to modify D.96-06-029.

PA's assertion that the Commission "rescinded the requirement of allocating ... costs" lacks merit. Subpart e of the matrix requirements in D.96-06-029 states that intervenors must provide:

"e. An allocation and breakdown of the intervenor's total costs in the same manner as a. through d. above." (D. 96-06-029, slip op. p. 27.) (Emphasis added.)

In D.97-02-043, the Commission denied PA's request to eliminate the matrix reporting requirements. The dictum that PA cites refers to is a TURN request regarding the allocation of common costs like overhead costs. In D.97-02-043, the Commission stated in dicta that:

"We shall consider any intervenor request in a telecommunications roadmap proceeding which does not provide this issue-by-issue allocation to be deficient. We agree with TURN, however, that certain costs do not lend themselves to meaningful allocation by separate issue category. Examples of such costs include overhead items such as postage, photocopying, mail and telephone charges. We shall not require separate

issue allocation of such common costs." (D.97-02-043 at p. 8, mimeo.)

More importantly, PA's selective reading of D.97-02-043 fails to address the need to allocate by cost.

"In its Petition for Modification, PA fails to address the Commission's concern regarding the need to accurately allocate intervenors costs and hours to the pertinent issues for which a substantial contribution is claimed. PA focuses on double counting as the only concern which the Commission sought to address in adopting these requirements. Yet, the need for allocation by issue goes beyond the concern over double counting. Cost allocation by issue is particularly important where an intervenor is awarded compensation only for some, but not all, of the issues for which it claims credit. Without an allocation of costs and hours by issue, the Commission lacks requisite information with which to quantify the monetary award for those specific issues eligible for compensation.

"PA proposes to satisfy the Commission's concerns by merely having the intervenor's counsel state in its sworn declaration that its compensation request does not duplicate hours requested elsewhere. While the sworn declaration of counsel attesting to the truth of the filing is important in assuring the overall integrity of the intervenor compensation process, the Commission must exercise its oversight responsibilities to require reasonable documentation of claimed costs and complete an independent review of the filing before approving an intervenor award of compensation. It does not matter whether the claimed costs are truthfully presented, if the costs are not allocated in a manner enabling the Commission to match issues with related costs and to compute an accurate compensation award for each separate proceeding." (D.97-02-043 at pp. 6-7, mimeo.) (Emphasis added.)

PA's legal analysis is silent on the fact that the Commission denied PA's petition to eliminate the matrix. PA's legal analysis is also silent to the reference to "total costs" in subpart e of the matrix requirements.

Additionally, PA's legal analysis erroneously and selectively relies on Commission dicta (to exempt common costs) as a basis to assert the Commission has eliminated the requirement to allocate costs (as well as hours) among the issues.

The tables PA submitted lack the required cost allocation attributed to attorneys work and provide only hourly allocations. Cost information may be compiled from the provided hourly allocations by multiplying hourly rates by the number of hours worked on each issue, however, the burden rests with PA, not the Commission to submit a complete request. PA's total requested compensation should be reduced by 40% to reflect matrix deficiencies in PA's Request.

2. Allocation by Decision

PA's matrix requirement also does not provide information by proceeding. PA's opening comments on the ALJ draft decision assert that PA's filing for an award of compensation meets the requirements of D.96-06-029 because its matrix provides "even greater detail with allocations by decision..." In the future, PA should strive to meet the Commission's requirements and not create special exemptions. Compliance with Commission requirements is not optional and benefits both the Commission and the intervenor by facilitating analysis of requests. PA's total requested compensation should be reduced by 10% to reflect allocation deficiencies in PA's Request. In combination, with the 40% reduction for matrix deficiencies, PA's Request should be reduced a total of 50%.

D. Other Costs

PA requests reimbursement of \$3,559.80 for miscellaneous costs which includes messenger delivery costs, photocopy charges postage and telephone/facsimile charges. In our judgment the costs are reasonable given the nature of the proceeding and extent of PA's involvement.

VI. Award

Attorney Fees

Mark Savage			
80.87 hours	X	\$230 =	\$18,600.10
Richard Dwyer			
39.70 hours	X	\$185 =	\$ 7,344.50
Stefan Rosenzweig			
3.30 hours	X	\$260 =	\$ 858.00
Yvonne Peters (law clerk)			
9.50 hours	X	\$55 =	\$ 522.50
Kelly Tilton (law clerk)			
5.50 hours	X	\$55 =	\$ 302.50
		Sub-Total	\$27,627.60

Other Costs

Messenger delivery costs	=	\$ 253.43
Photocopy charges	=	\$ 2,216.70
Postage	=	\$ 1,039.67
Telephone/Facsimile charges	=	\$ 50.00
	Sub-Total =	\$ 3,559.80

Total (without reduction)	=	\$31,187.40
Total (with 50% reduction)	=	\$15,593.70

VII. What Carriers Should Have To Pay The Award Of Compensation

GTE California Incorporated (GTEC) and Pacific Bell filed responses to PA's request for compensation. AT&T Communications of California, Inc. (AT&T), MCI Telecommunications Corporation (MCI) and Sprint Communications Company, LP. (Sprint) filed a reply to Pacific Bell's response.

GTEC asserts that competitive local carriers (CLCs) with approved Certificates of Public Convenience and Necessity must carry their share of the burden of supporting the public policy behind intervenor participation. Pacific Bell states that it and GTEC were not the subjects of the Commission's decision, D.98-10-076 and therefore should not have to pay any award of compensation in this proceeding. In support of Pacific Bell's position, it cites Section 1807, which states in part: "Any award made under this article shall be paid by the public utility which is the subject of the hearing, investigation, or proceeding, as determined by the commission..." Pacific Bell also suggests methods for allocating the cost of intervenor participation among CLCs.

On April 23, 1998 we issued D.98-04-059 (revised in D.99-02-039) in R.97-01-009 and I.97-01-010. In this decision we revised our intervenor compensation program. We adopted a revision to the manner in which we fund intervention in quasi-legislative, rulemaking proceedings which is similar to that advocated here by Pacific Bell and GTEC. We interpreted § 1807 to mean that "the public utility which is the subject of the...proceeding" in quasi-legislative, rulemaking proceedings, are all participating utilities.⁶ We require those utilities to pay the costs of any compensation awards unless a specific utility(ies) is named as a respondent. However, we also identified a problem

⁶ Contrary to our adopted policy, GTEC and Pacific Bell are arguing that they not be required to pay any portion of the award.

with implementing this approach, and sought further comment. (D.98-04-059), mimeo. At 59.) Therefore, the revision to the manner in which we fund intervention in quasi-legislative, rulemaking proceedings, cannot yet be applied.

Although we are sympathetic to some of Pacific Bell's and GTEC's arguments, we will require the costs of the award to be paid by Pacific Bell and GTEC in the same manner required in previous compensation decisions in this docket.

The practical and historical method of allocation is to allocate the awards between the telephone utilities according to the number of access lines served. This method of allocation has usually resulted in the awards being paid for by GTEC and Pacific. Those two carriers are the largest local exchange carriers in California, and are likely to remain so until true local competition develops. Accordingly, the compensation awarded to PA should be allocated among GTEC and Pacific in proportion to the number of access lines each serve.

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 February 17, 1998⁷ (the 75th day after each party filed its completed compensation request) and continuing until each utility makes its full payment of award.

As in all intervenor compensation decisions, we put PA on notice that the Commission's Telecommunications Division may audit records related to this award. Thus, PA must make and retain adequate accounting, and other documentation to support all claims for intervenor compensation. The records should identify specific issues for which the party requests compensation, the

⁷ PA filed its amendment on February 17, 1998.

actual time spent by each employee, the applicable hourly rate, fees paid to consultants, and any other costs for which compensation may be claimed.

VIII. Comments on Commissioner Alternate Draft Decision

The Alternate draft decision of the Commissioner Duque in this matter was mailed to the parties in accordance with Pub. Util. Code Section (311(e) and Rule 77.1 of the Rules of Practice and Procedure. Comments were filed on March 11, 1999 by GTEC, Pacific Bell, and Public Advocates. We have reviewed all the comments and incorporated this as appropriate in finalizing the decision.

Findings of Fact

1. PA has made a timely request for compensation for its contribution to D. 96-10-076.
2. In D.96-06-029, during an earlier phase of this proceeding, PA was found to be eligible for compensation on behalf of Southern Christian Leadership Conference, National Council of La Raza, Korean Youth and Community Center, Filipinos for Affirmative Action, and Filipino Civil Rights Advocates.
3. PA has not filed, pursuant to Pub. Util. Code § 1804 , a NOI to claim intervenor compensation for Association of Mexican-American Educators; California Association for Asian-Pacific Bilingual Education; California Association for Bilingual Education; California Rural Indian Health Board; Chicano Federation of San Diego County; Council for the Spanish Speaking; El Proyecto Del Barrio; Escuela De La Raza Unida; Foundation Center for Phenomenological Research; Hermandad Mexicana Nacional; Korean Community Center of the East Bay; Lawyers' Committee for Civil Rights of the San Francisco Bay Area; Motivating Adolescents to Succeed; Mountain View Community Health Center; Multicultural Area Health Education Center; Spanish Speaking Citizen's Foundation; and Spanish Speaking Unity Council.

4. PA has not presented a showing of significant financial hardship for Association of Mexican-American Educators; California Association for Asian-Pacific Bilingual Education; California Association for Bilingual Education; California Rural Indian Health Board; Chicano Federation of San Diego County; Council for the Spanish Speaking; El Proyecto Del Barrio; Escuela De La Raza Unida; Foundation Center for Phenomenological Research; Hermandad Mexicana Nacional; Korean Community Center of the East Bay; Lawyers' Committee for Civil Rights of the San Francisco Bay Area; Motivating Adolescents to Succeed; Mountain View Community Health Center; Multicultural Area Health Education Center; Spanish Speaking Citizen's Foundation; and Spanish Speaking Unity Council.

5. Public Advocates on behalf of Southern Christian Leadership Conference; National Council of La Raza; Korean Youth and Community Center; Filipinos for Affirmative Action; Filipino Civil Rights Advocates contributed substantially to D.96-10-076 on the single issue of CLCs maintaining customer contacts in the language in which a sale was made.

6. The following hourly rates are consistent with the rates we have previously authorized for individuals of comparable training and experience:

Mark Savage	\$230 / hour
Richard Dwyer	\$185 / hour
Stefan Rosenzweig	\$260 / hour
Law clerks	\$ 55 / hour

Conclusions of Law

1. The miscellaneous costs incurred by Public Advocates are reasonable.
2. Public Advocates request for an award of compensation on behalf of Southern Christian Leadership Conference; National Council of La Raza; Korean

Youth and Community Center; Filipinos for Affirmative Action; Filipino Civil Rights Advocates should be reduced 50% for deficiencies.

3. PA has not fulfilled the requirements of Pub. Util. Code §§ 1803 and 1804 governing demonstration of significant financial hardship for Association of Mexican-American Educators; California Association for Asian-Pacific Bilingual Education; California Association for Bilingual Education; California Rural Indian Health Board; Chicano Federation of San Diego County; Council for the Spanish Speaking; El Proyecto Del Barrio; Escuela De La Raza Unida; Foundation Center for Phenomenological Research; Hermandad Mexicana Nacional; Korean Community Center of the East Bay; Lawyers' Committee for Civil Rights of the San Francisco Bay Area; Motivating Adolescents to Succeed; Mountain View Community Health Center; Multicultural Area Health Education Center; Spanish Speaking Citizen's Foundation; and Spanish Speaking Unity Council.

4. Public Advocates on behalf of Southern Christian Leadership Conference; National Council of La Raza; Korean Youth and Community Center; Filipinos for Affirmative Action; Filipino Civil Rights Advocates has fulfilled the requirements of Sections 1801-1812 which govern awards of intervenor compensation.

5. Public Advocates on behalf of Southern Christian Leadership Conference; National Council of La Raza; Korean Youth and Community Center; Filipinos for Affirmative Action; Filipino Civil Rights Advocates should be awarded \$15,593.70 for its contribution to D.96-10-076.

6. This order should be effective today so that Public Advocates may be compensated without unnecessary delay.

7. Acceptance of PA's inadequate submission should not be considered an exception to the Commission's rules, rather NOTICE that the Commission will reject similar inadequate filings in the future.

O R D E R

IT IS ORDERED that:

1. Public Advocates on behalf of Southern Christian Leadership Conference; National Council of La Raza; Korean Youth and Community Center; Filipinos for Affirmative Action; Filipino Civil Rights Advocates is awarded \$15,593.70 in compensation for its contribution to Decision 96-10-076.

2. GTE California Incorporated (GTEC) and Pacific Bell shall together pay Public Advocates \$15,593.70 within 30 days of the effective date of this order. The award payment shall be allocated between Pacific and GTEC based on the number of access lines served. Pacific and GTEC shall also pay interest on the award at the rate earned on prime, three-month commercial paper, as reported in Federal Reserve Statistical Release G.13, with interest, beginning February 17, 1998, and continuing until full payment is made.

3. PA shall in the future comply with all Commission and statutory requirements in preparing and submitting requests for compensation for participation in Commission proceedings.

This order is effective today.

Dated March 18, 1999, at San Francisco, California.

- RICHARD A. BILAS
President
HENRY M. DUQUE
JOSIAH L. NEEPER
Commissioners