

Decision 08-11-052 November 21, 2008

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking Into
Implementation of Federal Communications
Commission Report and Order 4-87, as It Affects
the Universal LifeLine Telephone Service
Program.

Rulemaking 04-12-001
(Filed December 2, 2004)

**DECISION GRANTING INTERVENOR COMPENSATION
TO LATINO ISSUES FORUM FOR SUBSTANTIAL
CONTRIBUTION TO DECISION 08-08-029**

This decision awards Latino Issues Forum \$12,195 in compensation for its substantial contributions to Decision (D.) 08-08-029. Today's award payment will be paid from the Commission's intervenor compensation fund. This proceeding remains open so that the Commission can monitor the implementation of pre-qualification for the California Lifeline Telephone Program.

1. Background

This proceeding is the second phase of R.04-12-001. In D.08-08-029, we adopt a pre-qualification requirement for the California LifeLine Telephone Program (LifeLine or California LifeLine).¹ Under pre-qualification, a new applicant for the program will receive the discounted LifeLine rate for telephone

¹ Also known as the Universal LifeLine Telephone Service Program.

services once Solix, the Certifying Agent, determines that he/she is eligible. We adopt the changes to General Order 153 to implement pre-qualification.

Furthermore, we determine that we should not eliminate eligibility based on income but rather, continue to utilize eligibility based on both income and participation in other low-income programs. Some eligible customers do not participate in any of the means-tested programs and would therefore be excluded if we eliminated income-based eligibility.

We conclude that the changes we have made over the past year have been successful; the LifeLine program is operating effectively so no further steps are needed at this time to improve our process. This proceeding remains open so that the Commission can monitor the implementation of pre-qualification.

2. Requirements for Awards of Compensation

The intervenor compensation program, set forth in Pub. Util. Code §§ 1801-1812,² requires California jurisdictional utilities to pay the reasonable costs of an intervenor's participation if that party makes a substantial contribution to the Commission's proceedings. The statute provides that the utility may adjust its rates to collect the amount awarded from its ratepayers.

All of the following procedures and criteria must be satisfied for an intervenor to obtain a compensation award:

1. The intervenor must satisfy certain procedural requirements including the filing of a sufficient notice of intent (NOI) to claim compensation within 30 days of the prehearing conference (PHC), pursuant to Rule 17.1 of the Commission's Rules of

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

- Practice and Procedure (Rules), or at another appropriate time that we specify. (§ 1804(a).)
2. The intervenor must be a customer or a participant representing consumers, customers, or subscribers of a utility subject to our jurisdiction. (§ 1802(b).)
 3. The intervenor must 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).)
 4. The intervenor must demonstrate “significant financial hardship.” (§§ 1802(g) and 1804(b)(1).)
 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 or as otherwise found by the Commission. (§§ 1802(i) and 1803(a).)
 6. The claimed fees and costs must be reasonable (§ 1801), necessary for and related to the substantial contribution (D.98-04-059), comparable to the market rates paid to others with comparable training and experience (§ 1806), and productive (D.98-04-059).

In the discussion below, the procedural issues in Items 1-4 above are combined and a separate discussion of Items 5-6 follows.

2.1. Preliminary Procedural Issues

Under § 1804(a)(1) and Rule 17.1(a)(1), a customer who intends to seek an award of intervenor compensation must file an NOI before certain dates.

There was no pre-hearing conference for this proceeding. In a ruling dated January 11, 2005, a deadline of February 14, 2005 was set by Administrative Law Judge (ALJ) Karen Jones. Latino Issues Forum (LIF) filed a timely NOI on January 4, 2005. On March 8, 2005, ALJ Jones issued a ruling indicating that although LIF’s NOI was submitted timely, that it would still need to meet the significant hardship test before it can be found eligible to receive compensation.

Section 1802(b)(1) defines a “customer” as: (A) a participant representing consumers, customers or subscribers of a utility; (B) a representative who has been authorized by a customer; or (C) a representative of a group or organization authorized pursuant to its articles of incorporation or bylaws to represent the interests of residential or small business customers. (§ 1802(b)(1)(A) through (C).) The March 8, 2005 ruling found LIF is a customer pursuant to § 1802(b)(1)(C) and eligible to claim compensation. On September 24, 2008 in LIF’s request for intervenor compensation it made the required showing of significant financial hardship.

Regarding the timeliness of the request for compensation, LIF filed its request for compensation on September 24, 2008, within 60 days of the issuance of D.08-08-029. No party opposed the request. In view of the above, we find that LIF has satisfied all the procedural requirements necessary to make its request for compensation in this proceeding pursuant to § 1802(g).

3. Substantial Contribution

In evaluating whether a customer made a substantial contribution to a proceeding, we look at several things. First, we look at whether the Commission adopted one or more of the factual or legal contentions, or specific policy or procedural recommendations put forward by the customer. (§ 1802(i).) Second, if the customer’s contentions or recommendations paralleled those of another party, we look at whether the customer’s participation unnecessarily duplicated or materially supplemented, complemented, or contributed to the presentation of the other party. (§§ 1801.3(f) and 1802.5.)

As described in § 1802(i), 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 contributed. It is then a matter of judgment as to whether the customer's presentation substantially assisted the Commission.³

With this guidance in mind, we compare the claimed contributions LIF made to the proceeding with the record.

LIF asserts that because of their efforts, in conjunction with other "Joint Consumers," they persuaded the Commission to retain income-based enrollment for LifeLine as a means for achieving California's universal service goals. Additionally, LIF demonstrated that many potential LifeLine applicants would be ineligible for the majority of benefit programs through which LifeLine eligibility could be achieved. These positions were taken into consideration and cited in the final decision.⁴ LIF also demonstrated that a significant population, undocumented immigrants without children, is not eligible for any of the programs through which LifeLine eligibility could be achieved. The Commission ruled in favor of this position and found that elimination of income-based enrollment could only occur when the loss of potential customers is *de minimus*.⁵ LIF's claimed contributions are clear and affirmed in the final decision.

³ D.98-04-059, 79 CPUC2d 628 at 653.

⁴ D.08-08-029, pp. 49-50.

⁵ D.08-08-029, p. 50.

4. Contributions of Other Parties

Section 1801.3(f) requires an intervenor to avoid participation that duplicates that of similar interests otherwise adequately represented by another party, or participation unnecessary for a fair determination of the proceeding. Section 1802.5, however, allows an intervenor to be eligible for full compensation where its participation materially supplements, complements, or contributes to the presentation of another party if that participation makes a substantial contribution to the Commission order.

LIF coordinated its efforts with other intervenors and filed reply comments jointly to avoid duplication of effort. All of LIF's contributions to this proceeding occurred in collaboration with The Utility Reform Network, The National Consumer Law Center and Disability Rights Advocates (collectively "Joint Consumers"). Joint Consumers divided the work to ensure that duplication of efforts did not occur. Each individual consumer group primarily addressed one issue and reviewed the other consumers groups' work. LIF focused primarily on advocating for the retention of income-based enrollment to the LifeLine program.

LIF took reasonable steps to keep duplication to a minimum and to ensure that its work served to supplement, complement, or collectively contribute to the efforts of other parties in this proceeding. These claims are supported by the record.

After we have determined the scope of a customer's substantial contribution, we then look at whether the amount of the compensation request is reasonable.

5. Reasonableness of Requested Compensation

LIF requests \$12,195 for its participation in this proceeding, as follows:

Work on Proceeding				
Attorney/Staff	Year	Hours	Hourly Rate	Total
Enrique Gallardo	2007	16.5	\$300	\$4,950
Enrique Gallardo	2008	19.0	\$315	\$5,985
Subtotal:				\$10,935
Preparation of NOI and Compensation Request				
Attorney/Staff	Year	Hours	Hourly Rate	Total
Enrique Gallardo	2008	8.0	\$157.50	\$1,260
Subtotal Hourly Compensation:				\$1,260
Total Requested Compensation				\$12,195

In general, the components of this request must constitute reasonable fees and costs of the customer’s preparation for and participation in a proceeding that resulted in a substantial contribution. The issues we consider to determine reasonableness are discussed below:

5.1. Hours and Costs Related to and Necessary for Substantial Contribution

We first assess whether the hours claimed for the customer’s efforts that resulted in substantial contributions to Commission decisions are reasonable by determining to what degree the hours and costs are related to the work performed and necessary for the substantial contribution.

LIF documented its claimed hours by presenting a daily breakdown of the hours of Enrique Gallardo, accompanied by a brief description of each activity. The hourly breakdown, as adjusted herein, reasonably supports LIF’s claim for total hours.

Although the Commission has not reduced the award for unreasonableness of time, we observe however, that the hours LIF has spent on

some activities (i.e., 3.5 hours reviewing an eight-page scoping memo), are in the outer ranges of reasonableness.

5.2. Intervenor Hourly Rates

We next take into consideration whether the claimed fees and costs are comparable to the market rates paid to experts and advocates having comparable training and experience and offering similar services. LIF requests hourly rates as follows:

REPRESENTATIVE	RATE REQUESTED	PREVIOUSLY APPROVED	JUSTIFICATION
Enrique Gallardo (2007)	\$300	No	Adopted rate of \$285 in 2006 (D.06-11-009) plus 5% cost of living + step
Enrique Gallardo (2008)	\$315	No	Adopted rate of \$285 in 2006 (D.06-11-009) plus cost of living + step increases (2)

We adopt these rates as reasonable.

5.3. Direct Expenses

LIF waives negligible costs for printing and postage.

6. Productivity

D.98-04-059 directed customers to demonstrate productivity by assigning a reasonable dollar value to the benefits of their participation to ratepayers. (D.98-04-059, pp. 34-35.) The costs of a customer's participation should bear a reasonable relationship to the benefits realized through its participation. This showing assists us in determining the overall reasonableness of the request.

LIF represents the interest of Limited English Proficient (LEP) customers, immigrants and other vulnerable customers. For many in this population,

income-based certification is the only means to establish eligibility for the LifeLine program.

To be consistent with the Universal Service goals and the Legislative mandate in the Moore Universal Telephone Service Act, it is the Commission’s responsibility to ensure that all Californians entitled to LifeLine service are able to receive that service. The Legislative mandate cited by LIF and the Joint Consumers in § 871.5(c) gives the Commission a clear mandate to maximize participation of those eligible for the program. LIF’s efforts outweigh the cost of its participation in this proceeding because they advocated for an income-based eligibility program, which was adopted in this decision and reaffirms the Commission’s dedication to “ensure that every person qualified to receive LifeLine telephone service is informed of and is afforded the opportunity to subscribe to that service.”⁶

7. Award

As set forth in the table below, we award LIF \$12,195:

Work on Proceeding				
Attorney/Staff	Year	Hours	Hourly Rate	Total
Enrique Gallardo	2007	16.5	\$300	\$ 4,950
Enrique Gallardo	2008	19.0	\$315	\$ 5,985
Subtotal:				\$10,935
Preparation of NOI and Compensation Request				
Attorney/Staff	Year	Hours	Hourly Rate	Total
Enrique Gallardo	2008	8.0	\$157.50	\$ 1,260
Subtotal Hourly Compensation:				\$ 1,260
Total Awarded Compensation				\$12,195

⁶ D.08-08-029, p. 50.

This rulemaking proceeding affected a broad array of telecommunication carriers. As such, we find it appropriate to authorize payment of today's awards from the Commission's intervenor compensation program fund, as described in D.00-01-020.

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

8. Waiver of Comment Period

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

9. Assignment of Proceeding

Dian Grueneich is the assigned Commissioner, and Karen A. Jones is the assigned ALJ in this proceeding.

Findings of Fact

1. LIF has satisfied all the procedural requirements necessary to claim compensation in this proceeding.
2. LIF made a substantial contribution to D.08-08-029 as described herein.
3. LIF requested hourly rates for its representatives that are reasonable when compared to the market rates for persons with similar training and experience.
4. The total of the reasonable compensation is \$12,195.

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

Conclusions of Law

1. LIF has fulfilled the requirements of §§ 1801-1812, which govern awards of intervenor compensation, and is entitled to intervenor compensation for its claimed expenses, as adjusted herein, incurred in making substantial contributions to D.08-08-029.
2. LIF should be awarded \$12,195 for its contribution to D.08-08-029.
3. This order should be effective today so that LIF may be compensated without further delay.
4. This proceeding remains open so that the Commission can monitor the implementation of pre-qualification.

O R D E R

IT IS ORDERED that:

1. Latino Issues Forum (LIF) is awarded \$12,195 as compensation for its substantial contributions to Decision D.08-08-029.
2. Within 30 days of the effective date of this decision, LIF's award shall be paid from the intervenor compensation program fund, as described in Decision 00-01-020. Payment of the award shall include interest at the rate earned on prime, three-month commercial paper as reported in Federal Reserve Statistical Release H.15, beginning December 8, 2008, the 75th day after the filing date of LIF's request for compensation, and continuing until full payment is made.

3. Rulemaking 04-12-001 is open.

This order is effective today.

Dated November 21, 2008, at San Francisco, California.

MICHAEL R. PEEVEY

President

DIAN M. GRUENEICH

JOHN A. BOHN

RACHELLE B. CHONG

TIMOTHY ALAN SIMON

Commissioners

APPENDIX

Compensation Decision Summary Information

Compensation Decision:	D0811052	Modifies Decision? No
Contribution Decision(s):	D0808029	
Proceeding(s):	R0412001	
Author:	ALJ Jones	
Payer(s):	Commission	

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Multiplier?	Reason Change/Disallowance
Latino Issues Forum	09-24-08	\$12,195.00	\$12,195.00	No	

Advocate Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
Enrique	Gallardo	Attorney	Latino Issues Forum	\$300	2007	\$300
Enrique	Gallardo	Attorney	Latino Issues Forum	\$315	2008	\$315

(END OF APPENDIX)