

Decision 99-04-023 April 1, 1999

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own motion into the operations, practices, and conduct of Communication Telesystems International and Edward S. Soren, President of Communication Telesystems International to determine whether they have complied with the laws, rules, regulations and applicable tariff provisions governing the manner in which California consumers are switched from one long distance company to another, and other requirements for long distance carriers.

Investigation 96-02-043
(Filed February 23, 1996)

OPINION

This decision grants The Greenlining Institute and the Latino Issues Forum (Intervenors) attorneys' and experts' fees of \$270,285.50 to be paid out of funds from uncashed reparations checks.

1. Background

The Commission began its investigation of Communications TeleSystems International (CTS), also known as WorldxChange, on February 23, 1996, by issuing its Order Instituting Investigation and Order to Show Cause Why Communications TeleSystems International's Certificate of Public Convenience and Necessity Should Not Be Revoked, Investigation (I.) 96-02-043 (OII). In the OII, the Commission summarized evidence presented by its staff which alleged that CTS had transferred customers to its service without authorization. The staff also alleged that CTS had been targeting ethnic minority groups in its marketing efforts.

Hearings on the merits of the proceeding began on May 30, 1996, and concluded on June 7, 1996. The Commission issued its final decision on May 21, 1997, D.97-05-089.

In D.97-10-063, the Commission granted rehearing of D.97-05-089 on the limited issue of the disposition of funds from uncashed reparations checks. The decision on the merits in this proceeding directed that such funds should be paid to a public purpose trust, fund or organization to be designated by the Consumer Services Division (CSD). Recent Commission decisions suggest, as does the decision granting rehearing, that such funds may be required to escheat to the State of California. Resolution of this rehearing issue remains outstanding.

Also currently pending at the Commission is a request for intervenor compensation from Intervenors. CTS has challenged the authority of the Commission to make such an award based upon its interpretation of Pub.Util. Code § 1807, which CTS contends forbids the Commission from ordering CTS to fund an intervenor compensation award in this case. As explained below, this Decision resolves both the intervenor compensation issues and the uncashed check issue, on which rehearing was previously granted.

On July 20, 1998, the assigned Administrative Law Judge (ALJ) issued a ruling which presented a means of resolving both the pending rehearing issue and the intervenor compensation issue. The ruling first noted that the escheat statute states that unclaimed funds which could escheat to the state nevertheless remain subject to the Commission's equitable authority. The Commission's equitable authority includes the authority to award attorney's fees from a common fund. Thus, the ruling concluded, the unclaimed funds may be part of a common fund which could provide the Commission an opportunity to make a fee award apart from the provisions of Pub. Util. Code §§ 1801-1812.

The parties were invited to meet and confer regarding this potential means of resolving these outstanding issues. On October 1, 1998, CTS, Greenlining and the Latino Issues Forum submitted a Partial Settlement Agreement along with a Joint Motion seeking approval by the Commission.

The settlement agreement resolves the issue of how to fund any intervenor compensation award made in this docket. It also recommends an amount of compensation as well as a means of addressing the escheat issue. The agreement provides that intervenor compensation will be paid out of funds represented by the uncashed checks from the reparations fund created by D.97-05-089. This shall be the only source of funding for intervenor compensation.

To the extent the uncashed checks result in an amount that exceeds the award of intervenor compensation, the agreement suggests that the excess should be added to the consumer protection fund which is being created in docket I.98-02-025. Accordingly, no amounts would be available to escheat to the state.

Finally, the agreement recommends that the Commission award Intervenor \$388,492.08 in compensation for their work in this proceeding. The agreement explicitly leaves to the Commission the ultimate determination of the compensation amount.

The agreement does not affect litigation pending in federal court regarding D.97-05-089 and 97-10-063, and creates no precedent.

On October 14, 1998, the Commission's CSD submitted its response to the motion in which it opposed adoption of the settlement agreement. CSD contended that (1) the funds represented by the unclaimed checks must escheat to the General Fund pursuant to C.C.P. § 1519.5 and (2) that CTS should fund any intervenor compensation award, not the state taxpayers.

On December 17, 1998, CTS and Greenlining, with the permission of the assigned ALJ, filed replies to CSD's response. CTS stated that CSD's reply was based on the flawed factual premise that CTS has been ordered to pay the intervenor compensation award, and that CSD failed to realize that securing such an order would result in significant litigation which would be lengthy and expensive. CTS stated that CSD ignored the unsettled nature of the law on this question and the risk and expense to all parties, including the taxpayers.

Greenlining agreed with CTS that the compensation issued in this proceeding is unsettled and that resolving it would be likely to consume enormous Commission and Greenlining resources in the state and federal court systems. Greenlining noted CTS' past pursuit of review of the decision on the merits before the California Supreme Court, Federal District Court, and Ninth Circuit Court of Appeals. Greenlining sought approval of the settlement agreement as a means of furthering the purposes of the intervenor compensation program which are to promote broad participation and the presentation of a diversity of views in Commission proceedings. Greenlining concluded by reminding the Commission that it had advanced significant resources over a nearly three year period which has resulted in Greenlining being unable to fully staff their ongoing consumer protection activities.

2. Requirements for Approval of Settlement Agreements

Commission Rule of Practice and Procedure 51(e) requires that settlement agreements be (1) reasonable in light of the whole record, (2) consistent with the law, and (3) in the public interest to be approved by the Commission.

A. Reasonable in Light of the Whole Record

As this proceeding approaches its third anniversary, the record in this case reveals two remaining issues: intervenor compensation and disposition

of the funds from uncashed reparations checks. The settlement agreement resolves both issues without further litigation.

CTS has steadfastly maintained that the Commission lacks authority to make an intervenor compensation award in this proceeding. CTS contends that because the Commission suspended its California intrastate operating authority, CTS by definition can not recoup the intervenor award from customers within one year as contemplated by Pub. Util. Code § 1807. CTS' actions on this issue suggest that they would seek review of any decision making such an award.

Intervenors have expended valuable resources in this proceeding now nearing three years ago for which they have not yet been compensated. The settlement agreement provides for reasonably prompt payment of Intervenors from the fund with no further litigation on this issue.

CSD argues that this agreement is unreasonable because it absolves CTS of its statutory obligation to fund the award. Contrary to CSD's assertion, the intervenor compensation program is not intended to be punitive, but simply a means to fund intervention. Thus, it is of little importance that the intervenor compensation is paid from the uncashed checks funded by CTS rather than from an intervenor award CTS is directly obligated to pay.

CSD also argues that because the funds from the uncashed checks would otherwise escheat to the state, taxpayers are, in effect, paying the intervenor compensation award. CSD fails to note, however, that these same taxpayers would bear the costs of continued litigation of these issues, costs which could exceed the size of the award. CSD also ignores the possibility that a Commission decision awarding intervenor compensation might be reversed resulting in intervenors receiving no compensation and the taxpayers bearing all the litigation costs.

The settlement agreement resolves outstanding issues in an efficient, certain way and provides for no further delay in obtaining intervenor compensation. The record reveals unsettled legal issues which would likely result in additional protracted litigation, absent this agreement. Accordingly, we find the settlement agreement reasonable in light of the whole record.

B. Consistent with the Law

i. Intervenor Compensation

In Consumers Lobby Against Monopolies v. PUC, 25 Cal. 3d 891, 908, (1979) ("CLAM"), the California Supreme Court held that the Commission, even in the absence of specific statutory authorization, "possesses equitable power to award attorney fees under the common fund doctrine in quasi-judicial reparation actions." The common fund doctrine allows one who has incurred attorneys' fees in winning a proceeding that creates a fund which benefits others to recover its attorneys' fees from that "common fund". (Id. at 907.) Thus, under the common fund doctrine, the equitable relief ordered relates directly to the way in which the fund was created.

This case is a quasi-judicial reparations case, see D.97-05-089 at p. 33, which has created a common fund, the reparations fund. The settling parties propose to use a portion of this common fund, namely uncashed checks, to pay the Intervenor's award of attorneys' fees. Under CLAM, it is entirely proper for the Commission to pay the prevailing parties' attorneys' fees out of such a common fund in this kind of a case.

Furthermore, nothing in the escheat statute, Code of Civil Procedure § 1519.5, prevents using these unclaimed sums to pay the Intervenor's attorneys' fees. Section 1519.5 generally requires sums held by a business association that have been ordered to be refunded by the Public Utilities Commission and which have remained unclaimed by the owner for more than

one year to escheat to the state. However, that section also specifically states that "it is the intent of the Legislature that nothing in this section shall be construed to change the authority of a court or administrative agency to order equitable remedies." As discussed above, CLAM already holds that the awarding of attorneys' fees out of a common fund created in a quasi-judicial reparations case (as proposed here) is one of the equitable remedies the Commission has authority to order. Thus, nothing in § 1519.5 eliminates the Commission's authority to order such an equitable remedy in this case.

Pursuant to D.97-05-089, CTS will distribute the reparations fund to specific customers. Based on similar distributions in other matters, the Commission's staff expects that up to a third of the checks will not be cashed. The funds represented by these checks, assuming a third are not cashed, could be approximately \$700,000, far more than is needed to fund Greenlining's and the Latino Issues Forum's intervenor funding request.

Thus, the uncashed reparations checks represent a fund from which the Commission may allocate an award of reasonable attorney fees for Intervenors.

ii. Remaining Funds in a Consumer Trust Fund

In their joint motion and paragraph 5 of the settlement agreement, Intervenors and CTS support allocating any remaining amounts from uncashed checks to a consumer protection fund being established in I.98-02-025. Unfortunately, such an allocation appears inconsistent with the law.

In Cory v. P.U.C., 33 Cal.3d 522, 528 (1983), the California Supreme Court held that the Unclaimed Property Law applies to the Commission and utilities:

The purposes of the Unclaimed Property Law are to protect unknown owners by locating them and restoring their property and to give the state the benefit of the use of it. The

Controller states that during the last few years his efforts to locate the true owners have been successful in returning to them approximately 50 percent of the property turned over to him. The Commission is not authorized to forfeit the refunds of the unlocated customers, and the property should be held for the benefit of the unlocated customers in accordance with the Unclaimed Property Law.

The Unclaimed Property Law, however, also expressly retains the Commission's power to order equitable remedies. Code of Civil Procedure § 1519.5. Among the Commission's recognized equitable remedies is its authority to order the payment of attorney's fees, as noted in the CLAM decision discussed above.

However, no similar authority exists to support disregarding the general rule of § 1519.5 and diverting the funds from the uncashed checks to a consumer education group. In their joint motion, CTS and Intervenors did not point to any authority for the Commission to exercise its equitable power in this manner, nor do they state compelling facts which would cause the Commission to exercise its equitable powers in this way.

CTS and Intervenors did not fully address Assembly v. Public Utilities Commission, 12 Cal. 4th 87, 102 (1995), where the California Supreme Court held that the Commission's efforts to use a Pacific Bell refund obligation to create "an equitable fund which [could] be used to advance the State policy of improving telecommunications consumer education and school telecommunications infrastructure" was beyond the Commission's authority. Although that decision was based on the rate refund statute, § 435.5, which requires rate refunds to be distributed to "customers", the reparations statute upon which the CTS decision was based, § 734, similarly requires that reparations be made to "the complainant." Thus, the Assembly decision raises

questions as to whether we can use the reparations funds here for the more general equitable purposes proposed in this portion of the settlement.

While we remain open to the possibility that sufficient facts may appear in some case in the future to support exercising our equitable powers in this manner, the best route for the funds at issue here is through the state controller's office. This resolution disposes of the issue identified for rehearing in D.97-10-063.

C. In The Public Interest

This settlement agreement is in the public interest because it minimizes the expenses and risks of litigation while accomplishing the goals of the intervenor funding program.

For these reasons, the Commission finds that the settlement agreement, other than paragraph 5, is reasonable in light of the whole record, is consistent with the law, and is in the public interest. The agreement is approved pursuant to Rules 51 through 51.10 of the Commission's Rules of Practice and Procedure. (See also San Diego Gas & Electric, 46 CPUC2d 538 (1992)(rules for all-party settlements).)

3. Matter Unresolved By the Settlement Agreement

The settlement agreement contains a recommendation on the amount of compensation to be paid to Intervenors and CTS also filed, under seal, a statement of its hourly rates for comparison to those used for Intervenors. We have reviewed both the recommendations and the hourly rate information. We have concluded that the facts of this case do not warrant deviating from our historical practice of setting reasonable attorneys' and experts' fees.

A. Expert Witness

The starting point for any analysis of intervenor compensation is the number of hours worked by the experts and the appropriate hourly fee for their services.

i. Hours Claimed by Expert Witness

The Intervenors presented three expert witnesses at the hearing: John Gamboa, The Greenlining Institute, Henry Der, Chinese For Affirmative Action, Nghia Trung Tran, Vietnamese Community of Orange County. Mr. Gamboa and Mr. Der presented time sheets accounting for the time spent on the case and the activities in which they were engaged during those times. Mr. Gamboa's total hours, corrected to exclude time spent on the federal court litigation, is 55.1 hours. Mr. Der's recorded time is 5.5 hours.

Mr. Tran did not submit a time sheet but the request for intervenor compensation included an estimate of his time at 40 hours. This estimate is apparently the best information available regarding Mr. Tran's time. In general, this type of record keeping would not be sufficient to meet our standards. However, bearing in mind the testimony Mr. Tran provided, which included descriptions of many individuals' interactions with CTS, this estimate appears reasonable. Therefore, given Mr. Tran's lack of familiarity with our processes, we will accept an estimate for purposes of this request only. Mr. Tran is on notice that future compensation requests must contain detailed and accurate records or the claimed hours will be disallowed.

The Intervenors also sought compensation for Guillermo Rodriguez, Jr., for 30.45 hours of time, of which .95 hours were not properly included, leaving a corrected number of hours of 29.5. Mr. Rodriguez did not testify at the hearings, nor has his specific contribution been identified. His time records indicated that he attended the hearings and met with counsel.

ii. Hourly Rate

We have previously established \$125 per hour as the reasonable hourly rate for expert witnesses. D.96-08-040. We will retain that hourly rate for these witnesses.

For Mr. Rodriguez we will use the hourly rate most recently determined for his services:

$$\begin{aligned} & \text{Rodriguez hours (29.5) x rate (\$95, D.96-08-040)} \\ & = \$2,802.25 \end{aligned}$$

iii. Multiplier and Sharing of Free Award

The preliminary hearing in this investigation revealed that CTS' primary explanations for its high customer transfer dispute rate were based on ethnic and cultural differences between the long distance market as a whole and the market which CTS served.

The Commission disregarded CTS' cultural explanations for noncompliance with requirements for a valid customer transfer (Pub. Util. Code § 2889.5):

[T]he Commission may not set an "acceptable" level of unauthorized transfers for any group of customers. The Commission finds such a proposal particularly repugnant where, as here, the customer class at issue is composed largely of customers that have indicated a language preference other than English. The Commission's consumer protection standard is heightened where customers whose language preference is not English are targeted by aggressive and allegedly duplicitous sales tactics.

Communications TeleSystems International, D.96-05-050 mimeo.

at 13 (citations omitted). The Commission went on to note the absence of qualified experts that could give first hand testimony on the alleged cultural differences.

Subsequent to the Commission issuing that decision, The Greenlining Institute and the Latino Issues Forum, both groups which represent ethnic minorities, intervened in the proceeding. Their intervention took the form of presenting three highly-qualified expert witnesses that offered first hand accounts of the effects of CTS on their communities, as well as broader understanding of the communities. These witnesses voluntarily came forward and presented a viewpoint to the Commission that was noticeably missing in the earlier hearing and decision. This viewpoint would not have been presented to the Commission but for these witnesses making their time and expertise available.

Our determination of whether and, if so, to what magnitude, the expert witness fees should be subject to a multiplier will be made in the context of the facts in this particular case which lead us to conclude that the testimony from these experts had extraordinary and, indeed, unique value in assisting the Commission in achieving its consumer protection objectives. These objectives were squarely at issue in this proceeding which was the first fully litigated enforcement action by the Commission under Pub. Util. Code § 2889.5. In this proceeding, we implemented these objectives for the first time in the recently competitive long distance market amidst an unfamiliar technical landscape.

These witnesses represented groups whose viewpoints are chronically underrepresented in Commission proceedings and whose views were critical to creating a complete record upon which the Commission could base its decision. Discharging its consumer protection duties required that the Commission understand the communities in which CTS had marketed its services. The particular facts of this case made testimony from minority representatives uniquely valuable. As explained by CTS' expert witnesses,

limited English speaking customers are often recent immigrants which tend to have high international long distance bills and are thus "high value" customers. These customers, unfortunately, are often unfamiliar with the aggressively competitive long distance telephone market. Insight into the convergence of these two factors could only be provided by a member of the targeted consumers. The testimony of these experts was instrumental in supporting the nearly \$4 million in reparations and fines paid by CTS. A multiplier which recognizes the unique value of the testimony will have the salutary effect of encouraging other parties to come forward in future proceedings.

Our determination of the proper multiplier is guided by similar determinations by the Courts. Having determined the time and reasonable hourly rate applied to the experts' work, the Courts next look to a variety of factors which may increase or decrease the fee award. When increasing a fee request from a total of \$571,172 (\$225,662 for one firm and \$345,510 for the other) to \$800,000 to be shared equally by the firms the California Supreme Court considered several factors:

Among these factors were: (1) the novelty and difficulty of the questions involved, and the skill displayed in presenting them; (2) the extent to which the nature of the litigation precluded other employment by the attorneys; (3) the contingent nature of the fee award, both from a view of eventual victory on the merits and the point of view of establishing eligibility for an award; (4) the fact that an award against the state would ultimately fall upon the taxpayers; (5) the fact the attorneys in question received charitable and public funding for the purpose of bringing lawsuits of the character here involved; (6) the fact that the monies awarded will inure not to the individual benefit of the attorneys involved but to the organizations by which they are employed; and (7) the fact that the law firms involved had had an approximately equal share in the success of the litigation.

Serrano v. Priest, 20 Cal.3d 25, 49, 141 Cal Rptr. 315, 569 P.2d 1303 (1977).

The Courts have also considered other factors including “the novelty and difficulty of the issues presented, the quality of counsel’s services, the time limitations imposed by the litigation, the amount at stake, and the result obtained by counsel.” City of Oakland v. Oakland Raiders, 203 Cal. App. 3d 78, 83, 249 Cal. Rptr. 606 (1988)(citations omitted).

While not all of these factors are directly applicable in this case, several point strongly towards a significant multiplier for these witnesses’ testimony.

As noted above, this case was the first fully litigated “slamming” case before the Commission. This case set the precedent for how we would exercise our consumer protection directives contained in Pub. Util. Code § 2889.5. These witnesses presented essential views on novel issues without which a similar decision could not have been supported.

The type of information the Commission required, the perspective of the targeted consumers, was difficult to obtain and was pointedly missing from the initial hearing in this proceeding. The perspective of consumers who are mistrusting of government and unfamiliar with administrative processes could only be obtained by representatives coming forward.

These witnesses presented the Commission with high quality testimony that was grounded in significant experience in the topic areas. Indeed, the testimony of these experts was largely unchallenged.

The witnesses operated under severe time limitations. The need for expert witnesses on ethnic and cultural issues was not fully apparent until we issued the interim decision, at which point this proceeding was well underway moving towards hearings on the merits. The Intervenors formally

joined this proceeding and requested but were denied, properly, a delay in the schedule. Nevertheless, the witnesses were prepared and testified well. No significant flaws in their testimony was revealed under cross examination by experienced attorneys.

The awards to these witnesses will be paid to the groups which they represented, not to the individuals. Thus, these funds will go to benefit the types of consumers which suffered from CTS' unlawful actions.

Consumers have achieved an excellent result in this proceeding. Substantial restitution has been paid to the 56,000 consumers who were wrongfully transferred to CTS and nearly \$2 million in fines have been paid to the state treasury. Moreover, CTS' certificate of public convenience and necessity has been suspended for three years.

Based on these facts, we find that the fee award for the expert witnesses who testified at the hearings in their capacities as representatives of otherwise underrepresented ethnic and cultural groups should be subject to a significant multiplier. The Courts have noted that multipliers have been used from one to five times the hourly rate. California v. Meyer, 174 Cal. App. 3d 1061, 1073, 220 Cal. Rptr. 884 (1985). Due to the importance of the consumer views presented and the factors set out above, we determine that the maximum multiplier of five should be applied to the fee awards for witnesses Gamboa, Tran, and Der. We further determine that each witness contributed equally to the outcome such that the fee should be shared equally, as the Court did in Serrano.

100.6 (total hours) x \$125 (hourly rate) =	\$12,575
\$12,575 x 5 = \$62,875 divided by 3 =	\$20,958
Greenlining Institute (Gamboa)	\$20,958
Chinese for Affirmative Action (Der)	\$20,958
Vietnamese Community of Orange County (Tran)	\$20,958

The second and third listed groups, Chinese For Affirmative Action and Vietnamese Community of Orange County, participated in this proceeding as witnesses for Intervenors. Therefore, the total amount \$62,875.00 will be included in the compensation award to The Greenlining Institute with the instruction that The Greenlining Institute is to pay over to Chinese For Affirmative Action and Vietnamese Community of Orange County \$20,958 each within 10 days of receipt of the compensation payment.

The Intervenors also sought compensation for Guillermo Rodriguez, Jr., for 30.45 hours of time. Mr. Rodriguez did not testify at the hearings, nor has his specific contribution been identified, such that the above-stated factors do not clearly apply to his activities. For this reason, we will use our standard billing procedure of an hourly rate multiplied by the number of hours.

$$\begin{aligned} & \text{Rodriguez hours (29.5) x rate (\$95, D.96-08-040)} \\ & = \$2,802.25 \end{aligned}$$

B. Attorney's Fees

Intervenors requested compensation for three attorneys:

Robert Gnaizda, Susan E. Brown, and Mishka J. Migacz. The total hours worked, corrected to exclude impermissible activities, and hourly rates¹ for each attorney:

Mr. Gnaizda	320.05 (hours)	x \$260/hour	= \$83,330.00
Ms. Brown	300.63 (hours)	x \$225/hour	= \$67,641.75
Ms. Migacz	429.1 (hours)	x \$125/hour	= \$53,637.50

i. Hours Claimed

Intervenors documented the claimed hours by presenting a daily breakdown of hours for each attorney with a brief description of each activity. These totals have been corrected to exclude activities for which compensation is not available and to reflect travel time at one-half the hourly rate. As corrected, the hourly breakdown presented by Intervenors reasonably supports its claim for total hours.

In addition, the total hours for Mr. Gnaizda include 35 hours for post decision work to (1) follow up to ensure that the reparations checks were issued to consumers and (2) negotiation of the intervenor funding settlement agreement.

¹ The stated hourly rates are the rates most recently approved by the Commission for Mr. Gnaizda, Ms. Brown, and an attorney with comparable experience to Ms. Migacz. D.96-08-040. Intervenors requested higher hourly fees; a request we reject for the reasons stated in D.96-08-040, and decisions cited therein.

ii. Hourly Rates

The hourly rates used above are those previously approved by the Commission. Although Intervenors requested substantially higher hourly rates, we are not persuaded to change the rates, nor our means of calculating the rates.

We find the rates determined in D.96-08-040 to be reasonable and consistent with our past treatment of attorney and expert fees for comparable work. CTS filed under seal its hourly billing rates to support Intervenors' request for higher hourly rates. Although the legal basis for this award is our equitable power to award reasonable attorney's fees and not the intervenor funding statutes, both mechanisms call for the award of reasonable fees. In our view, "reasonable" should have the same meaning whether in the context of the intervenor statutes or our equitable authority. Accordingly, we will use the previously-determined hourly rates.

C. Other Costs

Intervenors requested \$3,796 for other costs (e.g., copying, postage, deliveries). Intervenors referenced Exhibit D to their request as support for their source of this number. Careful review of Exhibit D failed to reveal this amount in any place.

Exhibit D consisted of five pages. Page one and five appeared to be duplicates, so we will disregard page five. Page one included a list of expenses and was labeled "CTS Report by Category, 1/1/95 through 6/30/97, page 1." The page listed five categories with what appeared to be subtotals under each. The second page had the same heading as the first including identification as "page 1." This page also had the same categories but with different entries and different subtotals. The amount stated at the bottom of the page, \$1,513.19, was

labeled "Total Income/Expense." This total, however, is not the arithmetic sum of the subtotals listed on the two pages, each of which is labeled "page 1." The third page has the same heading as the first two, but was labeled "page 2" and showed the number "622.44" as the amount of "Total Income/Expense." The fourth page was labeled "Latino Issues Forum, CTS Transaction Report, 1/1/96 through 7/1/97." This page showed "Total Expenses" to be \$2,283.07.

The sum of the amounts labeled total expense listed at the bottom of each page does not add to the amount stated in Intervenors' request:

Second Page 1	total stated	\$1,513.19
(not sum of two pages)		
Third Page	total stated	\$ 622.44
Fourth Page	total stated	\$ <u>2,283.07</u>
	Total	4,418.70

The amount stated at the end of the second page one does not correspond to the total of the preceding subtotals. The sum of the numbers labeled "total" at the end of each page is not the amount requested by Intervenors.

The Assigned ALJ issued a ruling informing Intervenors that "exhibit [D] does not support the amount included in the request" and directing Intervenors to amend their request "to include an explanation of the calculations based on Exhibit D which yield a total of \$3,796." The ruling also questioned some entries and noted an apparent duplication. The ruling concluded by informing Intervenors that the request "particularly this portion, should be brought up to the level of clarity that a private client would expect of a law firm."

In response to the ALJ's ruling, Intervenors submitted "itemized expense vouchers and receipts for all entries that were under question submitted

under Exhibit D, totaling \$3,796." Amendment at page 15. The attached sheets of paper contain copies of random receipts and internal expense sheets that are in no way compiled nor tied to the previous reported amount. Again, nowhere in the Exhibit are totals shown which add up to \$3,796.

The amendment did reduce the total requested by \$152.42 for an amount mistakenly charged. The amendment also reduced by one-half a duplicate charge for Mark Associates. Intervenors stated that "if Greenlining pays for the services, Latino Issues reimburses Greenlining half the charges." Amendment at 16. This is an error as the charges for Mark Associates on 7/30/96 would now appear in the total not two times but only one and a half. To correct the compensation request to include this charge only once would require subtracting the whole amount, because it was included twice.

In sum, the documents do not reasonably support Intervenors' request for compensation for their additional costs. The Intervenors failed to comply with the ALJ's request to clarify the calculations which lead to \$3,796, an amount which is not supported by any document submitted by Intervenors. Given this state of the record, we are in no position to award the amount requested.

4. Award

We award the Latino Issues Forum:

Brown Fees \$67,641.75

Rodriguez 2,802.25

Total \$70,444.00

We award the Greenlining Institute:

Gamboa Fees \$20,958

Der Fees \$20,958

Tran Fees \$20,958

Gnaizda Fees \$83,330

Migacz Fees \$53,637.50

Total \$199,841.50

We will assess responsibility for payment to Communication TeleSystems International, as provided in the partial settlement agreement.

As in all intervenor compensation decisions, we put Intervenors on notice that the Commission Telecommunications Division may audit Intervenors' records related to this award. Thus, Intervenors must make and retain adequate accounting and other documentation to support all claims for intervenor compensation. Intervenors' records should identify specific issues for which it requests compensation, the actual time spent by each employee, the applicable hourly rate, fees paid to consultants, and any other costs for which compensation may be claimed.

5. Comments on Draft Decision

The draft decision of the ALJ in this matter was mailed to the parties in accordance with Pub. Util. Code Section 311(g)(1) and Rule 77.1 of the Rules of Practice and Procedure. CTS filed comments on January 29, 1999, in which it

supported the draft decision. Greenlining filed comments on February 3, 1999, in which it argued that higher hourly rates should be adopted.

Findings of Fact

1. CTS and Intervenors reached a partial settlement agreement which resolves the two outstanding issues in this proceeding, intervenor compensation and whether funds from uncashed reparations checks escheat to the state. The settlement agreement is Attachment A to this decision.

2. The settlement agreement does not specify the exact amount of compensation to be paid to intervenors but allows the Commission to make that determination.

3. Reasonable compensation for the Greenlining Institute and the Latino

Issues is:

Brown Fees	\$67,641.75
Rodriguez	<u>2,802.25</u>
Total	\$70,444.00
Gamboa Fees	\$20,958
Der Fees	\$20,958
Tran Fees	\$20,958
Gnaizda Fees	\$83,330
Migacz Fees	<u>\$53,637.50</u>
Total	\$199,841.50

4. Intervenors' filed documents do not reasonably support their request for compensation for their additional costs.

Conclusions of Law

1. The settlement agreement, other than the disposition of funds from uncashed checks remaining after the intervenor compensation award, is

reasonable in light of the whole record, is consistent with the law, is in the public interest, and should be approved.

2. In order to assure prompt compliance with the terms of the settlement agreement, and to quickly obtain the benefits of the settlement agreement for California consumers, this order should be made effective immediately.

3. California Supreme Court precedent permits the Commission to award attorneys' fees out of a common fund created in a quasi-judicial reparations case. The uncashed checks in this case are a portion of such a common fund that lawfully may be used to pay Intervenors' attorney's fees. Nothing in Code of Civil Procedure § 1519.5 prevents the Commission from ordering this equitable remedy.

4. The parties presented no legal authority allowing the Commission to disregard the Unclaimed Property Law, Code of Civil Procedure § 1519.5, and divert unclaimed funds to a consumer education fund as set out in paragraph 5 of the settlement agreement.

5. Paragraph 5 of the settlement agreement should not be approved.

6. This decision disposes of the issue identified for rehearing in D.97-10-063.

7. This is an enforcement proceeding, and so this decision is issued in an "adjudicatory proceeding" as defined in Pub. Util. Code § 1757.1.

O R D E R

Therefore, **IT IS ORDERED** that:

1. The settlement agreement, other than paragraph 5, affixed hereto as Attachment A and made a part hereof is approved, and the parties are directed to comply with the terms set forth in the settlement agreement, other than paragraph 5.

2. The Latino Issues Forum is awarded \$ 70,444 in attorney's and expert's fees.

3. The Greenlining Institute is awarded \$199,841.00, of which \$20,958 each must be paid over to the Vietnamese Community of Orange County and the Chinese For Affirmative Action, in attorneys' and experts' fees.

4. This decision shall be served on the Vietnamese Community of Orange County and the Chinese For Affirmative Action.

This order is effective today.

Dated April 1, 1999, at San Francisco, California.

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

ATTACHMENT A

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Investigation on the Commission's own
motion into the operations, practices, and
conduct of Communications TeleSystems
International and Edward S. Soren, President
of Communications TeleSystems
International, to determine whether they have
complied with the laws, rules, regulations
and applicable tariff provisions governing the
manner in which California consumers are
switched from one long-distance carrier to
another, and other requirements for long-
distance carriers.

I.96-02-043

PARTIAL SETTLEMENT

(COUNSEL LISTED ON SIGNATURE PAGES)

1
2
3 **BEFORE THE PUBLIC UTILITIES COMMISSION**
4 **OF THE STATE OF CALIFORNIA**
5

6 Investigation on the Commission's own
7 motion into the operations, practices, and
8 conduct of Communications TeleSystems
9 International and Edward S. Soren, President
10 of Communications TeleSystems
11 International, to determine whether they have
12 complied with the laws, rules, regulations
and applicable tariff provisions governing the
manner in which California consumers are
switched from one long-distance carrier to
another, and other requirements for long-
distance carriers.

I.96-02-043

13 **PARTIAL SETTLEMENT**

14 This settlement agreement, to be presented to the California Public Utilities
15 Commission ("CPUC") for adoption, by and among Communications TeleSystems
16 International ("CTS"), The Greenlining Institute, and Latino Issues Forum, collectively
17 known as the "parties," resolves certain unresolved issues in investigation I.96-02-043.

18 WHEREAS on February 23, 1996, the CPUC opened I.96-02-043, styled as an
19 "Investigation on the Commission's own motion into the operations, practices, and conduct
20 of Communications TeleSystems International and Edward S. Soren, President of
21 Communications TeleSystems International, to determine whether they have complied with
22 the laws, rules, regulations and applicable tariff provisions governing the manner in which
23 California consumers are switched from one long-distance carrier to another, and other
24 requirements for long-distance carriers."

25 WHEREAS the CPUC has rendered decisions 97-05-089 and 97-10-063, which
26 decisions CTS has challenged on various grounds in the state and federal courts, and which
27 challenges are still pending in the Ninth Circuit Court of Appeals (appealing a decision
28 rendered in United States District Court for the Northern District of California, Case No.

1 C-97-1935 MHP), and in the United States District Court for the Northern District of
2 California, Case No. C-9802861 MJJ.

3 WHEREAS decisions 97-05-089 and 97-10-063, which ordered CTS to pay certain
4 sums denominated as "reparations" to certain of its former customers, did not decide on the
5 disposition of unclaimed "reparations" checks (the "Escheat Issue").

6 WHEREAS the Commission still has before it the application of The Greenlining
7 Institute and Latino Issues Forum (jointly "Intervenors"), intervenors in this proceeding, for
8 intervenor compensation (the "Intervenor Compensation Issue").

9 WHEREAS CTS has argued that the Commission lacks authority to order it to pay
10 Intervenor Compensation in this proceeding.

11 WHEREAS the parties wish to settle the Escheat Issue and the Intervenor
12 Compensation Issue separate and apart from any other issues raised by decisions 97-05-089
13 and 97-10-063 and without prejudice to CTS' pending or future challenges to those
14 decisions.

15 THEREFORE, in consideration of the foregoing and based upon the mutual
16 promises made by the parties to each other, the parties hereby agree as follows:

17 1. Upon the mailing of checks by the CPUC's Consumer Services Division
18 ("CSD") to consumers as contemplated in decisions 97-05-089 and 97-10-063, any checks
19 that are returned as undeliverable shall be collected by CSD and returned to CTS as
20 provided in D.97-05-089.

21 2. The funds represented by checks returned to CTS, together with the funds
22 represented by consumer checks which are not presented for payment within 90 days of
23 mailing by CSD, shall constitute an equitably created fund for the purpose of furthering the
24 interests of utility ratepayers (the "CTS Fund"). CTS shall provide to Intervenors and CSD
25 a complete accounting regarding the CTS Fund within 100 days after the consumer checks
26 are mailed by CSD (the "Accounting Date").

27 3. The parties hereby recommend to the CPUC that reasonable fees for Intervenor
28 Compensation in this matter shall be \$373,492.08. This recommended amount includes

1 most elements of Intervenor's prior fee application, less the compensation previously
2 sought for activities that ALJ Bushey has ruled could not be compensated, plus an
3 allowance of \$15,000 for attorney, staff, and expert work related to the identification of
4 consumers eligible for "reparations." The CPUC shall make the final determination
5 regarding reasonable fees for Intervenor's. CTS will pay, out of the CTS Fund, the amount
6 of reasonable fees as determined by the CPUC to Intervenor's, in three (3) equal monthly
7 installments with the first monthly installment payable on the Accounting Date. These
8 payments shall be divided between Intervenor's as specified in Exhibit "A" attached hereto.
9 CTS will not be required to pay any sums to Intervenor's from any source other than the
10 CTS Fund. The parties acknowledge that the amount of the CTS Fund may be less or more
11 than the stipulated amount of Intervenor Compensation in this proceeding, and Intervenor's
12 agree to bear the financial risk that the CTS Fund will not have sufficient funds to pay the
13 full amount of Intervenor Compensation.

14 4. Intervenor's will not seek, and the CPUC will not order, payment of intervenor
15 compensation in I.96-02-043 from any source other than the CTS Fund.

16 5. If, after payment of intervenor compensation, any sums remain in the CTS
17 Fund, those sums shall be paid to the Consumer Protection Fund to be created in I.98-02-
18 025.

19 6. By entering into this settlement agreement, CTS does not admit any liability
20 fault or wrongdoing. Further, CTS does not waive its right to challenge decisions 97-05-
21 089 and 97-10-063 in any forum and on any grounds. Neither the CPUC nor any of the
22 parties, shall argue in any forum that this partial settlement, the agreement of any of the
23 parties to this partial settlement, or any decision of the CPUC regarding this partial
24 settlement constitutes a waiver, admission, or any other evidence regarding the
25 appropriateness or lawfulness of decisions 97-05-089 or 97-10-063.

26 7. This partial settlement, if adopted by the CPUC, constitutes the final resolution
27 of the Escheat Issue and the Intervenor Compensation Issue in this proceeding.

28 8. CPUC approval of this partial settlement shall not constitute precedent

1 regarding any issue, it shall not be cited by any party to any proceeding as such.

2 9. The CPUC shall retain jurisdiction over the Escheat Issue and the Intervenor
3 Compensation Issue to enforce the terms of this partial settlement agreement.

4 Dated: September _____, 1998

Communications TeleSystems International

6 By: _____

7 David C. Brownstein
8 HELLER, EHRMAN, WHITE & McAULIFFE
9 Counsel to Communications TeleSystems
10 International

11 Dated: September 29, 1998

The Greenlining Institute

12 By: _____

13 Robert Gnaizda
14 Counsel to The Greenlining Institute

15 Dated: September 30, 1998

Latino Issues Forum

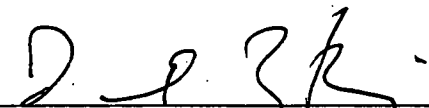
16 By: _____

17 Susan E. Brown
18 Counsel for Latino Issues Forum
19
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21
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27
28

1 regarding any issue, it shall not be cited by any party to any proceeding as such.

2 9. The CPUC shall retain jurisdiction over the Escheat Issue and the Intervenor
3 Compensation Issue to enforce the terms of this partial settlement agreement.

4 Dated: September 29, 1998 Communications TeleSystems International

5
6 By: 
7 David C. Brownstein
8 HELLER, EHRMAN, WHITE & McAULIFFE
9 Counsel to Communications TeleSystems
10 International

11 Dated: September _____, 1998 The Greenlining Institute

12 By: _____
13 Robert Gnaizda
14 Counsel to The Greenlining Institute

15 Dated: September _____, 1998 Latino Issues Forum

16 By: _____
17 Susan E. Brown
18 Counsel for Latino Issues Forum



785 MARKET STREET, 3RD FLOOR SAN FRANCISCO, CA 94103-2003
 PHONE: (415) 284-7200 FAX: (415) 284-7210 <http://www.greenlining.org>

October 20, 1998

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Maribeth Bushey
 Administrative Law Judge
 California Public Utilities Commission
 505 Van Ness Avenue, 5th Floor
 San Francisco, CA 94102

**CTS - I.96-02-043
 EXHIBIT A**

Dear Judge Bushey:

This letter reflects the intent of Greenlining Institute and Latino Issues Forum, pursuant to the Proposed Partial Settlement, to divide the attorney fees in accordance with the formula of hourly rates and time expended as set forth in prior documents reflecting hours expended separately for each non-profit.

Sincerely,

Robert Gnaizda
 General Counsel

Susan E. Brown
 Legal Counsel

(END OF ATTACHMENT A)