Decision 06-12-026 December 14, 2006

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Joint Application of SBC Communications Inc. ("SBC") and AT&T Corp. ("AT&T") for Authorization to Transfer Control of AT&T Communications of California (U-5002), TCG Los Angeles, Inc. (U-5462), TCG San Diego (U-5389), and TCG San Francisco (U-5454) to SBC, Which Will Occur Indirectly as a Result of AT&T's Merger With a Wholly-Owned Subsidiary of SBC, Tau Merger Sub Corporation.	Application 05-02-027 (Filed February 28, 2005)

OPINION DENYING THE PETITION FOR MODIFICATION OF THE GREENLINING INSTITUTE OF DECISION 06-09-011

The petition for modification of Decision (D.) 06-09-011, filed October 27, 2006, by the Greenlining Institute (Greenlining), is denied. D.06-09-011 awarded Greenlining intervenor compensation of $199,924 for its substantial contributions to D.05-11-028, which granted the merger application of SBC Communications, Inc. (SBC) and AT&T Corp. Greenlining had requested $224,799. In its petition, Greenlining seeks compensation of an additional $20,811 to the amount already awarded. Greenlining did not apply for rehearing of D.06-09-011.

Petition

In assessing the reasonableness of Greenlining's request for compensation regarding its contribution to D.05-11-028, the Commission disallowed $21,811 sought for three individuals' post-decision work. The bulk of this amount was associated with a meeting with SBC's chief executive officer *after* the Commission's decision. The Commission reasoned that these costs should be

disallowed in that Pub. Util. Code § 1802(C)(i) refers to activities that contributed to the Commission "in the making of its order or decision."

Greenlining seeks to recover $20,811 of the disallowed amount, representing 56 hours of work of two Greenlining staff persons.[1] Greenlining argues that its post-decision work was necessary or helpful in carrying out the terms of the settlement agreement that the Commission approved in the SBC merger decision. Specifically, it cites *San Francisco NAACP* v. *San Francisco Unified School Dist.* (9th Cir. 2002) 284 F.3d 1163, as standing for the proposition that post-decision fees can be recovered in certain circumstances. Greenlining also objects that while it was awarded about 89% of its compensation request, The Utility Reform Network (TURN), another intervenor, was awarded about 95% of its request.

Discussion

Procedurally, we note that Greenlining has filed a petition for modification under Rule 16.4 of the Rules of Practice and Procedure (Rules), rather than an application for rehearing under Rule 16.1. A petition for modification seeks "changes to the text of an issued decision," typically due to "new or changed facts" since the decision was issued, while an application for rehearing deals with a claim that the decision is "unlawful or erroneous." Apparently Greenlining intends the latter claim, but Greenlining states that a shortage of staff prevented it from filing an application for rehearing within 30 days of the challenged decision (as required by statute). However, untimeliness is an

[1] Greenlining does not seek to recover the $1,000 disallowance associated with Carrie Camarena's time, nor does it seek to recover the $1,628 disallowance for administrative tasks.

absolute bar to filing an application for rehearing, and Greenlining provides no reasonable basis for entertaining a petition to modify.

Substantively, we find that Greenlining has failed to demonstrate error in the Commission's conclusion that the type of post-decision work claimed (preparation for and participation in a meeting with SBC to discuss implementing the decision) should be disallowed. Our earlier decision in D.06-09-011 (post-decision work cannot be characterized as assisting the Commission in its work) put Greenlining on notice that post-decision activity of this nature would not be compensated. The *San Francisco NAACP* decision is distinguishable in that it dealt with "an original prevailing party who later defends a decree against a collateral attack in a separate action." (284 F.3d at 1166.) No such collateral attack or subsequent legal proceeding occurred in this case.

The fact that we awarded TURN a greater percentage than Greenlining of the compensation sought is irrelevant; TURN did not request compensation for post-decision work.

The subject petition does not demonstrate error nor include any new or changed facts, and does not justify an increase in the award of compensation. The petition is denied.

Waiver of Comment Period

This is an intervenor compensation matter. Accordingly, as provided by Rule 14.6(c)(6) of our Rules, we waive the otherwise applicable 30-day comment period for this decision.

Assignment of Proceeding

Michael R. Peevey is the assigned Commissioner and Thomas R. Pulsifer is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. There are no new or changed facts that justify granting the relief requested in Greenlining's petition to modify D.06-09-011.

2. The *San Francisco NAACP* decision cited by Greenlining is distinguishable from the situation here in that it dealt with "an original prevailing party who later defends a decree against a collateral attack in a separate action." (284 F.3d at 1166.) No such collateral attack or subsequent legal proceeding occurred in this case.

Conclusions of Law

1. Greenlining has not demonstrated any error or other new facts that would justify granting its petition.

2. For the reasons set forth in the foregoing discussion, the subject petition should be denied, effective immediately.

O R D E R

IT IS ORDERED that:

1. The petition for modification of Decision 06-09-011 is denied.
2. Application 05-02-027 is closed.

This order is effective today.

Dated December 14, 2006, at San Francisco, California.

MICHAEL R. PEEVEY
President
GEOFFREY F. BROWN
DIAN M. GRUENEICH
JOHN A. BOHN
RACHELLE B. CHONG
Commissioners