

Decision 99-11-034

November 4, 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.

R.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.

I.95-01-021
(Filed January 24, 1995)

**ORDER MODIFYING AND DENYING REHEARING
OF DECISION 99-07-046**

On July 22, 1999, the Commission issued Decision (D.) 99-07-046, which granted 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 D.96-10-066. That decision, issued in our combined rulemaking (OIR) and investigation (OII) into how regulatory policies regarding universal service need to be revised as a result of the opening of monopoly telecommunications markets to competition, had adopted final universal service rules.

PA had requested compensation in the amount of \$151,061.91 for its contribution to D.96-10-066, plus an additional \$17,987.30 for its contribution to the redlining issue which had been deferred to the universal service proceeding by D.96-12-029. Our award of \$75,238 was fully explained in D.99-07-046 (see especially pp. 21-22). It was based on our analysis of PA's claims of substantial

contribution in the areas of Basic Service/ULTS, Multilingual Service (referred to by PA as Bilingual Outreach), Advanced Services, and Redlining, as well as our assessment of the appropriate hourly rates for PA's attorneys, law clerks, and expert witness, appropriate expenses, and appropriate allocation of time to the above issues. As we also explain in detail, our calculation of this award was complicated by the fact that PA's data supporting its claim for compensation were generally deficient. This is despite directives from us concerning just what data we expected from PA, and despite three separate filings PA was allowed to make amending its original compensation request.

PA filed a timely application for rehearing, alleging that D.99-07-046 errs by 1) allocating the base and common hours (which PA argues are by definition unable to be allocated by issue) to issue areas and reducing the award accordingly; 2) denying all compensation for intervenors' substantial contribution on the issue of multilingual service in D.95-07-050; 3) reducing fees for discovery on the redlining issue by 50 %; and 4) reducing intervenors' hours on the universal service issue on the basis that intervenors' efforts duplicated efforts of other parties.

We have reviewed all of PA's allegations of error and are of the opinion that insufficient grounds for granting rehearing have been shown. We further discuss this conclusion below.

Universal Service Issue – 95 % Subscribership Goal. PA argues that the Commission committed legal error in awarding PA only 85% of its requested amount because PA duplicated the work of other parties on the issue of 95 % subscribership in underserved communities. PA contends it was the first party to raise this issue in 1994, it continued to raise the issue in various proceedings, it developed the issue, and it cultivated support for the 95 % subscribership goal recommendation among the other parties. Therefore, PA argues, it is unlawful for the Commission to reduce its compensation award on the basis that PA duplicated the work of other parties on this issue.

There is no doubt that PA was a prime mover in the area of the 95 % subscribership requirement. However, in the course of this proceeding, which is the proceeding for which PA is now seeking compensation, we were considering whether to refine the requirement, which we had already adopted in a simpler form in our Implementation Rate Design decision, D.94-09-065. Many parties contributed to the Commission's ultimate decision in the instant proceeding. This is evident in the Commission's discussion of the positions of the parties and in its resolution of the issue in D.96-10-066. (Slip Op., pp. 50-54.) We did not reduce PA's award because of duplication (an allegation which it does seem to backtrack from slightly, by at one point describing the decision as "implying" duplication; see App. Rhg, p. 15). We reduced its award because we utilized the input of other parties, as well as that of PA, in refining our requirement. In fact, the Commission went beyond PA's recommendation that a 95 % subscribership rate be applied to all carriers serving poor, non-white, non-English speaking communities, and specifically adopted "the suggestions by Consumer Action and DRA that the 95% subscribership rate in D.94-09-065 applies to all customer groups, and not just to low income and non-English speaking households." D.96-10-066, Slip Op., p. 53. We confirm our award of 85% of PA's compensation request on this issue.¹

Multilingual Service Issues. PA argues the Commission committed legal error in denying it all compensation for its contribution on multilingual service issues. The reasons given in D.99-07-046 for this denial are that two of PA's issues were considered and resolved, in PA's favor, in D.95-12-056, in the Commission's local exchange competition docket (R.95-04-043, I.95-04-044) and not in D.96-10-066; moreover, PA's third issue was rejected in D.96-10-066 and thus PA did not make a substantial contribution

¹ PA argues that awards of other parties were not reduced for alleged duplication; "[f]or example, TURN requested compensation for its contributions to the basic service issues in this proceeding citing the fact that the Commission declined to use income as the sole criteria for measuring telephone subscribership." App. Rhg., p. 16. In fact, TURN's statement was only the last sentence in a full page description TURN gave of its contribution to basic service issues.

on this third issue. PA contends that while its first two issues were not addressed by D.96-10-066, they were addressed in D.95-07-050, the predecessor to D.96-10-066 which adopted proposed universal service rules. Thus PA argues it deserves compensation for its work on these issues in 1995, leading up to D.95-07-050.

PA cites proposed rule 3.B.3.d (under the category of Universal Service Principles and Objectives) as evidence that the Commission adopted PA's position, expressed in its comments to the OII, on multilingual services. Proposed rule 3.B.3.d states:

“In service territories where there is a substantial population of non-English speakers, a carrier's efforts to communicate with such customers in their native languages shall be a factor that the Commission considers in assessing each local carrier's contribution to pursuit of universal service targets.”

D.95-07-050, 60 Cal. P.U.C.2d 536, 583; App. A.

However, the body of D.95-07-050 nowhere refers to the substance of this rule coming from PA's comments. The closest reference in the decision to this rule is found on page 574, in the discussion on Consumer Information, where the Commission states:

“Although we do not propose to impose the same sort of reports and marketing plans on the CLCs and the other incumbent LECs at this time, we believe that all carriers providing local exchange service should strive to achieve our universal service goal of at least 95% for every segment of the population in California. As part of the required annual reports, we propose to adopt the DCA [California Department of Consumer Affairs] suggestion that the CLCs and the incumbent LECs, except for Pacific and GTEC who have their own reporting requirements, report on their efforts to attain this goal for non-English speaking and low income people in the communities that these local exchange providers serve. (See proposed Rule 3.B.3., App. A.)”

Id. at p. 574.

D.95-12-056, on the other hand, very explicitly discusses and adopts PA's position as to two of its issues. That decision and a subsequent decision in the local competition docket, D.96-10-076, which resolved a petition for modification on these very issues in PA's favor, are the decisions for which PA should have claimed compensation for its contribution on those issues.

Redlining. PA contends the Commission erred in granting PA only 50 % of the 105.18 hours for which it requested compensation on the issue of redlining. The bulk of the hours requested were actually hours PA spent in developing its position on redlining in our local competition rulemaking and investigation. In addition to opposing redlining generally, PA had developed eight specific proposals related to preventing redlining which it presented in various forums, including both the local competition proceeding and the universal service proceeding.

In D.95-12-056, issued in the local competition proceeding, we had deferred consideration of most of PA's eight proposals on redlining to the instant proceeding on universal service. In D.96-10-066, in the universal service proceeding, we rejected PA's specific redlining proposals. In yet another decision in the local competition docket, D.96-12-029, we also deferred to the universal service proceeding consideration of compensation for the hours PA had devoted to redlining issues. In that decision, we laid out very specifically the requirement that in preparing its request for compensation in the universal service proceeding, PA must 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 general rule which we adopted in D.95-12-056 prohibiting redlining.

In that request for compensation, the one under consideration here, PA failed to provide the breakdown by proposal as we had required, claiming that it was impossible to do so. PA asserted that since almost all of its hours involved discovery related to redlining, they all related to the Commission's adoption of the general prohibition in D.95-12-056. However, all PA provided was the total

number of hours spent on redlining, per attorney or law clerk. PA provided no time sheets, and absolutely no explanation of what tasks those hours were spent on. It merely asserted that with the exception of 19.19 hours spent on preparing or responding to comments, the hours were all spent on discovery.

It should go without saying that this is insufficient for us to be able to assure ourselves that PA's assertion is correct. It is plausible that the time claimed was actually spent on discovery early in the proceeding, and not on development of PA's eight specific recommendations. However, we are obligated to independently review compensation requests before we grant awards. PA failed to present us with any way of doing this in this instance. Under such circumstances, we will not increase its award.

Allocation of Base/Common Hours. Base and common hours are those hours which are necessarily spent on a proceeding, particularly in its early stages, regardless of which issues a party chooses to address; thus typically they are not allocable to specific issues. D.85-08-012, Slip Op., p. 15. In D.99-07-046, in the course of calculating the award, the Commission allocated PA's base/common hours to issue areas, stating that "[o]ur calculation of the award in this case is complicated by PA's generally deficient reporting data for its claim." D.99-07-046, p. 21. In the explanation of the calculation which followed, the Commission said: "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 [fees clearly associated with topics]." *Id.*, p. 22.

PA objects to this allocation, arguing that there is no factual basis for such allocation of work which cannot be attributed to specific issues. PA further argues it knows of no other instance, in this proceeding or elsewhere, where we have made such an allocation of base and common hours or costs, and that we are unfairly targeting PA and no other party. PA also argues "there is no legal basis, statutory or otherwise, that requires the Commission to construe Sections

1801-1812 to require a reallocation of the base and common hours by issue.” App. Rhg, p. 7 (emphasis added).

This allocation was done, as was quoted earlier, because of the generally deficient nature of PA’s filing. Numerous references in the body of D.99-07-046, as well as Findings of Fact 8, 10, 11, 12, and 15, specify the deficiencies. Yet despite these problems, we recognized that PA had made certain substantial contributions to the universal service proceeding and specifically to D.96-10-066. We chose a method of calculating an award that we believed was fair, given circumstances which did not permit us to review PA’s claimed hours and costs in the detail which we require. One aspect of that calculation involved allocating base and common costs to issue areas. PA is correct that this is not our usual approach. We used this approach here because while we could not easily verify PA’s claim related to base and common costs, the allocation would give PA compensation for those costs proportional to that for its substantial contribution in specific areas. In our view, the allocation methodology provided us with a fair way of compensating PA’s base and common costs. Further, while there is no legal requirement to do so, we know of no legal bar to our fashioning a compensation remedy of this nature, given the circumstances with which we were faced.

PA argues we have not used this methodology for other compensation requests. We remind PA that we rarely receive requests for compensation from other parties which are fraught with the kinds of problems which its filings routinely present. We admonish PA, yet again, that in the future it must comply with all Commission requirements in preparing and submitting requests for compensation for participation in Commission proceedings.

Correction of Clerical Errors. We have discovered several clerical errors on page 15 of D.99-07-046 that we will correct in today’s order. In the last paragraph on page 15, D.95-07-050 is mistakenly referred to as D.95-05-070

several times, and it is also described as having been issued seven months, rather than five months, before D.95-12-056 was issued.

Therefore, **IT IS ORDERED** that:

1. Decision 99-07-046 is modified to change the last paragraph on page 15 as follows:

“In D.95-07-050, 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 five months after D.95-07-050 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.95-07-050.”

2. Rehearing of Decision 99-07-046, as modified above, is denied.

This order is effective today.

Dated November 4, 1999, at San Francisco, California.

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