

Decision 15-01-014 January 15, 2015

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Investigation on the Commission's Own Motion Into the Planned Purchase and Acquisition by AT&T Inc. of T-Mobile USA, Inc. and its Effects on California Ratepayers and the California Economy.

Investigation 11-06-009
(Filed June 9, 2011)

DECISION GRANTING COMPENSATION TO NATIONAL ASIAN AMERICAN COALITION AND LATINO BUSINESS CHAMBER OF GREATER LOS ANGELES FOR SUBSTANTIAL CONTRIBUTIONS TO DECISION 12-08-025

Claimant: Black Economic Council, National Asian American Coalition, and Latino Business Chamber of Greater Los Angeles. ¹	For contribution to Decision 12-08-025
Claimed (\$): \$242,243	Awarded (\$): \$42,505.15 (Reduced by 82.45%)
Assigned Commissioner: Catherine J.K. Sandoval	Assigned ALJ: Jessica T. Hecht

PART I: PROCEDURAL ISSUES

- A. Brief Description of Decision:** Decision (D.) 12-08-025 is the Decision dismissing Investigation (I.) 11-06-009 resulting from the proposed acquisition and purchase by AT&T, Inc. of T-Mobile, USA, Inc. AT&T, Inc. subsequently withdrew its application and D. 12-08-025 dismissed the proceeding and ruled that intervening parties were still eligible to receive intervenor compensation.

¹ Collectively, "Joint Parties."

B. Claimant must satisfy intervenor compensation requirements set forth in Public Utilities Code Sections 1801-1812:

	Claimant	CPUC Verified
Timely filing of notice of intent to claim compensation (NOI) (§ 1804(a)):		
1. Date of Prehearing Conference:	Please see comment below.	Verified
2. Other Specified Date for NOI:	September 6, 2011	Verified
3. Date NOI Filed:	September 7, 2011	Verified
4. Was the NOI timely filed?		Yes
Showing of customer or customer-related status (§ 1802(b)):		
5. Based on Administrative Law Judge (ALJ) ruling issued in proceeding number:	A.10-11-015	See Comment in Part IC
6. Date of ALJ ruling:	July 8, 2011	See Comment in Part IC
7. Based on another CPUC determination (specify):		
8. Has the Claimant demonstrated customer or customer-related status?		Yes
Showing of “significant financial hardship” (§ 1802(g)):		
9. Based on ALJ ruling issued in proceeding number:	Please see Comment below.	Verified
10. Date of ALJ ruling:		
11. Based on another CPUC determination (specify):		
12. Has the Claimant demonstrated significant financial hardship?		Yes
Timely request for compensation (§ 1804(c)):		
13. Identify Final Decision:	D.12-08-025	Verified
14. Date of Issuance of Final Order or Decision:	August 29, 2012	Verified
15. File date of compensation request:	October 29, 2012	Verified
16. Was the request for compensation timely?		Yes see Comment in Part IC

C. Additional Comments on Part I:

#	Claimant	CPUC	Comment
1	BEC, NAAC, LBCGLA	Verified	<p>Note on Date of Prehearing Conference</p> <p>In the OII, the Commission stated that “Any party that expects to claim intervenor compensation for its participation in this investigation shall file its notice of intent</p>

			<p>to claim intervenor compensation in accordance with Rule 17.1 of the Commission’s Rules of Practice and Procedure, no later than September 6, 2011 or pursuant to a date set forth in a ruling which may be issued by the assigned Commissioner or assigned Administrative Law Judge” (OIL, OP 18).</p> <p>As indicated in the Joint Parties’ initial NOI, ALJ Hecht authorized a file delay of one day on September 6, 2011. The NOI in this proceeding was filed in accordance with this directive and was filed on September 7, 2011.</p>
9	BEC, NAAC, LBCGLA	Verified	<p>Regarding Showing of Significant Financial Hardship</p> <p>In filing the NOI, the Joint Parties mistakenly believed ALJ Darling’s July 8, 2011 ruling in Application (A.) 10-11-015 finding customer status also found the parties had established significant financial hardship. Thus, ALJ Darling’s ruling was wrongfully cited in the NOI.</p> <p>In Rulemaking (R.) 09-07-027, a July 6, 2010 ruling made a finding of significant financial hardship for both the Black Economic Council and the Mabuhay Alliance (now known as the National Asian American Coalition). An August 25, 2010 ruling in the same proceeding made the same finding for the LBCGLA. Thus, these instances should have been correctly cited within the NOI.</p>
5, 6		X	<p>Ruling on Customer Status</p> <p>The July 8, 2011 ALJ ruling in A.10-11-015 found the Joint Parties conditionally and preliminarily eligible as Category 3 customers, and stated:</p> <p>None of the offered amendments or amended bylaws contain the relevant signature pages, instead they merely state the amendments were adopted. Although this would not be adequate for any legal purpose, I accept it on good faith for purposes of a preliminary finding of eligibility. <u>However, in order to perfect the record, if and when Joint Parties [BEC, NAAC, LBCGLA] file[] a request for IComp, the amendments must be resubmitted with the corporate officer(s) signatures attesting to adoption of the amendment, or a copy of the signed amended bylaws should be included. (Emphasis added.)</u></p> <p>Only LBCGLA and NAAC complied with the requirements of Pub. Util. Code § 1802(b)(1) and the July 8, 2011 ALJ ruling in A.10-11-015 for a finding of eligibility as Category 3 customers.</p> <p>On May 12, 2014, LBCGLA submitted its signed amended bylaws, as required by Public Utilities Code § 1802(b)(1), almost three years after being directed to do so in the July 8, 2011 ALJ ruling in A.10-11-015 to support its claim as eligible Category 3 customers. LBCGLA has met the requirements of § 1802(b)(1) for a finding of eligibility as a Category 3 customer.</p> <p>On May 16, 2014, NAAC submitted its signed amended bylaws, as required by Public Utilities Code § 1802(b)(1), almost three years after being directed to do so in the July 8, 2011 ALJ ruling in A.10-11-015 to support their claim as eligible Category 3 customers. NAAC has met the requirements of</p>

			<p>§ 1802(b)(1) for a finding of eligibility as a Category 3 customer.</p> <p>Despite having nearly three years since the July 8, 2011 ALJ ruling to comply with the requirements of § 1802(b)(1) for a finding of eligibility as a Category 3 customer, to date, BEC has not submitted its signed bylaws to the Commission and has failed to satisfy the requirements of Pub. Util. Code § 1802(b)(1) for a finding of eligibility as Category 3 customers.</p> <p>As noted below, the amount of the total award granted on this claim is the same as that which would have been granted if BEC were also found to be a customer. However, the award is granted to LBCGLA and NAAC only, because BEC has not been found to be a customer.</p>
16		X	<p>Timeliness of Filing</p> <p>Pursuant to Decision (D.) 98-04-059, the request is deemed complete on May 16, 2014, when the NAAC submitted eligibility documentation required by the July 8, 2011 ruling in A.10-11-015.</p>
		X	<p>In previous decisions involving proceeding dismissals at the request of the applicant, such as D.01-02-040, the Commission has awarded intervenor compensation. <i>See also</i>, D.02-07-030 for a discussion of the authority to allow intervenor compensation awards in a major application following dismissal. In these situations, the Commission has acknowledged that many of the general principles on which the Commission typically relies in evaluating whether a customer made a substantial contribution to a proceeding do not apply, since the Commission never issued a decision on the merits in that case, and has explained that: Denying compensation in this proceeding because circumstances beyond its control led to the dismissal of the application would be both unfair and inconsistent with the intent of intervenor compensation statutes... simply because there was no decision or order addressing the merits of substantive participation, we could create an inappropriate incentive for intervenors to argue for the continued processing of cases where discontinuation of the proceeding is the better outcome. (<i>Order Instituting Rulemaking Into the Commission’s Own Motion</i> (2006) [D.06-11-010]. The Commission has further recognized that: “[I]f the Commission were to deny compensation because application of the typical standards of review yield the conclusion that there was no ‘substantial contribution,’ it would in effect be assigning to eligible intervenors the risk that a proceeding might bog down and</p>

		<p>subsequently never reach its expected conclusion due to events or inaction that no party could have reasonably anticipated or prevented from occurring. ([D.07-07-031], <i>supra</i>, at 6.) Similarly, the Commission has determined that: participation of intervenors in our proceedings is vital to our ability to make reasoned decisions, and if we prohibit compensation where the proceeding might go away for reasons unrelated to the intervenors' actions, we might discourage participation in some of our most important proceedings. (<i>Id.</i> at 7.) If we denied compensation for substantial efforts on transactions that—through no fault of the intervenor—were not consummated, we would discourage intervenors...from participating in such proceedings. Every large controversial transaction presents some risk of not being consummated by virtue of its very largeness and level of controversy...Such large transactions are precisely the ones on which the Commission most needs the views of intervenors...We should encourage such participation in proceedings of such magnitude.” (<i>Id.</i>; citing [D.02-07-030], <i>supra</i>, at 9; [D.07-07-031], <i>supra</i>, at 7.) Thus, the fact that the applicants withdrew their merger has no bearing on the intervenors' entitlement to intervenor compensation, and the Commission's rationale in those cases provides ample justification for an award of compensation here. Moreover, we have consistently determined that we see no reason to increase an intervenor's risk by denying compensation in a proceeding that is prematurely terminated for reasons that are not reasonably foreseen and are beyond the intervenors control. Nor has New Cingular demonstrated the Legislature intended such an impractical and unlikely result. Therefore, denying intervenors compensation solely on the fact that we did not issue a decision on the merits because the merger was withdrawn, would be inconsistent with a series of our decisions recognizing that the risk of unanticipated dismissal should not be assigned to intervenors. Similarly, here we see no reason to increase the intervenor's risk by denying compensation in a proceeding that is prematurely terminated for reasons that are not reasonably foreseen and are beyond its control. Further, we recognize that such a limited view of substantial contribution would frustrate the objective behind the code, which is to encourage participation. Such a narrow view could also lead to incongruous results never intended by the Legislature, and New Cingular fails to demonstrate that the Legislature intended such an impractical and unlikely result. Here, the Commission initiated the examination of the proposed merger as part of its responsibility to protect California customers, and for six months, the intervenors, in good faith, dedicated their efforts to</p>
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		<p>assist in the evaluation of the proposed merger. The intervenors undertook their evaluation in good faith that its efforts could be considered for compensation, and New Cingular has failed to demonstrate otherwise. In fact, the intervenors worked towards the development of a robust record on almost all issues for the Commission’s review in the OII despite the fact that the Commission did not reach a final decision on the substantive merits of the case. (See Generally D.12-08-025 at 10-12.) Accordingly, and consistent with our policy, we correctly determined that intervenor compensation is warranted in this case. By contrast, New Cingular’s interpretation of the statute which advocates for not awarding compensation under circumstance such as this is inconsistent with the intent expressed in section 1801 et seq., and creates a barrier to effective participation in Commission proceedings for intervenors like LBCGLA and NAAC who have a stake in the public utility regulation process.</p>
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PART II: SUBSTANTIAL CONTRIBUTION

A. Claimant’s contribution to the final decision (see § 1802(i), § 1803(a) & D.98-04-059).

Intervenor’s Claimed Contribution	Specific References to Claimant’s Presentations and to Decision	CPUC’s Comment
<p>1. Given that there was no final decision on the merits, it is difficult to perceive what might have been included within the decision had the case proceeded. However, the Joint Parties believe that the Commission would have considered duopoly concerns, such as the potential competition by Google or Apple.</p> <p>As part of the Joint Parties’ arguments regarding other possible companies interested in a T-Mobile merger, the Joint Parties examined Sprint as a possible contender and compared its record to that of AT&T’s.</p> <p>The Joint Parties believe that the Commission would also have considered the potential of greater competition through other acquisitions, such as the likely acquisition of Sprint by SoftBank.</p>	<ul style="list-style-type: none"> • JP Opening Cmts at 3-4. • JP Reply Cmts at 8-9. • JP Response to ALJ Request for Section 854 Analysis at. 4-5, 7-8. • JP Reply Cmts at 3-4, 7-8. • JP Response to ALJ Request for Section 854 Analysis at 6-7 	<p>Not accepted. Joint Parties’ Opening Comments (at 3-4) and Joint Parties’ Reply Comments (at 3-4, 7-8) concern the diversity records of competitors, not the effect of merger on competition. The citations to Joint Parties’ Opening Reply Comments (at 8-9) and Response to ALJ Request (at 4-5, 7-8) concern the strength of Google and Apple, but those were excluded from the scope of competitors for the purposes of this investigation.</p>

<p>Therefore it appears likely there will no longer be a duopoly.</p>		<p>In order to assist the Commission in this investigation, Joint Parties should have provided data and analysis of comparable companies within the Commission's jurisdiction. Joint Parties did not provide meaningful data or analytical support to justify their recommendations and did not assist the Commission's reasoned and deliberative decision-making process.</p>
<p>2. The Joint Parties believe that AT&T's significant philanthropy record would have been taken into account in the acquisition, especially when compared to that of other potential competitors. In particular, AT&T's record of philanthropy created much community support of the merger. An estimated minimum of 230 business leaders and minority community leaders attended the four PPHs as a result of the Joint Parties' efforts. This is particularly important as no other party was able to encourage this number of members of the public to comment on these issues.</p> <p>For example, the leading opponent that has historically represented minority interests, the Greenlining Institute, was unable to get solicit meaningful participation from our communities.</p>	<ul style="list-style-type: none"> • JP Opening Cmts at 3-6. • JP Response to ALJ Request for § 854 Analysis at 15. • JP Cmts on Merger-Related Economic and Engineering Analyses, pp. 6-7. 	<p>Not accepted. This is outside the scope of the investigation and the PPH did not significantly contribute to the decision.</p>
<p>3. The Joint Parties believe the</p>	<ul style="list-style-type: none"> • JP Opening Cmts. at 3, 7. 	<p>Accepted, in small</p>

<p>Commission would have highlighted low-income issues and how the merger would have affected low-income constituencies. Additionally, the Joint Parties offered a unique viewpoint into these constituencies.</p> <p>The Joint Parties offered the definitive minority perspective on this matter since all other parties representing minorities (60% of the state’s population) opposed the merger. The Joint Parties’ experience in these communities, as well as the high turnout at the PPHs by supportive minority leaders, reflected the fact that minority communities were in support of this merger.</p> <p>Again, the other minority organization involved in the proceeding opposed the merger, but was unable to demonstrate community support for its position in the Public Participation Hearings (PPHs).</p>	<ul style="list-style-type: none"> • JP Reply Cmts at 10-11. • JP Response to ALJ Request for Section 854 Analysis at 11, 13-14. 	<p>part. The contributions by the Joint Parties largely did not fall within the scope of the proceeding.</p> <p>Joint Parties received 5% of their hours on this issue by providing some analysis for the impacts on low income communities and mitigation measures had the merger been approved.</p> <p>The Joint Parties claim to have offered the definitive minority perspective on this matter because the other parties opposed the merger and because they claim to be the only party to demonstrate community support at the PPHs, but this is inaccurate. First, participation at PPHs is not work that is compensated in the intervenor compensation process. Other organizations representing minority communities also offered a perspective on this issue, even though they did not support the Joint Parties’ viewpoint.</p>
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<p>4. Of particular note in this proceeding is that the Joint Parties and AT&T had reached the final stages of settlement negotiation. The strategy that the Joint Parties employed in this proceeding focused on job creation and small business technical assistance. Compared to other potential competitors, AT&T had the best record in these areas. By utilizing this strength to create 15,000–45,000 new jobs during the Great Recession, the Joint Parties believed that the public benefit of the merger would be clear and that the Commission would approve the merger.</p> <p>AT&T had committed to allocating \$10 million per year to technical assistance programs statewide for a period of five years. Thus, the Joint Parties had successfully negotiated a \$50 million program for job creation in minority communities. This would have resulted in the creation of between 15,000 and 45,000 jobs.</p> <p>Although no formal agreement had been signed, AT&T was progressing with the effort and had even sent the program to its branding division in order to announce it as a component of the merger. Thus, much time and internal discussion was spent on job creation issues, given that the Joint Parties were deciding on appropriate settlement terms, negotiating with AT&T, and</p>	<ul style="list-style-type: none"> • JP Opening Cmts at 3, 5. • JP Reply Cmts at 3, 5-7. • JP Response to ALJ Request for Section 854 Analysis at 9-11. • JP Cmts on Merger-Related Economic and Engineering Analyses at 4-5. 	<p>Accepted, in part. The settlement that Joint Parties claim compensation for was never filed as part of the record. Furthermore, time spent preparing for ex parte meetings is not part of the record and is not compensable.</p>

<p>hammering out the details of a settlement. This settlement, according to the California President of AT&T, had also been discussed with Governor Brown and his aides on at least two occasions and with many of the Commissioners.</p>		
<p>5. Another important component of the verbal settlement agreement described above was the development of small businesses through technical assistance. The job creation described above was aimed particularly at businesses with annual revenue of \$1 million or less. Thus, the topic of small business development also took a significant amount of time within internal and external negotiations.</p>	<ul style="list-style-type: none"> • JP Opening Cmt at 3-4, 6. • JP Reply Cmts..... at 4-5. • JP Response to ALJ Request for Section 854 Analysis at 7. • JP Cmts..... on Merger-Related Economic and Engineering Analyses at 4-5. 	<p>Accepted, in part. The settlement that the Joint Parties claim compensation for was never filed as part of the record.</p>
<p>6. The Joint Parties referenced AT&T's robust supplier diversity record throughout the proceeding. General Order (GO) 156 compliance is especially important to minority communities in the context of job creation and technical assistance, which was the major focus of the settlement agreement between AT&T and the Joint Parties.</p>	<ul style="list-style-type: none"> • JP Opening Cmts. at 3-6. • JP Reply Cmts. at 4-5. 	<p>Not accepted. Making reference to the contributions of AT&T is not, on its own, a contribution.</p> <p>Furthermore, GO 156 was not an issue within the scope of this proceeding. This advocacy should be presented in conjunction with specific programs when approved by the Commission, not here in the abstract.</p>
<p>7. The Joint Parties raised consumer protection issues, such as bill shock and arbitration provisions supported by the California Supreme Court but opposed by the U.S. Supreme Court, throughout the proceeding. From a consumer perspective, these issues were very</p>	<ul style="list-style-type: none"> • JP Opening Cmts at 7-8. • JP Reply Cmts at 12. • JP Response to ALJ Request for Section 854 Analysis at 14. • JP Cmts on Merger-Related Economic and Engineering Analyses at 7-9. 	<p>Accepted, in small part. These issues were largely outside the scope of the proceeding because the discussion was</p>

<p>important, given that T-Mobile customers would now be subject to the same policies under AT&T that have received many consumer complaints. The Joint Parties consistently raised these issues with AT&T throughout settlement negotiations.</p>		<p>mainly about an issue before the FCC.</p> <p>The Joint Parties received 10 % of their hours on this issue for providing some analysis on bill shock and consumer protection mitigation measures that may have been helpful had the merger been approved.</p>
<p>8. When the proposed decision was filed, a significant amount of the Joint Parties' time was spent addressing compensation issues, such as a possible multiplier for intervening parties.</p>	<ul style="list-style-type: none"> • JP Cmts on PD at 1-8. • JP Reply Cmts on PD at 1-6. 	<p>Accepted, in small part. The Joint Parties referenced comments focused, in part, on the management of confidential documents. The OII for I. 11-06-009 had already established a method to manage confidential documents. Also, the Commission's proposed decision had already explicitly allowed intervenors to request compensation despite the withdrawal of the merger. The Joint Parties have received partial contribution for this issue (Issue "H").</p>
<p>9. Once the Department of Justice began its own investigation, federal regulatory issues began to have a great impact on the proceeding.</p>	<ul style="list-style-type: none"> • JP Response to Mtn of DRA to Hold Proceedings in Abeyance at 1-2. 	<p>Not accepted. This work did not fall within the scope of the proceeding.</p>

<p>Unfortunately, much of the work surrounding this issue was not reflected in the record because of a limited opportunity to comment on the developments.</p>		
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B. Duplication of Effort (§§ 1801.3(f) & 1802.5):

	Claimant	CPUC Verified
<p>a. Was the Office of Ratepayer Advocates (ORA)² a party to the proceeding?</p>	Yes	Verified
<p>b. Were there other parties to the proceeding with positions similar to yours?</p>	Yes	Verified
<p>c. If so, provide name of other parties:</p> <p>The Greenlining Institute (Greenlining) typically represents minorities and low-income ratepayers. Greenlining may have had some potential overlap in issue areas. However, Greenlining and the Joint Parties took different views of the potential acquisition. Greenlining advocated against the proposed acquisition while the Joint Parties advocated in favor of it if the public benefits outweighed the so-called duopoly arguments.</p> <p>In addition, although the Joint Parties and Greenlining both raised GO 156 issues, the perspectives each organization brought to the issue were varied. For example, Greenlining advocated for AT&T to achieve a 20% nationwide level for procurement from diverse business enterprises. The Joint Parties believed that this goal was too modest, given that AT&T had already achieved a 19% nationwide diverse procurement level and had achieved 27% in California. Thus, the Joint Parties engaged in a different strategy and participated in settlement negotiations in which AT&T agreed to provide \$50 million for technical assistance and capacity building programs for small businesses. This would create between 15,000 and 45,000 jobs, with the majority in these jobs in California.</p>		Verified
<p>d. Describe how you coordinated with ORA and other parties to avoid duplication or how your participation supplemented, complemented, or contributed to that of another party:</p> <p>The Joint Parties were the only experts advocating for the merger. No other active participating intervenor addressed issues from the Joint Parties’ grassroots perspective or were in favor of the proposed acquisition. This may account for why a very high percentage of all participants at the PPHs came as a result of the Joint Parties’ efforts.</p> <p>Unlike in other proceedings in which ratepayer advocates take similar positions on issue, the Joint Parties’ position in this proceeding was unique. Thus, no coordination was necessary with other parties because other ratepayer advocates held opposing views</p>		Verified; however, the Joint Parties did not coordinate effectively amongst themselves and thus duplicated work. Reductions have been made for

² The Division of Ratepayer Advocates (DRA) was renamed the Office of Ratepayer Advocates effective September 26, 2013, pursuant to Senate Bill No. 96 (Budget Act of 2013: public resources), which was approved by the Governor on September 26, 2013.

to that of the Joint Parties.	these duplicated efforts. <i>See</i> comments in Part III (c).
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PART III: REASONABLENESS OF REQUESTED COMPENSATION

A. General Claim of Reasonableness (§§ 1801 & 1806):

<p>a. Concise explanation as to how the cost of Claimant’s participation bears a reasonable relationship with benefits realized through participation:</p> <p>The Joint Parties’ request for intervenor compensation seeks an award of approximately \$242,243 as the reasonable cost of their participation in this proceeding.</p> <p>The Joint Parties’ advocacy reflected in D.12-08-025 addressed broad policy matters and advocated for the merger in relation to how a merger would affect minority and low-income communities. For the most part, the Joint Parties cannot easily identify precise monetary benefits to ratepayers from their work related to D.12-08-025, given the nature of the issues presented and the ultimate resolution of the matter.</p> <p>The Joint Parties engaged in advocacy on a wide variety of areas, but perhaps most focused on job creation and small business development in minority communities. As explained earlier in this filing, the Joint Parties had a verbal settlement with AT&T as to the various issues arising from this proceeding.</p> <p>As explained above, the strategy that the Joint Parties employed in this proceeding focused on job creation and small business technical assistance. Compared to other potential competitors, AT&T had the best record in these areas. By utilizing this strength to create 15,000–45,000 new jobs during the Great Recession, the Joint Parties believed that the public benefit of the merger would be clear and that the Commission would approve the merger.</p> <p>The agreement, negotiated by the Joint Parties and their counsel, indicated that AT&T would provide \$50 million for technical assistance and capacity-building programs over a 5 year period. The majority of these funds were to be spent in California. Overall, this \$50 million would have created 15,000–5,000 jobs, with an emphasis on job creation in minority communities.</p> <p>Thus, much of the Joint Parties’ time was spent negotiating portions of the settlement, discussing amongst themselves the provisions of settlement, and soliciting input from community leaders.</p> <p>Had the merger gone through, the Joint Parties would have been responsible for persuading AT&T to create 15,000–45,000 jobs through technical assistance, capacity building, and small business development programs.</p>	<p style="text-align: center;">CPUC Verified</p> <hr/> <p>Agreed, in part. Much of the Joint Parties’ work was outside the scope of the proceeding or outside the timeframe of the proceeding.</p> <p>Joint Parties cannot receive compensation for work done before the proceeding was initiated on June 9, 2011, or after the final decision was issued.</p> <p>Similarly, the Joint Parties cannot claim AT&T’s diversity record as their own contribution. To the extent that the Joint Parties’ efforts at settlement negotiation were contributions, the marketing aspect was outside the scope of the proceeding.</p>
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<p>In fact, AT&T and the Joint Parties had ironed out so many details as to the proposed settlement that AT&T management had even sent the program to the branding/marketing division of the company in order to create suitable titles, branding, and marketing materials for the endeavor.</p> <p>For all these reasons, the Commission should find that the Joint Parties' efforts have been productive. Had the merger gone through, the Joint Parties would have been responsible for negotiating a settlement that created 15,000 – 45,000 jobs through a \$50 million investment in small businesses.</p>	
<p>b. Reasonableness of Hours Claimed.</p> <p>This Request for Compensation includes approximately 558.9 total hours for the Joint Parties' attorneys and staff. The Joint Parties submits that this is a reasonable amount of time, given the complex issues examined, as well as the wide variety resulting in D.12-08-025. These hours were devoted to substantive pleadings as well as some procedural matters. A good portion of these hours were dedicated to engaging in research and settlement discussions with AT&T surrounding job creation and small business development. Indeed, until the Department of Justice intervention put serious doubt as to the viability of the merger, the Joint Parties and AT&T had reached close to final stages of settlement negotiations and were merely delayed by AT&T's branding department.</p> <p>The Joint Parties' request is also reasonable because they were as efficient as possible in staffing this proceeding. This proceeding took place primarily when Mr. Gnaizda was the only full-time member of the legal staff. Since August 2011, Ms. Swaroop has been added as a full-time member of the staff, but was not able to take over a case of this complexity and magnitude of the issues. Once Ms. Swaroop joined the legal team, the negotiations with AT&T had already reached the stage in which it was inefficient to pass the case off to a new staff member. Thus, the Joint Parties utilized law student Mr. Moraine as much as possible throughout this proceeding.</p> <p>Once the Department of Justice filed its case, Mr. Gnaizda handled the issues efficiently and relied on Ms. Swaroop for minor matters of review, editing, and filing and serving documents with this Commission and the service list.</p> <p>The Joint Parties' request also includes 23 hours devoted to the preparation of this request for compensation. Ms. Swaroop has spent 21 hours preparing this claim, which is somewhat higher than usually expected for the CPUC. This is explained by a number of factors involved in this case, the complexity of the hours filed, the background research on other intervenor compensation issues, and time spent computing and confirming mathematical results. This avoided the need for any of Mr. Gnaizda's time, which is 2.5 times more costly. However, Mr. Gnaizda did contribute two hours of his time to this compensation request with initial comments, guidance, and final comments and review.</p> <p>The Commission should take into account that this expedited issue caused the Joint Parties, which had only one attorney available for all CPUC matters, to focus primarily on this expedited priority case. Second, it should be noted that the</p>	<p>Agree in part.</p> <p>The outreach efforts related to the PPH did not contribute to the decision.</p> <p>The contributions that the Joint Parties did make were overstated, exaggerated, and billed at an excessive rate.</p> <p>The vast majority of the Joint Parties' efforts are not compensable because they were outside the scope or timeframe of the proceeding.</p> <p>Further, the Joint Parties' work was done inefficiently and was internally duplicative.</p> <p>The Joint Parties spent an excessive amount of time preparing the documents for intervenor compensation.</p>

<p>Joint Parties urged, although this Commission did not comment, taking into account other lost intervenor compensation time by providing a multiplier. The Joint Parties urged a 50% multiplier, which would have increased the amount at issue from \$242,243 to \$363,365.</p>																						
<p>c. Allocation of Hours by Issue</p> <table border="1"> <tr> <td>A. Sprint, Google, Apple Competition</td> <td>4.9%</td> </tr> <tr> <td>B. AT&T's Philanthropy Record</td> <td>2.0%</td> </tr> <tr> <td>C. Issues affecting low-income consumers.</td> <td>7.4%</td> </tr> <tr> <td>D. Job creation through technical assistance settlement package.</td> <td>24.5%</td> </tr> <tr> <td>E. Small business development through the technical assistance settlement package.</td> <td>18.7%</td> </tr> <tr> <td>F. Supplier diversity and GO 156 compliance in the context of the technical assistance settlement package.</td> <td>3.5%</td> </tr> <tr> <td>G. Consumer protection on issues such as bill shock and AT&T arbitration contracts.</td> <td>6.5%</td> </tr> <tr> <td>H. Issues stemming from intervenor compensation in this proceeding.</td> <td>10.5%</td> </tr> <tr> <td>I. Government regulatory issues, such as the Department of Justice filing against AT&T.</td> <td>3.4%</td> </tr> <tr> <td>J. General Issues</td> <td>18.7%</td> </tr> </table>		A. Sprint, Google, Apple Competition	4.9%	B. AT&T's Philanthropy Record	2.0%	C. Issues affecting low-income consumers.	7.4%	D. Job creation through technical assistance settlement package.	24.5%	E. Small business development through the technical assistance settlement package.	18.7%	F. Supplier diversity and GO 156 compliance in the context of the technical assistance settlement package.	3.5%	G. Consumer protection on issues such as bill shock and AT&T arbitration contracts.	6.5%	H. Issues stemming from intervenor compensation in this proceeding.	10.5%	I. Government regulatory issues, such as the Department of Justice filing against AT&T.	3.4%	J. General Issues	18.7%	<p>The hours listed here do not correspond to those listed in the filed time records. For example, Joint Parties list issues "A-J" here and list issues "A-K" in the excel document. In addition, the Joint Parties should calculate the total time spent on each issue rather than simply listing the time spent on each issue by individual.</p> <p>Further, the time listed for issues "H" and "J" are both excessive. Also, the Joint Parties have spent 18.7% of their time on "general issues" incapable of being categorized.</p> <p>The hours claimed are, therefore, adjusted below.</p>
A. Sprint, Google, Apple Competition	4.9%																					
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J. General Issues	18.7%																					

B. Specific Claim:

CLAIMED						CPUC AWARD		
ATTORNEY, EXPERT, AND ADVOCATE FEES								
Item	Year	Hours	Rate	Basis for Rate*	Total \$	Hours	Rate	Total \$
Robert Gnaizda	2011	308.6	\$535	D.12-07-015	\$165,101	61.25	\$535	\$32,768.75
Robert Gnazida	2012	33.2	\$545	See Attachment B	\$18,094	0	\$545	\$0
Shalini Swaroop	2011	15.0	\$215	See Attachment C	\$3,225	.37	\$180	\$66.60

Shalini Swaroop	2012	9.7	\$215	See Attachment C	\$2,086	0	\$185	\$0
Faith Bautista	2011	60.9	\$300	See Attachment D	\$18,270	19.46	\$150	\$2,919
Faith Bautista	2012	5.2	\$300	See Attachment D	\$1,560	0	\$155	\$0
Len Canty	2011	38.4	\$300	See Attachment E	\$11,520	17.25	\$150	\$2,587.50
Len Canty	2012	3.3	\$300	See Attachment E	\$990	0	\$155	\$0
Jorge Corralejo	2011	43.7	\$300	See Attachment F	\$13,110	17.08	\$150	\$2,562
Jorge Corralejo	2012	3.4	\$300	See Attachment F	\$1,020	0	\$155	\$0
Subtotal:					\$234,976	Subtotal:		\$40,903.85
OTHER FEES								
Item	Year	Hours	Rate	Basis for Rate*	Total \$	Hours	Rate	Total \$
Kevin Moraine	2011	17.1	\$110	See Attachment G	\$1,881	0	\$100	\$0
Ian Brown	2012	21.4	\$110	See Attachment H	\$2,354	0	\$100	\$0
Subtotal:					\$4,235	Subtotal:		\$0
INTERVENOR COMPENSATION CLAIM PREPARATION **								
Item	Year	Hours	Rate	Basis for Rate*	Total \$	Hours	Rate	Total \$
Robert Gnaizda	2012	2	\$272.50	D.12-07-015	\$545	1	\$272.50	\$272.50
Shalini Swaroop	2012	21	\$107.50	See Attachment B	\$2,258	14	\$93	\$1,302
Subtotal:					\$2,803	Subtotal:		\$1,574.50
COSTS								
#	Item	Detail			Amount	Amount		
	Printing	Printing costs for the staff proposal, internal drafts of comments, and printing other parties' comments			\$50.00			\$26.80
	Travel	Travel for Robert Gnaizda to Southern California for Public Participation Hearings			\$179			\$0
Subtotal:					\$ 229	Subtotal:		\$26.80
TOTAL REQUEST \$:					\$242,243	TOTAL AWARD \$:		\$42,505.15
*We remind all intervenors that Commission staff may audit their records related to the award and that								

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

** Reasonable claim preparation time typically compensated at ½ of preparer's normal hourly rate (the same applies to the travel time).

Attorney	Date Admitted to CA BAR³	Member Number	Actions Affecting Eligibility (Yes/No?) If "Yes", attach explanation
Robert Gnaizda	January 9, 1962	32148	No.
Shalini Swaroop	June 11, 2010	270609	No.

C. CPUC Disallowances and Adjustments:

#	Reason
Reductions for Lack of Substantial Contribution, Lack of Efficiency, and PPH travel expenses	Much of the Joint Parties' work, such as the preparation for and attendance of the PPHs, did not contribute substantially to the outcome of the proceeding. Additionally, time spent preparing for PPHs and travel expenses for PPHs are not compensable. Joint Parties contributed to the decision through their discussions with AT&T to promote job creation and technical assistance. However, most of their work did not contribute to discussions of job creation, technical assistance, or any issue within the scope of the proceeding and their time was spent inefficiently. As such, 530.4 of the Joint Parties' hours are disallowed.
Reductions for Duplication	The Joint Parties' hours are reduced due to internal duplication. For example, the Joint Parties' request compensation for each member who attended a meeting or discussion without demonstrating the necessity of having three or more representatives present. As such, nine of the Joint Parties' hours are disallowed for internal duplication of efforts.
Disallowance of Expenses	Requested compensation for fees and costs of printing are unreasonable. All charges over \$20 must be supported with receipts. The Joint Parties were contacted by email to produce required receipts for requested printing costs totaling \$50. The printing receipt submitted included charges for maintenance, labor, and copier overhead and totaled \$180. This receipt did not allow for an accurate assessment of printing charges. After review of the Joint Parties' filings, printing expenses of \$26.80 are reasonable to reflect the printing necessary to fulfill the Joint Parties' service requirements.
2011-2012 hourly rate for	The Commission adopted a 2011 hourly rate for Gnaizda of \$535 in D.12-07-015. We apply this 2011 rate to Gnaizda's 2011 work in this proceeding.

³ This information may be obtained at: <http://www.calbar.ca.gov/>.

Robert Gnaizda	We apply the 2.2% Cost Of Living Adjustment adopted by the Commission in Resolution ALJ-281 to adopt an hourly rate of \$545 for Gnaizda's 2012 work.
2011-2012 hourly rate for Shalini Swaroop	An hourly rate for Shalini Swaroop has not been awarded by the Commission in the past. Swaroop became a licensed member of the California Bar in June of 2010 and had approximately one year of experience as a licensed attorney when she began work in this proceeding. None of this previous experience took place before the Commission. We base Swaroop's new rates on the 2011 rate described in Resolution ALJ-281 for attorney intervenors in Swaroop's experience range. The Commission adopts an hourly rate of \$180 for Swaroop in 2011. We apply the 2.2% Cost Of Living Adjustment adopted by the Commission in Resolution ALJ-281 to adopt an hourly rate of \$185 for Swaroop's 2012 work.
2011-2012 hourly rate for Faith Bautista	Faith Bautista's 2011 hourly rate was set at \$150 in D.12-07-015 and has been applied here because the experience provided in the current claim is substantially similar to that used to establish Bautista's rate in D.12-07-015. We apply the 2.2% Cost Of Living Adjustment adopted by the Commission in Resolution ALJ-281 to adopt an hourly rate of \$155 for Bautista's 2012 work.
2011-2012 hourly rate for Jorge Corralejo	Jorge Corralejo's 2011 hourly rate was set at \$150 in D.12-07-015 and has been applied here because the experience provided in the current claim is substantially similar to that used to establish Corralejo's rate in D.12-07-015. We apply the 2.2% Cost Of Living Adjustment adopted by the Commission in Resolution ALJ-281 to adopt an hourly rate of \$155 for Corralejo's 2012 work.
2011-2012 hourly rate for Len Canty	Len Canty's 2011 hourly rate was set at \$150 in D.12-07-015 and has been applied here because the experience provided in the current claim is substantially similar to that used to establish Canty's rate in D.12-07-015. We apply the 2.2% Cost Of Living Adjustment adopted by the Commission in Resolution ALJ-281 to adopt an hourly rate of \$155 for Canty's 2012 work.
2012 hourly rate and fees for Ian Brown	An hourly rate for Brown has not been awarded by the Commission in the past. In D.13-10-014, a law student with a comparable level of experience was awarded an hourly rate of \$100. We apply this hourly rate to Brown's 2012 work.
2011 hourly rate and fees for Kevin Morraine	An hourly rate for Morraine has not been awarded by the Commission in the past. In D.13-10-014, a law student with a comparable level of experience was awarded an hourly rate of \$100. We apply this hourly rate to Morraine's 2011 work.

PART IV: OPPOSITIONS AND COMMENTS

A. Opposition: Did any party oppose the Claim?

Yes

Party	Reason for Opposition	CPUC Disposition
New Cingular Wireless	New Cingular Wireless PCS, LLC argued that the Joint Parties had not significantly contributed to the decision	The Joint Parties filed a Reply on December 13, 2012 arguing that

PCS, LLC	because the CPUC’s decision was not based on anything revealed during the proceedings.	the Commission has awarded intervenor compensation for substantial contribution in similar cases where a decision on the merits was not issued. New Cingular Wireless PCS, LLC’s opposition is rejected. As established in D.12-08-025, the Commission has authority to award intervenor compensation in this proceeding.
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B. Comment Period: Was the 30-day comment period waived (see Rule 14.6(c)(6))?

No

If not:

Party	Comment	CPUC Disposition
Joint Parties	Joint Parties’ comment(s) addressed their contribution(s) to Decision (D.) 12-08-025.	The comments were reviewed, however no changes have been made.

FINDINGS OF FACT

1. Black Economic Council, National Asian American Coalition, and Latino Business Chamber of Greater Los Angeles rely on the July 8, 2011 ALJ ruling in A.10-11-015 to support their claim as eligible as Category 3 customers.
2. The July 8, 2011 ALJ ruling in A.10-11-015 required Black Economic Council, National Asian American Coalition, and Latino Business Chamber of Greater Los Angeles to submit signed bylaws with their claim in A.10-11-015 in order to satisfy the requirements of § 1802(b)(1) for a finding of eligibility as Category 3 customers.
3. On May 12, 2014, Latino Business Chamber of Greater Los Angeles submitted signed bylaws and satisfied the requirements of § 1802(b)(1) for a finding of eligibility as a Category 3 customer.
4. On May 16, 2014, National Asian American Coalition submitted signed amendments to its bylaws and satisfied the requirements of § 1802(b)(1) for a finding of eligibility as a Category 3 customer.
5. Black Economic Council does not have signed bylaws on file with the Commission and has not satisfied the requirements of Public Utilities Code § 1802(b)(1) for a finding of eligibility as Category 3 customers.
6. Decision 12-08-025 allows any party deemed eligible for intervenor compensation in Investigation 11-06-009 to request compensation.

7. Black Economic Council, National Asian American Coalition, and Latino Business Chamber of Greater Los Angeles participated continuously and extensively in this proceeding until the applicants withdrew their merger application and the proceeding was subsequently dismissed in D.12-08-025.
8. Black Economic Council, National Asian American Coalition, and Latino Business Chamber of Greater Los Angeles have made a substantial contribution to Decision 12-08-025 but only Latino Business Chamber of Greater Los Angeles and National Asian American Coalition are customers eligible for compensation, pursuant to § 1802(b)(1).
9. The Commission has awarded intervenor compensation to eligible parties for their work in other proceedings that were dismissed through no fault of the intervenor.
10. The requested hourly rates for National Asian American Coalition and Latino Business Chamber of Greater Los Angeles' representatives, as adjusted herein, are comparable to market rates paid to experts and advocates having comparable training and experience and offering similar services.
11. The claimed costs and expenses, as adjusted herein, are reasonable and commensurate with the work performed.
12. The total of reasonable compensation is \$42,505.15.

CONCLUSION OF LAW

Pursuant to Pub. Util. Code §§ 1801-1812, which govern awards of intervenor compensation, National Asian American Coalition and Latino Business Chamber of Greater Los Angeles is entitled to intervenor compensation.

ORDER

1. National Asian American Coalition, and Latino Business Chamber of Greater Los Angeles are awarded \$42,505.15.
2. Within 30 days of the effective date of this decision, T-Mobile West LLC dba T-Mobile (U3056C) (T-Mobile) and New Cingular Wireless PCS, LLC (U360C), AT&T Mobility Wireless Operations Holdings Inc. (U3021C), Santa Barbara Cellular Systems, Ltd. (U3015C) and AT&T Mobility Wireless Operations Holdings, LLC (U3014C) (collectively referred to as "AT&T Mobility) shall pay National Asian American Coalition and Latino Business Chamber of Greater Los Angeles their respective shares of the award set forth in Order Paragraph No. 1 above, based, on the pro rata share of their California- jurisdictional telecommunications revenues for the 2011 calendar year, to reflect the year in which the proceeding was primarily litigated. Payment of the award shall include compound interest at the rate earned on prime, three-month non-financial commercial paper as reported in Federal Reserve Statistical Release H.15, beginning July 30, 2014, the 75th day after the filing National Asian American Coalition and Latino Business Chamber of Greater Los Angeles' request was complete, and continuing until full payment is made.

3. The comment period for today's decision is not waived.

This Order is effective today.

Dated January 15, 2015, at San Francisco, California.

MICHAEL PICKER

President

MICHEL PETER FLORIO

CATHERINE J.K. SANDOVAL

CARLA J. PETERMAN

LIANE M. RANDOLPH

Commissioners

APPENDIX**Compensation Decision Summary Information**

Compensation Decision:	D1501014	Modifies Decision?	No
Contribution Decision(s):	D1208025		
Proceeding(s):	II106009		
Author:	ALJ Jessica Hecht		
Payer(s):	T-Mobile West LLC dba T-Mobile (U3056C)(T-Mobile) and New Cingular Wireless PCS, LLC (U360C), AT&T Mobility Wireless Operations Holdings Inc. (U3021C), Santa Barbara Cellular Systems, Ltd. (U3015C) and AT&T Mobility Wireless Operations Holdings, LLC (U3014C)		

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Multiplier?	Reason Change/Disallowance
Black Economic Council, National Asian American Coalition, and Latino Business Chamber of Greater Los Angeles	10/29/12 Date of completed filing: 5/16/14	\$242,243.00	\$42,505.15	No	Award only to National Asian American Coalition and Latino Business Chamber of Greater Los Angeles, as Black Economic Council did not qualify as a customer. Disallowances for lack of substantial contribution on certain issues. Adopted rates lower than requested. Reductions for duplication of effort and non-compensable tasks. No award to Black Economic Council for lack of statutory eligibility.

Advocate Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
Robert	Gnaizda	Attorney	Black Economic Council, National Asian American Coalition, and Latino Business Chamber of Greater Los Angeles	\$535	2011	\$535
Robert	Gnaizda	Attorney	Black Economic Council,	\$545	2012	\$545

			National Asian American Coalition, and Latino Business Chamber of Greater Los Angeles			
Shalini	Swaroop	Attorney	National Asian American Coalition	\$215	2011	\$180
Shalini	Swaroop	Attorney	National Asian American Coalition	\$215	2012	\$185
Faith	Bautista	Advocate	National Asian American Coalition	\$300	2011	\$150
Faith	Bautista	Advocate	National Asian American Coalition	\$300	2012	\$155
Jorge	Corralejo	Advocate	Latino Business Chamber of Greater Los Angeles	\$300	2011	\$150
Jorge	Corralejo	Advocate	Latino Business Chamber of Greater Los Angeles	\$300	2012	\$155
Kevin	Moraine	Law Student	Black Economic Council, National Asian American Coalition, and Latino Business Chamber of Greater Los Angeles	\$110	2011	\$100
Ian	Brown	Law Student	Black Economic Council, National Asian American Coalition, and Latino Business Chamber of Greater Los Angeles	\$110	2012	\$100
Len	Canty	Advocate	Black Economic Council	\$300	2011	\$150
Len	Canty	Advocate	Black Economic Council	\$300	2012	\$155

(END OF APPENDIX)