

Decision 04-12-054 December 16, 2004

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the
Commission's Own Motion to Establish
Consumer Rights and Consumer Protection Rules
Applicable to All Telecommunications Utilities.

Rulemaking 00-02-004
(Filed February 3, 2000)

**OPINION GRANTING INTERVENOR COMPENSATION
FOR SUBSTANTIAL CONTRIBUTIONS TO DECISION 04-05-057**

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Attachment – Compensation Decision Summary Information

OPINION GRANTING INTERVENOR COMPENSATION FOR SUBSTANTIAL CONTRIBUTIONS TO DECISION 04-05-057

Summary

This decision grants a total of \$826,901.85 in intervenor compensation to six intervenors for their contributions to Decision (D.) 04-05-057:

- *Utility Consumers' Action Network (UCAN)*: \$222,342.32, an increase of \$79.25 above its requested amount of \$222,263.07.
- *The Utility Reform Network (TURN)*: \$231,079.42, the amount it requested.
- *Wireless Consumers Alliance (WCA)*: \$23,258.50, a reduction of \$1,540 from its requested amount of \$24,798.50.
- *California Small Business Roundtable (CSBRT)*: \$15,961.98, a reduction of \$465 from its requested amount of \$16,426.98.
- *Latino Issues Forum (LIF)*: \$162,803.79, a reduction of \$40,700.95 from its requested amount of \$203,504.74.
- *National Consumer Law Center, Inc. (NCLC)*: \$171,455.84, a reduction of \$8,216.00 from its requested amount of \$179,671.84.

Background

Over the past two decades, there has been a rapid evolution in the telecommunications industry, not only in the technology the industry employs but as well in its structure, the mix of services it provides, and the ways it provides those services. The Commission has for some time recognized that the ongoing shift to a more competitive telecommunications marketplace challenges it to find new methods to protect consumers. Toward that end, the Commission

opened this rulemaking to consider whether to revise its existing consumer protection rules and/or establish new rules applicable to regulated telecommunications utilities.

The rulemaking order introduced a Commission staff report suggesting specific consumer protection measures, including a telecommunications consumers' bill of rights, rules to protect those rights, and changes to the industry's current tariffing and limitation of liability practices. Stakeholders were afforded numerous opportunities to submit comments on the proposed new consumer protection rules overall or various subsets of them during the more than four-year course of the proceeding. In response to then-recently enacted anti-cramming legislation, the Commission issued a set of interim rules in D.01-07-030 addressing non-communications related charges on telephone bills.¹ The Assigned Commissioner distributed his first draft decision proposing a new telecommunications bill of rights and consumer protection general order in June 2002 following nine opportunities for parties to submit comments and/or replies to comments. There followed four days of workshops, recommendations by a joint industry-consumer working group, and several more opportunities to comment before the Assigned Commissioner submitted a revised draft decision with proposed rules in July 2003. Following additional comments and replies, he revised and reissued it for further public and party comment in March 2004. By the time that draft, revised for yet more comments, and two alternate decisions

¹ The non-communications related billing rules set forth in Interim D.01-07-030 were subsequently reviewed again in D.04-05-057 and included in General Order (G.O.) 168. Thus, today's decision discusses the intervenors' contributions to D.01-07-030 as being contributions to D.04-05-057.

by other commissioners were considered by the full Commission, industry and consumer representatives had had more than 20 opportunities for input on the proposed rules.

In May 2004, the Commission issued D.04-05-057 adopting General Order 168, Rules Governing Telecommunications Consumer Protection. G.O. 168 sets forth: in Part 1, a telecommunications consumers' Bill of Rights, the fundamental consumer rights that all communications service providers must respect; in Part 2, a set of Consumer Protection Rules all carriers must follow to protect those rights; in Part 3, a reserved section formerly addressing privacy rights; in Part 4, Rules Governing Billing for Non-communications-Related Charges; and in Part 5, Rules Governing Slamming Complaints.

D.04-05-057 did not implement the rulemaking order's proposal to have the new consumer protection rules replace tariffs for competitive telecommunications services. It did keep the proceeding open to consider whether the Commission should establish a privacy rule and a telecommunications consumer education program; whether to curtail the Commission-sanctioned limitation of liability; and whether additional rules requiring that communications directed at consumers and subscribers be in languages other than English are needed.

Requirements for Awards of Compensation

The intervenor compensation program, enacted by the Legislature in Pub. Util. Code §§ 1801-1812,² establishes a mechanism for reimbursing public utility customers for their reasonable costs of participation in Commission proceedings

² All statutory references are to the Public Utilities Code unless otherwise indicated.

if they make a substantial contribution to the Commission's decision. All of these procedures must be followed and criteria satisfied for an intervenor to obtain a compensation award:

1. The intervenor must satisfy certain procedural requirements including filing a sufficient notice of intent to claim compensation (NOI) within 30 days of the prehearing conference (or in special circumstances, at other appropriate times that we specify). (§ 1804(a).)
2. The intervenor must be a customer or a participant representing consumers, customers, or a subscriber of a utility subject to our jurisdiction. (§ 1802(b).)
3. The intervenor must demonstrate "significant financial hardship." (§§ 1802(g), 1804(b)(1).)
4. The intervenor should 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).)
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. (§§ 1802(h), 1803(a).)
6. The claimed fees and costs must be comparable to the market rates paid to experts and advocates having comparable training and experience and offering similar services. (§ 1806.)

We evaluate each intervenor's compliance with Items 1 through 4 in the Eligibility and Timeliness section below, followed by sections evaluating their contributions and charges.

Eligibility and Timeliness

Because no prehearing conference was held, the assigned Administrative Law Judge (ALJ) on March 20, 2000 issued a ruling setting an NOI filing deadline of June 2, 2000, 30 days after the first round of reply comments was due. In a subsequent ruling, the ALJ extended the date for reply comments and at the same time extended the NOI deadline to September 14, 2000. For all of the parties for whom we are evaluating claims in this decision, the ALJ issued the rulings called for in Section 1804(b).³ In those rulings, each claimant was found to have met the NOI filing requirements, and to have demonstrated that it was a “customer” as defined in Section 1802(b) for whom participation without an award of compensation would be a significant financial hardship. In addition, we find today that each has filed a timely request for compensation.⁴ Thus, each has met the requirements set forth in Items 1 through 4 in the Requirements for Awards of Compensation section above.

Under § 1804(c), the Commission staff or any other party may file a response to any claimant’s request. In this case, the only response was filed by Verizon California Inc. and objected to LIF’s request that the Commission apply

³ ALJ’s rulings dated June 21, 2000 (for UCAN), October 6, 2000 (for TURN, WCA, CSBRT and LIF), and August 17, 2001 (for NCLC, following the ALJ’s granting of NCLC’s motion to accept its late-filed NOI).

⁴ On August 25, 2004, the assigned ALJ issued a ruling determining that WCA’s initially filed request for an award of compensation appeared insufficient to demonstrate that WCA had made a substantial contribution to the proceeding. WCA had also included a justification for attorney fees and other costs that appeared inadequate for the purpose. The ALJ’s ruling allowed WCA additional time to file an amended request, and it did so on September 8.

a multiplier to LIF's request for compensation. We address Verizon California's response and LIF's subsequent reply in a later section below.⁵

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 recommendations put forward by the customer?⁶ Second, if the customer's contentions or recommendations paralleled those of another party, did the customer's participation materially supplement, complement, or contribute to the presentation of the other party or to the development of a fuller record that assisted the Commission in making its decision?⁷ 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

⁵ Verizon California Inc.'s (U1002C) Response to Request for Intervenor Compensation for Substantial Contribution to D.04-05-057 and General Order 168 by Latino Issues Forum (filed September 7, 2004); and Latino Issues Forum's Reply (filed September 22, 2004).

⁶ See § 1802(h).

⁷ See §§ 1802(h) and 1802.5.

contributed. It is then a matter of judgment as to whether the customer's presentation substantially assisted the Commission.⁸

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 each intervenor made to this proceeding.

UCAN

The Commission in D.04-05-057 generally avoided crediting individual contributors because there were so many opportunities to comment that most rules went through many iterations and numerous modifications from the initial proposal to the final decision.⁹ Throughout the proceeding many of the consumer-oriented parties collaborated with one another to submit comments, motions, workshop products, and replies and responses to the comments and motions of industry participants. At various points, UCAN made joint submittals with TURN, Consumers Union, NCLC, and California Department of Consumer Affairs, and reports having worked at other times to coordinate

⁸ D.98-04-059, 79 CPUC2d, 628 at 653.

⁹ The proceeding began in February 2000; the Assigned Commissioner issued drafts of what would become D.04-05-057 in June 2002, July 2003, and March 2004; and two other commissioners issued alternates, one of which was eventually adopted as D.04-05-057 in May 2004. There was also an interim opinion, D.01-07-030, promulgating interim rules governing non-telecommunications related charges in telephone bills.

informally with ORA, the California Attorney General's office, and Greenlining Institute. The Commission in D.04-05-057 in many places referred to and relied on the work of the consumer groups as a bloc.¹⁰ At other times, each of the consumer groups, including UCAN, made individual contributions.¹¹ As UCAN notes, it was generally not possible for consumer representatives to separate out their unique inputs to the group products, and we agree that is unnecessary for our purposes here.

During the course of the proceeding, UCAN contributed in one form or another to most of the rule sections that eventually became Part 2 of the general order, and to many other topics addressed in the decision. UCAN's individual contributions were particularly noteworthy in supporting the need for the new rules and their economic effects. Industry participants' reaction to UCAN's Navarro paper¹² was one contributing factor that led to the Commission's extensive discussion explaining the adequacy of the record supporting the rules' economic effects.

Many of UCAN's recommendations were adopted; some were not. We need not deconstruct every claimed instance of UCAN's contributions here

¹⁰ See, e.g., D.04-05-057 at pages 43 (Rule 3), 55-56 (Rule 4), 60 (Rule 6), 88 (Rule 11), 114 (consumer education), 123 (enforcement), 129 *et seq.* (economic effects), and 138-140 (sufficiency of the record).

¹¹ See, e.g., D.04-05-057 at pages 121 and 131 (economic effects and UCAN's Navarro paper).

¹² Peter Navarro, *An Economic Justification for Consumer Protection Laws and Disclosure Regulations in the Telecommunications Industry (August 25, 2003)*, submitted as Attachment A to the UCAN's comments on the Assigned Commissioner's July 2003 Draft Decision.

because even where its recommendations were not adopted, they generated spirited debate and led to a fuller examination of the issues. UCAN has made a substantial contribution to the proceeding and should receive an award of compensation.

TURN

TURN participated, as did UCAN, through products both submitted jointly with others and submitted on its own. TURN's joint submittals were made with UCAN, Consumer Action, Consumers Union, NCLC, and California Department of Consumer Affairs. TURN notes that by coordinating their efforts, the consumer representatives were able to achieve efficiencies that allowed a greater level of participation than any of them could have achieved on their own, and to forge agreement on the best set of rights and rules for consumers. This unified front on highly contentious issues facilitated the Commission's work as well. Additionally, the various stakeholders met periodically through workshop and working group negotiating sessions at the urging of the ALJ and Assigned Commissioner to discuss technical aspects of the rules and attempt to narrow their differences.

TURN does not attempt to enumerate every instance where D.04-05-057 (or one of the draft or alternate decisions leading to it¹³) adopted its recommendations because there were so many, and because it would be impractical to attempt to separate out its contributions submitted as part of

¹³ A customer's efforts may be compensable when they contribute to a draft decision recommended by an Assigned Commissioner or ALJ, even though the final decision may reach a different result. *See, e.g.*, D.99-11-006 [pp. 9, 10], citing D.99-04-004 and D.96-08-023; and D.01-06-063 [pp. 6-7].

consumer groups' joint products. It does, however, cite various provisions of Rule 1, Rule 2 (primarily the earlier drafts), Rules 3 through 7, Rule 9, and Rule 11 for which it claims (with its other consumer collaborators) a measure of credit. We note that some of the specific subrules it cites were already included in the staff's February 2000 recommendations that the Commission advanced for comment in R.00-02-004, and the adopted versions of others were taken from earlier decisions and (almost verbatim) from statutes. That does not diminish the value of TURN and the other consumer parties' contributions, however, because they did provide suggested modifications and a vigorous consumer presence to help overcome industry commenters' efforts to weaken or discard those proposed rules.

Similarly, TURN cites its contributions to other decision topics including detariffing, limitation of liability, consumer education, and privacy. While none of those topics have been finally disposed of in D.04-05-057, the proceeding has been kept open to address them in a future decision. We recognize the considerable effort the parties devoted to these topics and conclude that even in these areas where we have not yet reached a conclusion, we have benefited from TURN's analysis and discussion. TURN has made a substantial contribution to the proceeding and should receive an award of compensation.

WCA

WCA is a non-profit consumer advocacy organization with considerable background and experience in dealing with wireless issues. It receives and deals with a large number of wireless consumer complaints, and is highly knowledgeable of the technical aspects of wireless systems and the rules, regulations and decisions applying to them. Unlike TURN and UCAN, all of WCA's filings were done on its own, and all were aimed primarily at improving

protections for wireless customers (although many of the changes it advocated were also applicable to other carrier classes).

At various points in the proceeding, WCA provided input and recommendations concerning the general order's proposed Rules 2 (early draft version), 3, 4, 7, 8, 11 and 15, and the privacy, detariffing and limitation of liability issues. It advocated adopting a rule requiring wireless carriers to supply consumers with better disclosure and contracts as opposed to oral agreements. WCA supported the proposition that consumers should have a clearly defined trial period to cancel service without penalty, and opportunity to opt out when carriers change their contracts. WCA advocated requiring wireless carriers to provide better coverage maps and entitling consumers to return handsets without penalty during the trial period. WCA brought its legal expertise to bear in addressing the wireless industry's recurrent contention that the Commission lacks jurisdiction to adopt a consumer bill of rights and/or specific rules. WCA also persuaded the Commission to take judicial notice of an FCC opinion on the topic in a docket for which WCA was the petitioner.

Some of WCA's suggestions were accepted and incorporated into either the drafts or final decision, and some were not. However, even those WCA suggestions and arguments that were not adopted helped generate lively debate among the parties and led us to consider alternative ways of addressing wireless (and other) consumer protections.

We agree that WCA's background and expertise give it special insight into consumer problems and potential solutions that benefited the Commission in this proceeding. WCA made a substantial contribution and should receive an award of compensation.

CSBRT

CSBRT is a non-profit organization formed for, among other purposes, advocating on behalf of California's small businesses and representing the

interests of both small business and residential customers in all matters relating to utility services. Its intervenor compensation claim cites its contributions in three primary areas: extending protections to small businesses; ensuring wireless carriers remained covered by the rules; and preserving customers' flexibility in how they sign up for and change their services.

The initial set of draft rules distributed for comment with R.00-02-004 proposed to provide protections to customers generally, but did not explicitly define small businesses. CSBRT was the primary contributor from the consumer side working to extend and preserve protections for small businesses, including those with T-1 service. As such, it successfully countered several iterations of opposing comments that would have confined the rules to protecting individuals and residential customers, or restricted their applicability to businesses much smaller than those covered in the final rules. CSBRT successfully argued that small business owners are as vulnerable to fraudulent, misleading or unfair practices as residential customers and have been hit hard by slamming, cramming and telemarketing abuses.

Although the initial set of draft rules proposed they be applied to all Commission-regulated telecommunications providers, there was continual pressure throughout the proceeding to exclude wireless carriers. CSBRT was among the many consumer groups that consistently opposed that exclusion. CSBRT argued that rules consistent across the telecommunications industry would make it much easier for small businesses to know what protections they are entitled to, and for the Commission staff to bring enforcement actions against unscrupulous providers on their behalf.

CSBRT also advocated for allowing flexibility in how consumers initiate service and add or subtract features. Agreeing with wireless carriers, CSBRT

maintained that requiring written signatures would be inconvenient to customers, delay service initiation, increase costs, and be unnecessary. CSBRT urged the Commission to instead permit customers to initiate service using electronic signature, oral capture or other less burdensome methods and add or subtract features from their service or take advantage of new rates plans by contacting their carriers orally.

CSBRT was largely successful in achieving its goals in all three areas. It was the primary (although not the sole) consumer-oriented contributor in the area of defining and protecting small businesses. It was one among several or many in the other two areas. CSBRT has made a substantial contribution to the Commission's decision in this proceeding and should receive an award of compensation.

LIF

Throughout the proceeding, LIF has stressed its aim of representing the interests of low-income, immigrant and language minority customers and other vulnerable communities.¹⁴

¹⁴ Latino Issues Forum is a non-profit 501(c)(3) organization devoted to advancing the interests of Latinos. LIF and Greenlining Institute filed a single NOI, indicating an intent to participate as one joint entity ("Greenling/LIF"). The NOI included a single statement of the nature and extent of Greenlining/LIF's planned participation, and a single estimate of the compensation it expected to request. That joint entity was found eligible to claim intervenor compensation by the assigned ALJ's Ruling on October 6, 2000. All filings in the proceeding through calendar year 2003 were made by Greenlining/LIF; filings beginning in 2004 were made by LIF alone. For purposes of evaluating LIF's claim, we treat LIF as representing the joint entity found eligible and credit to it in this order all participation by LIF and joint entity Greenlining/LIF.

LIF lists in its claim numerous topics from the draft, alternate and final decisions where it believes its participation made a substantial contribution. LIF argued in favor of rules and against a market-based approach to consumer protection; against having the new rules replace tariffs; in favor of prohibiting deceptive, untrue or misleading statements about rates and services; against allowing statements that are ambiguous, illegible, or too complex; in favor of in-language requirements; in favor of informing consumers of their least expensive service options; in favor of providing key terms and written contracts at in-person points of sale and promptly after for other sales; in favor of extending the penalty-free cancellation interval; in favor of improving protections against unauthorized charges; against requiring social security numbers; in favor of applying the billing rules to all carrier classes; in favor of a clearer bill statement of the no-disconnect rule and a clearer bill description of non-mandated charges; in favor of better no-disconnect rights; in favor of better agreement change notice and cancellation rights; and in favor of a consumer education program.

As with TURN, we note that many or most of the topics LIF cites as having benefited from its contributions were already included in the staff's February 2000 recommendations, or were initially suggested or addressed by others. Others amount to statutory requirements reflected in the rules. Again, that does not diminish the value of LIF and the other consumer parties' contributions because they did provide suggested modifications and a vigorous consumer presence to help overcome industry commenters' efforts to weaken or discard most of the proposed rules.

LIF was indeed an early and influential sponsor of some of the first suggestions regarding consumer education and in-language requirements, two topics still pending in the proceeding. We recognize the considerable effort LIF

has devoted to all of the topics it addressed and conclude that even in those areas where we have not yet reached a conclusion, we have benefited from LIF's analysis and discussion. LIF has made a substantial contribution to the proceeding and should receive an award of compensation.

NCLC

NCLC is a non-profit consumer advocacy organization working solely on behalf of low-income residential consumers of various utility services, including telecommunications services. It does that through, among other methods, research into the legal aspects of consumer problems and assisting consumers in obtaining needed reformation of the law through judicial and other lawful processes.

NCLC was another of the consumer representatives contributing through both consumer group and individual work products. At various times, NCLC partnered with TURN, UCAN, California Department of Consumer Affairs, and Consumers Union, and at other times contributed on its own. In cooperation with UCAN and TURN, it submitted comments and replies concerning the legal requirements for rulemaking procedures, the design of consumer education programs, the wording of the consumer protection rules, the importance of disclosing terms and conditions, the handling of consumer complaints, and other issues relevant to this proceeding. NCLC also addressed a number of legal and policy issues raised by the carriers. In particular, NCLC addressed the Commission's legal authority to adopt consumer protection rules even though no party was able to quantify the precise benefits that will flow to consumers; the Commission's ability to regulate offers to consumers and disclosures of information without violating the carriers' commercial free speech rights; the right of the Commission to adopt regulations in areas the FCC currently

regulates, such as privacy; and the Commission’s jurisdiction over wireless carriers’ terms and conditions. Finally, NCLC points to a number of wording changes it suggested be made to specific rules, and its opposition to changes proposed by the carriers. Although some of its positions were adopted and some were not, its participation on behalf of consumers unquestionably made a substantial contribution to the Commission’s decision in the proceeding. NCLC should receive an award of compensation.

Reasonableness of Requested Compensation

All claimants have submitted time logs to support the hours claimed by their professionals. Those logs typically note the names, dates, number of hours charged, and the issues and/or activities in which each was engaged. Each claimant has adequately detailed the hours for which it is claiming compensation, and its other expenses. We tabulate their claims in this section, and evaluate each claim. Later we retabulate the results to show how we derive their awards. Where claimants have made adjustments, arithmetic errors or other errors in their submittals that make the tables appear inconsistent, their figures are retained here and corrected in our subsequent retabulations.

UCAN’s Claim

| Name | Expertise | Year | Hours | Rate | Amount |
|-----------------|------------------|-------------|--------------|-------------|---------------|
| Michael Shames | Attorney | 2000 | 205.9 | \$195 | \$40,150.50 |
| | | 2001 | 61.7 | 195 | 12,031.50 |
| | | 2002 | 287 | 220 | 63,140.00 |
| | | 2003 | 127.5 | 250 | 31,875.00 |
| | | 2004 | 120.8 | 250 | 30,200.00 |
| Jordana Beebe | Policy Expert | 2000 | 32.5 | 75 | 2,437.50 |
| | | 2001 | 39.9 | 75 | 2,992.50 |
| Charles Carbone | Attorney | 2000 | 62.2 | 100 | 6,220.00 |
| Beth Givens | Policy Expert | 2000 | 5.8 | 175 | 1,015.00 |
| | | 2002 | 7 | 175 | 1,225.00 |

| | | | | | |
|-------------------|-----------|------|------|-----|--------------|
| | | 2003 | 2.4 | 175 | 420.00 |
| Peter Navarro | Economist | 2003 | 58.5 | 300 | 25,000.00 |
| | | 2004 | 33 | 300 | |
| | | | | | |
| Travel | | | | | 1,689.00 |
| Copying & Postage | | | | | 3,967.57 |
| | | | | | |
| Total Claim | | | | | \$222,263.07 |

TURN's Claim

| Name | Expertise | Year | Hours | Rate | Amount |
|--------------------|---------------|------|--------|-------|--------------|
| Christine Mailloux | Attorney | 2001 | 57 | \$250 | \$14,250.00 |
| | | 2002 | 268.75 | 275 | 73,906.26 |
| | | 2003 | 134.25 | 300 | 40,275.00 |
| | | 2004 | 96.875 | 325 | 31,484.37 |
| Paul Stein | Attorney | 2000 | 113.25 | 200 | 22,650.00 |
| Regina Costa | Policy Expert | 2001 | 4.5 | 180 | 810.00 |
| | | 2002 | 88.5 | 200 | 17,700.00 |
| | | 2003 | 4 | 215 | 860.00 |
| | | 2004 | 26 | 230 | 5,980.00 |
| William Nusbaum | Attorney | 2003 | 13.5 | 340 | 4,590.00 |
| Robert Finkelstein | Attorney | 2001 | 0.5 | 310 | 155.00 |
| | | 2002 | 1.5 | 340 | 510.00 |
| | | 2003 | 6.25 | 365 | 2,281.25 |
| Hayley Goodson | Paralegal | 2000 | 9.75 | 80 | 780.00 |
| Mark Barmore | Attorney | 2004 | 21.25 | 125 | 2,656.25 |
| | | | | | |
| Copies | | | | | 8,237.59 |
| Postage | | | | | 1,021.09 |
| Phone/Facsimile | | | | | 723.49 |
| LEXIS Research | | | | | 850.24 |
| Attorney Travel | | | | | 1,358.88 |
| | | | | | |
| Total Claim | | | | | \$231,079.42 |

WCA's Claim

| Name | Expertise | Year | Hours | Rate | Amount |
|---------------|-----------|------|-------|-------|------------|
| Carl Hilliard | Attorney | 2000 | 20.4 | \$385 | \$7,854.00 |
| | | 2001 | 0.8 | 385 | 308.00 |
| | | 2002 | 8.1 | 385 | 3,118.50 |

| | | | | | |
|-------------|--|------|------|-----|-------------|
| | | 2003 | 14.4 | 385 | 5,544.00 |
| | | 2004 | 17.2 | 385 | 6,622.00 |
| | | | | | |
| Copies | | | | | 589.00 |
| Mailing | | | | | 359.00 |
| FedEx | | | | | 246.00 |
| Travel | | | | | 158.00 |
| | | | | | |
| Total Claim | | | | | \$24,798.50 |

CSBRT's Claim

| Name | Expertise | Year | Hours | Rate | Amount |
|--------------------|-----------|------|-------|-------|-------------|
| Maryanne McCormick | Attorney | 2002 | 28 | \$200 | \$5,600.00 |
| | | 2003 | 24.5 | 185 | 4,532.50 |
| | | 2004 | 10 | 225 | 2,250.00 |
| Carl K. Oshiro | Attorney | 2004 | 12.4 | 310 | 3,844.00 |
| | | | | | |
| Copies | | | | | 35.14 |
| Postage | | | | | 76.36 |
| Fed Ex | | | | | 13.98 |
| Surveys | | | | | 75.00 |
| | | | | | |
| Total Claim | | | | | \$16,426.98 |

LIF's Claim

| Name | Expertise | Year | Hours | Rate | Amount |
|------------------|-----------|------|--------|-------|-------------|
| Susan Brown | Attorney | 2000 | 28.5 | \$380 | \$10,830.00 |
| | | 2001 | 59.25 | 380 | 22,515.00 |
| | | 2002 | 126.75 | 380 | 48,165.00 |
| | | 2003 | 48.5 | 380 | 18,430.00 |
| | | 2004 | 97.75 | 390 | 38,122.50 |
| Mirissa McMurray | Law Clerk | 2002 | 12 | 100 | 1,200.00 |
| | Attorney | 2003 | 28.5 | 180 | 5,130.00 |
| | Attorney | 2004 | 59 | 190 | 11,210.00 |
| Enrique Gallardo | Attorney | 2004 | 22 | 275 | 6,050.00 |
| | | | | | |
| Postage | | | | | 303.60 |
| Copies | | | | | 502.15 |
| Supplies | | | | | 345.54 |
| | | | | | |

R.00-02-004 ALJ/JCM/sid

| | | | | | |
|-----------------|--|--|--|--|--------------|
| Total | | | | | 162,803.79 |
| +25% multiplier | | | | | 40,700.95 |
| Total Claim | | | | | \$203,504.74 |

NCLC's Claim

| Name | Expertise | Year | Hours | Rate | Amount |
|--------------------|------------------|-------------|--------------|-------------|---------------------|
| Steve Boyajian | Legal Intern | 2004 | 56.5 | \$100 | \$5,650.00 |
| Olivia Wein | Attorney | 2002 | 58.5 | 235 | 13,747.50 |
| Charles Harak | Attorney | 2001 | 56.7 | 350 | 19,845.00 |
| | | 2002 | 128.4 | 385 | 49,434.00 |
| | | 2003 | 100.3 | 435 | 43,630.50 |
| | | 2004 | 105.7 | 435 | 45,979.50 |
| | | | | | |
| Copying & Service | | | | | 291.74 |
| Travel | | | | | 984.39 |
| Conference Calls | | | | | 109.21 |
| | | | | | |
| Total Claim | | | | | \$179,671.84 |

The components of each request must constitute reasonable fees and costs of that claimant's preparation for and participation in the proceeding. Only those fees and costs associated with the claimant's work that the Commission concludes made a substantial contribution are reasonable and eligible for compensation.

To assist in determining the reasonableness of the compensation requested, the Commission in D.98-04-059 directed claimants to demonstrate productivity by assigning a dollar value to the ratepayer benefits of their participation. We then evaluate whether the costs of each claimant's participation bear a reasonable relationship to the benefits realized from it. In this case, no claimant attempted to assign a dollar value to either the ratepayer benefits of the Commission's order overall, or to the benefits resulting from their contribution to it.¹⁵ That is to be expected. While the Commission itself found,

¹⁵ CSBRT's claim perhaps came closest: "While it is difficult to precisely quantify the benefits of protecting small business consumers through adoption of General Order 168, these benefits certainly amount to many millions of dollars."

“The rules we adopt in this order will provide numerous benefits to telecommunications consumers in California, including substantial economic benefits,”¹⁶ it also agreed that the benefits were not easily reducible to dollar terms. To make that point, the Commission quoted from an NCLC, UCAN, TURN and Consumers Union filing that became part of the record:

It is often the case that regulations that protect the public health, safety and welfare impose significant costs on the regulated industry that can be estimated, even if imprecisely, while providing benefits that cannot easily be reduced to dollar terms. Examples include virtually all pollution control regulations, where the regulated industries can incur substantial engineering, design, construction and equipment purchase costs while the public receives much harder-to-quantify reductions in illness and intangible increases in enjoyment of air, water and land resources; consumer protection and disclosure rules that address fraudulent and deceptive practices, where regulated parties may face increased printing, marketing, advertising, or call center costs while the public avoids an unquantifiable number of deceptive practices; and the Federal Communications Commission’s (“FCC”) number portability rules, where the industry must invest millions of dollars in the technology that allows for number portability while consumers gain the hard-to-quantify benefit of being able to switch carriers more easily.¹⁷

The Commission went on to say, “We agree with these comments,” and proceeded to list some of the difficult-to-quantify benefits the General Order 168 consumer protection rules would provide.

¹⁶ D.04-05-057, Finding of Fact 27.

¹⁷ D.04-05-057, page 139.

We conclude that the overall benefits to ratepayers of the new consumer protection rules are substantial, and they would not have been achieved without the participation of these intervenors to complement and balance the efforts of the telecommunications industry. We need not quantify the benefits to know that they will exceed the aggregate amount of all of the intervenor compensation claims by a wide margin.

The various consumer groups were notably efficient in that they frequently participated in coordinated groups. Throughout the proceeding, consumer representatives were outnumbered by an industry that frequently filed a large number of comment sets carrier by carrier.¹⁸ TURN, UCAN, and NCLC often partnered with others to submit a single set of combined comments (as did the Attorney General's office and ORA). That helped avoid duplication of effort and reduced the burden on the Commission of reviewing multiple, overlapping sets. Under the circumstances, we find that all of the claimants' efforts have been productive.

We next assess whether the hours charged for each claimant's efforts that resulted in substantial contributions to the Commission's decision are reasonable. Then we determine whether the compensation rates claimed are commensurate with market rates for similar services from comparably qualified persons.

¹⁸ We also note, however, that as the proceeding wore on, carriers exhibited more cooperation, often dividing up the topics and submitting and concurring in coordinated comments representing, *e.g.*, wireline carriers, wireless carriers, or small and mid-sized local exchange carriers.

UCAN

UCAN detailed the number of hours each advocate worked by date and activity. UCAN's claim suffered from numerous small errors in the arithmetic and in carrying figures forward from the underlying worksheets to successive summaries, but the underlying time and expense detail sheets allow us to reconstruct what it is actually seeking. Given the length and scope of the proceeding, the number of parties actively participating, the number of filings each intervenor was required to review in preparing its own comments and replies, and the number of filings UCAN made, we agree that UCAN's hours and expenses are commensurate with its contributions in the proceeding. We therefore find them reasonable. The only adjustments we will make to its hours and expense charges are corrections for the arithmetic and carrying errors and a small decrease (0.75 hours) to one timesheet entry to reflect charging one-half the hourly rate for compensation-related work.

The rates UCAN seeks¹⁹ for attorney Michael Shames, its Executive Director, are the same as those we previously approved for 2000 through 2004.²⁰ Similarly, we have approved all of the rates UCAN seeks here for policy experts Jordana Beebe and Beth Givens, and for attorney Charles Carbone.²¹

¹⁹ For the hourly rates each claimant seeks by individual and year, see the tables in the preceding section.

²⁰ *See, e.g.*, D.02-01-025 for 2000; D.03-05-013 for 2001; and D.04-09-024 for 2002, 2003 and 2004.

²¹ *See, e.g.*, Beebe, D.02-11-020 (2000 and 2001); Givens, D.02-03-038 (2000) and D.03-07-014 (2002 and 2003); and Carbone, D.02-07-030 (2000).

UCAN also engaged the consulting services of Peter Navarro during 2003 and 2004 to provide economic and policy expertise to UCAN and the other consumer groups with which it collaborated, to analyze industry's submittals on the economic effects of our new rules, and to prepare for UCAN an independent report on the economic effects of the rules, which report became part of our record. In addition to his undergraduate degree, Navarro holds a Masters of Public Administration and a PhD in Economics. During the ten years before receiving his doctorate in 1986, Navarro was a policy analyst for, in turn, a Washington-based consulting firm, the Massachusetts Energy Office, and the Department of Energy; a Research Associate at Harvard; and a University of California at San Diego lecturer. He was an Assistant Professor of Economics at UC San Diego from 1986 through 1988, and has been an Associate Professor of Economics and Public Policy at the University of California at Irvine for the past 16 years. His resume lists six books and some 57 book chapters, electronic texts, journal articles and other publications, many or most having to do with the policy and economics of regulation, utilities, and the energy industry. UCAN paid Navarro on a project basis with a \$25,000 cap on his total billings and proposes to pass that amount through without markup here. We last adopted a \$135 rate for Navarro's work in 1995.²² UCAN seeks a \$300 hourly rate for Navarro's 2003 and 2004 work, a rate UCAN says reflects a substantial discount from his normal consulting fee and is comparable to the expert fees the

²² See D.96-08-040 for Navarro's 1995 rate.

Commission has granted to similarly qualified experts.²³ UCAN cites, for example, the \$300 hourly rate we granted to Terry Murray for work done in 1999,²⁴ and believes Navarro's advanced degrees, publishing history and very high level knowledge of regulatory economics would justify for him a 2003/2004 hourly rate well above Murray's from 1999. We agree that the information UCAN submitted supports a \$300 rate for Navarro's work in 2003 and 2004, and adopt the \$25,000 capped amount Navarro billed UCAN.

TURN

We have reviewed the breakdown TURN provided of its advocates' working hours by advocate and date, listing the activity, the issue area, and the number of hours, and a breakdown of its other expenses. TURN has reduced by one-half its time charged for intervenor compensation-related efforts and travel, consistent with our policies.²⁵ TURN earlier received an interim award in this proceeding and has properly excluded those hours and expenses from its claim here.²⁶ Given the length and scope of the proceeding, the number of parties actively participating, the number of filings each intervenor was required to review in preparing its own comments and replies, and the number of filings TURN made, we agree that TURN's hours and expenses are commensurate with its contributions in the proceeding. We therefore find them reasonable.

²³ Because Navarro's charges are capped at \$25,000, UCAN's claim for him divided by his hours gives an effective rate much closer to \$275 for 2003 and 2004.

²⁴ By D.03-03-031, we awarded Murray a \$300 rate for 1999 and 2000.

²⁵ We make an exception for the compensation-related work of TURN's Mark Barmore, as noted below.

²⁶ See D.02-04-007 awarding TURN \$17,609.85 for its contributions to D.01-07-030.

We have accepted in past proceedings all of the hourly rates TURN shows for its 2000, 2001 and 2002 participants (attorneys Mailloux, Stein and Finkelstein, policy expert Costa, and paralegal Goodson).

Attorney Mailloux was previously awarded the \$250 and \$275 hourly rates TURN now seeks for 2001 and 2002.²⁷ TURN has requested \$300 and \$325 hourly rates for Mailloux in 2003 and 2004, stating that this is the first request for her substantive work in those years. In D.03-07-014, we granted Mailloux a \$275 rate in recognition of her 2003 responsibilities as lead attorney in that case, in this proceeding before us today, and in one other. Her previous 2003 rate, however, represented no increase over 2002. TURN cites the substantial expertise Mailloux has gained during her past 10 years as an attorney in the telecommunications and consumer protection areas that are at the heart of this proceeding, and the lead role she has taken in a number of telecommunications proceedings before this Commission. Our experience with her work here, TURN's summary of her accomplishments in other proceedings, and a review of market information for attorneys with similar training and experience, persuade us that the 2003 increase it seeks for her is warranted. The \$325 rate for 2004 is consistent with the 8% increase considered reasonable under Resolution ALJ-184, and we approve it.

We have previously approved the rates for attorneys Stein and Finkelstein that TURN uses in this proceeding.²⁸ TURN has charged paralegal Hayley

²⁷ See, e.g., D.03-01-074 and D.03-05-027 (2001), and D.03-07-014 and D.04-02-014 (2002).

²⁸ See, e.g., for Stein, D.03-03-031 (2000); and for Finkelstein, D.02-06-070 and D.04-09-017 (2001), D.02-06-070 and D.03-01-074 (2002), D.03-08-041 and D.04-09-017 (2003), and D.04-08-025 for all three years.

Goodson's work in 2000 at \$80 per hour, the same year 2000 rate we approved in D.03-10-080. This is reasonable.

We previously approved hourly rates for policy expert Regina Costa of \$180 (2001) and \$200 (2002 and 2003).²⁹ TURN now seeks \$215 for 2003 and \$230 for 2004. TURN provides a thorough description of Costa's education and background from graduation in 1984 until she joined TURN's staff in 1993, and her intensive focus on state and federal telecommunications regulatory matters since. It then compares her hourly rate with those of two others to demonstrate market comparability. TURN's seeks annual increases of approximately 7% from 2002 to 2003 and 2004, escalation within the range we consider reasonable given Costa's increased experience over that period and market rates for others with her training and experience.

TURN initially claimed \$150 per hour for Mark Barmore's work and later amended the rate to \$125. TURN engaged Barmore specifically to prepare its compensation requests for this and other proceedings. According to TURN, the Commission approved a \$140 hourly rate for Barmore's work as an attorney in 1990.³⁰ As TURN points out, that earlier determination is now 14 years out of date, Barmore has not formally practiced law since 2001, he worked exclusively here on preparing TURN's compensation request, and we typically determine that compensation request preparation does not require attorney qualifications. Taking these facts together, TURN believes it would not be appropriate for the

²⁹ See, e.g., D.01-08-011 and D.04-09-017 (2001), D.01-08-011, D.03-05-027, and D.03-07-014 (2002), and D.04-02-014 (2003).

³⁰ D.90-12-026 and D.91-02-038.

Commission to apply the typical 50% reduction to the relatively low \$125 rate it now seeks for Barmore. We have awarded at most \$125 per hour (at the full hourly rate) for new attorneys for compensation-related work. We will award the requested \$125 rate here and apply it without reduction for his 2004 work.

TURN requests an hourly rate of \$340 for William Nusbaum's work in 2003. Nusbaum joined TURN in 2003 as senior telecommunications attorney with more than 25 years of telecommunications experience. He is a former assistant general counsel for the National Association of Regulatory Utility Commissioners, was a communications policy specialist at the National Telecommunications and Information Administration, and held several senior level positions at Pacific Telesis (now SBC) for 13 years. Nusbaum's training and experience are comparable to those of attorney Finkelstein, who was awarded \$340 for work in 2002, so we find Nusbaum's requested 2003 rate reasonable.

TURN has supported each of the hourly rates it seeks for its individual participants, and we grant them without modification.

WCA

WCA submitted an invoice detailing attorney Carl Hilliard's hours and activities, and its expenses. After review, we have reduced Hilliard's time by four hours to reflect our longstanding policy of allowing time related to intervenor compensation requests at one-half the otherwise applicable rate. Given the length and scope of the proceeding, the number of parties actively participating, the number of filings each intervenor was required to review in preparing its own comments and replies, and the number of filings WCA made, we agree that WCA's hours (as adjusted) and expenses are commensurate with its contributions in the proceeding. We therefore find them reasonable.

This is our first hourly rate evaluation for Carl Hilliard, founder and President of WCA. Hilliard received his law degree in 1963 and for the next 15 years specialized in communications law, representing clients before the FCC,

this Commission, and the commissions of several other states. In 1978, he founded, and in 1984 sold, a company that owned and operated television, microwave transmission and paging facilities throughout the United States. In 1984, Hilliard joined the faculty of California Western School of Law and was director of the Simon Center for the Study of Communications Law. He was also a visiting associate professor at George Mason School of Law and University of California at San Diego. In 1992, he left academia for international negotiation engagements involving communications satellite acquisitions and frequency coordination agreements. Hilliard founded WCA as a non-profit consumer advocacy group in 1995. He cites successful consumer protection actions he and WCA have pursued before the FCC and the courts involving wireless carriers, in one of which the court awarded him attorney's fees of \$250,000 based on a \$550 hourly rate.

WCA seeks \$385 per hour for Hilliard's work between 2000 and 2004, and claims his usual rate is \$750 per hour. Hilliard has training and experience similar to that of attorney Robert Gnaizda of the Greenlining Institute who received his law degree in 1961. The \$385 rate sought for Hilliard for work between 2000 and 2004 is lower than the rate awarded to Gnaizda in each of these years. We accept Hilliard's rate.

CSBRT

We have reviewed CSBRT's tabulation of its advocates' time and expenses. We note that CSBRT has properly reduced by one-half its rate for preparing its compensation request (it had no travel-related time), and has excluded from its claim here its hours and expenses associated with an interim award already

received in this proceeding.³¹ Given the length and scope of the proceeding, the number of parties actively participating, the number of filings each intervenor was required to review in preparing its own comments and replies, and the number of filings CSBRT made, we agree that CSBRT's hours and expenses are commensurate with its contributions in the proceeding. We therefore find them reasonable.

At the time CSBRT filed its compensation claim, we had not yet issued decisions addressing several applications for rehearing and motions to stay D.04-05-057 in which CSBRT was participating. CSBRT has therefore not reflected in this compensation claim the hours and expenses associated with that effort. We subsequently issued two orders, D.04-08-056 and D.04-10-013, addressing those topics. On November 12, 2004, CSBRT followed up with a supplemental compensation request that we will address after the parties have had had their opportunity to respond as permitted under § 1804(c).

CSBRT seeks \$310 per hour for attorney Oshiro's work in 2004. We have previously awarded \$265 per hour for Oshiro's work in 1999, 2000, and 2001, including for his work during the latter two years under CSBRT's interim claim in this proceeding. CSBRT cites two independent attorney fee surveys that support a \$310 rate for comparably qualified attorneys in 2004.³² A 17% increase in Oshiro's rate from 1999 to 2004 is slightly more than 3% per year and is reasonable.

³¹ See D.02-04-008 awarding CSBRT \$13,642.24 for its contributions to D.01-07-030.

³² See D.02-01-064 (for 1999 and 2000), and D.02-04-008 in this proceeding for 2000 and 2001.

Attorney McCormick holds a Bachelor of Arts and an MBA, and in 2000 received a Juris Doctor. She was admitted to the California bar in January 2003. From 1997 to 2001 she served in various capacities at the FCC, in the Common Carrier Bureau, the Wireless Bureau, and the Chairman's office. The rates CSBRT seeks for McCormick (\$200 in 2002, \$185 in 2003, and \$225 in 2004) are the Altman Weil survey's beginning-of-year upper quartile rates for attorneys in California with under two years of experience for 2002, 2003 and 2004.³³ At the time she began her legal career, McCormick had several years of experience in the communications arena. As such, she is comparable to TURN attorney Matthew Freedman, who had several years of energy experience when he began his legal career. We approved a 2001 a rate for Freedman of \$180. We find that a rate of \$180 for work in 2002 is reasonable given McCormick's prior experience, and given that she had not yet been admitted to the California bar at the time, \$195 and \$210 are reasonable for her work in 2003 and 2004 (consistent with Resolution ALJ-184).

LIF

LIF provided timesheets showing each advocate's hours by date, activity and issue, and properly reduced hours associated with travel and compensation by one-half. As we noted earlier in this order, for purposes of evaluating LIF's claim, we treat it as the claim of the joint entity Greenlining/LIF that was found eligible in the ALJ's ruling. Therefore, we evaluate here the reasonableness of the hours claimed for participation through filings made both by LIF alone and by

³³ The Altman Weil survey shows rates declined between 2002 and 2003, but rose again in 2004.

LIF/Greenlining together. Given the length and scope of the proceeding, the number of parties actively participating, the number of filings each intervenor was required to review in preparing its own comments and replies on others' comments, and the number of filings LIF made, we find the hours LIF claims to be commensurate with its contributions to the proceeding, and its other expenses reasonable.

LIF's was the only compensation claim that drew a response from another party as permitted by § 1804(c). In addition to seeking compensation for its advocates' efforts and for expenses, it seeks a 25% multiplier to be applied to its entire request. It provides as justification the delay in receiving compensation because of the length of the proceeding and the risk it took in participating (particularly in contrast to carriers' attorneys who bore no such delay or risk), and the fact that it directly represented the interest of tens of millions of language minority consumers. In two identical, supporting footnotes, it notes several court decisions regarding multipliers in non-Commission cases and attempts to draw a parallel with its participation here. What it does not note, but Verizon California, Inc. (Verizon) in its response does, is the Commission's previous, consistent reluctance to award multipliers except under exceptional circumstances.³⁴

We have noted in the past that our standards for applying hourly multipliers to attorney fees are necessarily high.³⁵ If we did not set and maintain

³⁴ LIF provided considerably more argument along the same lines in its reply to Verizon's response, but again neither addressed nor referenced any of the points Verizon raised.

³⁵ See, e.g., D.00-04-003, D.02-09-003, and D.03-02-023.

high standards, many attorney fees in compensation requests would include such multipliers, and we would no longer be adopting attorney fees based on market rates for comparable training and experience as required by § 1804.

As we stated in D.98-04-059, we have included hourly rate multipliers when a customer's participation involved skills or duties beyond those normally required, such as when an attorney develops and sponsors technical testimony in addition to his/her work as an attorney. We stated in D.88-02-056 and reiterated in D.00-10-007 that an upward adjustment in base level of compensation depends on many factors. Factors that can be considered in making this determination are:

A. Fee Level

1. The experience, reputation and ability of the attorney
2. The skill required to perform the legal service properly
3. Customary fee

B. Compensable Hours

1. The time and labor required (reasonable number of hours to present the case)
2. Efficiency of presentation
3. Novelty and difficulty of the issues
4. Duplication of effort

C. Degree of Success

1. Dollar amount involved
2. Degree of importance of the issue
3. The result obtained (partial or complete success on the issue)

As we further stated, "Of course, these factors are not to be applied in a rigid manner. Some factors will apply to particular elements at times and at other times the factors will be considered in adjusting the overall award."³⁶

We reject LIF's hourly multiplier. While we have benefited by Greenlining/LIF's participation, that participation was not exceptional in relation to the participation of other consumer representatives, nor has LIF shown that its participation qualified as exceptional under any of the factors we list above.

We have previously approved the \$380 hourly rate LIF seeks for attorney Brown for 2000 through 2003. For 2004, LIF has increased her hourly rate to \$390 to reflect an additional year of experience and standard market rate inflation, following our guidance in Resolution ALJ-184. Gallardo's \$275 rate for 2004 is likewise the \$265 we previously approved for 2003, plus escalation.³⁷ We accept the rates claimed for Brown and Gallardo.

LIF seeks a \$100 hourly rate for McMurray's work in 2002, \$180 in 2003, and \$190 in 2004. McMurray received a Bachelor of Arts in 2000 and worked as a law clerk for LIF until she received her Juris Doctor in May 2003. She has worked as an LIF attorney thereafter. McMurray was licensed to practice law in California in December 2003. LIF supports McMurray's \$100 rate in for 2002 as reflecting the standard level for law clerks. For McMurray's 2003 and 2004 rates, LIF cites an award we granted TURN that valued 2002 graduate attorney Daniel

³⁶ D.00-10-007.

³⁷ See D.04-05-021 for Brown in 2000, and D.04-03-030 for Brown in 2000 through 2003 and Gallardo in 2003. In D.04-03-030, as in this proceeding, Gallardo's hours were limited to preparing the compensation request and subject to our 50% standard reduction.

Edington 's 2003 work at \$190.³⁸ We agree that McMurray's proposed rates are reasonable and we adopt them.

NCLC

NCLC also provided timesheets that showed each advocate's hours by date, activity and issue. While travel time was reduced by one-half, attorney Harak's compensation-related time was not. We have made that adjustment by subtracting 5.95 hours in 2001 and 14.1 hours in 2004 in the Awards section below. Given the length and scope of the proceeding, the number of parties actively participating, the number of filings each intervenor was required to review in preparing its own comments and replies, and the number of filings NCLC made, we agree that NCLC's hours (as adjusted) and expenses are commensurate with its contributions in the proceeding. We therefore find them reasonable.

We have not previously established hourly rates for the individuals in NCLC's compensation claim. Boyajian is a second year law student and summer legal intern at NCLC. All of Boyajian's time was for drafting the compensation request, for which NCLC seeks a \$100 hourly rate and no 50% reduction. In support, NCLC cites a TURN award based on \$95 per hour for TURN's legal intern Goodson in 2002, and a \$100 per hour award granted in 2000 for a law clerk assisting in the preparation of a compensation claim.³⁹ NCLC's proposed \$100 rate is reasonable, and we adopt it without a reduction.

³⁸ See D.04-05-048. All of McMurray's 2003 hours were charged after her May 2003 law school graduation.

³⁹ See D.03-05-065 and D.00-02-044.

NCLC requests \$235 per hour for work performed by attorney Wein in 2002. Wein is a 1995 law school graduate and a member of the bar in California, Maryland, and the District of Columbia.⁴⁰ She holds a Bachelor of Arts and a Masters of Education. Since graduating from law school, Wein has held a number of public interest positions, including significant work on telecommunications issues. Since the beginning of 2000, Wein has been a staff attorney at NCLC specializing in energy and utility issues. She is on the board of the National Low-Income Energy Consortium. She is an editor and contributor to NCLC's *Energy and Utility Update*, a quarterly subscription newsletter mailed to several hundred consumer advocates around the country, and an editor and author of *Access to Utility Service*, NCLC's major consumer treatise on electric, gas, and telephone issues. She is also familiar with the concerns of telephone consumers through her work in researching and writing a guide for telephone consumers in the state of Washington. We have previously allowed attorneys Berrio and Gallardo, 1997 graduates, \$235 per hour for 2002 work, and awarded attorney Armi, also a 1997 graduate, \$230. As a 1995 graduate, Wein has two more years of experience than these attorneys. She also has a well-developed specialty in utilities law. In light of her years of experience and her specialization in telecommunications, we adopt a rate of \$235 per hour for work Wein completed in 2002 as reasonable.

NCLC requests \$350, \$385, \$435, and \$435 hourly rates for Harak's work in 2001, 2002, 2003, and 2004. Harak received his Bachelor of Arts in 1972, his J.D.

⁴⁰ In 2002, Wein went on inactive status in California as she had already been living in Washington D.C. for several years.

in 1976, and was admitted to the Massachusetts bar in 1977. He has been an instructor at Boston College Law School (1976 -1977), a staff attorney for the Massachusetts Public Interest Research Group (1978 - 1979), a staff attorney specializing on energy and utility issues at the Massachusetts Law Reform Institute (1979 - 1995), an attorney in the utilities and insurance division of the Office of the Massachusetts Attorney General (1995 - 1998), of counsel with a law firm primarily representing municipal and non-profit clients on utility issues (1998 – 2001), and senior attorney at NCLC’s energy and utilities project (2001 – 2004). Harak has represented a range of consumer, environmental and labor organizations in proceedings before five different state commissions, including a prior appearance before this Commission. He has successfully represented low-income clients on energy, utilities, and housing issues in state and federal court at both trial and appellate levels. Harak has litigated telecommunications-related cases in Massachusetts, filed comments in various dockets before the FCC, and advocated before the Massachusetts PUC for mechanisms to automatically enroll lifeline-eligible households. Harak has authored and/or edited a number of newsletters, handbooks and treatises on a broad range of utility and energy issues, and is a frequent presenter at various energy and utility conferences.

The Commission has previously awarded attorneys Randy Wu and Mike Florio \$350 hourly for work in 2001. While Wu and Florio have more experience before us, Harak has previously appeared before this Commission⁴¹ and the commissions of four other states in proceedings of all types. He has devoted virtually his entire legal career to representing the interests of low-income

⁴¹ See A.99-10-023.

consumers on a range of utility issues. Similarly, Harak's \$385 rate for 2002 is comparable to that awarded to Wu and Florio for their work in that year,⁴² and to the \$380 awarded to LIF for work Susan Brown performed in 2001/2002.⁴³ Finally, NCLC seeks \$435 for the work Harak performed in 2003, with no increase in that hourly rate for 2004. We recently awarded TURN attorney Florio \$435 for work in 2003 and included an analysis of current market rates.⁴⁴ Florio and Harak have nearly identical years of experience, and while Harak has not practiced as exclusively in California as Florio, Harak's experience in proceedings and consumer work around the country brings its own unique value to his work in this proceeding.

We find the hourly rates NCLC seeks for Harak reasonable and will allow them: \$350 in 2001, \$385 in 2002, and \$435 in 2003 and 2004.

Awards

The tables below reflect the adjustments and corrections described in the preceding section and summarize our award for each claimant.

⁴² See D.03-05-065 and D.04-02-046.

⁴³ See D.03-10-062. Brown graduated from law school in 1978.

⁴⁴ See D.04-02-017.

UCAN's Award

| Advocate | Year | Hours | Rate | Amount |
|-----------------|-------------|--------------|-------------|---------------|
| Shames | 2000 | 205.15 | \$195 | \$40,004.25 |
| | 2001 | 61.7 | 195 | 12,031.50 |
| | 2002 | 287 | 220 | 63,140.00 |
| | 2003 | 127.5 | 250 | 31,875.00 |
| | 2004 | 121.3 | 250 | 30,325.00 |
| Beebe | 2000 | 32.5 | 75 | 2,437.50 |
| | 2001 | 39.9 | 75 | 2,992.50 |
| Carbone | 2000 | 62.2 | 100 | 6,220.00 |
| Givens | 2000 | 5.8 | 175 | 1,015.00 |
| | 2002 | 7 | 175 | 1,225.00 |
| | 2003 | 2.4 | 175 | 420.00 |
| Navarro | 2003 | 58.5 | 300 | 25,000.00 |
| | 2004 | 33 | 300 | |
| | | | | |
| Subtotal | | | | 216,685.75 |
| | | | | |
| Expenses | | | | 5,656.57 |
| | | | | |
| Total Award | | | | \$222,342.32 |

TURN's Award

| Advocate | Year | Hours | Rate | Amount |
|-----------------|-------------|--------------|-------------|---------------|
| Mailloux | 2001 | 57 | \$250 | \$14,250.00 |
| | 2002 | 268.75 | 275 | 73,906.26 |
| | 2003 | 134.25 | 300 | 40,275.00 |
| | 2004 | 96.875 | 325 | 31,484.37 |
| Stein | 2000 | 113.25 | 200 | 22,650.00 |
| Costa | 2001 | 4.5 | 180 | 810.00 |
| | 2002 | 88.5 | 200 | 17,700.00 |
| | 2003 | 4 | 215 | 860.00 |
| | 2004 | 26 | 230 | 5,980.00 |
| Nusbaum | 2003 | 13.5 | 340 | 4,590.00 |
| Finkelstein | 2001 | 0.5 | 310 | 155.00 |
| | 2002 | 1.5 | 340 | 510.00 |
| | 2003 | 6.25 | 365 | 2,281.25 |
| Goodson | 2000 | 9.75 | 80 | 780.00 |
| Barmore | 2004 | 21.25 | 125 | 2,656.25 |
| | | | | |

| | | | | |
|-------------|--|--|--|--------------|
| Subtotal | | | | 218,888.13 |
| | | | | |
| Expenses | | | | 12,191.29 |
| | | | | |
| Total Award | | | | \$231,079.42 |

WCA's Award

| Advocate | Year | Hours | Rate | Amount |
|-----------------|-------------|--------------|-------------|---------------|
| Hilliard | 2000 | 18.75 | \$385 | 7,218.75 |
| | 2001 | 0.8 | 385 | 308.00 |
| | 2002 | 8.1 | 385 | 3,118.50 |
| | 2003 | 14.4 | 385 | 5,544.00 |
| | 2004 | 14.85 | 385 | 5,717.25 |
| | | | | |
| Subtotal | | | | 21,906.50 |
| | | | | |
| Expenses | | | | 1,352.00 |
| | | | | |
| Total Award | | | | \$23,258.50 |

CSBRT's Award

| Advocate | Year | Hours | Rate | Amount |
|-----------------|-------------|--------------|-------------|---------------|
| McCormick | 2002 | 28 | \$180 | \$5,040.00 |
| | 2003 | 24.5 | 195 | 4,777.50 |
| | 2004 | 10 | 210 | 2,100.00 |
| Oshiro | 2004 | 12.4 | 310 | 3,844.00 |
| | | | | |
| Subtotal | | | | 15,761.50 |
| | | | | |
| Expenses | | | | 200.48 |
| | | | | |
| Total Award | | | | \$15,961.98 |

LIF's Award

| Advocate | Year | Hours | Rate | Amount |
|-----------------|-------------|--------------|-------------|---------------|
| Brown | 2000 | 28.5 | \$380 | \$10,830.00 |
| | 2001 | 59.25 | 380 | 22,515.00 |
| | 2002 | 126.75 | 380 | 48,165.00 |
| | 2003 | 48.5 | 380 | 18,430.00 |
| | 2004 | 97.75 | 390 | 38,122.50 |
| McMurray | 2002 | 12 | 100 | 1,200.00 |
| | 2003 | 28.5 | 180 | 5,130.00 |
| | 2004 | 59 | 190 | 11,210.00 |
| Gallardo | 2004 | 22 | 275 | 6,050.00 |
| | | | | |
| Subtotal | | | | 161,652.50 |
| | | | | |
| Expenses | | | | 1,151.29 |
| | | | | |
| Total Award | | | | \$162,803.79 |

NCLC's Award

| Advocate | Year | Hours | Rate | Amount |
|-----------------|-------------|--------------|-------------|---------------|
| Boyajian | 2004 | 56.5 | \$100 | \$5,650.00 |
| Wein | 2002 | 58.5 | 235 | 13,747.50 |
| Harak | 2001 | 50.75 | 350 | 17,762.50 |
| | 2002 | 128.4 | 385 | 49,434.00 |
| | 2003 | 100.3 | 435 | 43,630.50 |
| | 2004 | 91.6 | 435 | 39,846.00 |
| | | | | |
| Subtotal | | | | 170,070.50 |
| | | | | |
| Expenses | | | | 1,385.34 |
| | | | | |
| Total Award | | | | \$171,455.84 |

Consistent with previous Commission decisions, we order that interest be paid on the award amounts (at the rate earned on prime, three-month commercial paper, as reported in Federal Reserve Statistical Release H.15)

commencing the 75th day after each intervenor filed its compensation request and continuing until full payment of the award is made.⁴⁵

This is a quasi-legislative rulemaking proceeding affecting the entire regulated telecommunications industry. As such, we find it appropriate to authorize payment of the compensation awards from the intervenor compensation program fund, as described in D.00-01-020. To obtain their awards, intervenors that have never received payment of an award from the Commission must provide their taxpayer identification number, and a completed STD 204 Payee Data Record form, available at <http://www.documents.dgs.ca.gov/osp/pdf/std204.pdf>, to the address below. For assistance completing Section 1 of STD 204, call the phone number below.

California Public Utilities Commission
Attention: Fiscal Office
505 Van Ness Avenue, Room 3000
San Francisco, CA 94102
(415) 703-2306

We remind all intervenors that Commission staff may audit their records related to these awards and that intervenors must make and retain adequate accounting and other documentation to support all claims for intervenor compensation. Those records should identify specific issues for which they requested compensation, the actual time spent by each employee or consultant, the applicable hourly rate, fees paid to consultants, and any other costs for which compensation was claimed.

⁴⁵ The filing dates to be used are: UCAN, August 3, 2004; TURN (amended request), September 1, 2004; WCA (amended request), September 8, 2004; CSBRT, August 6, 2004; LIF, August 5, 2004; and NCLC, August 4, 2004.

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

Carl Wood is the Assigned Commissioner in this proceeding and James McVicar is the assigned ALJ.

Findings of Fact

1. UCAN, TURN, WCA, CSBRT, LIF and NCLC each filed a timely notice of intent and each was found eligible to claim compensation in this proceeding.
2. UCAN, TURN, WCA, CSBRT, LIF and NCLC each filed a timely claim for compensation.
3. UCAN, TURN, WCA, CSBRT, LIF and NCLC each made a substantial contribution to D.04-05-057, as described herein.
4. UCAN, TURN, WCA, CSBRT, LIF and NCLC each requested hourly rates for attorneys and experts that, as adjusted herein, are reasonable when compared to the market rates for persons with similar training and experience.
5. The number of hours for each attorney or expert claimed by UCAN, TURN, WCA, CSBRT, LIF and NCLC, as adjusted herein, are reasonable.
6. The non-labor expense amounts claimed by UCAN, TURN, WCA, CSBRT, LIF and NCLC are reasonable.
7. Neither LIF's contributions nor the circumstances of this proceeding merit application of a multiplier to increase LIF's award.
8. The total of the reasonable compensation is: for UCAN, \$222,342.32; for TURN, \$231,079.42; for WCA, \$23,258.50; for CSBRT, \$15,961.98; for LIF, \$162,803.79; and for NCLC, \$171,455.84.

Conclusions of Law

1. UCAN, TURN, WCA, CSBRT, LIF and NCLC have each fulfilled the requirements of Pub. Util. Code §§ 1801-1812, which govern awards of intervenor compensation, and each is entitled to intervenor compensation as set forth herein for its costs incurred in making a substantial contribution to D.04-05-057.

2. This decision should be made effective immediately.

O R D E R

IT IS ORDERED that:

1. Utility Consumers' Action Network is awarded \$222,342.32 as compensation for its substantial contributions to Decision (D.) 04-05-057.
2. The Utility Reform Network is awarded \$231,079.42 as compensation for its substantial contributions to D.04-05-057.
3. Wireless Consumers Alliance is awarded \$23,258.50 as compensation for its substantial contributions to D.04-05-057.
4. California Small Business Roundtable is awarded \$15,961.98 as compensation for its substantial contributions to D.04-05-057.
5. Latino Issues Forum (LIF) is awarded \$162,803.79 as compensation for its substantial contributions to D.04-05-057.
6. The request by LIF for a 25% multiplier is denied.
7. National Consumer Law Center, Inc. is awarded \$171,455.84 as compensation for its substantial contributions to D.04-05-057.
8. The awards granted in Ordering Paragraphs 1 through 7 shall be paid within 30 days of the effective date of this decision from the intervenor compensation program fund described in D.00-01-020. Payment of each award

shall include interest at the rate earned on prime, three-month commercial paper as reported in Federal Reserve Statistical Release H.15, beginning on the 75th day after the filing date of each intervenor's request for compensation, and continuing until full payment is made. The request for compensation filing dates to be used are: for UCAN, August 3, 2004; for TURN, September 1, 2004; for WCA, September 8, 2004; for CSBRT, August 6, 2004; for LIF, August 5, 2004; and for NCLC, August 4, 2004.

9. The comment period for today's decision is waived.

This order is effective today.

Dated December 16, 2004, at San Francisco, California.

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

Attachment**Compensation Decision Summary Information**

| | |
|----------------------------------|---------------------------------------|
| Compensation Decision: | D0412054 |
| Contribution Decision(s): | D0405057 (including Interim D0107030) |
| Proceeding(s): | R0002004 |
| Author: | ALJ McVicar |
| Payer(s): | Commission |

Intervenor Information

| Intervenor | Claim Date | Amount Requested | Amount Awarded | Multiplier? | Reason for Change/Disallowance |
|--------------------------------------|-------------------|-------------------------|-----------------------|--------------------|---|
| Utility Consumers' Action Network | 8/3/04 | \$222,263.07 | \$222,342.32 | No | Failure to discount intervenor comp prep time; Arithmetic errors |
| The Utility Reform Network | 9/1/04 | \$231,079.42 | \$231,079.42 | No | |
| Wireless Consumers Alliance | 9/8/04 | \$24,798.50 | \$23,258.50 | No | Failure to discount intervenor comp prep time |
| California Small Business Roundtable | 8/6/04 | \$16,426.98 | \$15,961.98 | No | Failure to justify hourly rate; Increase in hourly rate |
| Latino Issues Forum | 8/5/04 | \$203,504.74 | \$162,803.79 | No | Failure to justify multiplier |
| National Consumer Law Center, Inc. | 8/4/04 | \$179,671.84 | \$171,455.84 | No | Failure to discount intervenor comp prep time |

Advocate Information

| First Name | Last Name | Type | Intervenor | Hourly Fee Requested | Year Hourly Fee Requested | Hourly Fee Adopted |
|-------------------|------------------|---------------|-----------------------------------|-----------------------------|----------------------------------|---------------------------|
| Michael | Shames | Attorney | Utility Consumers' Action Network | \$195 | 2000 | \$195 |
| Michael | Shames | Attorney | Utility Consumers' Action Network | \$195 | 2001 | \$195 |
| Michael | Shames | Attorney | Utility Consumers' Action Network | \$220 | 2002 | \$220 |
| Michael | Shames | Attorney | Utility Consumers' Action Network | \$250 | 2003 | \$250 |
| Michael | Shames | Attorney | Utility Consumers' Action Network | \$250 | 2004 | \$250 |
| Jordana | Beebe | Policy Expert | Utility Consumers' Action Network | \$ 75 | 2000 | \$ 75 |
| Jordana | Beebe | Policy Expert | Utility Consumers' Action Network | \$ 75 | 2001 | \$ 75 |
| Charles | Carbone | Attorney | Utility Consumers' Action Network | \$100 | 2000 | \$100 |
| Beth | Givens | Policy Expert | Utility Consumers' Action Network | \$175 | 2000 | \$175 |
| Beth | Givens | Policy Expert | Utility Consumers' Action Network | \$175 | 2002 | \$175 |
| Beth | Givens | Policy Expert | Utility Consumers' Action Network | \$175 | 2003 | \$175 |
| Peter | Navarro | Economist | Utility Consumers' Action Network | \$300 | 2003 | \$300 |
| Peter | Navarro | Economist | Utility Consumers' Action Network | \$300 | 2004 | \$300 |
| Christine | Mailloux | Attorney | The Utility Reform Network | \$250 | 2001 | \$250 |
| Christine | Mailloux | Attorney | The Utility Reform Network | \$275 | 2002 | \$275 |
| Christine | Mailloux | Attorney | The Utility Reform Network | \$300 | 2003 | \$300 |
| Christine | Mailloux | Attorney | The Utility Reform Network | \$325 | 2004 | \$325 |
| Paul | Stein | Attorney | The Utility Reform Network | \$200 | 2000 | \$200 |
| Regina | Costa | Policy Expert | The Utility Reform Network | \$180 | 2001 | \$180 |

| | | | | | | |
|----------|-------------|---------------|--------------------------------------|-------|------|-------|
| Regina | Costa | Policy Expert | The Utility Reform Network | \$200 | 2002 | \$200 |
| Regina | Costa | Policy Expert | The Utility Reform Network | \$215 | 2003 | \$215 |
| Regina | Costa | Policy Expert | The Utility Reform Network | \$230 | 2004 | \$230 |
| William | Nusbaum | Attorney | The Utility Reform Network | \$340 | 2003 | \$340 |
| Robert | Finkelstein | Attorney | The Utility Reform Network | \$310 | 2001 | \$310 |
| Robert | Finkelstein | Attorney | The Utility Reform Network | \$340 | 2002 | \$340 |
| Robert | Finkelstein | Attorney | The Utility Reform Network | \$365 | 2003 | \$365 |
| Hayley | Goodson | Paralegal | The Utility Reform Network | \$ 80 | 2000 | \$ 80 |
| Mark | Barmore | Attorney | The Utility Reform Network | \$125 | 2004 | \$125 |
| Carl | Hilliard | Attorney | Wireless Consumers Alliance | \$385 | 2000 | \$385 |
| Carl | Hilliard | Attorney | Wireless Consumers Alliance | \$385 | 2001 | \$385 |
| Carl | Hilliard | Attorney | Wireless Consumers Alliance | \$385 | 2002 | \$385 |
| Carl | Hilliard | Attorney | Wireless Consumers Alliance | \$385 | 2003 | \$385 |
| Carl | Hilliard | Attorney | Wireless Consumers Alliance | \$385 | 2004 | \$385 |
| Maryanne | McCormick | Attorney | California Small Business Roundtable | \$200 | 2002 | \$180 |
| Maryanne | McCormick | Attorney | California Small Business Roundtable | \$185 | 2003 | \$195 |
| Maryanne | McCormick | Attorney | California Small Business Roundtable | \$225 | 2004 | \$210 |
| Carl K. | Oshiro | Attorney | California Small Business Roundtable | \$310 | 2004 | \$310 |
| Susan | Brown | Attorney | Latino Issues Forum | \$380 | 2000 | \$380 |
| Susan | Brown | Attorney | Latino Issues Forum | \$380 | 2001 | \$380 |
| Susan | Brown | Attorney | Latino Issues Forum | \$380 | 2002 | \$380 |
| Susan | Brown | Attorney | Latino Issues Forum | \$380 | 2003 | \$380 |
| Susan | Brown | Attorney | Latino Issues Forum | \$390 | 2004 | \$390 |
| Mirissa | McMurray | Law Clerk | Latino Issues Forum | \$100 | 2002 | \$100 |
| Mirissa | McMurray | Attorney | Latino Issues Forum | \$180 | 2003 | \$180 |
| Mirissa | McMurray | Attorney | Latino Issues Forum | \$190 | 2004 | \$190 |

| | | | | | | |
|---------|----------|--------------|------------------------------|-------|------|-------|
| Enrique | Gallardo | Attorney | Latino Issues Forum | \$275 | 2004 | \$275 |
| Steve | Boyajian | Legal Intern | National Consumer Law Center | \$100 | 2004 | \$100 |
| Olivia | Wein | Attorney | National Consumer Law Center | \$235 | 2002 | \$235 |
| Charles | Harak | Attorney | National Consumer Law Center | \$350 | 2001 | \$350 |
| Charles | Harak | Attorney | National Consumer Law Center | \$385 | 2002 | \$385 |
| Charles | Harak | Attorney | National Consumer Law Center | \$435 | 2003 | \$435 |
| Charles | Harak | Attorney | National Consumer Law Center | \$435 | 2004 | \$435 |

(END OF ATTACHMENT)