

Decision 09-02-027 February 20, 2009

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Rulemaking on the Commission's Own
Motion to Review the Telecommunications
Public Policy Programs.

Rulemaking 06-05-028
(Filed May 25, 2006)

**DECISION GRANTING INTERVENOR COMPENSATION
TO LATINO ISSUES FORUM FOR SUBSTANTIAL
CONTRIBUTION TO DECISION 08-06-020**

This decision awards Latino Issues Forum (LIF) \$14,370.73 in compensation for its substantial contributions to Decision 08-06-020. The award reflects a decrease of \$23,783.64 from the original request of \$38,154.37 required by our policies on reasonableness and substantial contribution. Today's award payment will be paid from the Commission's intervenor compensation fund. This proceeding remains open.

Background

On May 25, 2006, the Commission opened this rulemaking to conduct a comprehensive review of its Telecommunications Public Policy Programs – the Universal Lifeline Telephone Service (Lifeline), Payphone Programs, Deaf and Disabled Telecommunications Program (DDTP), and California Teleconnect Fund (CTF).

Decision (D.) 08-06-020 addressed four of the five Telecommunications Public Policy Payphone Programs at issues in this proceeding. Issues relating to Lifeline program will be dealt with separately in a future decision. The CTF was

expanded to include community colleges, with an initial monetary cap of \$7.2 million annually. An Office of CTF Outreach and Assistance was established. The CTF was made more competitively and technologically neutral. We further removed the tariff requirements related to CTF for non-rate-of-return carriers, and finally, ensured that all participants in the California Telehealth Network were eligible to receive CTF discounts.

The Payphone Enforcement Program was combined with our existing enforcement efforts. In addition, a Public Policy Payphone Program was reestablished, and we delegated to the Executive Director the task of establishing the most appropriate surcharge mechanism, including utilizing an existing program. The on-going wireless equipment pilot for the Deaf and Disabled Telecommunications Program will be monitored for further action as needed.

Requirements for Awards of Compensation

The intervenor compensation program, which is set forth in Pub. Util. Code §§ 1801-1812,¹ 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

¹ All subsequent statutory references are to the Public Utilities Code unless otherwise indicated.

- conference (PHC), pursuant to Rule 17.1 of the Commission's Rules of 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 separate discussions of Items 5 and 6 follow.

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 prehearing conference for this proceeding. Administrative Law Judge (ALJ) Maribeth A. Bushey established a deadline of August 11, 2006, for filing notices of intent to claim intervenor compensation. LIF filed its timely notice on August 7, 2006. No party filed an opposition to LIF's notice.

On August 29, 2006, ALJ Bushey ruled that LIF is a customer as defined in

§ 1802 (b)(1)(C). At the request of LIF, the ruling deferred the establishment of financial hardship until LIF submitted its request for award of compensation, and LIF made the required showing in its request.

Regarding the timeliness of the request for compensation, LIF filed its request for compensation on August 15, 2008, within 60 days of the issuance of D.08-06-020. No party opposed the request. In view of the above, we affirm the ALJ's ruling and find that LIF has satisfied all the procedural requirements necessary to make its request for compensation in this proceeding.

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.²

With this guidance in mind, we turn to the claimed contributions LIF made to the proceeding.

CTF Topics

In its July 28, 2006 comments, LIF made six separate recommendations regarding the CTF. LIF recommended that the Commission:

1. hire a third-party administrator;
2. centralize the process within the Commission;
3. expand the definition of CBOs;
4. direct CTF to low-income communities;
5. expand program to include cable, Internet Service Providers, and wireless; and
6. fund demonstration grants.

LIF's reply comments on this subject did not identify errors of fact or law in other parties' comments or add anything new to the record. Most of LIF's presentation did not substantially contribute to the Commission's decision because the Commission did not adopt these recommendations. The concept of increasing and centralizing CTF outreach was reflected in the Commission's decision to include CTF outreach support to entities other than schools and libraries as was expanding the program to include other providers such as cable, internet service providers, and wireless. The reasonableness of the requested compensation must be balanced against the contribution it made, and is discussed below.

² D.98-04-059, 79 CPUC2d 628 at 653.

Payphone Topics

On September 7, 2007, LIF filed comments on the payphone programs that reiterated the scoping memo and Division of Ratepayer Advocates (DRA) recommendations. In addition, the comments included LIF's observation that payphones serve a vital public need, along with citations to a 2004 Commission report and a then-recent article in the popular press.

LIF's reply comments on September 25, 2007 contained procedural objections, restatements of LIF's and other parties' comments, further reiteration of DRA's payphone recommendations, and LIF's objections to using the CTF to fund public policy payphones. The Commission directed the Executive Director to develop a public policy payphone program which may use an "existing program" as a funding source, *see* D.08-06-020 at 45, the opposite of what LIF recommended in the remainder of its reply comments.

The portion of LIF's opening comments that did substantially contribute to the Commission in the making of its decision relates to LIF's comments on the public need for payphones including its citation to a Commission report and news coverage, *see* D.08-06-020 at 43, and thus meets the statutory standards for compensation. Because LIF's September 25, 2007 reply comments did not add anything new to the record, they did not substantially assist the Commission in making its decision. The reasonableness of the requested compensation associated with these issues must be balanced against the contribution LIF made, and is discussed below.

Scoping Memo Issues

On August 24, 2007, LIF filed comments in response to the assigned Commissioner's scoping memo issued on July 13, 2007. The scoping memo sought comment on five specific recommendations for the CTF. LIF opposed

expanding the CTF to include community colleges and the federal telemedicine project, and LIF also opposed limiting to schools and libraries the expansion of the list of CTF-eligible services to mirror the federal E-rate program. Although the Commission did not adopt LIF's recommendation on these issues, LIF's August 24, 2007 comments substantially assisted in the making the decision by presenting alternative viewpoints and analysis. LIF's reply comments did not result in a substantial contribution because they simply restated LIF's August 24, 2007 comments. The reasonableness of the requested compensation associated with these issues must be balanced against the contribution LIF made, and is discussed below.

Comments on Proposed Decision

LIF's June 2, 2008 comments on the assigned Commissioner's Proposed Decision raised five issues. On the first issue, limiting community college use of CTF funds, LIF agreed with the PD. On three issues - expanding the CTF to mirror E-rate, requiring all service providers to provide CTF discounts, and not funding the public policy payphone program from the CTF - the Commission declined to adopt LIF's recommendations. The Commission did adopt LIF's recommendation to include CBOs in the CTF outreach assistance effort. We find LIF substantially assisted the Commission on one issue and added to the discussions on the other issues and its work associated with its comments on the Proposed Decision should be fully compensated.³

³ 2008 hours associated with Intervenor Compensation as addressed separately.

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. In this proceeding, LIF’s presentations closely paralleled those of other parties on some issues but also provided a sufficiently different perspective. We, therefore, conclude that no disallowance for duplication is required.

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.

Reasonableness of Requested Compensation

LIF requested \$38,154.37⁴ for its participation in this proceeding, as follows:

Attorney/Staff	Work on Proceeding			
	Year	Hours	Hourly Rate	Total
Enrique Gallardo	2006	17.75	\$285	\$5,058.75
Enrique Gallardo	2007	23.75	\$300	\$7,125.00
Enrique Gallardo	2008	17.00	\$315	\$5,355.00
Richard Chabrán	2006	31.25	\$210	\$6,562.50

⁴ In its request, LIF, for the most part, divided its compensation related hours by two and added those hours to its hours associated with the issues in the proceeding. Its requested amount was \$38,115.00. However, in one case, LIF reduced the hours by more than 50%, so we have corrected this error in this table.

Richard Chabrán	2007	16.50	\$220	\$3,630.00
Richard Chabrán	2008	4.00	\$230	\$920.00
James Lau	2006	49.0	\$160	\$7,840.00
Subtotal:				\$36,491.25

Preparation of NOI and Compensation Request

Attorney/Staff	Year	Hours	Hourly Rate	Total
Enrique Gallardo	2006	2.0	\$142.50	\$285.00
Enrique Gallardo	2008	8.75	\$157.50	\$1,378.12
Subtotal Hourly Compensation:				\$1,663.12
Total Requested Compensation				\$38,154.37

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:

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 its attorneys, accompanied by a brief description of each activity. Because we found that not all of LIFs efforts resulted in a substantial contribution or their efforts resulted in a very narrow contribution, we evaluate the reasonableness of LIF’s request by reviewing each document LIF submitted for the record in this proceeding. No hearings were held so the record is comprised only of written documents. On a document-by-document basis, we assess whether LIF’s hours and costs were related to and necessary in light of our finding of whether they resulted in a substantial contribution.

LIF's presentation in this proceeding consisted of seven filed documents:

LIF's Presentation		Pages	Compensation Requested
CTF Topics	Comments filed 7-28-06 + review of comments	7.5	<u>Gallardo</u> 14.25 hrs. <u>Lau</u> 40.25 hrs. <u>Chabrán</u> 22.25 hrs.
CTF Topics	Reply Comments filed 9-15-06	2.5	<u>Gallardo</u> 3.5 hrs. <u>Lau</u> 8.75 hrs. <u>Chabrán</u> 9.0 hrs.
Scoping Memo Issues	Comments filed 8-24-07	5	<u>Gallardo</u> 9.0 hrs. <u>Chabrán</u> 3.5 hrs.
Payphone Topics	Comments filed 9-07-07	3.5	<u>Gallardo</u> 4.25 hrs. <u>Chabrán</u> 5.0 hrs.
Scoping Memo Issues	Reply Comments filed 9-13-07	1	<u>Gallardo</u> 1.0 hrs. <u>Chabrán</u> 1.0 hrs.
Payphone Topics	Reply Comments filed 9-25-07	4	<u>Gallardo</u> 9.5 hrs. <u>Chabrán</u> 7.0 hrs.
Comments on Proposed Decision	Comments filed 6-02-08	5	<u>Gallardo</u> 17.0 hrs. <u>Chabrán</u> 4.0 hrs.
Intervenor Compensation	2006 2008		<u>Gallardo</u> 2.0 hrs. <u>Gallardo</u> 8.75 hrs.

CTF Topics- 2006 Comments and Reply Comments

In its July 28, 2006, comments, LIF presented seven and one-half pages of text addressing the CTF; making the six separate recommendations described above. In the ensuing reply comments, LIF's presentation largely reiterated its comments in two and one-half pages of text, identifying no errors of fact or law in the other parties' comments.

Most of the content of LIF's presentation did not substantially contribute to the Commission's decision because the Commission did not adopt these recommendations. The concept of increasing and centralizing CTF outreach was

reflected in the Commission's decision to include CTF outreach support to entities other than schools and libraries⁵ as was expanding the program to include other providers such as cable, internet service providers, and wireless. This recommendation comprised about one of the seven pages in LIF's presentation.

The number of hours and resulting compensation request is unreasonable given the contribution of the comments and reply comments to the outcome of the proceeding. Rather than attempt to set a reasonable amount of time to have developed this portion of the presentation, we will compensate LIF for one-seventh its claimed hours leading up to its July 28, 2006 comments and its review of other parties July 28, 2006 comments. Because the reply comments added nothing new to the record and did not contribute to the outcome of the proceeding, we disallow the remaining hours requested for 2006.⁶

Payphone Topics- 2007 Comments and Reply Comments

LIF's September 7, 2007 comments on the payphone programs consist of three and one-half pages of text. Of those pages, about one-half reiterate the scoping memo and DRA recommendations. LIF's observation that payphones serve a vital public need, supported by citations to a 2004 Commission report and a then-recent article in the popular press, is stated in less than one page of text. As described above, this portion of LIF's September 7, 2007 comments substantially assisted the Commission in making its decision. LIF's reply comments on September 25, 2007, were comprised of four pages of text. Of those

⁵ See D.08-06-020 at 37.

⁶ Hours in 2006 associated with preparation of LIF's NOI are addressed separately.

four pages, more than one page again reiterated DRA's payphone recommendations. Procedural objections and restatements of LIF's and other parties' comments take up another two pages, with one page containing LIF's presentation of its objections to using the CTF to fund public policy payphones.

The number of hours and resulting compensation request is unreasonable given the contribution of the comments and reply comments to the outcome of the proceeding. Rather than attempt to define a reasonable number of hours for preparing this presentation, we will use the fractional share of the total pages of the opening comments, about one-third, devoted to this issue as the basis for finding that a similar share of the total cost is reasonable. The hours associated with the reply comments did not contribute to the outcome of the proceeding, we disallow them.

Scoping Memo Issues- 2007 Comments and Reply Comments

On August 24, 2007, LIF filed comments in response to the assigned Commissioner's scoping memo issued on July 13, 2007. The scoping memo sought comment on five specific recommendations for the CTF. LIF addressed these recommendations in five pages of text. In its presentation, LIF opposed expanding the CTF to include community colleges and the federal telemedicine project, and LIF also opposed limiting to schools and libraries the expansion of the list of CTF-eligible services to mirror the federal E-rate program. Although the Commission did not adopt LIF's recommendation on these issues, LIF's presentation substantially assisted in the making the decision by presenting alternative viewpoints and analysis. While we have reservations that the amount of hours claimed for these comments are reasonable, due to the substantial reductions we have made elsewhere in this decision, we will grant award

compensation for the full number of hours associated with the August 24, 2007 opening comments.

LIF's presentation in its one-page reply comments simply restated its opening comments and did not add new analysis to the record. Because these reply comments did not result in a substantial contribution, we deny the hours associated with preparing these reply comments.

2008 Comments on Proposed Decision

LIF's five pages of comments on the assigned Commissioner's Proposed Decision made a substantial contribution as described above and LIF should receive compensation for all the hours associated with its comments on the Proposed Decision.

Time Associated with Intervenor Compensation Matters

LIF separately identified hours associated with preparing its NOI and request for compensation. In future claims, LIF should subtotal the hours associated with compensation matters separately from hours associated with work on the issues in the case. The amount of hours claimed associated with compensation matters appears reasonable.

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 has requested rates that are comparable to the market rates paid to experts and advocates having comparable training and experience and offering similar services.

LIF seeks an hourly rate of \$285 for Enrique Gallardo, for work performed in 2006. We previously approved this rate in D.06-11-009, and adopt it here. Applying a 5% yearly step increase for Gallardo, LIF's request for \$300 an hour

in 2007 and \$315 an hour in 2008 are reasonable and adopted here. In 2005, Richard Chabrán was compensated at an hourly rate of \$200 in D.06-04-036. LIF's request for \$210 an hour for his work in 2006 and \$220 an hour for his work in 2007, represents a 5% yearly step increase for both years which is reasonable and we adopt them here. James Lau received hourly compensation rate of \$150 in 2005 in D.06-04-036. LIF's request for hourly compensation of \$160 in 2006 for Lau represents a 5% yearly step increase which is reasonable and is adopted here.

Direct Expenses

LIF waives reimbursement for printing and postage as the costs were negligible.

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 at 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.

In this proceeding, the Commission is reviewing its telecommunications public policy programs, which benefit millions of Californians. Ensuring that these programs continue to achieve our universal service goals will directly benefit participants and will also indirectly benefit all telecommunications users. These benefits, although difficult to quantify, are substantial and we, therefore, find that LIF's participation has been productive.

Award

As set forth in the table below, we award LIF \$14,370.73.

Work on Proceeding				
Attorney/Staff	Year	Hours	Hourly Rate	Total
Enrique Gallardo	2006	2.04	\$285.00	\$580.18
Enrique Gallardo	2007	10.42	\$300.00	\$3,126.00
Enrique Gallardo	2008	17.00	\$315.00	\$5,355.00
Richard Chabrán	2006	3.18	\$210.00	\$667.80
Richard Chabrán	2007	5.17	\$220.00	\$1,137.40
Richard Chabrán	2008	4.00	\$230.00	\$920.00
James Lau	2006	5.75	\$160.00	\$920.00
Work on Proceeding Subtotal:				\$12,622.59

Preparation of NOI and Compensation Request				
Attorney/Staff	Year	Hours	Hourly Rate	Total
Enrique Gallardo	2006	2.00	\$142.50	\$285.00
Enrique Gallardo	2008	8.75	\$157.50	\$1,378.13
NOI and Compensation Subtotal:				\$1,663.13
Total Compensation:				\$14,370.73

Consistent with previous Commission decisions, we order that interest be paid on the award amount (at the rate earned on prime, three-month commercial paper, as reported in Federal Reserve Statistical Release H.15) commencing on November 23, 2008, the 75th day after LIF filed its compensation request, and continuing until full payment of the award is made.

This rulemaking proceeding affects a broad array of utilities and others in the telecommunications field. 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. The records pertaining to an award of compensation shall be retained for at least three years from the date of the final decision making the award.

Comments on Proposed Decision

This is an intervenor compensation matter. As provided in Rule 14.6(c)(6) of our Rules of Practice and Procedure, we normally waive the otherwise applicable 30-day comment period for this proposed decision. Because the Proposed Decision recommended an award that represents a sizable reduction from the amount requested, the proposed decision was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. No comments were filed.

Assignment of Proceeding

Rachelle B. Chong is the assigned Commissioner and Maribeth A. Bushey 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.08-06-020 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 \$14,370.73.

5. 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.08-06-020.

2. LIF should be awarded \$14,370.73 for its contribution to D.08-06-020.

3. This order should be effective today so that LIF may be compensated without further delay.

O R D E R

IT IS ORDERED that:

1. Latino Issues Forum (LIF) is awarded \$14,370.73 as compensation for its substantial contributions to Decision (D.) 08-06-020.

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 D.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 November 23, 2008, the 75th day after the filing date of LIF's request for compensation, and continuing until full payment is made.

3. Rulemaking 06-05-028 remains open.

This order is effective today.

Dated February 20, 2009, 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:	D0902027	Modifies Decision? No
Contribution Decision(s):	D0806020	
Proceeding(s):	R0605028	
Author:	ALJ Bushey	
Payer(s):	Commission	

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Multiplier?	Reason Change/Disallowance
Latino Issues Forum	08-15-08	\$38,154.37	\$14,370.73	No	Lack of substantial contribution

Advocate Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
Eduardo	Gallardo	Attorney	Latino Issues Forum	\$285	2006	\$285
Eduardo	Gallardo	Attorney	Latino Issues Forum	\$300	2007	\$300
Eduardo	Gallardo	Attorney	Latino Issues Forum	\$315	2008	\$315
Richard	Chabrán	Expert	Latino Issues Forum	\$210	2006	\$210
Richard	Chabrán	Expert	Latino Issues Forum	\$220	2007	\$220
Richard	Chabrán	Expert	Latino Issues Forum	\$230	2008	\$230
James	Lau	Expert	Latino Issues Forum	\$160	2006	\$160

(END OF APPENDIX)