Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Rulemaking on the Commission's Own Motion to Government Open Access to Bottleneck Services and Establish a Framework for Network Architecture Development of Dominant Carrier Networks.	Rulemaking 93-04-003 (Filed April 7, 1993)
Investigation on the Commission's Own Motion into Open Access and Network Architecture Development of Dominant Carrier Networks.	Investigation 93-04-002 (Filed April 7, 1993)
Order Instituting Rulemaking on the Commission's Own Motion Into Competition for Local Exchange Service.	Rulemaking 95-04-043 (Filed April 26, 1995)
Order Instituting Investigation on the Commission's Own Motion Into Competition for Local Exchange Service.	Investigation 95-04-044 (Filed April 26, 1995)

OPINION GRANTING INTERVENOR COMPENSATION TO GREENLINING INSTITUTE FOR SUBSTANTIAL CONTRIBUTION TO DECISION 02-12-081

This decision awards the Greenlining Institute (Greenlining) $ 54,516.47 for its contribution to Decision (D.) 02-12-081.

Background

Entry of an incumbent local exchange company into the market for providing long-distance telephone services is conditioned upon demonstration of compliance with certain provisions of state and federal law. Regarding federal

law (47 U.S.C. § 271), Pacific Bell Telephone Company, currently doing business as SBC California, first sought to demonstrate compliance when it requested authority to provide in-region long-distance[1] telephone service in March 1998. Following Telecommunications Division staff meetings and collaborative sessions with SBC California, a group of competitive local exchange carriers and other interested parties, and the issuance of initial and final staff reports, the Commission denied SBC California's request in D.98-12-069 and provided a blueprint for a future Section 271 request. Included in the blueprint were a list of technical requirements and the directive that SBC California's Operations Support System (OSS) should undergo independent third-party testing. The OSS Test reports were issued in December 2000. SBC California and the interested parties commented on the reports in March 2001. To show that it had satisfied the 14 Section 271 technical requirements,[2] SBC California submitted compliance filings in July and August 1999, January, March, August, October and December 2000, June 2001 and September 2001.

Regarding compliance with state law, SBC California submitted its Public Utilities (Pub. Util.) Code § 709.2 compliance showings in July 1999 and in June and September 2001. Interested parties responded to each submission.

On November 5 and 14, 2001, public participation hearings were held in San Francisco and Los Angeles. On December 3-5, 2001, the Assigned Commissioner and Administrative Law Judge (ALJ) heard oral argument on issues related to compliance with Pub. Util. Code § 709.2.

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[1] Specifically, inter local access and transport area (interLATA) service.

[2] Referred to as checklist items under the statute.

The Commission determined that SBC California had satisfied the requirements of Section 271, and so advised the Federal Communications Commission in D.02-09-050. Later, in D.02-12-081, the Commission resolved the remaining issues regarding the State's requirements for long distance authorization pursuant to Pub. Util. Code § 709.2. The Commission, in D.03-11-025, modified D.02-12-081 and denied rehearing of the decision as modified. Greenlining filed its request for compensation 60 days after the issuance of D.03-11-025.

These consolidated rulemakings/investigations are sometimes referred to collectively as the Section 271 proceeding, although as noted above the case also deals with critical state law issues. The proceeding remains open pending the resolution of several remaining issues and a petition to modify.

Requirements for Awards of Compensation

The intervenor compensation program, enacted in Pub. Util. Code §§ 1801-1812, requires that the intervenor satisfy all of the following procedures and criteria to obtain a compensation award:

1. The intervenor must fit within one of three statutorily defined categories of "customer" or participant representing consumers, customers, or subscribers of a utility subject to our jurisdiction. (§ 1802(b).)

2. The intervenor must satisfy certain procedural requirements including the filing of a sufficient notice of intent (NOI) to claim compensation within 30 days of the prehearing conference (or in special circumstances, at other appropriate times that we specify.) (§ 1804(a).)

3. The intervenor must file and serve a request for a compensation award within 60 days of our final order or decision in a hearing or proceeding. (§ 1804(c).)

4. The intervenor must demonstrate significant financial hardship. (§ 1804(b)(1).)

5. The intervenor's presentation must have made a substantial contribution to the proceeding, through the adoption, in whole or in part, of the intervenor's contention or recommendations by a Commission order or decision. (§ 1803(a).)

6. The claimed fees and costs are comparable to the market rates paid to experts and advocates having comparable training and experience and offering similar services. (§ 1806.)

For discussion here, the procedural issues in Items 1-3 above are combined, followed by separate discussions on Items 4-6.

Procedural Issues

There is a single but significant problem with Greenlining's satisfaction of the second of the procedural requirements, namely, timely filing of its NOI. As discussed below, Greenlining did not file its NOI within 30 days, or indeed at all until it submitted its request for compensation. Failure to comply with the NOI filing requirement has been a recurring problem for Greenlining. However, we find sufficient extenuating circumstances in the Section 271 proceeding to justify our entertaining Greenlinging's request for compensation despite the late filing of its NOI.

On February 21, 2001, Greenlining filed a Motion and Petition to Intervene in the Section 271 proceeding.[3] The Assigned Commissioner and ALJ convened a prehearing conference (PHC) and heard oral argument on Pub. Util. Code § 709.2

[3] Greenlining was joined in its motion and petition by Latino Issues Forum (LIF). However, Greenlining appears on its own in subsequent participation in the proceeding and in this request for intervenor compensation.

issues on February 23, 2001. Greenlining did not timely file an NOI following that PHC. Instead, it appended the NOI to its January 12, 2004 Request for Compensation. It asks the Commission to accept its late-filed NOI, claiming that the Commission never ruled on its February 2001 motion and petition. This claim is erroneous. In fact, by ruling on March 27, 2001, the Assigned Commissioner ruled that Greenlining sought to add new and unrelated issues, whereas this proceeding was charged with addressing specific technical issues.[4] The ruling advised Greenlining that if it wished to participate in the proceeding, it would have to address issues identified in the ruling. Among the issues identified in the ruling were the nature of the "public hearing" requirement under Pub. Util. Code § 709.2. The ruling also invited Greenlining to advise the ALJ whether Greenlining intended to address any of the identified issues. Greenlining did not advise the ALJ of its plans; however, Greenlining ultimately did participate, and specifically addressed the issue of public hearings within the context of § 709.2.

In light of these facts, and Greenlining's expenditure of more than 100 hours of attorney time after issuance of the Assigned Commissioner's Ruling, we find that Greenlining intended to and did participate as intervenor in this proceeding. Greenlining's assertion that it did not know whether it had been granted leave to intervene, and therefore, whether it was appropriate to file an

[4] Specifically, Greenlining wanted competitive local carriers to set forth proposed plans to serve residential and small business customers. As explained earlier, the Section 271 proceeding was charged with addressing the showing of an incumbent local carrier (SBC California) in support of that carrier's request for authority to enter the long-distance market.

NOI, is not persuasive. In any event, Greenlining could have sought clarification on these points but failed to do so.

Recently, this Commission declined to accept a late-filed NOI submitted by Greenlining because its lateness was not excusable. *(See D.04-05-004.)* In that decision the Commission denied compensation to Greenlining not only because it failed to timely file its NOI, but also because it failed to make a substantial contribution to the decision for which it was seeking compensation. The Section 271 proceeding can be distinguished from the situation addressed in D.04-05-004. This proceeding spanned five years and was part of a larger multi-issue proceeding. During the course of the Section 271 review, many PHCs were held in the proceeding as a whole. While the issues of the Section 271 review were clear, we acknowledge the complexity of the docket as a whole, the lengthy timeline, and the fact that Greenlining changed counsel just at the point that it became involved. Moreover, Greenlining did participate in accordance with the terms of the Assigned Commissioner's Ruling, and ultimately made a substantial contribution in the proceeding. Greenlining's failure to timely file its NOI should not, under these circumstances, absolutely bar its request for compensation. Therefore, under these facts, we will accept Greenlining's late-filed NOI.

In all other respects, Greenlining has met the procedural requirements.

Financial Hardship

An intervenor seeking compensation must show that, without undue hardship, it cannot pay the reasonable costs of effective participation in the proceeding.

Section 1804(b) states that a finding by the Commission of significant financial hardship shall create a rebuttable presumption of eligibility for

compensation in other Commission proceedings commencing within one year of the date of that finding. In its late-filed NOI, in support of its claim of significant financial hardship, Greenlining directs the Commission to an April 9, 2003 NOI ruling.[5] However, given that the relevant PHC for this proceeding was held on February 23, 2001, we should look to our relevant finding in D.00-04-003. In that decision, we found that Greenlining had made a showing of significant financial hardship under § 1802(g). Because D.00-04-003 was issued within a year of the PHC addressing the § 709.2 issues, this finding of significant financial hardship creates a rebuttable presumption of eligibility[6] for compensation in this proceeding. No party has rebutted this presumption; thus, we find that the determination of significant financial hardship continues to exist for this proceeding.

Substantial Contribution

In evaluating whether a customer made a substantial contribution to a proceeding, we look at several things. First, did the ALJ or Commission adopt one or more of the factual or legal contentions, or specific policy or procedural

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[5] Administrative Law Judge's Ruling Regarding Notices of Intent to Claim Compensation in Application 02-11-017.

[6] At least the past two years of Commission decisions addressing Greenlining's showing of significant financial hardship have permitted Greenlining to establish a rebuttable presumption by referring to a prior decision where the financial eligibility finding also relies on a rebuttable presumption, etc. Because we have done so in the past, we follow this approach here. However, in the future, if Greenlining seeks to establish a rebuttable presumption of a significant financial hardship by referring to a finding of significant financial hardship made within the past year (*see* § 1804 (b)), the finding used to establish the rebuttable presumption shall be based on actual financial information and not on a rebuttable presumption. In this way, the intervenor's financial information will be updated with the Commission annually.

recommendations put forward by the customer? (*See* §1802(h).) Second, did the customer's participation materially supplement, complement, or contribute to the presentation of another party or to the development of a fuller record that assisted the Commission in making its decision? (*See* §§ 1802(h) and 1802.5.) As described in § 1802(h), the assessment of whether the customer made a substantial contribution requires the exercise of judgment.

> In assessing whether the customer meets this standard, the Commission typically reviews the record, composed in part of pleadings of the customer and, in litigated matters, the hearing transcripts, and compares it to the findings, conclusions, and orders in the decision to which the customer asserts it contributed. It is then a matter of judgment as to whether the customer's presentation substantially assisted the Commission.[7]

Even where the Commission does not adopt any of the customer's recommendations, compensation may be awarded if, in the judgment of the Commission, the customer's participation substantially contributed to the decision or order. For example, if a customer provided a unique perspective that enriched the Commission's deliberations and the record, the Commission could find that the customer made a substantial contribution. With this guidance in mind, we turn to the claimed contributions Greenlining made to the proceeding.

In this proceeding, Greenlining's contributions were primarily procedural. Greenlining asserts that it was the leading proponent of public hearings in this proceeding, which it believes provided the Commission with valuable information regarding whether Pacific's entry into the long distance market was in the public interest pursuant to § 709.2(c). It recommended PPHs in at least

two rounds of comments and briefs; it worked with the offices of the Assigned Commissioner and the Commission's Public Advisor on the number of, locations of, and notices for, the public hearings; and it encouraged attendance by its constituents at the two PPHs. Greenlining's advocacy for holding public hearings was useful and substantially contributed to the Commission's decision to hold public hearings. While a number of issues were pivotal to the ultimate public interest determination in D.02-12-081, our having held public hearings helped ensure that a broad perspective was heard, which did assist us in making our decision.

Greenlining also claims to have substantially contributed to D.02-12-081 by joining with eight other parties who presented an expedited dispute resolution proposal adopted in the decision. The approved process, affirmed as an integral public interest safeguard, set forth a series of rules detailing procedures for the resolution of carrier-to-carrier operational and interconnection disputes. However, Greenlining does not specify in its request what tasks it performed in the drafting and presentation of the dispute resolution proposal. In addition, Greenlining's supporting documentation for the description of work by its attorneys does not show any tasks reflecting work on the expedited dispute resolution process. Since we are not able to identify and quantify Greenlining's work on the dispute resolution process, we do not include it in the assessment of Greenlining's substantial contribution to D.02-12-081.

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[7] D.98-04-059, 79 CPUC2d 628 at 653.

Reasonableness of Requested Compensation

After we have determined that a customer made a substantial contribution and have established its scope, we then look at whether the compensation requested is reasonable.

The components of this request must constitute reasonable fees and costs of the customer's participation that resulted in a substantial contribution. Thus, only those fees and costs associated with the customer's work that the Commission concludes made a substantial contribution are reasonable and eligible for compensation.

Also, to assist us in determining the reasonableness of the requested compensation, D.98-04-059 directed customers to demonstrate productivity by assigning a reasonable dollar value to the benefits of their participation to ratepayers. The costs of a customer's participation should bear a reasonable relationship to the benefits realized through their participation. This showing assists us in determining the overall reasonableness of the request.

We must also assess whether the hours claimed for the customer's efforts that resulted in substantial contributions to Commission decisions are reasonable. Finally, in determining compensation, we take into consideration the market rates for similar services from comparably qualified persons.

Greenlining requests $56,814.22 for the costs and fees associated with its participation in this proceeding. It arrives at this amount after dividing $106,187.50,[8] which represents 318.5 attorney hours from 2001 through 2004, by 50% and adding costs for postage and copy expenses. Greenlining states that it is

[8] Greenlining arrives at this figure by multiplying the sum of its claimed hours (318.5) by the hourly rates it proposes for its two attorneys.

"voluntarily waiving 50% of the time... spent in this case." Greenlining Request at 2. Its description of reasonable expenditures[9] is set forth as follows:

[9] Attachments 1 and 2, appended to the Request, list issue allocations for the claimed hours.

Attorney/Advocate	**Year**	**Hourly Rate**	**Hours**	**Total**
Robert Gnaizda	2002	$435	39.2	$17,052.00
Robert Gnaizda	2001	$425	101	$42,925.00
Itzel Berrio	2004	$310	3.6	$1116.00
Itzel Berrio	2003	$290	2.2	$638.00
Itzel Berrio	2002	$265	46.9	$12,428.50
Itzel Berrio	2001	$255	125.6	$32,028.00
TOTAL Fees				$106,187.50
WITH 50% REDUCTION				$53,093.75

Other costs: Postage Charges: $1,146.67
Copy Charges: $2,573.80

Total Costs & Fees Requested: $56,814.22

We assess Greenlining's productivity in the context of its participation in the technical, multi-issue 271 proceeding. Greenlining does not ascribe a monetary value to the ratepayer benefit of its participation, and we recognize that the value of the end product of its efforts, the advocacy of PPHs, eludes ready quantification. Greenlining's several discussions with the Assigned Commissioner's office resulted in the adoption of a firm schedule for the PPHs. Prior to its advocacy, the schedule had been tentative. Greenlining's community meetings educating its constituents enabled a broader spectrum of the public to offer the public's assessment of SBC California's readiness to enter the long distance market.

Although Greenlining indicates that it voluntarily waives 50% of its hours, we must verify that the hours requested resulted in a substantial contribution, and were commensurate with the results achieved. The documentation

supporting Gnaizda's total hours sets forth an issue allocation that attributes 1/3 of the 140.2 hours claimed to PPHs and 2/3 of the hours to General/Other. This breaks down to 46.7 hours for PPHs and 93.5 hours for General for Gnaizda. For Berrio, Greenlining records and totals her hours under the categories, General, PPHs, and Unbundled Network Elements Pricing.[10] For 2001, under General and PPHs, Greenlining records 43.2 and 82 .4 hours, respectively, for Berrio. For 2002 through 2004, Greenlining records 52.7 General hours for Berrio.

We find documentation supporting 46.7 hours for Gnaizda and 54.7 hours for Berrio related to Greenlining's efforts to promote PPHs in this proceeding. From Berrio's total of 82.4 PPH hours, we remove 27.7 hours representing time spent on preparation for the PPHs. PPHs provide members of the public who are not parties to the proceeding an opportunity to offer their comments to the Commission. We do not award compensation for the time spent preparing for PPHs. (D.96-08-040, 67 CPUC2d 562, 577.) We deduct this time from the total PPH hours.

Given the complexity of this proceeding, we find it appropriate to compensate Greenlining for a reasonable amount of attorney hours that would be attributable to the General category of its issues allocation. In that regard, we find 25 hours for Gnaizda and Berrio, respectively, to be a reasonable amount of time devoted to reading the briefs and comments filed, and meeting with the other parties and Commissioners' offices, in order to keep abreast of the prevailing issues of the proceeding. With the exception of this time that we will

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[10] The pricing category refers to an issue that was excluded from the Section 271 proceeding and addressed in another proceeding, so the small number of hours (0.6) Berrio shows in this category are not compensable.

allow, we do not find adequate documentation that the attorney hours claimed for 2002 and 2003 were effective or productive. Therefore, we exclude these hours in calculating Greenlining's reasonable compensation.

Normally, we compensate intervenors for their time spent preparing an NOI and compensation request without discussion. However, given Greenlining's significant expertise as an intervenor in numerous proceedings before this Commission, Greenlining's failure to draft the NOI and request with the skill commensurate with its experience and expertise, and the minimal substantiation provided in its late-filed NOI and request, we find that the time spent by Greenlining on these activities was not effective or productive and should not be compensated.

In sum, there is documentation supporting 151.4 attorney hours for Greenlining in 2001, and we find this amount to be reasonable.

Greenlining notes that in D. 03-10-062, the Commission set Robert Gnaizda's 2002 hourly rate at $435. It urges us to set his hourly rate for 2001 slightly lower, at $425. The rate requested for Gnaizda is reasonable considering his experience, the hourly rate awarded to him in 2002, and the rate awarded to other practitioners with similar experience. Accordingly, we adopt it as requested. In D.03-10-062, we awarded Itzel Berrio an hourly rate of $255 for work performed in 2001. We adopt that same rate for her work here.

Greenlining listed $3,720.47 in expenses associated with this case for photocopying and postage charges. The cost breakdown included with Greenlining's requests shows these miscellaneous expenses to be commensurate with the work performed. We find Greenlining's other costs reasonable.

The table below sets forth Greenlining's reasonable costs with the modifications discussed above:

Attorney	Year	Hourly Rate	Hours	Total
Robert Gnaizda	2001	$425	71.7	$30,472.50
Itzel Berrio	2001	$255	79.7	$20,323.50
			Subtotal	$50,796.00
Other Costs				$3,720.47
			Total	$54,516.47

Award

We award Greenlining $54,516.47 in compensation for its substantial contribution to D. 02-12-081. Consistent with previous Commission decisions, we will order that Greenlining receive $54,516.47 plus interest calculated at the three-month commercial paper rate. Interest is to commence on the 75th day after Greenlining filed its compensation request (March 29, 2004) and continue until SBC California has made payment to Greenlining.

As in all intervenor compensation decisions, we remind Greenlining that Commission staff may audit their records related to this award and that intervenors must make and retain adequate accounting and other documentation to support all claims for intervenor compensation.

Waiver of Comment Period

This is an intervenor compensation matter. Accordingly, as provided by Rule 77.7(f)(6) of our Rules of Practice and Procedure, we waive the otherwise applicable 30-day comment period for this decision.

Assignment of Proceeding

Geoffrey F. Brown is the Assigned Commissioner. Jacqueline A. Reed is the assigned ALJ in this proceeding.

Findings of Fact

1. Greenlining seeks $56,814.22 in total costs and fees, which includes a voluntary waiver of 50% of the attorney fees it calculated.

2. Greenlining did not timely file an NOI in this proceeding, but rather appended the NOI to its Request for Compensation.

3. Greenlining made a timely request for compensation for its contribution to D.02-12-081.

4. Greenlining substantially contributed to D.02-12-081 through its public advocacy for public participation hearings.

5. The hourly rates approved by this decision are reasonable.

6. Inadequate documentation, recording of time for issues or activities for which no substantial contribution was made, and work that was unproductive or ineffective result in a reduction of the hours for which Greenlining should be reasonably compensated.

7. The miscellaneous costs incurred by Greenlining are reasonable.

8. The reasonable compensation for Greenlining's substantial contribution to D.02-12-081 is $54,516.47, which is the sum of Greenlining's reasonable costs and of the reasonable number of hours for which Greenlining could be compensated times the approved hourly rates.

Conclusions of Law

1. Given the period of time that this proceeding spanned and Greenlining's change of counsel, Greenlining's late-filed NOI should be accepted.

2. Greenlining has fulfilled the requirements of Pub. Util. Code §§ 1801-1812, which govern awards of intervenor compensation, and is entitled to intervenor

compensation for its claimed fees and expenses, as described herein, incurred in making substantial contributions to D.02-12-081.

3. Greenlining should be awarded $54,516.47, for its contribution to D.02-12-081.

4. Per Rule 77.7(f)(6), the comment period for this compensation decision may be waived.

5. This order should be effective today so that Greenlining may be compensated without further delay.

O R D E R

IT IS ORDERED that:

1. The Greenlining Institute (Greenlining) is awarded $ 54,516.47 in compensation for its substantial contribution to Decision 02-12-081.

2. Pacific Bell Telephone Company, doing business as SBC California, shall pay Greenlining the award granted in Ordering Paragraph 1.

3. SBC California shall make payment within 30 days of the effective date of this order. SBC California shall also pay interest on the award at the rate earned on prime, three-month commercial paper, as reported in Federal Reserve Statistical Release H.15, beginning the 75th day after January 12, 2004, the date the request for intervenor compensation was filed, and continuing until full payment has been made.

4. The comment period for this decision is waived.

This order is effective today.

Dated _____, at San Francisco, California.

Compensation Decision Summary Information

Compensation Decision:	
Contribution Decision(s):	D0212081
Proceeding(s):	R9304003/I9304002/R9504043/I9504044
Author:	ALJ Reed
Payer(s):	Pacific Bell Telephone Company

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Multiplier?	Reason Change/Disallowance
The Greenlining Institute	1/12/2004	$56,814.22	$54,516.47	No	Failure to make substantial contribution; excessive hours.

Advocate Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
Robert	Gnaizda	Attorney	The Greenlining Institute	$425	2001	$425
Itzel	Berrio	Attorney	The Greenlining Institute	$255	2001	$255