ALJ/JJJ/hkr **Mailed 4/18/2003**

Decision 03-04-050 April 17, 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 ON REQUEST FOR INTERVENOR COMPENSATION

I. Summary

This decision awards the Greenlining Institute and Latino Issues Forum (jointly Greenlining/LIF) $202,517.47 in compensation for contributions to Decision (D.) 02-10-059.

II. Background

In D.02-10-059, we found that Qwest Communications Corporation and its wholly owned subsidiary, LCI International Telecommunications Corporation (collectively Qwest) violated Pub. Util. Code § 2889.5 and § 2890, as well as other statutes, in the course of their marketing activities, and that sanctions are

warranted for these violations.[1] We found that, primarily in 1999 and 2000, Qwest failed to adequately supervise its sales agents so that the agents switched thousands of customers' long distance telephone service without their permission in violation of § 2889.5. In some cases, the third-party verification tapes or letters of authorization confirming the switches were falsified, and Qwest failed to retain third-party verification tapes and make them available to the customers and the Commission. We also found that Qwest violated § 2890 by placing unauthorized charges on thousands of customers' telephone bills. For these acts, we concluded that a $20,340,500 fine was warranted. We also ordered reparations and required Qwest to comply with additional conditions to ensure compliance with § 2889.5 and § 2890. The Commission's Consumer Protection and Safety Division (CPSD) and Greenlining/LIF both actively participated in this investigation in a complementary fashion. In D.03-01-087, the Commission denied the applications for rehearing of D.02-10-059.

Greenlining/LIF filed their Request for Intervenor Compensation on December 23, 2002. In part, the request stated that Greenlining/LIF did not include a compensation request for Christopher Witteman, because Witteman was no longer working at Greenlining Institute and Greenlining Institute was having difficulties in obtaining a breakdown of Witteman's hours.

A January 3, 2003 Administrative Law Judge (ALJ) ruling directed Greenlining/LIF to supplement the request by January 31, 2003, and allowed parties responding to the request to do so no later than 30 days thereafter. On January 31, Greenlining/LIF filed the Amended Request for Intervenor

[1] Unless otherwise indicated, statutory citations are to the Public Utilities Code.

Compensation which included a compensation request for Witteman's hours. No party filed a response thereto.

III. Requirements for Awards of Compensation

Intervenors who seek compensation for their contributions in Commission proceedings must file requests for compensation pursuant to §§ 1801-1812. Section 1804(a) requires an intervenor to file a notice of intent (NOI) to claim compensation within prescribed time periods. The NOI must present information regarding the nature and extent of the customer's planned participation and an itemized estimate of the compensation the customer expects to request.[2] It may also request a finding of eligibility.

Other code sections address requests for compensation filed after a Commission decision is issued. Under § 1804(c), an intervenor requesting compensation must provide "a detailed description of services and expenditures and a description of the customer's substantial contribution to the hearing or proceeding." Section 1802(h) states that "substantial contribution" means that,

> ". . . in the judgment of the commission, the customer's presentation has substantially assisted the commission in the making of its order or decision because the order or decision has adopted in whole or in part one or more factual contentions, legal contentions, or specific policy or procedural recommendations presented by the customer. Where the customer's participation has resulted in a substantial contribution, even if the decision adopts that customer's contention or recommendations only in part, the commission may award the customer compensation for all reasonable advocate's fees, reasonable expert fees, and other reasonable costs incurred by the

[2] To be eligible for compensation, an intervenor must be a "customer," as defined by § 1802(b). In today's decision, "customer" and "intervenor" are used interchangeably.

customer in preparing or presenting that contention or recommendation."

Section 1804(e) requires the Commission to issue a decision that determines whether the customer has made a substantial contribution and what amount of compensation to award. The level of compensation must take into account the market rate paid to people with comparable training and experience who offer similar services.

IV. NOI to Claim Compensation

Greenlining/LIF filed their NOI and was found eligible for compensation in this proceeding by a March 1, 2001 ALJ ruling. The ruling found that, pursuant to § 1804(b)(1), Greenlining/LIF satisfied their burden of establishing significant financial hardship so as to be eligible to claim intervenor compensation.

V. Timeliness of Request

Section 1804(c) requires an eligible customer to file a request for an award within 60 days of issuance of a final order or decision by the Commission in the proceeding. D.02-10-059 was issued on October 24, 2002. Greenlining/LIF's request for compensation was filed on December 23, 2002 and thus is timely.

VI. Substantial Contribution to Resolution of Issues

Pursuant to § 1802(h), a party may make a substantial contribution to a decision in several ways. It may offer a factual or legal contention upon which the Commission relied in making a decision, or it may advance a specific policy or procedural recommendation that the ALJ or Commission adopted. A substantial contribution includes evidence or argument that supports part of the decision even if the Commission does not adopt a party's position in total.

In this instance, both Greenlining/LIF and CPSD prepared and served extensive written testimony and exhibits concerning evidence of Qwest's switching customers' telephone service without their permission, a practice known as slamming, and of Qwest's placing unauthorized charges on customers' telephone bills, a practice known as cramming. Both of these parties also fully participated in the evidentiary hearings, briefing, and oral argument.

The ALJ ruling on Greenlining/LIF's NOI cautioned CPSD and Greenlining/LIF to work cooperatively to avoid duplication of efforts, and the parties did so. Greenlining/LIF's efforts were complementary to those of CPSD. CPSD represented all consumers, and Greenlining/LIF represented low-income, minority, immigrant and other vulnerable communities who Greenlining/LIF argued were targeted by Qwest and therefore most affected by Qwest's violations of the law.

Greenlining/LIF made a substantial contribution to substantially all issues in this proceeding.[3] For example, Greenlining/LIF produced evidence of slamming and of falsified verifications and authorizations of changes in telephone service providers. Their evidence also showed that Qwest's definition of slamming understated the problem, that Qwest uses its Welcome Postcards in an inappropriate manner, that Qwest targeted certain minority groups with its slamming and cramming practices, that primary interexchange carrier disputes from Spanish- and Asian-preferred-speaking customers may be understated, that Qwest's third-party verification agents were not independent as required by

[3] We reduce Greenlining/LIF's claimed hours for work done on several narrow categories where there was no substantial contribution. These categories are discussed at the conclusion of this section.

statute; and that Qwest continued its slamming practices even after, according to Qwest, it had established practices to remedy the violations. Finally, Greenlining/LIF discredited Qwest's claim that it had "zero tolerance" for slamming, and assisted the Commission in setting the amount of the fine.

Greenlining/LIF and CPSD's complementary participation was essential to determine the extent of Qwest's slamming and cramming practices, and in determining an appropriate fine. In all but a few issues, Greenlining/LIF made a substantial contribution to the outcome of this proceeding.

We reduce Greenlining/LIF's award for the hours spent on what they term "the need for a bond by Qwest" (the bond issue), communication with legislators and their staff, and engaging in improper ex parte communications because these activities did not result in a substantial contribution to D.02-10-059. Once the Presiding Officer's Decision (POD) issued, Greenlining/LIF made a series of emergency motions and conducted other activities to support their position that the Commission should order Qwest to post a bond. Because this activity occurred after the POD issued, the POD does not reference or rely on it. Similarly, the final decision issued by the Commission, D.02-10-059, does not mention, address, or rely on this issue. Greenlining/LIF did not make a substantial contribution to D.02-10-059 with their activities related to the bond issue, and we reduce the claimed hours to reflect this.

We also reduce the hours spent on improper ex parte communications because the Commission necessarily disregarded such contact and thus, it did not result in a substantial contribution. We have consistently reduced requests for compensation for time associated with communicating with legislators and their staff, because these activities do not result in a substantial contribution to the proceeding at issue. (See e.g., D.02-11-024 at p. 33; D.96-06-029, 66 CPUC 2d

351, 359.) Consistent with this policy, we reduce Greenlining/LIF's hours accordingly.

In D.98-04-059, the Commission noted that an element of a customer's demonstration of "substantial contribution" is a showing that the customer's participation was "productive," as that term is used in § 1801.3, where the Legislature provided guidance on program administration.[4] D.98-04-059 explained that participation must be productive in the sense that the costs of participation should bear a reasonable relationship to the benefits realized through such participation. D.98-04-059 directed customers to demonstrate productivity by assigning a reasonable dollar value to the ratepayer benefits of their participation. This exercise assists us in determining the reasonableness of the request and in avoiding unproductive participation.

As a result of this proceeding, Qwest was required to provide refunds or a credit to over 30,000 customers who allege an unauthorized switch of their telephone service. Moreover, the Commission assessed a $20,340,500 fine against Qwest and ordered the utility to comply with additional conditions to ensure compliance with § 2889.5 and § 2890. While we cannot assign a precise dollar value to the outcome of this case, the fact that the Commission ordered refunds and a large fine, as well as operating changes demonstrates significant value to ratepayers which exceeds the compensation claimed.

In summary, Greenlining/LIF's participation was productive and complementary to CPSD's participation. Greenlining/LIF's participation satisfies all the requisite elements of substantial contribution.

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[4] See D.98-04-059.

VII. Reasonableness of the Requested Compensation

Greenlining/LIF request $223,566.97 as summarized below:

Attorney/Advocate/Expert	Year	Hourly Rate	Hours	Total
Robert Gnaizda	2002	$365.00	26.1	$ 9,526.50
John C. Gamboa	2001/2002	$300.00	3.6	$ 1,080.00
Michael Phillips	2002	$350.00	4.1	$ 1,435.00
Itzel Berrío	2002	$255.00	119.2	$ 30,396.00
Itzel Berrío	2001	$230.00	13.4	$ 3,082.00
Susan Brown	2002	$325.00	1.5	$ 487.50
Susan Brown	2001	$300.00	117.75	$ 35,325.00
Enrique Gallardo	2002	$255.00	9.0	$ 2,295.00
Araceli Perez	2001	$125.00	116.75	$ 14,593.75
Chris Witteman	2001	$325.00	359.1	$116,707.50
Chris Witteman	2000	$300.00	2.2	$ 660.00
Bill Ong Hing	2001	$300.00	6	$ 1,800.00
Luis Arteaga	2001	$250.00	17	$ 4,250.00
Total Hours Claimed and Fees Requested			795.7	**$221,638.25**

Other costs: Postage Charges: $227.02

Copying Charges: $1,701.70

Total Costs and Fees: $223,566.97

A. Hours Claimed

The hours claimed by Greenlining/LIF are reasonable except for the hours for which there was no substantial contribution. These include the hours associated with (a) the bond issue (11.8 hours for Gnaizda; 1.5 hours for Gamboa; 2 hours for Phillips; 18 hours for Berrío); (b) communicating with legislators

(1 hour for Gnaizda; 5.5 hours for Berrío); and (c) improper ex parte communications (.2 hours for Berrío).

B. Hourly Rates

Greenlining/LIF seek new rates for several of their attorneys and experts. The rates requested for attorneys Robert Gnaizda, Susan Brown, and Chris Witteman are reasonable considering their experience and the hourly rates awarded to other practitioners with similar experience and we adopt them as requested.

Attorney Itzel Berrío was last awarded a rate for work performed in 1998. Here, Greenlining/LIF requests an hourly rate of $230 for 2001 and $255 for 2002. Greenlining/LIF also requests an hourly rate of $255 for 2002 for attorney Enrique Gallardo. Both Berrío and Gallardo are 1997 law school graduates. We recently awarded $220/hour for a 2001 hourly rate for another 1997 law school graduate, Osa Armi, in D.02-05-005. We award this same rate to Berrío for 2001. For 2002, we increase this rate to $235/hour and apply it to both Berrío and Gallardo.

Greenlining/LIF seek $125/hour for work performed by second year law student Araceli Perez in 2001. In D.03-01-075, we awarded $85/hour to summer associates (law students) for Disability Rights Advocates for work performed in 2001. We utilize this same rate for Perez.

Greenlining/LIF request $300/hour for expert John C. Gamboa for work in 2001 and 2002. In D.03-02-023, we awarded an hourly rate of $160 for Gamboa's work in 2001 based on an evaluation of the same information submitted in this claim regarding Gamboa's training and experience. Because Gamboa's work for 2002 involved the bond issue for which we do not award compensation, we need not determine a 2002 rate for Gamboa here.

Greenlining/LIF seek $350/hour for expert Michael Phillips. We last adopted a rate for Phillips for 1999 of $250/hour.[5] The request for compensation does not describe why an increase of $100/hour in two years is warranted. Thus, we adopt a lower rate than requested, $290/hour for 2001, to reflect Phillips' additional years of experience and inflation since 1999.[6]

Greenlining/LIF seek a 2001 rate of $300/hour for the time spent by Bill Ong Hing preparing testimony. According to the request for compensation, Hing generally charges his clients $300/hour for research and consultation services, consistent with the rate requested here.[7] Hing's training and years of experience justify the requested hourly rate of $300 for 2001.

Greenlining/LIF request $250/hour for 2001 for expert Luis Arteaga. Arteaga holds a B.A. in Politics with a concentration in Latin American Studies from Princeton (1991) and an M.A. in Public Policy from the Kennedy School at Harvard University (1995). Arteaga is currently the Interim Executive Director at Latino Issues Forum. Greenlining/LIF do not provide any market rate

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[5] $250 was the requested rate for Phillips and was awarded in D.03-03-022.

[6] Although Greenlining/LIF state that all of the work performed by Phillips occurred in 2002, the discussions with Witteman on executive compensation prior to the opening brief had to occur in 2001, when the opening brief was filed, and we treat the request as if that work occurred in 2001. We do not compensate Phillips for his work performed in 2002 because that work involved the bond issue.

[7] Hing has been an attorney specializing in immigration issues and immigrant rights since 1974. Since June 1996, Hing has been Of Counsel at Baker & McKenzie, developing marketing strategies and the formation of a business immigration unit for the San Francisco office of a large international law firm. Hing has been a Professor at Stanford Law School (from 1985 to 1996) and at Boalt Law School (spring 1993 and 1996-1997.) He has also researched, authored, and edited numerous books and articles related to immigrants and their legal and societal status.

information for experts with similar training and experience to Arteaga's. In this proceeding, Arteaga testified on similar issues as Hing, but has many fewer years of experience than Hing. We also compare Arteaga to Latino Issues Forum's prior Executive Director, Viola Gonzales, who also held a masters degree but has more than 20 years of additional experience than Arteaga. In D.03-02-023, Gonzales was awarded an hourly rate of $160 in 2001. Thus, we adopt a 2001 hourly rate for Arteaga of $140.

C. Other Costs

Greenlining/LIF listed $1,928.72 in expenses associated with this case for photocopying and postage charges. The cost breakdown included with Greenlining/LIF's claim shows these miscellaneous expenses to be commensurate with the work performed. We find Greenlining/LIF's other costs reasonable.

VIII. Total Award

We award Greenlining/LIF $202,517.47 for contributions to D.02-10-059, as detailed in the table below.

Attorney/Advocate/Expert	Year	Hourly Rate	Hours	Total
Robert Gnaizda	2002	$365.00	13.3	$ 4,854.50
John C. Gamboa	2001	$160.00	2.1	$ 336.00
Michael Phillips	2001	$290.00	2.1	$ 609.00
Itzel Berrío	2002	$235.00	95.5	$ 22,442.50
Itzel Berrío	2001	$220.00	13.4	$ 2,948.00
Susan Brown	2002	$325.00	1.5	$ 487.50
Susan Brown	2001	$300.00	117.75	$ 35,325.00
Enrique Gallardo	2002	$235.00	9.0	$ 2,115.00
Araceli Perez	2001	$ 85.00	116.75	$ 9,923.75
Chris Witteman	2001	$325.00	359.1	$116,707.50
Chris Witteman	2000	$300.00	2.2	$ 660.00
Bill Ong Hing	2001	$300.00	6	$ 1,800.00
Luis Arteaga	2001	$140.00	17	$ 2,380.00
Total Fees Awarded			755.7	**$200,588.75**

Other costs: Postage Charges: $227.02

Copying Charges: $1,701.70

Total Costs and Fees: $202,517.47

Consistent with previous Commission decisions, we will order that Greenlining/LIF receive that amount plus interest calculated at the three-month commercial paper rate. Interest is to commence on the 75th day after Greenlining/LIF filed their amended compensation request (January 31, 2003) and continue until Qwest has made payment to Greenlining/LIF.

As in all intervenor compensation decisions, we put Greenlining/LIF on notice that they must make and retain adequate accounting and other documentation to support their intervenor compensation claim, and that the Commission staff may audit Greenlining/LIF's records related to this award. Those records should identify specific issues for which they requested compensation, the actual time spent, the applicable hourly rate, and any other costs for which compensation is claimed.

IX. Waiver of Comment Period

Pursuant to Rule 77.7(f)(6) of the Commission's Rules of Practice and Procedure, the otherwise applicable 30-day period for public review and comment is being waived.

X. Assignment of Proceeding

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

Findings of Fact

1. Greenlining/LIF made a timely request for compensation for their contributions to D.02-10-059.
2. Greenlining/LIF substantially contributed to D.02-10-059 except for their work associated with the bond issue, communication with legislators, and improper ex parte communications.
3. Greenlining/LIF's participation was productive in that the costs claimed for their participation were less than the benefits realized.
4. The hourly rates approved by this decision are reasonable.
5. The hours claimed for the work performed in this case are itemized and reasonable.
6. The miscellaneous costs incurred by Greenlining/LIF are reasonable.

7. The Appendix to this decision summarizes today's award.

Conclusions of Law

1. Greenlining/LIF fulfilled the requirements of §§ 1801—1812, which govern awards of intervenor compensation.

2. Greenlining/LIF should be awarded $202,517.47 for their contributions to D.02-10-059.

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

4. This order should be effective today so that Greenlining/LIF may be compensated without unnecessary delay.

O R D E R

IT IS ORDERED that:

1. The Greenlining Institute and Latino Issues Forum (Greenlining/LIF) are awarded $202,517.47 in compensation for their substantial contribution to Decision 02-10-059.

2. Qwest Communications Corporation and its wholly owned subsidiary, LCI International Telecommunications Corporation (collectively Qwest) shall pay Greenlining/LIF the award granted in Ordering Paragraph 1.

3. Qwest shall make payment within 30 days of the effective date of this order. Qwest 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 31, 2003, the date the amended request for intervenor compensation was filed, and continuing until full payment has been made.

4. The comment period for this decision is waived.
5. This proceeding is closed.

This order is effective today.

Dated April 17, 2003, at San Francisco, California.

MICHAEL R. PEEVEY
President
CARL W. WOOD
LORETTA M. LYNCH
GEOFFREY F. BROWN
SUSAN P. KENNEDY
Commissioners

Compensation Decision Summary Information

Compensation Decision(s):	D0304050
Contribution Decision(s):	D0210059
Proceeding(s):	I0011052
Author:	ALJ Econome
Payer(s):	Qwest Communications Corporation; LCI International Telecommunications Corporation

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Reason Change/Disallowance
Greenlining Institute and Latino Issues Forum	1/31/2003	$223,566.97	$202,517.47	Communicating with legislators not compensable; failure to make substantial contribution; failure to justify hourly rates.

Advocate Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
Robert	Gnaizda	Attorney	Greenlining Institute/Latino Issues Forum (Greenlining/LIF)	$365	2002	$365
Susan	Brown	Attorney	Greenlining/LIF	$325	2002	$325
Susan	Brown	Attorney	Greenlining/LIF	$300	2001	$300
Chris	Witteman	Attorney	Greenlining/LIF	$325	2001	$325
Chris	Witteman	Attorney	Greenlining/LIF	$300	2000	$300
Itzel	Berrío	Attorney	Greenlining/LIF	$255	2002	$235
Itzel	Berrío	Attorney	Greenlining/LIF	$230	2001	$220
Enríque	Gallardo	Attorney	Greenlining/LIF	$255	2002	$235
Araceli	Perez	Law Student	Greenlining/LIF	$125	2001	$85
John	Gamboa	Policy Expert	Greenlining/LIF	$300	2001	$160
Michael	Phillips	Policy Expert	Greenlining/LIF	$350	2001	$290
Bill Ong	Hing	Policy Expert	Greenlining/LIF	$300	2001	$300
Luis	Arteaga	Policy Expert	Greenlining/LIF	$250	2001	$140