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Decision 99-07-046 July 22, 1999

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Rulemaking on the Commission's Own Motion
into Universal Service and to Comply with the
Mandates of Assembly Bill 3643.

Rulemaking 95-01-020
(Filed January 24, 1995)

Investigation on the Commission's Own Motion
into Universal Service and to Comply with the
Mandates of Assembly Bill 3643.

Investigation 95-01-021
(Filed January 24, 1995)

(See Decision 96-10-066 for list of appearances.)

OPINION

This decision grants intervenor compensation to Public Advocates, Inc. (PA) 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 the amount of \$75,238 for its contributions to Decision (D.) 96-10-066.

1. Procedural Background

The Commission initiated the above-captioned rulemaking (OIR) and investigation (OII) on January 24, 1995. This proceeding was opened as part of the Commission's comprehensive review of how regulatory policies regarding universal service need to be revised as a result of the opening of monopoly telecommunications markets to competition. Initial comments to the questions raised in the OIR/OII were filed in March 1995 by interested persons. As a result of those initial comments, the Commission issued D.95-07-050. That interim

decision described and set forth a proposed set of universal service rules. Opening and reply comments to the proposed rules were solicited by the Commission in the fall of 1995. A series of public participation hearings were also held throughout the state regarding the proposed rules.

Evidentiary hearings were held in late April and early May of 1996 on issues regarding the cost proxy models. After the filing of briefs, the proposed decision of the assigned Administrative Law Judge (ALJ) was mailed on August 5, 1996. Comments to the proposed decision were filed in late August and early September, and an en banc oral argument was held before the Commission on August 27, 1996.

A revised proposed decision was mailed to the parties for comment on October 9, 1996. Those comments were reviewed, and appropriate changes were made. This process culminated in the issuance of D.96-10-066, and the adoption of the universal service rules.

PA timely filed its request for compensation (RFC) on December 26, 1996. On January 10, 1997, PA filed its first motion to augment its filing. PA claimed that the press of other proceedings and the holidays led to the initial request being filed without all needed information. There were no protests to this motion. No other parties would be hurt by granting the motion. The motion is therefore granted and the augmentation accepted.

PA requested \$151,061.91 for its contribution to D.96-10-066 plus an additional \$17,987.30 for the issue of redlining deferred to this proceeding by D.96-12-029.

On January 24, 1997, GTE California Incorporated (GTEC) filed a response to PA's request for compensation. The response addressed PA's requested hourly rates, costs, legislative activity, compensation for redlining issues, and allocation of any intervenor compensation award. GTEC asked that we treat the

hourly rates, costs and legislative activity in a manner consistent with previous decisions. GTEC also recommended that we allocate any award to all telecommunications carriers authorized to offer competitive local and toll services in California. As to redlining, GTEC pointed out that PA did not allocate redlining costs as directed by D.96-12-029. GTEC is correct. On February 7, 1997, PA filed its response.

On February 17, 1998, PA filed a motion to amend its request for compensation for the second time. In its motion, PA included tables which were represented as being those incorporated by reference in its previous filings. PA also sought to change its filing to request compensation only on behalf of the five parties indicated above. PA did not change the amount of compensation requested. There were no protests to this motion. GTEC filed a response on March 9, 1998, reiterating some points made in its previous response. No other parties would be prejudiced by granting the motion. The motion is therefore granted and the augmentation accepted.

On March 20, 1998, PA filed a motion to amend its request for compensation for the third time. The amendment was primarily argument in response to a proposed order for the Commission's meeting of March 26, 1998. The amendment identified 31.4 hours leading up to the notices of appearance and joinder filed on March 18, 1996 and April 16, 1996 on the part of the 17 ineligible parties. It also identified 2.8 hours, after those dates, spent responding to a few inquiries from those parties. There were no protests to this motion. No other parties would be prejudiced by granting the motion. The motion is, therefore granted.

2. Eligibility Requirements for Awards of Compensation

Intervenors who seek compensation for their contributions in Commission proceedings must file requests for compensation pursuant to PU 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.

In an ALJ ruling dated August 21, 1995, Southern Christian Leadership conference, National Council of La Raza, Korean Youth and Community Center, Filipinos For Affirmative Action, and Filipino Civil Rights Advocates were found eligible for an award of compensation in this proceeding. PA's filing for compensation dated December 26, 1996 and its first amendment dated January 10, 1997 were 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, 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, Spanish Speaking Unity Council. Only the first five are eligible. In its February 17, 1998 motion, PA modified its request to include only the five eligible parties.

In this proceeding, exclusive of the issue of redlining, PA represented 22 parties, of which only five were found eligible for an award. Over the course of this proceeding, PA acquired 17 additional parties, but never filed an NOI requesting eligibility for them.

In D.99-03-054, we addressed similar concerns regarding PA's practice of filing intervenor compensation on behalf of ineligible parties. Since PA's participation in this proceeding and the instant filing were made prior to our issuance of D.99-03-054, we will treat PA's request for compensation as only on behalf of the five eligible parties. However, as stated in D.99-03-054, 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 as 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).

3. Matrices

In D.96-06-029 Ordering Paragraph (O.P. 8), we ordered PA to provide a matrix with its compensation requests. The matrix was to provide a detailed breakdown of hours worked in the telecommunications "Roadmap" proceedings. PA did not do so in its initial request or in its January 10, 1997 augmentation. PA stated "intervenors have already filed much of the information required by D.96-06-029, and hereby incorporate those tables by

reference."¹ This refers to a filing made in the local exchange service proceeding.² Those matrices cover hours through August 9, 1996.

In its February 17, 1998 amendment, PA included tables filed on December 24, 1996, in the local competition proceeding, Rulemaking (R.) 95-04-043, Investigation (I.) 95-04-044. PA represented that these tables satisfy the requirements of D.96-06-029. These tables still do not fully satisfy this requirement. The tables are broken down by decision rather than by proceeding as required. Totals by proceeding can be calculated from the tables but are not included in the tables.

In its tables filed with its February 17, 1998 amendment, PA stated the following:

"First, Intervenor's attach certain tables which the request had instead incorporated by reference." (p. 2.)

"In doing so, the request did not provide the Commission with and incorporate the updated table counsel filed on December 24, 1996, in the local-competition proceeding, File Nos. R.95-04-043/I.95-04-044. Counsel therefore includes at Exhibit A, a complete set of tables constituting the roadmap matrix." (p.3.)

From these statements, we conclude that the tables included in Exhibit A are supposed to be the tables previously included by reference and the table filed on December 24, 1996.

¹ Augmented request for compensation regarding D.96-10-066, PA, January 10, 1997, p. 20.

² Supplement to intervenors' prior requests for compensation in response to ALJ's ruling, File No. R.95-04-043 (August 16, 1996.)

On October 3, 1997, PA provided at the request of the ALJ a copy of the filings referenced in PA's original request that included the referenced tables. A comparison of those tables with the tables submitted with PA's February 17, 1998 filing reveals that they are not the same as the following cases show.

- The table concerning D.95-07-054 has differences in the attorney hours claimed and moves expenses between issues.
- The table concerning D.95-12-056 has differences in attorney and consultant hours and expenses, and moves pending claims to awarded claims.
- The table concurring D.96-03-020 and D.96-04-029 has expenses and hours moved from pending to awarded and moves some expenses between issue categories.
- The three tables discussed above were originally submitted on August 16, 1996 in R.95-04-043/I.95-04-044, the Local Exchange Service proceeding. Of the six tables submitted with the February 17, 1998 amendment, these three are clearly not the tables referenced in the original filing as represented by PA..

Recently, in D.99-03-054, we addressed similar shortcomings in PA's attempt to comply fully with the matrix table requirements set forth in D.96-06-029. However, the instant request was filed prior to the issuance of D.99-03-054. In summary, we find similar deficiencies in the instant request. For brevity, we do not repeat our concerns here, but advise PA to consult D.99-03-054 in future filings requiring compliance with the Commission's matrix requirements.

4. Allocation

When reaching a decision on intervenor compensation, we must, among other things, decide if the intervenor has made a substantial contribution on an individual issue. Then, we must consider whether the costs related to that issue were reasonably incurred. We generally disallow costs associated with such things as legislative and press contacts. We also, generally, do not allow the full

hourly rate for travel time. Therefore, a filing for intervenor compensation must clearly lay out for each issue the substantial contribution, the total costs and hours allocated, and what the costs and hours were for. A filing that does not do these things does not provide sufficient information for us to judge the merits of the request and make necessary adjustments.

In its filing, PA allocates its time to the following topics:

- Base/Common
- Basic Services/Universal Lifeline Telephone Service (ULTS)
- Redlining
- Multilingual Service
- Advanced Services
- Costs
- Section 1801-1808

PA's discussion of its substantial contribution refers to the following topics:

- 95% subscribership goal
- Redlining
- Multilingual Service Requirements
- Discounts for Health Care Providers and Community-Based Organizations
- Definition of Basic Service
- ULTS

PA left it to us to relate the two lists of topics. We will do so in our award calculation.

In addition, PA's discussion of the hours carried over by D.96-12-029 for redlining refers to the following:

- 95% subscribership goal
- Advanced Services
- Lifeline/basic service

We note that there is no allocation of the carried-over hours to anything other than redlining. PA provided no timesheets for the carried-over hours attributed to redlining.

Additionally, there is no explanation of how the allocated hours for other topics tie to the hours and tasks performed by PA's attorneys, experts, and law clerks, that PA did provide. PA's filing and specifically its allocation by topic is, therefore, deficient.

5. Substantial Contribution

In its March 20, 1998 amendment to its filing, PA summarized its contributions to topics as following:

1. "In response to Intervenor's key contentions and recommendations, the Commission affirmed its 95 percent subscribership goal, with specific assessment by ethnicity and geography as well as income." And later: "Decision 95-07-050, the Commission's interim opinion, . . . adopted Intervenor's recommendation and explicitly resolved to keep lifeline rates at their present levels: \$5.62 for flat-rate service, \$3.00 for measured service, and \$10.00 for installation. Decision 96-10-066 incorporated in its proposed rules Intervenor's concerns that all carriers make customers aware of the availability and terms of lifeline service."
2. "The Commission specifically continued its explicit prohibition against telecommunications redlining[.]"
3. "[I]ts [the Commission's] multilingual service requirements will advance universal service for over 7 million Californians speaking languages other than English."
4. "For the first time ever, the Commission also established access and discounts to the information superhighway for community-based organizations providing education, health, and employment services to these communities, as well as for schools, libraries, and municipal and county government-owned and operated hospitals and clinics, adopting Intervenor's positions on health-care providers as well as community-based organizations."

- "These four issues correspond rather clearly to the headings employed in the matrix: 'Basic Service/ULTS,' 'Redlining,' 'Multilingual Service' and 'Advanced Services'."

"The Draft Decision does separate the universal service issue into '95 subscribership goal' and 'lifeline service,' but they are merely perspectives on the same issue. The draft adds a new category, "definition of basic service," but as the compensation request stated, the phrase arose in the description of substantial contribution to advanced services for community-based organizations and health clinics. The matrix properly identifies hours incurred on a fifth issue, proxy-cost models ("Costs"), even though the request does not identify a corresponding substantial contribution on that issue. The request does explain why these 18.2 hours on proxy-cost models were reasonably incurred in the context of the entire proceeding and should be compensated."

As to redlining PA states as follows:

"D.96-10-066 did affirm the Commission's 95 percent subscribership goal on pages 53-54. It did recognize the need for active marketing and annual review on pages 63-64 and 234. And at pages 80-92, it did adopt Intervenor's suggestion to provide community-based organizations in underserved communities with access to advanced services."

We address PA's substantial contribution as follows:

A. Basic Service/ULTS

1. 95% Goal for Universal Service

In D.95-07-050, we solicited comments on whether subscribership should be measured only by income. PA recommended that we measure subscribership by language status, race, and income. We decided to retain our existing measurement including measuring subscribership by income, ethnicity and geography. We also extended our 95% goal to other

telecommunications carriers. However, we did not limit the goal to poor, non-white, and non-English-speaking households.

Our retention of the existing measurement method, and expansion of the applicability of the 95% subscribership goal, was due to, in part, the input of PA and other parties. Therefore, we will award PA 85% of the attributed hours, which is commensurate with their contribution to the topic of Basic Service/ULTS.

B. Multilingual Service

This topic was addressed under the caption of Bilingual Outreach. PA made three specific recommendations:

1. Every CLC should inform each new customer, and regularly inform existing customers of the availability, terms, and statewide rates of lifeline telephone service and basic service. Public Advocates recommends that this information (and other information such as bills and notices) be provided to non-English-speaking customers in the common languages spoken within the exchange or larger territory, including Spanish, Cantonese, Mandarin, Tagalog, Vietnamese, and Korean.
2. Each carrier must have bilingual customer service representatives available in the common languages of the exchange.
3. Each carrier must conduct targeted marketing and outreach to non-English speaking populations.

PA seeks compensation for its contribution to D.96-10-066.

However, D.96-10-066 does not address the issues raised in PA's recommendations 1 and 2. Instead, the Commission addressed much of recommendations 1 and 2 in D.95-12-056. Any further resolution was deferred by D.96-10-066 to the local exchange competition proceeding R.95-04-043 and I.95-04-044, and the petition to modify D 95-07-054 and D.96-02-072.

Recommendation 3 was rejected. Therefore, PA made no substantial contribution on this topic in this proceeding.

C. Advanced Services

1. Community Based Organizations

PA proposed that discounts be given to qualifying community based organizations. We adopted this recommendation. This constitutes a substantial contribution to this issue.

2. Definition of Basic Services

PA opposed the 65% subscribership criterion we proposed to use in deciding whether a service should be included in basic service. We retained this criterion. While we believe that our basic service guidelines address the general concerns raised by several parties including PA, we do not find that PA made a significant contribution to this issue.

3. Inclusion of Advanced Services in ULTS

PA recommended that advanced services be made available to qualified ULTS customers at 50% discount. We rejected this proposal. We, therefore, do not find that PA made a substantial contribution to this issue.

4. Summary Advanced Services

Based on the above, we will award PA half of the reasonably incurred hours attributable to the topic of advanced services.

D. Costs

PA made no assertion of substantial contribution to this topic. We conclude that no substantial contribution was made.

E. Redlining

In D.95-12-056 under the heading of redlining, we addressed the following eight proposals by P.A.:

1. Each carrier must be responsible for the Commission's goal of at least 95% telephone penetration in poor, non-white, and non-English-speaking households.
2. Each carrier must actively market its telephone services to the above identified households and small businesses throughout each exchange or larger territory in which it operates.
3. Each carrier must develop and submit one-year, two-year, and five-year business plans with detailed targets towards obtaining the Commission's goal among poor, non-white, and non-English-speaking households, and meeting the minimum specified criteria in D.94-09-065.
4. The Commission should annually assess the degree to which carriers have or have not met their universal-service goals in California's poor, non-white, and non-English-speaking communities, and should exercise their authority to ensure that their universal service goals are actively and effectively pursued.
5. The Commission should analyze the service territory maps of all carriers to determine if there are areas suffering from an absence of competition. If such areas exist, the Commission should require carriers who serve territories bordering these redlined communities to expand their territories to encompass these underserved communities to increase competitive choice.
6. Enhanced telecommunications services such as digital, broadband, and fiber or fiber-coax services must become part of basic service when such service is available to (even if not yet purchased by) 51% of the customers in the exchange, neighborhood, city, council, county, metropolitan area, or larger territory such as a LATA.
7. Each carrier that is developing or building out new telecommunications technologies or services (hardware or software) must do so without discrimination in access on the basis of income, race, or ethnicity, or geography.

8. Enhanced telecommunications services must be available to qualified lifeline customers at lifeline rates, i.e., no more than 50% of the regular price.

We rejected proposal 5 and referred the other proposals to the Universal Services proceeding.

In D.96-12-029, we deferred to this proceeding consideration of 105.18 hours devoted to the issue of redlining as follows:

"PA has claimed a total of 105.18 hours representing a substantial contribution to D.95-12-056 for time spent on the issue of redlining. In our discussion of PA's redlining proposals in D.95-12-056, we concluded that PA's redlining proposals were better addressed in our Universal Service proceeding.

"While not adopting any of PA's specific proposed rules aimed at prohibiting redlining, D.95-12-056 did adopt a general rule explicitly prohibiting redlining by telecommunications providers. We conclude that PA's Comments contributed in a broad sense to the Commission's general perspective on the issue of redlining and helped frame the context for adoption of the general redlining prohibition adopted in D.95-12-056. PA's comments, however, are generally intended to provide a basis to justify adoption of its proposed rules.

"PA has not provided an allocation of its time, however, in a manner which permits us to separately identify an appropriate number of hours representing PA's contribution to the development of our general rule adopted in D.95-12-056 prohibiting redlining. For this reason, we shall defer granting compensation for any of the hours claimed by PA for redlining issues until we consider PA's RFC in the Universal Service Proceeding. At that time, we shall have a complete record before us regarding PA's contribution to our decisions, both here as well as in the Universal Service Proceeding, on the issue of redlining. In preparing its RFC in the Universal Service Proceeding, we shall require PA to separately identify

the time spent on the development of its specific proposals for redlining in contrast to the time spent on its claimed contribution to the rule which we adopted in D.95-12-056 prohibiting redlining. Together with the record in both this proceeding and in the Universal Service Proceeding on the treatment of PA's redlining proposals, we shall then be in a position to determine what allowance, if any, is warranted for PA's time claimed on the redlining issue either in this proceeding or in the Universal Service Proceeding." (Emphasis added.)

In D.96-10-066 under the heading of Redlining, proposals two through eight were addressed. None of these specific proposals were adopted. Proposal one was specifically addressed under the heading of 95% Subscribership Goal for Universal Service. It is treated separately from the issue of whether subscribership should be measured by income only. It, along with two other proposals were referred to the headings of Redlining and bilingual service. It was not adopted under either of these headings.

In D.95-05-070, we did apply the 95% subscribership goal to all telecommunications carriers. We did not, however, limit it to poor, non-white, and non-English-speaking households. D.95-12-056, which referred consideration of PA's redlining proposals, including proposal one, occurred seven months after D.95-05-070 was adopted. Therefore, extension of the goal to all telecommunications carriers was due in part to PA's participation in this proceeding attributable to the 95% subscribership goal, and not to the recommendation and hours carried over by D.95-05-070.

In its request for compensation, PA did not provide any breakdown of the 105.18 hours as required. PA claimed that it is impossible to do so.³ We believe that these hours were spent on specific recommendations which we have rejected. PA did not allocate any of the 105.18 hours to the general rule or any issue other than redlining. Moreover, PA also did not provide the timesheets for the 105.18 hours claimed. Rather than totally deny PA compensation for any of the 105.8 hours, we will award PA 50% of its hours as a reasonable proxy of hours for PA's limited contribution to redlining issues.

6. Hourly Rates

PA requested the following hourly rates:

<u>Attorneys</u>	<u>Rates</u>
Mark Savage	\$235
Carmela Castellano	185
Richard Dwyer	200
Stefan Rosenzweig	335
Abigail Trillin	135
Patricia Nix Hodes	165
<u>Law Clerks</u>	
All	95
<u>Expert</u>	
Thomas Hargadon	250

PA requested these rates for work done in 1995 and 1996. PA claimed that this is appropriate to recognize the present value of work done in 1995. PA has

³ Request for intervenor compensation regarding D.96-10-066, PA, December 26, 1996, p. 4.

presented no compelling argument to convince us that we should depart from our long standing policy of paying the rates applicable to the period during which the work was performed. We shall therefore use rates we have previously approved for 1995 and 1996.

The rates we will use are as follows:

<u>Attorneys</u>	<u>1995</u>	<u>1996</u>	<u>Referenced Decision</u>
Mark Savage	\$225	\$235	D.96-06-029
Carmela Castellano	160	-	D.96-06-029
Richard Dwyer	-	185	D.98-04-025
Stefan Rosenzweig	260	260	D.98-04-025 and D.96-12-029
Abigail Trillin	100	-	D.96-12-029
Patricia Nix Hodes	155	-	D.96-12-029
<u>Law Clerks</u>			
All	55	55	D.98-04-025
<u>Expert</u>			
Thomas Hargadon	250	250	D.98-04-025

Consistent with our usual practice we will allow half of the attorney's rate for preparation of the compensation request.

7. PA's Requested Compensation

The Compensation requested by PA is as follows for D.96-10-066:

<u>Attorneys</u>	<u>Hours</u>	<u>Rates</u>	<u>Fees</u>
Savage	415.41	\$235	\$ 97,621.35
Castellano	54.70	185	10,119.50
Dwyer	48.10	200	9,620.00
Rosenzweig	7.10	335	2,378.50
Trillin	22.25	135	3,003.75
Chen (law clerk)	28.20	95	2,679.00
DeGuzman (law clerk)	29.70	95	2,821.50
Dundon (law clerk)	10.00	95	950.00
Hung (law clerk)	1.00	95	95.00
Petty (law clerk)	19.50	95	1,852.50
Tilton (law clerk)	<u>2.00</u>	<u>95</u>	<u>190.00</u>
TOTAL ATTORNEYS' FEES	637.96		\$131,331.10
<u>Experts</u>			
Hargardon	50.00	\$250	\$ <u>12,500.00</u>
Total Experts' Fees	50.00		12,500.00
ATTORNEYS' EXPENSES			\$ 7,230.81
TOTAL ATTORNEYS' FEES AND EXPENSES			<u>\$151,061.91</u>

Redlining: (Deferred to this proceeding by D.96-12-029.)

<u>Attorneys</u>	<u>Hours</u>	<u>Rates</u>	<u>Fees</u>
Savage	29.42	\$235	\$ 6,913.70
Castellano	25.68	185	4,750.80
Nix Hodes	6.40	165	1,056.00
Rosenzweig	3.10	335	1,038.50
Trillin	9.33	135	1,259.55
Jorgensen (law clerk)	6.25	95	593.75
Petty (law clerk)	25.00	95	<u>2,375.00</u>
TOTAL ATTORNEYS' FEES	105.18		\$ 17,987.30
TOTAL REQUEST			<u>\$169,049.21</u>

The requested hours, broken down by topic for D.96-10-066, including the redlining hours from the table above, are as follows:

<u>Requested Hours</u>							
1995	<u>Base Common</u>	<u>Basic Service ULTS</u>	<u>Redlining</u>	<u>Multilingual Service</u>	<u>Advanced Services</u>	<u>Costs</u>	<u>Sections 1801-7⁴</u>
Savage	46.03	10.28	35.41	6.23	39.92	0.30	6.82
Castellano	14.20	13.75	25.68	14.25	3.80		8.70
Nix Hodes			6.40				
Rosenzweig	4.60		3.10				
Trillin	3.25	6.33	9.33	6.33	6.34		
Law Clerks	1.50	3.50	31.25		14.50		
Hargadon	14.50				1.00		
(expert)							
1996							
Savage	180.96	16.80			68.79	6.65	26.38
Rosenzweig	1.80				0.70		
Dwyer	42.60	5.50					
Law Clerks	9.00	7.00			54.90		
Hargadon	14.25				9.00	11.25	
(expert)							

⁴ Preparation of compensation request. Reference is to PU Code sections.

8. Expenses

PA requested \$7,230.81 in expenses. PA did not allocate these expenses to particular topics. It assigns all expenses to its base/common category which is attributable to all topics.

It has been our practice to exclude expenses for meals and legislative contacts. PA has provided no compelling reason why we should not do so here. We will continue to apply this policy.

In this proceeding PA spent \$535.78 for messenger service. We are aware of no reason why messenger service would have been necessary in this proceeding. Such costs are excessive. We disallow \$485.78 which leaves \$50 to cover equivalent postage.

The expenses eligible for award are calculated as follows:

Request	\$7,230.81
Less:	
Meals	26.64
Legislative Contacts	121.42
Messenger Service	<u>485.78</u>
Total	\$6,596.97

9. Award

Our calculation of the award in this case is complicated by PA's generally deficient reporting data for its claim. For this reason, our approach requires some explanation as follows:

- The starting point is the hours requested by PA. These are called the Requested Hours. (See 7., PA's Requested Compensation.)
- The Requested Hours are then reduced to remove hours attributable to legislative and press contacts. Half of the hours attributable to travel are also deducted. This results in the Adjusted Requested Hours. (See 9.A.)

- The Adjusted Requested Hours are multiplied by the adopted hourly rates to derive the Adjusted Requested Fees. (See 9.B.)
- We will presume that the Base Common Fees (costs) are attributable to all topics. Therefore, the Base Common Fees are allocated to topics and added to the Directly Attributed Fees. This yields the Total Fees by Topic. Fees attributable to PU Code Sections 1801-1807, intervenor compensation request preparation, are not topic oriented and, therefore, receive no allocation of Base Common Fees.
- The Total Fees by Topic are multiplied by the portion recoverable due to a substantial contribution. The total is then added to the fees attributable to Section 1801-7, since we allow half of the full rate for preparation of the compensation request. The result is the Total Fees Recoverable.
- The allowable expenses are then calculated and added to determine the total award. (See 9.E.)

A. Adjustments To Requested Hours

It has been our practice not to reimburse for legislative contacts and press contacts. Therefore, we make the following reduction to the requested hours.

Legislative contacts:

Legislative	17.88 hours	
Letter to President Clinton	<u>1.13 hours</u>	
Total	19.01 hours	(Savage 1996)

Press contacts:

1.73 hours (Savage 1996)
0.75 hours (Castellano 1995)

It has also been our practice to allow half of the full rate for travel.

To keep the arithmetic simple, we will deduct the equivalent hours.

Travel:	0.38 hours (Savage 1995)
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After adjustment to delete hours spent on legislative contacts, and press contacts and reduction of hours for travel, the requested hours are as follows:

Adjusted Requested Hours

	Base <u>Common</u>	Basic Service <u>ULTS</u>	<u>Redlining</u>	Multilingual <u>Service</u>	Advanced <u>Services</u>	<u>Costs</u>	Sections <u>1801-7</u>
1995							
Savage	45.65	10.28	35.41	6.23	39.92	0.30	6.82
Castellano	13.45	13.75	25.68	14.25	3.80		8.70
Nix Hodes			6.40				
Rosenzweig	4.60		3.10				
Trillin	3.25	6.33	9.33	6.33	6.34		
Law Clerks	1.50	3.50	31.25		14.50		
Hargadon (expert)	14.50				1.00		
1996							
Savage	160.22	16.80			68.79	6.65	26.38
Rosenzweig	1.80				0.70		
Dwyer	42.60	5.50					
Law Clerks	9.00	7.00			54.90		
Hargadon (expert)	14.25				9.00	11.25	

B. Fee Calculation

Based on the hourly rates we adopt for attorneys and experts in this order and the adjusted requested hours, the adjusted requested fees are as follows:

<u>Adjusted Requested Fees</u>							
1995	<u>Base Common</u>	<u>Basic Service ULTS</u>	<u>Redlining</u>	<u>Multilingual Service</u>	<u>Advanced Services</u>	<u>Costs</u>	<u>Sections 1801-7⁵</u>
Savage	\$10,271	\$ 2,313	\$7,967	\$1,402	\$ 8,982	\$ 68	\$ 767
Castellano	2,152	2,200	4,109	2,280	608		696
Nix Hodes			992				
Rosenzweig	1,196		806				
Trillin	325	633	933	633	634		
Law Clerks	82	192	1,719		798		
Hargadon (expert)	<u>3,625</u>	<u> </u>	<u> </u>	<u> </u>	<u>250</u>	<u> </u>	<u> </u>
Subtotal	<u>\$17,651</u>	<u>\$ 5,338</u>	<u>\$ 16,526</u>	<u>\$4,315</u>	<u>\$11,272</u>	<u>\$ 68</u>	<u>\$1,463</u>
1996							
Savage	\$37,652	\$ 3,948			\$16,166	\$1,563	\$3,100
Rosenzweig	468				182		
Dwyer	7,881	1,018					
Law Clerks	495	385			3,020		
Hargadon (expert)	<u>3,562</u>	<u> </u>	<u> </u>	<u> </u>	<u>2,250</u>	<u>2,812</u>	<u> </u>
Subtotal	<u>\$50,058</u>	<u>\$ 5,351</u>			<u>\$21,618</u>	<u>\$4,375</u>	<u>\$3,100</u>
Total	\$67,709	\$10,689	<u>\$ 16,526</u>	\$4,315	\$32,890	\$4,443	\$4,563

⁵ Half of the full rate is used for preparation of the compensation request.

Using the above table, we calculate the factors used to allocate base common costs to the topics. The allocation factor is the fees attributable to a topic, divided by the total fees attributable to topics, excluding Base Common and Section 1801-7. For example, for Costs the allocation factor is $\$4,443 \div \$68,863 = 0.06$. The allocation of Base Common costs is $0.06 \times \$67,709 = \$4,063$.

Allocation Factor for Base Common Costs

<u>Topic</u>	<u>Fees</u>	<u>Allocation Factor</u>	<u>Allocation</u>
Basic Service/ULTS	\$10,689	0.16	\$10,833
Redlining	16,526	0.24	16,250
Multilingual Service	4,315	0.06	4,063
Advanced Services	32,890	0.48	32,500
Costs	<u>4,443</u>	<u>0.06</u>	<u>4,063</u>
Total	\$68,863	1.00	\$67,709

Total Fees By Topic

<u>Topic</u>	<u>Directly Attributed Fees</u>	<u>Base Common Costs</u>	<u>Total</u>
Basic Service/ULTS	\$10,689	\$10,833	\$ 21,522
Redlining	16,526	16,250	32,776
Multilingual Services	4,315	4,063	8,378
Advanced Services	32,890	32,500	65,390
Costs	<u>4,443</u>	<u>4,063</u>	<u>8,506</u>
Total	\$68,863	\$67,709	\$136,572

The total fees recoverable after consideration of the level of contribution is as follows:

<u>Topic</u>	<u>Total Fees Recoverable</u>		
	<u>Total Fees</u>	<u>Recoverable Portion</u>	<u>Recoverable Fees</u>
Basic Service/ULTS	\$ 21,522	0.85	\$18,294
Redlining	32,776	0.50	16,388
Multilingual Services	8,378	0	0
Advanced Services	65,390	0.50	32,695
Costs	<u>8,506</u>	<u>0</u>	<u>0</u>
Subtotal	\$136,572		\$67,377
Section 1801-7	<u>4,563</u>		<u>\$ 4,563</u>
Total	\$141,135		\$71,940

C. **Expenses**

The recoverable expenses are as follows:

Expenses eligible for recovery \$6,596.97

Without consideration of the costs attributable to the ineligible parties, PA would be eligible to receive the following proportion of the fees.

$$\$58,235 \div \$117,837 = 0.5 \text{ (See 9.B. Total Fees Recoverable)}$$

The recoverable expenses are, therefore, as follows:

$$\$6,596.97 \times 0.5 = \$ 3,298$$

The award would be as follows if no other factors are considered:

Recoverable Fees	\$71,940
plus: Recoverable Expense	<u>3,298</u>
Award	\$75,238

10. **Quality of Filing**

PA has a long history of making inadequate filings regarding intervenor compensation, especially regarding allocation by issue. We have repeatedly admonished them for this (e.g. D.88-05-028, D.90-09-080, D.90-09-089,

D.91-07-001, D.91-12-051, D.95-03-007, D.96-06-029). PA continues to make inadequate filings by ignoring our requirements as discussed above.

PA has had four opportunities to make an adequate filing in this proceeding. They are PA's initial filing on December 26, 1996, and PA's January 10, 1997, February 17, 1998 and March 20, 1998, amendments to its filing. In addition, on October 2, 1997, ALJ O'Donnell, in a phone conversation with PA's attorney Mark Savage, informed PA that 17 of the 22 parties it filed a request for compensation for were ineligible, and that the matrices included with its filing did not comply with D.96-06-029.

Our usual practice is to grant interest on the approved compensation award beginning 75 days after the request for award is filed. This assumes a complete and timely filing was made. PA's initial filing was submitted before the deadline. However, as discussed above and as demonstrated by the three amendments, it was and still is incomplete. Due to the incompleteness of PA's filing, we will grant no interest on the awarded compensation for the period prior to the effective date of this decision.

11. What Carriers Should Have to Pay The Award of Compensation

The only filings responding to PA's request for compensation were filed by GTE California Incorporated (GTEC). GTEC asserted that any award of compensation in this proceeding should be recovered from all telecommunications utilities authorized to offer local exchange service in California.

On April 23, 1998 we issued D.98-04-059 in R.97-01-009 and I.97-01-010. In this decision we revised our intervenor compensation program. We adopted principles that we will use "as a guide in considering future requests for compensation." (O.P.1.) They will not be applied here.

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 will be allocated between GTEC and Pacific in proportion to the number of access lines served.

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

12. Comments on Alternate Decision

The alternate decision of Commissioner Neeper in this matter was mailed to the parties in accordance with Public Utility Code § 311(g) and Rule 77.1 of the Rules of Practice and Procedure on June 8, 1999.

Timely comments were received from Public Advocates, Inc. and GTE California. The draft decision has been revised as appropriate in response to the filed comments.

Findings of Fact

1. By ALJ ruling dated August 21, 1995, Southern Christian Leadership Conference, National Council of La Raza, Korean Youth and Community Center, Filipinos for Affirmative Action, and Filipino Civil Rights Advocates were found eligible for compensation in this proceeding.

2. On December 26, 1996, PA filed a timely request for compensation regarding D.96-10-066 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, 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.

3. On January 10, 1997, PA filed a motion to amend its December 26, 1996 filing.

4. On January 24, 1997 and March 9, 1998, GTEC filed responses to PA's request for compensation and amendments.

5. On February 7, 1997, PA filed its reply to GTEC's response.

6. On February 17, 1998, PA filed a motion to amend its filing of December 26, 1996 for the second time.

7. On March 20, 1998, PA filed a motion to amend its request for compensation for the third time.

8. PA did not provide in its request for compensation, including the January 10, 1997 amendment, the complete matrices ordered by D.96-06-029 (O.P. 8). Its February 17, 1998 amendment did not fully satisfy the requirement.

9. In D.96-10-066, we did not adopt any of PA's specific proposals regarding redlining. However, PA's participation provided limited benefit to the Commission's analysis of redlining issues.

10. PA provided neither the allocation of the 105.18 hours spent on redlining required by D.96-12-029, nor the timesheets for the 105.18 hours.

11. PA did not clearly relate its allocation of hours to the topics addressed in its claim of substantial contribution.

12. PA did not clearly relate its allocation of hours spent on individual topics to its daily listing of hours and tasks.

13. PA has been previously admonished for inadequate intervenor compensation filings.

14. There were no protests to PA's January 10, 1997, February 17, 1998, and March 20, 1998 motions to amend its filing, and no other parties would be hurt by granting PA's motions.

15. PA's compensation filing, including the three amendments, is incomplete.

16. PA contributed substantially to D.96-10-066 to the extent discussed above.

17. Hourly rates as modified above, are not greater than the market rates for individuals with comparable training and experience.

18. The miscellaneous costs incurred by PA to the extent discussed above are reasonable.

Conclusions of Law

1. PA's January 10, 1997, February 17, 1998 and March 20, 1998, motions to augment its filing should be granted.

2. PA should receive no interest on the award prior to the effective date of this decision.

3. To the extent discussed in the decision, PA has fulfilled the requirements of §§ 1801-1812 which govern awards of intervenor compensation.

4. PA's request for compensation for its contribution to D.96-10-066 should be granted in the amount of \$75,238.

O R D E R

IT IS ORDERED that:

1. Public Advocates Inc.'s (PA) motions of January 10, 1997, February 17, 1998 and March 20, 1998 to augment its request for compensation are granted.

2. PA's request for compensation for its substantial contribution to Decision 96-10-066 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 granted in the amount of \$75,238.

3. Pacific Bell (Pacific) and GTE California Incorporated (GTEC) shall together pay PA \$75,238 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.

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

This order is effective today.

Dated July 22, 1999, at San Francisco, California.

RICHARD A. BILAS
President
HENRY M. DUQUE
JOSIAH L. NEEPER
JOEL Z. HYATT
CARL W. WOOD
Commissioners