STATE OF CALIFORNIA GRAY DAVIS, *Governor*

PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

May 28, 2003 **Agenda ID #2305**

TO: PARTIES OF RECORD IN INVESTIGATION 00-11-052

This is the draft decision of Administrative Law Judge (ALJ) Econome. It will not appear on the Commission's agenda for at least 30 days after the date it is mailed. The Commission may act then, or it may postpone action until later.

When the Commission acts on the draft decision, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare its own decision. Only when the Commission acts does the decision become binding on the parties.

Parties to the proceeding may file comments on the draft decision as provided in Article 19 of the Commission's "Rules of Practice and Procedure." These rules are accessible on the Commission's website at http://www.cpuc.ca.gov. Pursuant to Rule 77.3 opening comments shall not exceed 15 pages. Finally, comments must be served separately on the ALJ and the Assigned Commissioner, and for that purpose I suggest hand delivery, overnight mail, or other expeditious method of service.

/s/ ANGELA K. MINKIN
Angela K. Minkin, Chief
Administrative Law Judge

ANG:hkr

Attachment

Decision **DRAFT DECISION OF ALJ ECONOME** **(Mailed 5/28/2003)**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own motion into the operations, practices, and conduct of Qwest Communications Corporation (Qwest), U-5335-C and its wholly owned subsidiary, LCI International Telecommunications Corporation, doing business as Qwest Communications Services (LCIT), U-5270-C to determine whether Qwest and LCIT have violated the laws, rules and regulations governing the manner in which California consumers are switched from one long distance carrier to another and billed for long distance telephone services.	Investigation 00-11-052 (Filed November 21, 2000)

OPINION DENYING PETITION TO MODIFY DECISION 03-04-050

Decision (D.) 03-04-050 awarded the Greenlining Institute (Greenlining) and Latino Issues Forum (LIF) $202,517.47 in compensation for contributions to D.02-10-059. On May 13, 2003, Greenlining filed a petition for modification of D.03-04-050. Greenlining believes that its attorney and expert rates should be reconsidered in light of the rates awarded to attorneys for Disability Rights Advocates in D.03-01-075. This decision denies the petition to modify.

D.03-01-075 awarded rates for 2001 and 2002 for the following attorneys for Disability Rights Advocates:[1]

Attorneys	Requested	Adopted
Sid Wolinsky	$535	$435[2]
Lawrence Paradis	$405	$310[3]

In its petition, Greenlining argues that its attorneys and experts have comparable experience to these two attorneys and should receive close to the same rates for their work in 2001 and 2002 for Wolinsky and Paradis.

D.03-04-050 awarded rates for the following attorneys and experts for Greenlining and LIF:

Attorneys	Requested	Adopted
Robert Gnaizda (2002)	$365	$365
Susan Brown (2002)	$325	$325
Susan Brown (2001)	$300	$300
Itzel Berrío (2002)	$255	$235
Itzel Berrío (2001)	$230	$220
Enrique Gallardo (2002)	$255	$235
Experts	Requested	Adopted
John Gamboa (2001)	$300	$160
Luis Arteaga (2001)	$250	$140

[1] This list includes only those advocates for Disability Rights Advocates cited by Greenlining in its petition.

[2] Rate adopted for 2001 and 2002.

[3] Rate adopted for 2001.

Greenlining argues that despite the fact that it requested certain rates when it filed its request for compensation, the Commission should adjust the rates for now. We disagree. Many parties eligible for intervenor compensation appear before the Commission. Each intervenor requests hourly rates for its advocates based on many factors, resulting in a range of rates awarded to advocates with similar training and experience. Each intervenor must make a showing regarding the hourly rates requested to justify an award and must do so on a timely basis. We look to other rates adopted as a check that the rates requested are in the range of those adopted for other advocates with similar training and experience, but do not adjust them upward on our own initiative unless a higher rate than requested for that particular advocate has been adopted while the request was pending.[4] It is up to each intervenor to justify its request for hourly rates, not the Commission's responsibility to award rates higher than requested simply because another intervenor may have been awarded a higher rate.

Greenlining could have filed a timely supplement to its request in this proceeding based on its review of D.03-01-075 but did not do so. If it chooses, Greenlining may file timely supplements to any pending requests for compensation to seek higher rates than originally requested. Consistent with the requirements for an initial request for intervenor compensation, any supplement must clearly state what rates the Commission has previously adopted for the advocate or advocates and the years in question.

Greenlining argues that its experts, Gamboa and Arteaga, should be awarded a rate based on the rate adopted for attorney Paradis, who, in addition

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[4] See Pub. Util. Code § 1806.

to being an attorney, is also the Executive Director of Disability Rights Advocates. Paradis was awarded a rate for his legal services in D.03-01-075, therefore the comparison is not on point.

Greenlining also argues that the rates for Berrío and Gallardo should be modified from those adopted in D.03-04-050. The rates Greenlining seeks are higher than the rate authorized for Osa Armi, a 1997 law school graduate like both Berrío and Gallardo, who was used as a comparison in setting Berrío and Gallardo's rates. Greenlining explains that it believes that both of its attorneys have significantly more experience before the Commission than Armi, thus higher rates than those authorized for Armi are appropriate. Berrío made two brief appearances before the Commission in 1997 and 1998, but Gallardo and Armi have both appeared over the same period of time (2001-2003). Greenlining seeks the same rates for Berrío and Gallardo without sufficiently distinguishing why their periods of experience before the Commission deserve a similar rate and Armi's does not. We find Berrío and Gallardo's experience comparable to Armi's given that all three had been practicing law only five years during the time relevant to this petition. Therefore, we do not change the rates awarded to Berrío and Gallardo.

Comments on Draft Decision

The draft decision of the Administrative Law Judge (ALJ) in this matter was mailed to the parties in accordance with Pub. Util. Code § 311(g)(1) and Rule 77.7 of the Rules of Practice and Procedure. Comments were filed on _____, and reply comments were filed on _____.

Assignment of Proceeding

Carl W. Wood is the Assigned Commissioner and Janet Econome is the assigned ALJ in this proceeding.

Findings of Fact

1. Greenlining and LIF requested certain rates and provided justification for them in their request for compensation and supplement. D.03-04-050 adopted rates after reviewing the requested rates and justification provided.

2. Intervenor requests for hourly rates are based on many factors, resulting in a range of rates awarded to advocates with similar training and experience.

3. Each intervenor must justify its request for hourly rates in its request for compensation.

4. Greenlining did not file a timely supplement to its compensation request in Investigation 00-11-052.

Conclusions of Law

1. The Commission should not adopt higher rates than requested on its own initiative unless a higher rate for a particular advocate has been adopted while the request was pending.

2. D.03-04-050 should not be modified.

3. If it chooses, Greenlining may supplement pending requests for compensation to seek advocates' rates different than previously requested.

O R D E R

IT IS ORDERED that:

1. The petition to modify Decision 03-04-050 by Greenlining Institute is denied.

2. This proceeding is closed.

This order is effective today.

Dated _____, at San Francisco, California.