

Decision **DRAFT DECISION OF ALJ BUSHEY** (Mailed 6/24/03)**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**Rulemaking on the Commission's Own Motion to  
Comply with the Mandates of Senate Bill 1712.Rulemaking 01-05-046  
(Filed May 24, 2001)**OPINION ON REQUEST FOR INTERVENOR COMPENSATION  
BY THE NATIONAL COUNCIL OF LA RAZA, SOUTHERN  
LEADERSHIP CONFERENCE AND THE CALIFORNIA  
RURAL INDIAN HEALTH BOARD, AND GREENLINING  
INSTITUTE AND LATINO ISSUES FORUM**

This decision awards the National Council of La Raza, Southern Christian Leadership Conference and the California Rural Indian Health Board (jointly, "La Raza") \$28,510.77 in compensation for their contribution to Decision (D.) 02-10-060. This decision denies the request of Greenlining Institute and Latino Issues Forum (Greenlining/LIF) for compensation in this proceeding.

**I. Background**

We initiated this proceeding in response to Senate Bill (SB) 1712 (Polanco, Ch.943, Stats. 2000), codified as Pub. Util. Code §§ 871.7 and 883, which required that we open an investigation into the feasibility of redefining universal telephone service to include high-speed internet access, and to report its findings to the Legislature. The legislation also required "public hearings that encourage participation by a broad and diverse range of interests from all areas of the state." Section 883(a).

We held Public Participation Hearings (PPH) throughout the state, and interested members of the public made their views known on the issues to be addressed in this proceeding. In the formal phase of this proceeding, the formal parties, which included La Raza and Greenlining/LIF, submitted two rounds of comments. Based on the comments, as well as the results of Commission staff work, the Commission prepared and submitted the required Broadband Report to the Legislature on August 14, 2002. All formal parties were mailed a copy of the Broadband Report on August 15, 2002.

The draft decision of the assigned Administrative Law Judge (ALJ) adopting the Broadband Report was mailed to parties for comment on August 26, 2002. La Raza filed comments and Greenlining/LIF filed reply comments. On October 24, 2002, the Commission issued D.02-10-060, which summarized the Broadband Report, and stated that the cost of making broadband technology available to all would be prohibitive. It found that Internet access is available to all customers who have basic telephone services, and concluded that it should maintain its commitment to keeping basic telephone service as affordable as possible.

## **II. Requirements for Awards of Compensation**

Intervenors who seek compensation for their contributions in Commission proceedings must file requests for compensation pursuant to Pub. Util. Code §§ 1801-1812. Section 1804(a) requires an intervenor to file a notice of intent (NOI) to claim compensation within 30 days after the prehearing conference or by a date established by the Commission. 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. The NOI may request a finding of eligibility.

The assigned ALJ issued a ruling dated January 8, 2002, finding La Raza to be eligible for compensation in this proceeding. The same ruling also found that La Raza had demonstrated that its participation, unless compensated, would impose a significant financial hardship. See §§ 1802(g), 1804(b)(1). The ALJ issued a similar ruling on January 2, 2002, finding that Greenlining/LIF was eligible for compensation in this proceeding.

Other code sections address requests for compensation filed after a Commission decision is issued. 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. La Raza timely filed a request for an award of compensation on December 30, 2002. Greenlining/LIF timely filed a request on December 23, 2002.

Pub. Util. Code § 1804(c) requires that an intervenor requesting compensation 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 customer in preparing or presenting that contention or recommendation.”

Pub. Util. Code § 1802(h) provides that a party may make a substantial contribution to a decision in one of 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.

Section 1804(e) requires the Commission to issue a decision that resolves 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, consistent with § 1806.

### **III. La Raza's Contribution to Resolution of Issues**

In this case, La Raza proposed that the Commission redefine "Universal Service" to incorporate two-way voice, video and data service using broadband technology. It argued that the cost of broadband, about \$20 per month (\$10 per month for lifeline customers), was substantially less than the benefits of the service to consumers and society. La Raza also proposed that all California customers should have access to the Internet as a matter of equity and to secure the state's economic future. La Raza filed comments and reply comments on the initial OIR, filed motions, filed comments on the ALJ's draft decision and the Commission's report to the Legislature, and presented a declaration with analysis by an expert witness.

In typical proceedings, an intervenor seeks to establish "substantial contribution" by linking a specific outcome adopted by the Commission to a position the intervenor took in prepared testimony or in a brief. La Raza

acknowledges that the Commission did not adopt its positions in this proceeding, but seeks compensation under the theory that the Commission may award compensation in certain circumstances even if the Commission does not adopt the intervenor's position. D.95-08-051 and previous orders have found that the Commission may make such an award where the case is complex, requires uncommon skill and the proceeding is unusually important.

We believe some compensation in this case is warranted even though the Commission did not explicitly adopt La Raza's overall policy recommendations. This proceeding, as La Raza observes, was important because it raised vital issues of equity and economic development. We also note that the Legislature directed us to undertake this proceeding. Although we did not agree with La Raza to expand the definition of universal service to include broadband services, we did explicitly recognize the vital role of information technology in the state's economy and in spreading the benefits of those technologies to all Californians.

The issues in this proceeding were complex in that they involved changing technologies and markets for them, the cost of technology and ratemaking treatment for those costs, legislative intent and jurisdictional issues. In addition, La Raza is correct that it contributed to some procedural issues raised in the course of the proceeding, some of which influenced the development of a complete record, see 1802(h).

Most significantly, La Raza provided a unique and unpopular perspective, which enriched the Commission's deliberations and the proceeding record. As a specific example, nearly half of the text of D.00-10-060 is devoted to responding to La Raza's substantive and procedural issues. Indeed, La Raza was the only party to advocate for the kinds of changes suggested in the statute. Without its

participation, the Commission would have had no proposal to change the status quo.

For the foregoing reasons, we find that La Raza made a significant contribution to this proceeding. We grant La Raza 50% of its requested attorney and expert hours, consistent with D.01-11-047.<sup>1</sup>

#### IV. Reasonableness of La Raza's Requested Compensation

La Raza requests \$90,731.37<sup>2</sup> as follows:

##### **Attorney Fees**

Mark Savage	129.6 hours x \$390.00	= \$50,544.00
Jenny Huang	52.1 hours x \$295.00	= \$15,369.50

##### **Law Clerk**

Elisa Laird	37.9 hours x \$130.00	= \$ 4,927.00
	<b>Subtotal</b>	<b>\$70,840.50</b>

##### **Attorney Expenses**

\$ 2,015.87

##### **Expert Witness Fees and Expenses**

Tom Hargadon	71.50 hours x \$250.00	\$17,875.00
	<b>Total</b>	<b>\$90,731.37</b>

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<sup>1</sup> In D.01-11-047, we agreed with Aglet Consumers Alliance that a 50% reduction in the request for compensation was appropriate given that Aglet's positions were not adopted, because Aglet's involvement resulted in a better understanding of the issues in the proceeding. (See generally, D.01-11-047, pp. 7-8.)

<sup>2</sup> La Raza also provided an alternative request that reduced the hours worked on the intervenor compensation request by 50% and made the rate for law clerks consistent with Commission decisions setting rates for that category of professional. Applying these policies reduces the total request to \$80,514.47.

La Raza asserts that its 223.90 hours of work were reasonable over the course of a 20-month proceeding, and during which La Raza filed several formal documents and analysis.

#### **A. Hours Claimed**

We find that the hours claimed for La Raza's attorneys and law clerk are reasonable. We reduce Hargadon's compensable hours because his testimony was vague and did not provide specific analysis. For example, the testimony proposes that customers and their broadband providers enter into contracts for service to overcome problems presented by existing state and federal law, but it does not explain what those legal barriers might be and how a contractual arrangement would solve them. The testimony proposes that basic service for business include broadband because "there is little distinction between residential and business in digital services," an observation that is vague and seemingly irrelevant to scope of the proceeding. A substantial portion of the testimony addresses the cost of ubiquitous broadband access by assuming those costs rather than analyzing what they might be or reporting what they are. Hargadon's testimony touched on many complex issues implicated by this rulemaking but offered no comprehensive, feasible proposals to address these issues. Moreover, we cannot agree with La Raza that more than 70 hours of billed time is reasonable to draft less than seven pages on matters of substance. For these reasons, we find that 20 hours is a reasonable estimate of the time spent on topics which were useful to the Commission.

As stated previously, we will award compensation for the reasonable hours of attorneys and experts but apply 50% reduction in recognition that the Commission did not adopt La Raza's substantive recommendations.

## B. Hourly Rates

La Raza provided an analysis of San Francisco attorney fees to justify its proposed rates. It sets the rates by comparing the rates of large San Francisco area law firms and then (apparently) adding a premium for “contingency work” and adding a multiplier.<sup>3</sup> La Raza’s expert, Richard Pearl, argues that firms typically require premium rates for contingency work because they assume a risk that they will not recover their fees.

We do not adopt La Raza's proposed fee levels because they are significantly higher than the rates for other attorneys we have compensated in Commission proceedings. Those fees are set according to our assessment of market rates. Specifically, Michel Florio of TURN has more than 20 years of experience in utility law and received \$315 an hour for the period 2000-01 (D.01-11-014). Robert Finkelstein, who has slightly more experience than Savage, received \$280 in 2000, \$310 in 2001, and \$340 in 2002. Like Savage, Christopher Hilten was admitted to the California state bar in 1989. Hilten received \$285 for work in 2001. Accordingly, we adopt an hourly fee for Savage of \$285 for 2001 and increase it to \$300 for 2002.

Setting the fee for Jenny Huang is somewhat more complicated. Huang was not licensed to practice law in California during the period in question. In a supplemental filing, La Raza clarified that she provided legal research under the supervision of an attorney in this proceeding. Under the circumstances, Huang’s market rate would not be the same as the rate for a

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<sup>3</sup> Adding on a premium for contingency work is not consistent with our administration of the intervenor compensation program. While under certain circumstances we will use a multiplier, see Communications TeleSystems International, 85 CPUC 2d 552, 558-561 (1999)(D.99-04-023), La Raza has not demonstrated that those circumstances are present here.

member of the California bar conducting independent legal representation. Rather, her work is comparable to that of an accomplished law clerk. We add a premium to the legal fees we adopt here for law clerks to recognize Huang's legal practice experience in another state. This approach is consistent with D.02-11-024, where we adopted a rate of \$125 an hour in 2001 for a highly experienced paralegal who also had a juris doctorate but was not a member of the California bar. We adopt that rate for Huang today for 2001 and increase it to \$135 an hour for 2002.

For Laird, we adopt a rate of \$85 an hour, which is the rate we awarded to law clerks in D.03-01-075. Consistent with past practice, we do not discount the rate for time spent by law clerks on intervenor compensation requests.

La Raza claims \$250 an hour for the work of Hargadon, which is consistent with our past awards to Hargadon and we will adopt it.

**V. La Raza's Award**

We award La Raza \$28,510.77 as follows:

**Savage**

2001	\$285 x 67.28	= \$19,174.80
2002	\$300 x 62.32	= \$18,696.00
	<b>Total</b>	<b>\$37,870.80</b>

**Huang**

2001	\$125 x 13.6	= \$ 1,700.00
2002	\$135 x 38.5	= \$ 5,197.50
	<b>Total</b>	<b>\$ 6,897.50</b>

**Laird**

$$\text{\$ } 85 \times 37.9 = \text{\$ } 3,221.50$$

**Hargadon**

$$\text{\$ } 250 \times 20 = \text{\$ } 5,000.00$$

**Subtotal      \$52,989.80**

$$\text{Reduced by 50\% } (\text{\$ } 52,989.80 \div 2) = \text{\$ } 26,494.90$$

Expenses      \$ 2,015.87

**Grand Total      \$28,510.77**

Consistent with previous Commission decisions, we will order that interest be paid on the award amount, calculated at the three-month commercial paper rate and commencing the 75<sup>th</sup> day after La Raza filed its compensation request and continuing until the utility makes its full payment of award.

As in all intervenor compensation decisions, we put La Raza on notice that the Commission Staff may audit its records related to this award. Thus, La Raza

must make and retain adequate accounting and other documentation to support all claims for intervenor compensation.

This proceeding affected a broad array of utilities and others in the telecommunications field. As such, we find it appropriate to authorize payment of the compensation award from the intervenor compensation program fund, as described in D.00-01-020.

#### **VI. Greenlining/LIF's Contribution to Resolution of Issues**

Greenlining/LIF's request for compensation<sup>4</sup> states that the Commission adopted its positions because it proposed that (1) customers should continue to access Internet using basic ("dial up") telecommunications services "without overwhelming the Universal Lifeline Telephone Service (ULTS) fund"; (2) widespread internet use should be facilitated through the ULTS program; and (3) the Commission should increase the discounts for the California Teleconnect Fund (CTF). Greenlining/LIF concluded that because the Commission adopted its proposals, it had made a significant contribution to D.02-10-060.

We have carefully reviewed the record and we are unable to find any support for Greenlining/LIF's assertions that it presented these recommendations, *see* § 1802(h), or that Greenlining/LIF's work materially supplemented, complemented, or contributed to the presentation of another party *see* § 1802.5. In fact, Greenlining/LIF's proposals in this proceeding were twofold: (1) to provide a \$10 subsidy to ULTS customers so they could purchase dial-up internet services, and (2) to create a blue ribbon panel to conduct further studies of the issues raised by SB 1712. The Commission did not adopt

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<sup>4</sup> Greenlining requested \$31,345.06 in compensation for its work in this proceeding, which consisted of filing initial comments (11 pages), reply comments (8 pages), and reply comments on the draft decision (6 pages).

Greenlining/LIF's suggestion to provide a subsidy for dial-up Internet access, and explicitly rejected any such subsidies as imposing too great a burden on the ULTS program and customer rates. The Commission also rejected Greenlining/LIF's suggestion that "the least prudent course for the Commission would be to conclude that advanced technologies are not within the current definition of 'essential' and do no more." Contrary to Greenlining/LIF's suggestion, the Commission did not include any type of Internet access in the definition of basic service and instead decided to "keep basic telephone service as affordable as possible," D.02-10-060, *mimeo.* at p.10. The Commission also did not adopt Greenlining/LIF's suggestion to create a blue ribbon panel.

Greenlining/LIF also claimed that "[t]he Commission adopted Greenlining/LIF's suggestion that a higher CTF discount for CBO's<sup>5</sup> would increase their participation in the CTF program. The Commission directed the Telecommunications Division to increase the CTF discount for CBO's to 50%, as Greenlining/LIF suggested." Greenlining/LIF request for compensation at p.6. To evaluate this assertion, we have carefully reviewed Greenlining/LIF's comments and reply comments responding to OII.<sup>6</sup> We are unable to locate a single reference to the CTF, much less a suggestion that the Commission increase the discount in the OIR comments or reply comments. Greenlining/LIF's OIR comments and reply comments contained no "presentation" on this issue as is required by § 1802(h).

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<sup>5</sup> Community Based Organization

<sup>6</sup> The parties' OIR comments and reply comments were the substantive foundation of this proceeding as we found that evidentiary hearings were not necessary.

After receiving the parties' OIR comments, reply comments, and holding the PPHs described above, the Commission staff issued its Broadband Report supporting the CTF proposal, attributing it to presentations by other parties and PPH participants. See Broadband Report at page 22. The Commission subsequently issued for comment a draft decision adopting the Broadband Report. In its reply comments on the draft decision adopting the Broadband Report, Greenlining/LIF addressed for the first time the CTF proposal reflected in the Broadband Report. In the final decision, the Commission summarized Greenlining/LIF's reply comments on the draft decision: "[Greenlining/LIF] recommended that the Commission appoint a blue-ribbon panel of experts in advanced telecommunications technologies and representatives of low-income communities to formulate a long-term plan for implementing SB 1712 including deployment of advanced technologies to universal service customers. These groups also recommended further expansion of the CTF for community based organizations." D.02-10-060 at page 4 – 5. Those reply comments also supported, with one sentence on page 3,<sup>7</sup> the Broadband Report's proposed expansion of the CTF. The Commission decision adopted the CTF proposal in the Broadband Report and directed the Telecommunications Division to prepare a resolution modifying the CTF program. Greenlining/LIF's one sentence presentation of belated support for adopting the Broadband Report's recommendation, with no additional substantive elaboration, did not substantially assist the Commission in adopting the CTF modifications.

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<sup>7</sup> The first two and a half pages of the reply comments are devoted to the "blue ribbon" panel proposal. The next page and half advocate for increasing the CTF discount to 75% to 80% for CBOs and the final page and a half recommend expanding the definition of CBOs and an outreach campaign. The final decision did not adopt these proposals.

As the above discussion demonstrates, Greenlining/LIF's assertions that it made a presentation on the adopted CTF modifications, or that Greenlining/LIF materially supplemented another party's presentation, is not supported by the record. Consequently, we conclude that Greenlining/LIF did not make a significant contribution on this issue.

A similar result, but for different reasons, occurs with regard to Greenlining/LIF's statement that it advocated for increased reliance on CBOs for outreach to low-income families. While Greenlining/LIF did make a vague reference to "non profits,"<sup>8</sup> the Commission took no action in this proceeding that increased reliance on CBOs for outreach to low-income families. On page 33 of the Broadband Report cited to by Greenlining/LIF, the Commission described an extant initiative relying on CBOs, where contracts were under review by the Department of General Services with approval expected soon thereafter. Other than to note the existence of this already approved and nearly implemented program, the Commission did not address the topic at all. Greenlining/LIF's advocacy in this proceeding did not substantially contribute to the outcome.

We are, therefore, compelled to conclude that, in all particulars, Greenlining/LIF's request for compensation does not demonstrate that Greenlining/LIF has met the statutory standards for compensation. The request also fails to address or attribute any time to Greenlining/LIF's rejected proposals, i.e, the blue ribbon panel or \$10/month subsidy.<sup>9</sup> These problems and

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<sup>8</sup> "Leveraged technology partnerships between non-profits, various levels of government, and private enterprises can and should be fostered by the Commission in its overarching blueprint for long-term technology deployment for ULTS customers." Greenlining/LIF Reply Comments at 3-4.

<sup>9</sup> In its comments on the intervenor compensation draft decision, Greenlining/LIF stated that approximately 15% of its time was devoted to this proposal. We cannot rely

inconsistencies make it impossible for us to decide the substantial contribution question in Greenlining/LIF's favor.

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on this assertion because it is new factual information the provision of which violates Rule 77.3 of the Commission's Rules of Practice and Procedure.

As discussed above with regards to La Raza's request, the Commission can award compensation where the Commission does not adopt the intervenor's position. Such an award, however, requires that the participation enhance the record in the proceeding or be otherwise useful to the Commission, see D.01-11-047. Here, the Commission did not act on Greenlining/LIF's proposals for a blue ribbon panel and the \$10/month subsidy for dial-up internet access. Thus, Greenlining/LIF's proposals were not useful to the Commission, nor did the proposals enhance the record in the proceeding.

In short, Greenlining/LIF has failed to meet its burden of proving that it made a substantial contribution to this proceeding. For that reason, we are constrained by § 1803(a) to decline to award Greenlining/LIF intervenor compensation.

## **VII. Comments on Draft Decision**

The Draft Decision on intervenor compensation was mailed to the parties, and Greenlining/LIF and La Raza filed comments. La Raza took issue only with the determination that 20 hours of expert time is reasonable for the Hargadon testimony, rather than the 70 hours requested. La Raza re-iterated its previously stated justification for 70 hours of time and pointed out that Haragon's testimony was 24 pages in total. We find that 20 hours of expert time is reasonable for the portions of the testimony that "assisted the Commission in the making of its order or decision," § 1802(h), and decline to modify the draft decision.

Greenlining/LIF argued that the Commission erred by finding that La Raza had made a substantial contribution to the proceeding, and that the Commission arbitrarily used different standards to evaluate the two intervenors' efforts in the proceeding. Greenlining/LIF comments at 2 and 9. La Raza sought

compensation under the theory that although the Commission did not adopt La Raza's recommendations, La Raza's presentation was useful to the Commission in making its order or decision. In contrast, Greenlining contended that the Commission adopted its proposals. In today's decision, we apply the applicable standards and determine that La Raza made a substantial contribution and that Greenlining did not show that it met that statutory requirement.<sup>10</sup>

Under § 1802(h), a party may make a substantial contribution to a decision by presenting evidence or argument that supports part of the decision even if the Commission does not adopt a party's position in total. The Commission has construed this statutory provision to authorize an award of compensation even when the position advanced by the intervenor is rejected, where extraordinary circumstances justify the award. For example, in D.89-03-063, we awarded San Luis Obispo Mothers For Peace and Rochelle Becker compensation in the Diablo Canyon rate case because their arguments, while ultimately not adopted by us, forced the utility to thoroughly document the safety issues involved. We said that we may find that an intervenor has made a substantial contribution even in the absence of the adoption of any of the intervenor's recommendations but only in cases where a strong public policy exists to encourage intervenor participation because of factors not present in the usual Commission proceeding. These factors must include (1) an extraordinarily complex proceeding, and (2) a case of unusual importance. As stated in today's decision, we determine that La Raza has shown that its efforts meet this standard, and that it has made a substantial contribution.

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<sup>10</sup> Moreover, we find Greenlining/LIF failed to show that its presentation met the standards under which La Raza seeks compensation. See section VI.

Greenlining/LIF seeks compensation, however, under the theory that the Commission “implicitly and explicitly adopted” its positions, and that it “advanced additional positions endorsed by other parties thereby materially contributing to the analysis underlying the adopted decision,” Comments on Draft Decision at p.1. Where the Commission adopted positions advocated by several parties, Greenlining/LIF must show that its presentation “materially supplement[ed], complement[ed], or contribute[d] to the presentation of another party.” § 1802.5. We have previously determined that an intervenor need not make a unique contribution to meet this standard, but the “customer’s presentation must substantially assist the Commission in making its order or decision.” D.01-11-047, *mimeo*, at p. 9. In its Comments on the Draft Decision, Greenlining/LIF correctly restates the standard as requiring that the requesting party show that its position is (1) distinguishable from others, and (2) uniquely persuasive.<sup>11</sup>

To show that it met the requirements of the second standard, Greenlining/LIF stated that it “recommended, and the Commission adopted” facilitating internet access through the ULTS program, and that the “Commission adopted Greenlining/LIF’s suggestion that a higher CTF discount for CBO’s would increase participation in the CTF program.” Greenlining/LIF’s Request at pages 4 and 6. As discussed above, however, the Commission did not adopt

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<sup>11</sup> In its comments on the intervenor compensation draft decision, Greenlining/LIF repeatedly points out that it provided “unique” views and proposals to the Commission. As Greenlining/LIF’s own quotation shows, however, to obtain compensation the presentation must be “uniquely persuasive” to the Commission. As discussed in today’s decision, Greenlining/LIF did not persuade the Commission to adopt its contentions, and thus Greenlining/LIF did not meet the standard.

Greenlining/LIF's dial up internet access subsidy<sup>12</sup> as part of the ULTS program, and instead opted to keep ULTS basic telephone service rates as affordable as possible by rejecting any subsidy for internet access. In its comments on the intervenor compensation draft decision, Greenlining/LIF argues that it advocated for "protection" of the ULTS fund, and that the Commission adopted this contention. Greenlining/LIF's recommendation for a ULTS subsidy for dial-up internet access<sup>13</sup> included additional "customer protections . . . to prevent marketing abuses" but these new protections were in the context of adding "high end technologies to the ULTS program." OIR Comments at page 10. Because the Commission did not adopt any type of ULTS subsidy, Greenlining/LIF's recommendation for these additional customer protections was neither considered nor adopted by the Commission. Also discussed above is the basis for our conclusion that one sentence in Greenlining/LIF's reply comments on the draft Broadband decision did not "materially supplement, complement, or contribute to the presentation of another party." Where an intervenor has not demonstrated a substantial contribution to the decision, § 1803 requires that we decline to make an award of compensation.

In sum, Greenlining/LIF has not shown that the draft decision erred in its conclusion that Greenlining/LIF had not met the standard for demonstrating that it made a substantial contribution. In response to Greenlining/LIF's

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<sup>12</sup> Or the broadband subsidy proposed in SB 1712.

<sup>13</sup> "Intervenors recommend that short-term ULTS advanced technology implementation include immediate access to dial-up Internet service for low-income households and individuals, since this most basic Internet service can be provided at relatively low cost (so as not to place low-income customers at risk of ordering services that will undermine their ability to pay for basic service) . . ." Greenlining/LIF OIR Comments at 5.

comments on the draft decision, however, we have made several modifications to the discussion to clarify the rationale supporting our conclusions.

### **VIII. Assignment of Proceeding**

Geoffrey F. Brown is the Assigned Commissioner and Maribeth A. Bushey is the assigned ALJ in this proceeding.

### **Findings of Fact**

1. La Raza made a timely request for compensation for its contribution to D.02-10-060.
2. La Raza made a showing of significant financial hardship by demonstrating the economic interests of its individual members would be extremely small compared to the costs of participating in this proceeding.
3. La Raza contributed substantially to the development of the record in this proceeding although the Commission did not adopt its proposals.
4. Greenlining/LIF made a timely request for compensation for its contribution to D.02-10-060.
5. Greenlining/LIF's made no presentation on the adopted CTF modifications.
6. Greenlining/LIF's limited advocacy for increased reliance on CBOs for UTLS outreach in this proceeding did not assist the Commission in making its order or decision because the Commission took no action in this proceeding on that topic.
7. Greenlining/LIF did not contribute substantially to the development of the record in this proceeding.
8. As adjusted above, La Raza's hourly rates are comparable to rates applied to professionals with comparable experience and skills.

**Conclusions of Law**

1. Except as otherwise noted in this opinion, La Raza fulfilled the requirements of §§ 1801-1812 that govern awards of intervenor compensation.
2. Consistent with D.01-11-047, the Commission should award La Raza 50% of its otherwise reasonable billed hours because, although the Commission did not adopt La Raza's policy recommendations, La Raza made a substantial contribution to the understanding of key issues addressed in D.02-10-060.
3. Greenlining/LIF failed to meet its burden to demonstrate that it contributed substantially to the development of the record in this proceeding.
4. La Raza should be awarded \$28,510.77 for its contribution to D.02-10-060.
5. This order should be effective today so that La Raza can be compensated without unnecessary delay.

**O R D E R****IT IS ORDERED** that:

1. National Council of La Raza is awarded \$28,510.77 in compensation for substantial contribution to Decision (D.) 02-10-060. The Commission will forward this amount to La Raza, including interest at the rate earned on prime, three-month commercial paper, as reported in Federal Reserve Statistical Release H.15, beginning 2003, from the from the intervenor compensation program fund, as described in D.00-01-020.
2. The request for compensation by Greenlining Institute and Latino Issues Forum is denied.
3. This proceeding is closed.

This order is effective today.

Dated \_\_\_\_\_, at San Francisco, California.



**APPENDIX  
(Page 1)**

<b>Compensation Decision(s):</b>	
<b>Contribution Decision(s):</b>	D0210060
<b>Proceeding(s):</b>	R0105046
<b>Author:</b>	ALJ Bushey
<b>Payer(s):</b>	Commission

**Intervenor Information**

<b>Intervenor</b>	<b>Claim Date</b>	<b>Amount Requested</b>	<b>Amount Awarded</b>	<b>Reason Change/Disallowance</b>
National Council of La Raza/Southern Christian Leadership Conference/California Rural Indian Health Board	12/30/02	\$90,731.37	\$28,510.77	Failure to prevail/excessive rates
Greenlining Institute/Latino Issues Forum	12/23/02	\$31,345.06	0	Failure to make substantial contribution

**APPENDIX**

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**Advocate Information**

<b>First Name</b>	<b>Last Name</b>	<b>Type</b>	<b>Intervenor</b>	<b>Hourly Fee Requested</b>	<b>Year Hourly Fee Requested</b>	<b>Hourly Fee Adopted</b>
Mark	Savage	Attorney	National Council of La Raza/Southern Christian Leadership Conference/California Rural Indian Health Board	\$390	2001	\$285
Mark	Savage	Attorney	National Council of La Raza/Southern Christian Leadership Conference/California Rural Indian Health Board	\$390	2002	\$300
Jenny	Huang	Law Clerk	National Council of La Raza/Southern Christian Leadership Conference/California Rural Indian Health Board	\$295	2001	\$125
Jenny	Huang	Law Clerk	National Council of La Raza/Southern Christian Leadership Conference/California Rural Indian Health Board	\$295	2002	\$135
Elisa	Laird	Law Clerk	National Council of La Raza/Southern Christian Leadership Conference/California Rural Indian Health Board	\$130	2001	\$85
Thomas	Hargadon	Policy Expert	National Council of La Raza/Southern Christian Leadership Conference/California Rural Indian Health Board	\$250	2001	\$250

**(End of Appendix)**