COM/CXW/mnt * **ALTERNATE DRAFT** **Agenda ID. #1461**
(Alternate to Agenda ID #93)
Ratesetting
H-1a 12/17/02

Decision **ALTERNATE DRAFT DECISION OF COMMISSIONER WOOD**
(Mailed 11/25/02)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Joint Application of GTE Corporation ("GTE") and Bell Atlantic Corporation ("Bell Atlantic") to Transfer Control of GTE's California Utility Subsidiaries to Bell Atlantic, Which Will Occur Indirectly as a Result of GTE's Merger With Bell Atlantic.	Application 98-12-005 (Filed December 2, 1998)

OPINION MODIFYING DECISION 01-09-045 TO INCLUDE RESPONSE TO COMMENTS

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Today's decision modifies, Decision (D.) 01-09-045, in which we resolved pending requests for awards of intervenor compensation filed by The Utility Reform Network (TURN), The Greenlining Institute (GL), Latino Issues Forum (LIF)[1], and Public Advocates, Inc. (PA) for substantial contributions to D.00-03-021. We awarded TURN $146,113.66; we awarded GL/LIF $159,414.76; and we awarded PA $167,844.20. In this revised decision we award GL/LIF $268,108.93 and we award PA $279,140.33. Through inadvertence, we failed to include in D.01-09-045 our response to the comments we received on the Administrative Law Judge's (ALJ) Draft Decision on these requests. We have concluded that the application of a duplication penalty to reduce awards to participants that make a substantial contribution is not permissible under the statutes governing compensation of participating customers in commission proceedings. Our reasoning is laid out in a revised Section 6. D.02-05-011 directed that the hourly rates adopted in D.01-09-045 be modified as appropriate to utilize the hourly rates adopted in D.02-05-011 for 1998, and later years. What follows is D.01-09-045 modified by a revision of Section 6, the addition of Section 8 ("Comments on Draft Decision") and by use of revised hourly rates. There is no change to the amount of the award or the reasoning supporting it for TURN.

1. Background

In this proceeding we reviewed the joint application of GTE Corporation (GTE) and Bell Atlantic Corporation (Bell Atlantic)[2] for approval to transfer GTE's California utility subsidiaries to Bell Atlantic, as a result of the merger of

[1] GL and LIF jointly filed a Request for Compensation. Hereinafter they are referred to collectively as GL/LIF.

[2] GTE and Bell Atlantic are hereinafter jointly referred to as "Applicants".

GTE with Bell Atlantic. In D.00-03-021 we approved the application with limited conditions and clarifications. The conditions and clarifications relate to the total amount of benefits allocated to ratepayers, distribution of those benefits, the funding of the Community Collaborative Agreement (CCA), preparation of service quality monitoring reports, and sharing of state level accounting cost information. We adopted D.00-03-021 following 13 days of evidentiary hearings during which 146 exhibits were received, as well as opening and reply briefs, and comments on the proposed decision (PD) of the ALJ.

TURN, GL/LIF, and PA all filed timely Notices of Intent (NOI) to claim intervenor compensation. Following issuance of D.00-03-021, TURN, GL/LIF, and PA each filed a Request For Compensation (Request). GL/LIF filed a subsequent Errata to Request (Errata).

No opposition to TURN's Request was filed. However, Applicants filed a Joint Response (Joint Response) to the Requests of GL/LIF and PA. Applicants agree that the participation of these intervenors merits compensation, but they challenge the proposed hourly rates for attorney services. A Response to Request (Response) was filed by PA addressing the issue of duplication of effort between PA and GL/LIF. A Motion For Leave to Late-File Reply and Reply (Reply) were filed by GL/LIF, in which the issue of duplication of effort is addressed.

2. Procedural Matters

The motion of GL/LIF for leave to late-file the Reply to the Response of PA is granted.

3. Requirements for Awards of Compensation

Intervenors who seek compensation for their contributions in Commission proceedings must file requests for compensation pursuant to Pub. Util. Code

§§ 1801-1812.[3] Section 1804(a) requires an intervenor to file an NOI to claim compensation within 30 days of the prehearing conference (PHC) or by a date established by the Commission. The NOI must present information regarding the nature and extent of planned participation in the proceeding, and an itemized estimate of compensation that the customer expects to request. The NOI may also request a finding of eligibility.

Other code sections address requests for compensation filed after a Commission decision is issued. Section 1804(c) requires an intervenor requesting compensation to provide "a detailed description of services and expenditures and a description of the customer's substantial contribution to the hearing or proceeding." Section 1802(h) states that "substantial contribution" means that,

> "in the judgment of the commission, the customer's presentation has substantially assisted the commission in the making of its order or decision because the order or decision has adopted in whole or in part one or more factual contentions, legal contentions, or specific policy or procedural recommendations presented by the customer. Where the customer's participation has resulted in a substantial contribution, even if the decision adopts that customer's contention or recommendations only in part, the commission may award the customer compensation for all reasonable advocate's fees, reasonable expert fees, and other reasonable costs incurred by the customer in preparing or presenting that contention or recommendation."

Section 1804(e) requires the Commission to issue a decision which determines whether or not the customer has made a substantial contribution and the amount of compensation to be paid. The level of compensation must take

[3] All statutory citations are to the Pub. Util. Code.

into account the market rate paid to people with comparable training and experience who offer similar services, consistent with Section 1806.

4. NOI to Claim Compensation

TURN, PA, and GL/LIF timely filed NOIs after the first PHC. By a ruling dated April 1, 1999 (Eligibility Ruling), the assigned ALJ found each to be a customer as defined in Section 1802(b). The Eligibility Ruling also found that TURN and PA demonstrated significant financial hardship (as defined in Section 1802(g) in their NOI filings. The Eligibility Ruling also required that GL/LIF include a showing of significant financial hardship in the request for compensation.

In response, GL/LIF referred to hardship showings made in other proceedings regarding the relevant time period. Specifically, in D.00-04-011, the Commission found that GL/LIF met the test based on documentation provided on December 23, 1999, in Rulemaking (R.) 98-12-015. For purposes of this proceeding we will apply this finding of significant financial hardship.

In the Eligibility Ruling, both PA and GL/LIF were put on notice that their estimated budgets appeared potentially excessive. PA estimated total fees and costs of $323,400. (The amount sought in the Request is $325,649.) GL/LIF estimated their budget to be $301,500. (The amount sought in the Request is $323,276.50, and an additional $642.72 is claimed in the Errata.)[4]

Over the past few years the Commission has erected additional tests for compensation eligibility through a partial reading of Pub. Util. Code section 1801.3, which places exclusive emphasis on one subdivision of that intent section,

[4] TURN's estimated budget was 124,750.00. The amount sought in the Request is $146,113.66.

1801.3(f), rather giving effect to the plain language of the substantive provisions of section 1803 and all of the subdivisions of 1801.3 equally. Many of these additional tests were adopted in D.98-04-059. This decision overrules that former decision to the extent that it erects additional barriers to compensation and, specifically, to the extent that it is authority for imposing a duplication penalty to reduce awards for making a substantial contribution. The Eligibility Ruling put all intervenors on notice that to the extent their efforts in the proceeding duplicate the efforts of other parties, they are at risk for receiving reduced or no compensation for such efforts. All intervenors were directed to address the issues of underrepresentation, fair determination and duplication in their subsequent requests for compensation. In view of our decision today, the practice of adding eligibility criteria such as these derived from the misreading of the statues in D.98-04-059 will have to be modified.

5. Substantial Contribution to Resolution of Issues

Under Pub. Util. Code § 1802(h), party may make a substantial contribution to a decision in one of several ways. It may offer a factual or legal contention upon which the Commission relied in making a decision, or it may advance a specific policy or procedural recommendation that the presiding officer or Commission adopted. A substantial contribution includes evidence or argument that supports part of the decision even if the Commission does not adopt a party's position in total.[5]

TURN:

[5] See D.89-03-063.

TURN asserts it substantially contributed to D.00-03-021 in three areas. First, TURN cites its contributions to the Commission's analyses of the economic benefits resulting from the merger. We agree with TURN that its recommendations regarding the definition of "long-term" for purposes of calculating the economic benefits resulting from the merger constitute a substantial contribution. TURN's recommendations played a significant role in the Commission's decision to adopt a five-year definition of "long-term", rather than the four-year period proposed by the Applicants. The Commission agreed with TURN that the four-year estimate was unrealistic. (See D.00-03-021, pp. 44-45.) We note that TURN recommended a definition of "long-term" of 10 years, but in no event less than 5.6 years. While the Commission did not adopt TURN's specific definition, we do not find that this reduces the significance of TURN's contribution. TURN's participation on this issue assisted the Commission in arriving at the five-year definition ultimately adopted. On the issue of economic benefits of the merger, TURN also provided testimony that resulted in Applicants adjusting their benefits forecast to increase the amount of cost savings. (See Exhibit 6, p. 6.) Additionally, TURN provided testimony and argument regarding revenue synergies that contributed to our decision to increase the economic benefits forecast by $2.375 million over four years. (D.00 03-021, pp. 34-37.)

The second issue on which TURN claims it made a substantial contribution is the inclusion of residential basic exchange service in the merger surcredit billing base. TURN correctly points out that it was the only party to recommend that residential basic exchange service be included. The Commission adopted TURN's recommendation and relied upon its reasoning. As a result of TURN'S

advocacy on this issue, additional customers will receive a share of merger benefits. (See D.00-03-021, pp. 74-75.)

Lastly, TURN asserts that its participation on the CCA issue provided a substantial contribution to the decision. We have reviewed the record and agree with TURN's assertion. While the Commission did not require shareholders to fund the CCA as recommended by TURN, we did adopt many of TURN's recommendations to impose conditions on the CCA in order to safeguard ratepayer interests and make the collaborative consistent with Section 854. (See D.00-03-021, pp. 58, 63-65, and 71-72.)

GL/LIF:

The contributions of GL/LIF pertain to the CCA. In their Request, GL/LIF list the activities in which they engaged to demonstrate the contributions made to the decision. They participated in negotiations with Applicants, educated and mobilized local community groups to urge Commission approval of the CCA, and conducted a survey of ratepayer preferences to determine if ratepayers preferred refunds or the establishment of the CCA. During hearings GL/LIF participated on the CCA issue through cross-examination and the presentation of witnesses. During the decision-making phase, they provided comments and reply comments. Lastly, they argue that they met and worked with other signatories to the CCA.

Applicants state in their Response that GL/LIF "unquestionably made substantial contributions to the Commission's decision…" Specifically they cite the efforts of GL/LIF in negotiating the CCA and advocating its adoption. We find that GL/LIF made substantial contributions to D.00-03-021. Their participation played an important role in our decision to adopt the CCA, which will result in millions of dollars being invested to promote telecommunications

access to underserved communities. The CCA includes a 98% penetration goal for Universal Lifeline Telephone Service, enhanced charitable contributions from Applicants, and renewed commitments on the part of Applicants to diversity in hiring, promotion, and contracting.

PA:

The participation of PA, like GL/LIF, was limited to the issue of the CCA. PA points out that D.00-03-021 adopted the CCA, and that PA is one of the parties advocating its adoption. PA participation included negotiations with Applicants, attendance at community meetings, communication with lawmakers, participation at hearings, and filing of comments.

In their Response, Applicants conclude that PA made substantial contributions to the Commission's decision to approve the merger with adoption of the CCA. We find that PA's participation represents a substantial contribution to the outcome of the proceeding.

6. Application of Section 1801.3 to Create a "Duplication Reduction"

Pub. Util. Code section 1803 requires that the Commission award compensation to "any customer" who makes a substantial contribution to the outcome of a proceeding and whose participation[6] imposes a significant financial hardship. Section 1801.3 contains an authoritative expression of the Legislature's intent in enacting the intervenor compensation program. During the era of deregulation the Commissioners interpreted this section, and particularly subdivision 1801.3(f), as imposing restrictions on intervenor compensation that

[6] Although Article 5 of Chapter 9 of the Public Utilities Act is denominated "Intervenor's Fees and Expenses" it applies to "participation or intervention in any proceeding." Participation is broader than formal intervention as a party.

the text of the statute does not support. Most notably in its decision *Commission's Intervenor Compensation Program*, D.98-04-059, 79 CPUC 2d 628 (April 23, 1998)[7] the Commission attempted to decisively narrow customer participation at the Commission by selectively elevating section 1801.3(f) to a "standard" for compensation that would limit or preclude many types of customer participation at the CPUC, while ignoring other and more prominent subdivisions of that section such as 1801.3(b). 79 CPUC2d 628, 649-50.

The ideological basis for this narrowing was made apparent in the decision. The Commissioners opined that:

> [A]s the telecommunications and energy industries become increasingly competitive, the participation of customers, separate and apart from their representation through ORA or CSD, may not be necessary. We must begin to more critically assess, at the outset of a proceeding, whether the participation of these 'third-party' customers, separate and apart from their representation through ORA or CSD, is necessary, both in terms of non-duplication and in terms of a fair determination of the proceeding.
>
> 79 CPUC2d 628 at 649, emphasis added.

This statement envisions a peetering out of 3rd party consumer advocacy as regulation "withers away" and is replaced with competition. It is at odds with reality and the experience of California over the past several years. And its cavalier dismissal of active customer participation in Commission proceedings

[7] D.98-04-059 was issued in a combination rulemaking/investigation, R.97-01-009/I.97-01-010, commenced to consider generic issues in the Commission's implementation of the Legislature's intervenor compensation legislation in light of its view of changing

Footnote continued on next page

cannot be reconciled with other substantive and intent provisions of the statute, particularly with Pub. Util. Code section 1801.3(b), which provides:

> 1801.3.
> …
> The provisions of this article shall be administered in a manner that encourages the effective and efficient participation of all groups that have a stake in the public utility regulation process.
> …
> (emphasis added)

To the extent that D.98-04-059 and the "duplication reduction" or "penalty" concept that is based on it, (c.f., 79 CPUC2d 628, 658 and 675, Finding of Fact 24) are inconsistent with this decision, they are disapproved and over-ruled.[8]

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regulatory practices and in light of the "Alkon Report," described as a study of the compensation program. 79 CPUC 2d 628, 636-37

[8] On the so-called "duplication adjustment" point D.98-04-059 referred to continuing an established practice, as reflected in several cited decisions. Id. At 658, 675 (Finding of Fact 24). These referenced decisions included decisions in proceedings that preceded the effective date of extensive amendments to the intervenor compensation statutes enacted by Stats. 1992, Ch. 942. These decisions did not survive the statutory amendment, but if they did, they are also disapproved and over-ruled. They are *San Diego Gas and Electric Company*, D.88-12-085, 30 CPUC 2d 299 (1988) issued in A.87-12-003 (1987), at pages 337-339, Findings of Fact, Conclusions of Law, and Ordering Paragraphs relating to UCAN compensation; *Pacific Gas and Electric Company*, D.93-06-022 (June 1993) issued in R.91-08-003 / I.91-08-002 (August 1991), 49 CPUC2d 478. Other pre-1992 "duplication penalty" cases not cited in D.98-04-059, such as *Gas Utility Procurement Practices,* D. 91-12-055 in R.09-02-008 (TURN compensation), are also over-ruled if they survived the 1992 amendments. None of these cases considered that the less-than-fully compensated intervenors had supplemented, complemented, or

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In 1992 the Legislature substantially amended the intervenor compensation statutes and substantially broadened the legislative authorization[9] for compensation for customer participation or intervention in commission proceedings. Stats. 1992, Ch. 942 (AB 1975 (Moore)).

AB 1975 added three new sections to the statute -- Pub. Util. Code sections 1801.3, 1802.5 and 1812; repealed a section – Pub. Util. Code section 1805; and made a number of amendments to the remaining Public Utilities Code sections.

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contributed to the presentations of other parties, which would have entitled them to compensation under the 1992 amendments.

D.98-04-059 also referred to the intervenor compensation decisions in the Electric Restructuring Docket, D.96-08-040 (July 1996), in R.94-04-001 / I.94-04-002. 79 CPUC2d 628, 658. This decision explicitly refused to apply a duplication penalty. However, *Competition for Local Exchange Service*, D.96-06-029 (June 1996) in R.95-04-043 / I.95-04-044 did apply a duplication penalty to TURN and is disapproved and over-ruled to the extent that it is authority for applying a duplication penalty for a party who makes a substantial contribution as part of a coalition.

[9] In enacting intervenor compensation legislation in 1984, the Legislature eliminated pre-1984 limitations on intervenor compensation after January 1, 1985 derived from older CPUC programs, and established a purely legislative program. Stats. 1984, Ch. 297 (SB 4 (Montoya)). Section 1 of that statute provides: "It is the intent of the Legislature in enacting this act …to require that for proceedings commenced on and after January 1, 1985, awards to customers shall be made pursuant to this act." This renders nugatory and of no effect statements such as "The requirement that a contribution assist the Commission in promoting a public purpose was very in keeping with the common fund theory at the root of our program. It compensates the participation of intervenors when other, nonparticipants, derive a benefit from that participation." 79 CPUC2d 628 at 638. The fiction of a perpetuation of the Commission's old "common fund" theory underlies the notion that a participating customer must confer some monetary benefit on non-participants as the "consideration" for an award of compensation. 79 CPUC 628, 650.

The most important amendment was to Public Util. Code section 1803. Prior to AB 1975, the section provided:

> The commission may award reasonable advocate's fees, reasonable expert witness fees and other reasonable costs of participation or intervention in a hearing or proceeding for the purpose of modifying a rate or establishing a fact or rule that may influence a rate to any customer who complies with section 1804 and satisfies all of the following requirements:
>
> (a) The customer's presentation makes a substantial contribution to the adoption, in whole or in part, of the commission's order or decision.
>
> (b) Participation or intervention without an award of fees or costs imposes a significant financial hardship.

AB 1975 rewrote the section as follows:

> 1803. The commission shall award reasonable advocate's fees, reasonable expert witness fees and other reasonable costs of preparation for and participation in a hearing or proceeding to any customer who complies with section 1804 and satisfies both of the following requirements:
>
> (a) The customer's presentation makes a substantial contribution to the adoption, in whole or in part, of the commission's order or decision.
>
> (b) Participation or intervention without an award of fees or costs imposes a significant financial hardship.

By making the award mandatory for any customer who makes a substantial contribution and meets the financial hardship requirement, the Legislature eliminated any other obstacles to participation, and to compensation for the costs of participation. There is no qualification of a complying customer's

right to be compensated on the face of this statute, or in any other substantive provision of the statutes governing participant compensation.[10]

The Legislature specifically provided for multifarious, overlapping and duplicative participation by customers in all manner of Commission proceedings. Repealed section 1805 authorized the commission to designate a common legal representative for multiple parties, notwithstanding their desire for separate representation. That provision was replaced by Section 1802.5, which provides:

> 1802.5. Participation by a customer that materially supplements, complements, or contributes to the presentation of another party, including the commission staff, may be fully eligible for compensation if the participation makes a substantial contribution to a commission order or decision, consistent with Section 1801.3.

This section anticipates customer activity in Commission proceedings that overlaps with the activity of other customers and parties, including ORA and CSD. This activity is compensable if it makes a substantial contribution "…, consistent with section 1801.3." The evident purpose is to "encourage" participation by groups that might be broadly aligned around common positions and proposals, but who have distinct constituencies or distinct abilities to contribute to the conduct of a proceeding at the commission. The only requirement is that they have a stake in the process – 1801.3(b) – and that they make a substantial contribution in the judgement of the commission – 1801.3(d).

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[10] AB 1975 also amended section 1802(h), which defines "substantial contribution," by specifically authorizing compensation for substantial contributions that involve the commission's partial adoption of a customer's presentation or positions.

Section 1801.3 is a codified intent section that instructs the Commission to administer the statutory program so as to "encourage the effective and efficient participation of all groups that have a stake in the …process…." 1801.3(b), and to compensate intervenors "…for making a substantial contribution to proceedings of the commission" without qualification. 1801.3(d).

Notwithstanding these provisions, the Commission has purported to narrow the effect of the statute by elevating one subdivision of 1801.3 to an additional set of "standards" for administration.

Subdivision 1801.3(f) provides:

> 1801.3.
> …
> …
> (f) This article shall be administered in a manner that avoids unproductive or unnecessary participation that duplicates the participation of similar interests otherwise adequately represented or participation that is not necessary for a fair determination of the proceeding.

This subdivision seeks to avoid two types of participation:

(1) unproductive or unnecessary participation that duplicates…[or]

(2) participation not necessary for a fair determination

The second type of participation to be avoided describes participation that is literally irrelevant because the participation addresses issues outside the scoping memo or application. C.f.,D.98-04-059, 79 CPUC2d 628, 649. By definition it cannot make the substantial contribution required for compensation, and is easily avoided without trenching into the positive objective of encouraging effective and efficient participation of all groups. It is the first type

of participation to be avoided – unproductive participation that duplicates -- that raises the legal and policy difficulties.

Ignoring the plain language of the subdivision and the other provisions of section 1801.3, D.98-04-059 purported to convert the subdivision into a substantive provision and interpreted section 1801.3(f) as establishing "three standards for program administration (productive, necessary, and needed for a fair determination)…." 79 CPUC2d 628, 649 and 674, Finding of fact 13. The "necessary" standard is described as entailing "nonduplication of effort." D.98-04-059 recognizes that multi-party proceedings will involve situations where "parties' positions likely will overlap." *Id.* At 649-50. However, D.98-04-059 also appears to create a presumption that overlapping presentations will justify a refusal to fully compensate a participating customer who makes a substantial contribution, through the imposition of a duplication penalty or discount.[11] The Proposed Decision in this case applies that presumption to impose a substantial "duplication" discount on two parties, despite the fact that no party advocated such a penalty and all affected parties made compensable substantial contributions.

This is misreading of the plain language of the statute, and is impermissible. People ex rel. Wood v. Sands, 102 C. 12 (1893); Trafficschoolonline, Inc. v. Superior Court, 89 Cal. App. 4th 222 (2001). It both misreads the plain language of 1801.3(f) and misses the other substantive and intent provisions of the statute. It creates additional barriers to compensation

[11] Routine reductions that were justified by their relatively small size may have been the norm during the deregulation era. Compare D.96-06-029 with D.96-08-040, above footnote 3. .

awards that are not found in the mandatory substantive provisions of 1803 and 1802.5.[12]

Section 1801.3(f) does not say that intervenor compensation administration should avoid all participation "that duplicates the participation of similar interests otherwise adequately represented." Only duplicative participation that is "unproductive or unnecessary" is to be avoided. The plain language of the subdivision establishes two distinct elements for describing the first type of participation to be avoided: (1) unproductive or unnecessary and (2) duplicative of similar interests otherwise adequately represented. Unless both elements are present, the participation to be avoided does not appear and a substantial contribution is to be compensated.

Any participation that results in a substantial contribution is by definition not "unproductive or unnecessary," because the commission must find, in its judgement, that the participation "has substantially assisted the commission…." Contrary to D.98-04-059 and the Proposed Decision, the intervenor compensation

[12] The Proposed Decision also purports to find a additional eligibility requirement – representation of an otherwise under-represented class – in D.98-04-059, relying on dicta at 79 CPUC2d 628 at 648 to the effect that "[W]e agree with ORA/CSD that the intent of the statute is that we compensate only those customer interests that would otherwise be under-represented." This dictum is not reflected in any findings, conclusions or ordering paragraphs and is so clearly unsupported by the plain language of the statute that we dismiss it. Since it did not affect the outcome of this proceeding, it is unnecessary to specifically disapprove or over-rule it, but we caution parties and administrative law judges for the future that it is erroneous dictum and of no force and effect. It should have no place in our administration of participant compensation going forward.

statute does not permit a duplication discount based on 1801.3(f), once a substantial contribution has been made.

Subdivision 1801.3(f) does not seek to avoid all "unproductive" participation either, but only "unproductive" participation that "duplicates the participation of similar interests that are otherwise adequately represented." Since the statute permits compensation for hearing preparation that may supplement, complement or support other parties, participation that only indirectly contributes to the commission decision – such as facilitating turn-out for public hearings or inciting participation in the public portion of commission meetings – and might therefore potentially be considered "unproductive" in that it is informal, could be compensable. The Legislature clearly has that as an objective. 1801.3(b).

The duplication language contained in the first dependent clause requires the compensation opponent to establish three elements – duplication, similar interests, and adequate representation. However, D.98-04-059 converts this element of the compensation opponent's showing in avoidance to a requirement of an affirmative showing by the participant that he/she represents interests that are otherwise un- or under-represented. This is not consistent with the plain language of the subdivision, or with the provisions of 1801.3(b) and (d). This additional "eligibility requirement" is confected by D.98-04-059 and inappropriately maintained in the Proposed Decision out of thin air.

Pub. Util. Code section 1804(b)(2) authorizes an assigned administrative law judge to issue an advisory ruling on "matter[s] that may affect the customer's ultimate claim for compensation" including "similar positions" and "areas of potential duplication." However, the ruling is expressly made merely advisory on all matters it addresses except for the "significant financial

hardship" determination. Pub. Util. Code 1804(b)(1). Such a ruling may have real value for customers in assisting them to be both effective and efficient in their participation. However, this procedural provision cannot be read to impliedly create additional substantive conditions for an award over and above what is in Pub. Util. Code section 1803, and thus limit the substantive standard contained in section 1803 for a compensation award to a customer whose participation makes a substantial contribution.

For all of these reasons, D.98-04-059 is partially over-ruled and the concept of a duplication penalty or reduction will henceforth not be a part of the Commission's administration of intervenor compensation.

7. Comments on Alternate Draft Decision

The Commission received comments on the duplication reduction or penalty aspect of the Decision from Public Advocates (on behalf of numerous organizations it represents), TURN, Greenlining Institute/Latino Issues Forum and Verizon. On December 12, 2002, Public Advocates filed reply comments.

Verizon contends that the Commission may exercise some discretion in awarding reasonable compensation to parties who meet the criteria in Section 1803 for the costs associated with making a substantial contribution. In general, we agree. However, it is contrary to law, and an abuse of that discretion to create additional eligibility criteria beyond section 1803[13] or to arbitrarily reduce awards for substantial contributions based on "duplication" as D.98-04-059 purported to do. We must and do over-rule that decision to the extent that it permits such practices. Verizon's arguments to the contrary are unavailing. Its

[13] Verizon does not attempt to defend over-ruled Finding 13 of D.98-04-059, purporting to interpret 1801.3(f).

suggestion that no duplication penalty be assessed in this case illustrates the fundamentally arbitrary and standardless character of the discretion it would have the Commission assert.

Verizon argues that section 1801.3(f) provides legal support for the application of a duplication reduction, although it notes that it did not advocate for that result for any of the parties affected by the Decision. Verizon's position repeats the fundamental error of D. 98-04-059, which attempts to confect from a subdivision of an intent section, Public Utilities Code section 1801.3(f), a set of standards in addition to the substantive ones in section 1803, that are not consistent with the plain language of that subdivision and are not consistent with the other subdivisions of 1801.3. Verizon erects its edifice on a weak foundation -- an attempt to trivialize the fundamental element of intervenor compensation, substantial contribution, as a "minimal threshold" (Comments, page 2). To buttress its construct it proceeds to misread, through selective quotation and substitution of words not found in the statute for the words that are there, sections 1801.3(b),[14] 1802(a),[15] 1802.5[16] and 1804[17] as suggesting that after the

[14] 1801.3(b) establishes an intention to "encourage the effective and efficient participation of all groups that have a stake in the regulatory process." The Comments (at page 7) incorrectly and arbitrarily transmute this to "solicitude for efficiency of presentation in proceedings." What is to be made efficient and effective is the participation of all the groups that have a stake in the process.

[15] 1802(a) defines "Compensation" as "payment for all or part of … reasonable costs of preparation and participation in a proceeding…." The reference to "part or all" is clearly to 1802(h), which permits a substantial contribution finding based on part of the customer's participation. The Comments suggest (at page 8) that 1802(a) should instead be read as "all or part of the reasonable costs of making the substantial contribution" – i.e., as permitting a partial payment (discount) of that portion of the costs of preparation and participation that are associated with making the substantial contribution. This does violence to the plain meaning of the statute.

Commission has found substantial contribution, it may nevertheless refuse to award the reasonable costs associated with making that substantial contribution. As Public Advocates points out, this is not consistent either with the language of the statute or the consistent interpretation of similar statutes by the appellate courts. We decline to adopt the suggestion.

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[16] Section 1802.5 permits compensation even for parties that "complement, supplement or contribute to the presentation of another party." The words of the statute describe participation that is wholly dependent on – additive to or completing – the participation of another party. Merriam-Webster Collegiate Dictionary, Tenth Edition, defines "complement" (at page 235), "supplement" (at page 1180) and "contribute" (at page 252) in precisely this manner. The Comments attempt to generalize the permission for compensation even in this extremely narrow and marginal circumstance to infer its opposite -- a discretionary penalty applicable to any independent participation that makes a substantial contribution but overlaps with contributions made by others. The discussion in the Comments (pages 6-7) about the significance of the use of the permissive in section 1802.5 misses the point that that section permits compensation even in the marginal circumstance that the substantial contribution is derived from the activity of another party, so long as the Commission finds a substantial contribution. It is wholly irrelevant to the question of whether the statute permits only partial payment for the costs of independent participation that makes a substantial contribution. That issue is resolved by section 1803.

[17] Section 1804 describes procedures for determining eligibility and payments. The Comments seize on 1804(b)(2) as providing some evidence of legislative intent that the Commission may exercise discretion to penalize participation that duplicates. (Pages 4-5) The subdivision authorizes an advisory ruling that points out various matters including "areas of potential duplication in showings…that may affect the customer's ultimate claim for compensation." Verizon contends that not to invent an otherwise unsupported duplication penalty or discount would render this language in the subdivision meaningless. To the contrary, Verizon must create from whole cloth the inference that the "affect" must be negative – something the Legislature was careful not to do – in order to find support for its argument. A more reasonable and natural reading is that the advisory ruling would accomplish what the legislature said it intended in 1801.3(b): to make the parties' participation more effective and efficient by pointing out synergies and collaborative opportunities that would permit them to

Footnote continued on next page

Verizon's effort to rehabilitate D.98-04-059, through a more thorough and complete misreading of the statute than was attempted in the original order, is grounded on an attempt to create the fiction that in enacting AB 1975 the Legislature was concerned to confine and limit compensation for participation in the interest of "efficient proceedings." This chimera should be contrasted with the plain language of AB 1975, which shows throughout the Legislature's intention to "encourage participation" by providing that "intervenors be compensated" if they make a substantial contribution to the commission's proceedings and whose participation imposes financial hardship. D. 98-04-059 was rooted in a contrary attitude of overt hostility to regulation and participation in its processes, and was intended to limit participation through a variety of devices based on a misreading of portions of the statute. TURN correctly notes that this is contrary to the evident intent of the Legislature and that repudiating it on this point restores the operation and effect of the statute.

As TURN points out, the discipline imposed by AB 1975 is rooted in the requirement that a compensated intervenor make a substantial contribution to the outcome. As Verizon recognizes, unnecessary or unproductive participation – that is, participation that does not make a substantial contribution as the statute defines it – is not eligible for compensation; Verizon's error is to trivialize that requirement as a justification for attempting to expand upon that fundamental limitation by creating additional obstacles intended to discourage participation, rather than encourage it. As Verizon notes, "…[T]he Commission may consider the duplicative nature of a party's participation in determining whether that

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reduce their costs while remaining effective in making the presentation that will assist the Commission – i.e., make the substantial contribution.

party has made a substantial contribution" (Comments at 5) because wholly redundant or derived participation is neither productive nor necessary. But once the Commission has found the substantial contribution, the statute requires compensation and does not permit the arbitrary reduction contemplated by D.98-04-059. Any other approach would discourage participation, contrary to the statute. We will encourage, not discourage, customer participation in the future, and we will compensate that participation when it makes a substantial contribution and imposes a financial hardship on the customer.

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8. The Commission received comments on the duplication reduction or Reasonableness of Requested Compensation

Request of TURN:

TURN requests $146,113.66 as follows:

Advocates' Fees

Paul Stein, Attorney		
188.25 hours @ $190 / hr. (1999)	=	$ 35,767.50
34.75 hours @ $200 / hr. (2000)	=	$ 6,950.00
16 hours @ $100 / hr. (2000)	=	$ 1,600.00
Robert Finkelstein, Attorney		
147.50 hours @ $265 / hr. (1999)	=	$ 39,087.50
8.25 hours @ $265 / hr. (2000)	=	$ 2,186.25
Subtotal	=	$ 85,591.25

Consultant's Fees

Terry Murray		
77.25 hours @ $300 / hr. (1999)	=	$ 23,175.00
.75 hours @ $300 / hour (2000)	=	$ 225.00

Scott Cratty		
194.83 hours @ $175 / hr. (1999)	=	$ 34,095.25
Subtotal	=	$ 57,495.25
Other Costs		
Photocopying	=	$ 2,140.60
Postage	=	$ 280.06
Fax	=	$ 21.70
Phone	=	$ 15.88
Fed Ex / Other	=	$ 154.50
On-Line Legal Research	=	$ 414.42
Subtotal	=	$ 3,027.16
Total	**=**	**$146,113.66**

Request of GL/LIF:

GL / LIF requests $323,919.22 as follows:[18]

Advocates' Fees		
Robert Gnaizda		
188.75 hours @ $375 / hr.	=	$ 70,781.25
Susan E. Brown		
458.15 hours @ $275 / hr.	=	$125,991.25
Chris Witteman		
327.3 hours @ $250 / hr.	=	$ 81,825.00
Subtotal	=	$278,597.50
Consultant / Expert Fees		
John Gamboa		
64.85 hours @ $250 / hr.	=	$ 16,212.50
Viola Gonzalez		
34.7 hours @ $250 / hr.	=	$ 8,675.00

[18] This number is the combination of $323,276.50 in the Request and an additional $642.72 in the Errata.

Subtotal	=	$ 24,887.50

Paralegal Fees

Jose Hernandez		
132.15 hours @ $105 / hr.	=	$ 13,875.75
Subtotal	=	$ 13,875.75

Other Costs

Postage, photocopies, deliveries, supplies	=	$ 3,075.30
Postage and copying (see Errata)	=	$ 642.72
Transportation, phone, parking, mileage, airfare, etc.	=	$ 2,840.40
Subtotal	=	$ 6,558.42
Total	**=**	**$323,919.17**

Request of PA:

PA requests $325,649.24 as follows:

Advocates' Fees

Mark Savage		
770.69 hours @ $300 / hr.	=	$231,207.00
Maria Andrade		
239.30 hours @ $225 / hr.	=	$ 53,842.50
John Affeldt		
9.20 hours @ $285 / hr.	=	$ 2,622.00
Subtotal	=	$287,671.50

Consultant's Fees

Thomas Hargadon		
40 hours @ $250 / hr.	=	$ 10,000.00
Subtotal	=	$ 10,000.00

Paralegal Fees

Jennifer Cynn		
81 hours @ $110 / hr.	=	$ 8,910.00
Rebecca Yee		
66 hours @ $110 / hr.	=	$ 7,260.00

Subtotal	=	$ 16,170.00
Other Costs		
Airfare, copying, messenger service, phone, etc.	=	$ 11,807.74
Subtotal	=	$ 11,807.74
Total	**=**	**$325,649.24**

8.1 Overall Benefits of Participation

In D.98-04-059, Finding of Fact 42, we indicated that compensation for a customer's participation should be in proportion to the benefit ratepayers receive as a result of that participation. We recognize that putting a dollar value on the benefits accruing to ratepayers as the result of a customer's substantial contribution may be difficult. However, an assessment of whether the requested compensation is in proportion to the benefits achieved helps ensure that ratepayers receive value from compensated intervention, and that only reasonable costs are compensated. (Id., page 73.)

It is not possible to quantify precisely the benefits to ratepayers of TURN's participation in this proceeding, but it is possible to conclude that they substantially exceed the requested award. TURN's participation on the issue of benefits forecast contributed to our decision to adopt a forecast that is $56.4 million (net present value) higher than Applicants' initial estimate. As a result, ratepayers will receive on the order of $28 million more in benefits than they would have received had we adopted Applicants' estimate. TURN's participation also resulted in elements of our decision which provide 1) all GTE ratepayers will see merger related reductions on their bills, and 2) the approximately $19 million allocated to the CCA will be spent, to the extent possible, in GTE's service territories. These are important benefits to GTE ratepayers. We conclude that the benefits to ratepayers of TURN's participation

exceed the costs claimed in this Request. An award of $146,113.66 to compensate TURN for its efforts on behalf of ratepayers is reasonable.

We similarly conclude that the awards of compensation to GL/LIF and PA are reasonable, and with adjustments to hourly rates and costs as noted below. The participation of both parties played a role in our decision to adopt the CCA with a statewide goal of achieving 98 percent subscribership in underserved communities, and bringing the "information superhighway" to these communities. The CCA creates a $24 million community technology trust fund to pursue these goals. The benefits to ratepayers of the CCA cannot be precisely quantified, but because so many ratepayers may benefit over the long-term we conclude that the benefit to ratepayers is in proportion to the amount of the awards to GL/LIF and PA.

8.2 Hours Claimed

TURN has segregated its hours by activity in accordance with Commission guidelines. We appreciate the effort that TURN has made to clearly allocate hours to specific issues whenever possible. TURN's efforts to make its request as clear as possible helped to facilitate our review, and we appreciate TURN's effort to assist us in determining how many hours would be subject to reduction if we had found that TURN had failed to make a contribution on any given issue. Upon review we find that the hours claimed for specific activities performed by attorneys and consultants appear reasonable, and no reduction in the hours claimed is warranted. We note that the time spent by TURN Staff Attorney Paul Stein devoted to preparation of the intervenor compensation request is charged at one-half of his hourly rate. This is consistent with our direction in D.98-04-059. We conclude the hours billed by TURN are generally reasonable and are fully compensable.

The request of GL/LIF is not presented in a manner that facilitated our review. Problems with the format and information in the request required many hours to be spent sorting through GL/LIF records to confirm numbers and determine the correct rates and amounts to be compensated. GL/LIF is directed to make an effort to present future requests in a form that facilitates our review consistent with our direction in D.98-04-059.[19] By not doing so, GL/LIF risks having otherwise allowable expenses disallowed because we simply cannot determine the reasonableness of amounts requested.

While GL/LIF has presented many tables categorizing hours in various ways, the result is an abundance of information that does not readily support the requested award. For example, in the Request, Exhibit D, a breakdown of "professional hours" for each attorney and consultant is provided, but the hourly totals do not match the totals that are utilized in the summary of hours in the Request at page 27. Exhibit D indicates a total of 184.35 hours for Robert Gnaizda, but the summary at page 27 seeks compensation for 188.75 hours. The reason for this discrepancy is not apparent to us. We assume there is some explanation because this type of discrepancy exists in the record of hours for other GL/LIF attorneys and consultants, but we cannot presume that the higher number of hours claimed is reasonable. In the case of Gnaizda, for example, if we assume that he expended the higher number of hours, without knowing what he was doing during those additional 4.4 hours (that evidently were not "professional hours") we do not know at what rate to compensate him. If this

[19] We note D.98-04-059 was the culmination of a rulemaking in which we addressed many policy and practical issues in our intervenor compensation program. Both TURN and GL/LIF participated in that rulemaking.

time was spent, for example, travelling or in preparation of the fee request, compensation would be at only 1/2 of his allowable hourly rate.

The information that we need may well be somewhere in the documents supporting the request, but after attempting to make these types of determinations, we remain unable to reconcile discrepancies in hours reported. Accordingly, we will only compensate the number of hours for each attorney and consultant that is listed on Exhibit D under "professional hours." We engaged in a similar effort in D.00-04-003, an earlier compensation decision in which we put GL/LIF on notice that more clear breakdowns are needed. If GL/LIF seeks compensation for time spent on travel or fee request preparation in the future, it should identify these hours separately in the request, and clearly indicate that it is seeking the allowable 50% hourly rate. This specification should appear in the summary of hours in the body of the request. Failing to do so may result in disallowance of the hours in question.

We note that on the timesheet of Witteman, which is in a different format from that of the other attorneys, the full hourly rate is charged for travel to Los Angeles on 4/9/99 and for fee petition preparation on 5/2 and 5/3/00. We will compensate a total of 9.9 hours at one half of Witteman's hourly rate because this error was readily ascertained.

Furthermore, GL/LIF does itself and us a disservice by not providing calculations using the hourly rates that we have previously adopted for its attorneys and consultants. We do not have any objection to GL/LIF continuing to assert that they should be paid at a higher hourly rate than we have allowed, and we are happy to receive those calculations as well. However, having made it clear in D.00-04-003 and other decisions that we intend to use the previously adopted rates, unless and until we modify them, GL/LIF's failure to provide

calculations using those rates simply delayed the preparation of this compensation decision. Because GL/LIF does not provide calculations using previously adopted rates we had to review records to make a determination of the years during which the work of all attorneys and consultants was performed, the previously adopted rate for those years, and the resultant fees in this proceeding.

Upon review of the materials submitted by GL/LIF, we conclude that the hours claimed for specific activities appear generally reasonable. With the exception of the reduction of the fee for 9.9 of Witteman's hours, and for hours in excess of those in Request, Exh. D, we will compensate GL/LIF for all hours claimed.

The PA request presented us with problems similar to those we have outlined regarding the GL/LIF request. It should not be necessary for us to spend hours sorting through a request trying to find information and verify numbers. This effort delayed the preparation of this compensation decision. By not providing us with calculations for attorney fees using previously adopted rates, we expended unnecessary time digging through exhibits and declarations to determine past rates, the years in which work was performed, etc. The request also appears to incorrectly seek payment for travel time and fee petition preparation at full hourly rates. It appears that these hours are mingled with other hours in the hourly logs. To the extent that we identify these hours we compensate them at 1/2 the hourly rate, and put PA on notice that in the future such hours will simply be disallowed if PA does not break these hours out separately in its fee request. We find a total of 20.8 hours of travel time identified in Savage's declaration that are incorrectly billed at Savage's full hourly rate. We will compensate for this time at one half his hourly rate.

With the exception of the hours that are compensated at 1/2 the hourly rate, we find that the hours claimed for specific activities appear generally reasonable.

8.3 Hourly Rates

TURN seeks compensation for hours worked by attorney Stein in 1999 at $190 per hour, and at $200 per hour for work performed in 2000. The most recent Commission approved rate for Stein is $170.00 per hour for work performed in 1997. (See D.98-08-016.) This is the first case in which TURN has sought an increase in Stein's rate from the 1997 level. Since 1997, Stein has represented TURN in a number of energy and telecommunications proceedings before the Commission. Through this participation Stein has developed an increased level of expertise in the subject matters before us. TURN provides information regarding prevailing market rates for attorneys as identified in the Of Counsel survey for 1999 through 2000. This survey contains information from selected law firms in San Francisco and other major cities. The survey reports a range of associate attorney rates of $110 to $350 per hour. Based upon the information contained in this survey, as well as Stein's level of expertise developed through participation in our proceedings, it is reasonable to increase Stein's rates to the levels requested by TURN. Pub. Util. Code § 1806 provides in part that intervenor compensation awards shall "take into consideration the market rates paid to persons of comparable training and experience who offer similar services." We conclude that henceforth the approved hourly rate for work performed by Stein in 1999 is $190 per hour, and the approved rate for work performed by Stein in 2000 is $200 per hour.

TURN requests compensation for the hours worked by attorney Finkelstein in 1999 and 2000 at $265 per hour. The Commission previously

approved this rate for Finkelstein and applied it in D.00-02-008, and D.00-02-038. Accordingly, we apply this rate in this proceeding.

TURN seeks compensation for consultant Scott Cratty at an hourly rate of $175 for work performed in 1999. Cratty is Vice President of Murray & Cratty, LLC. He provided support for TURN's lead witness, consultant Terry Murray. The most recent Commission approved rate for Cratty is $125 per hour for work performed in 1996. (See D.98-04-025.) The requested rate of $175 per hour for 1999 is $50 per hour higher than the 1996 approved rate. TURN argues that this increase is reasonable considering the impact of inflation and the enormous increase in demand in the past few years for telecommunications experts of Cratty's caliber. TURN states that the rate charged by Cratty to TURN is the same rate that he charges all of his business clients. We agree with TURN that the requested rate is reasonable.

The hourly rate claimed by TURN for consultant Murray is $300 for work performed in 1999 and 2000. The last Commission approved rate for Murray is $250 for work performed in 1996. (See D.98-04-025, p. 8.) At that time, $250 was the highest hourly rate approved by the Commission for an expert witness, and the Commission noted Murray's extensive qualifications. As in the case of Cratty, TURN states that Murray charged TURN the same consulting rate she charges all of her business clients, including corporations such as AT&T and MCI. We find that the increase in rates sought for Murray is justified by her experience, inflation, and the overall increase in demand for telecommunications experts. We adopt a rate of $300 per hour for work performed by Murray in 1999 and 2000.

GL/LIF seeks compensation for attorney Gnaizda in 1999 and 2000 at an hourly rate of $375. The most recent adopted rates for Gnaizda are $300 for 1999

and $310 for 2000 (see D.02-07-03). We will use these rates for work performed in 1999 and 2000 in this proceeding.

A rate of $275 per hour is claimed for attorney Brown for work in 1999 and 2000. This rate was previously adopted in D.02-06-038.

GL/LIF does not direct us to a previously adopted rate for attorney Witteman. An hourly rate of $250 per hour is requested. Based upon a review of his experience and qualifications, we conclude that a rate of $200 per hour is appropriate for work performed in 1999 and 2000. We base this rate upon consideration of his relative lack of experience before the Commission, and the fact that he was working with two other attorneys who are compensated at senior attorney rates. The $200 per hour rate is consistent with the rate paid to Stein of TURN. While Stein has less of years practice than Witteman, he has more experience before the Commission. Both attorneys worked under senior attorneys in this proceeding.

An hourly rate of $250 is claimed for GL staff member Gamboa. We have previously set an hourly rate for Gamboa of $135. (See D.00-04-003.) We find no convincing reason to increase his rate at this time. We will utilize the $135 per hour rate for all work performed in this proceeding. GL/LIF also seeks a $250 per hour rate for staff member Gonzales, Executive Director of LIF. We have not previously adopted an hourly rate for Gonzales. We find it appropriate to utilize the same rate ($135 per hour) applied to Gamboa for work on this proceeding.

An hourly rate of $105 is sought for paralegal Hernandez. GL/LIF does not direct us to previous hourly rates for Hernandez. We will utilize $75 per hour, the paralegal rate we adopted in D.00-04-011. We note that Witteman prepared separate bills for work performed under his supervision, and that $75 is the hourly rate he seeks for paralegal work for GL/LIF.

PA proposed an hourly rate of $300 for attorney Savage. We previously set an hourly rate of $250 for work in 1998 (D.00-02-044) and $275 for work in 1999 and 2000 (D.00-05-033) for Savage. We will use those rates here.

We have not previously set an hourly rate for attorney Andrade, who has been an attorney since 1995, and joined PA in 1998. Based upon her experience and qualifications, we set an hourly rate of $150 for 1998, $160 for 1999, and $170 for 2000.

The requested hourly rate for attorney Affeldt is $285. The previously adopted hourly rate for attorney Affeldt is $175 for work performed in 1997. (See D.00-02-044). We are disturbed that we find no reference to the previously adopted rate in Affeldt's declaration, but only find citations to higher rates adopted in other venues. We find this omission misleading. It also caused us to engage in unnecessary research to determine our previously adopted 1997 rate. We will adopt a rate of $185 for work performed in this proceeding in 1999 and 2000.

The hourly rate sought for law clerks Cynn and Yee is $110 per hour. We will use a $75 per hour rate, which is the same rate awarded to GL/LIF for its paralegal. We find no justification for granting PA's clerks a higher hourly rate.

We have reviewed the request for an hourly rate of $250 for expert Hargadon. The Commission has previously utilized this rate for work performed by Hargadon. (See D.96-06-029 and D.96-12-029.) We adopt the requested rate for this proceeding.

8.4 Other Costs

TURN requests $3,027.16 for miscellaneous expenses. The majority of these expenses are for photocopying, mailing of pleadings, and on-line legal

research. The expenses are fully itemized in the Request. The expenses appear reasonable and are fully compensable.

GL/LIF request $6,558.42 for miscellaneous expenses. The request is problematic in several ways. In the Errata we note the amount claimed is $642.72, but supporting documentation indicates $572.59. We cannot determine the cause of the discrepancy and will pay the lower amount. While the dollar difference is small, discrepancies of this kind compel us to question the accuracy of all numbers, which results in wasted time spent verifying all numbers.

More troubling is the inclusion of expenses for which there is no explanation. We cannot compensate for expenses where there is no explanation provided. We deduct the following costs from the award:

- Page 14 of Witteman expense sheet - 10/21/99 airfare for Stewart Kwoh and Giao Bui to attend meeting - $641.50. No explanation is provided regarding this expense;
- travel expenses for Brown, Gonzales and Hernandez on 4/28, 5/3, 5/10, and 8/16/99 totaling $117.11. We have compared the dates on which these expenses are billed and find no corresponding work activities to indicate a nexus to this case. We disallowed travel expenses to GL/LIF on this same basis in D.00-04-003;
- $452.00 for airfare for Barbara Perkins and Ronaldo Babiera for meeting 10/22/99, and $339.50 for airfare and taxi for meeting 10/22/99. We can locate no explanation in the request regarding the identity of these individuals, a breakdown of what these expenses cover, and why these expenses should be paid by ratepayers in this proceeding.

The disallowed expenses total $1,550.11.

With the exception of the expenses itemized above, the costs claimed appear reasonable and will be compensated in full.

PA requests a total of $11,807.74 for miscellaneous expenses. Again, the request is cryptic. We cannot compensate for expenses for which no explanation is provided. In Exhibit 1 travel expenses are claimed for individuals and no explanation is provided regarding the identity of these individuals, what the expense amounts cover, and why ratepayers should pay these expenses in this proceeding. We disallow the following unjustified travel expenses:

- Barbara O'Connor ($242.31);
- Lisa Navarrete ($884.41);
- Robert Arroyo ($326.50);
- Jacquelyn Brand ($218.50);
- Jim Crouch ($210.19).

We are very concerned about the inclusion of travel expenses for Barbara O'Connor and Jacquelyn Brand. We have reviewed the signature pages to the CCA (which is Attachment C to D.00-03-021). We find that O'Connor signed the CCA as the founder of Alliance for Public Technology, which represented 16 organizations. We find that Brand signed the CCA as Coordinator of Universal Services Alliance, representing 18 organizations. Neither Alliance for Public Technology nor Universal Service Alliance have qualified for or filed for intervenor compensation in this proceeding. It appears that PA inappropriately seeks to reimburse these groups for expenses of participation by means of the intervenor compensation program. This possibility is very disturbing, as it would be an abuse of the intervenor compensation program. We put PA on notice that if we verify inappropriate billing of costs in the future, we will consider imposing sanctions under Rule 1 of the Rules of Practice and Procedure.

The remainder of PA's claimed expenses appear generally reasonable and will be compensated in full.

8.5 Award

Award to TURN:

We award $146,113.66 to TURN for contributions to D.00-03-021. The award is calculated as follows:

Advocate Fees	=	$ 85,591.25
Consultant Fees	=	$ 57,495.25
Other Costs	=	$ 3,027.16
Total Compensation Award	=	$146,113.66

The breakdown of TURN's advocate and consultant fees and other costs is shown in Section 7 of today's decision.

Award to GL/LIF:

We award $268,108.93 to GL / LIF for contributions to D.00-03-021. The award is calculated as follows:

Advocates' Fees:

Robert Gnaizda, Attorney		
159 hours @ $300 / hr. (1999)	=	$ 47,700.00
25.3 hours @ $310 / hr. (2000)	=	$ 7,843.00
Susan E. Brown, Attorney		
375.5 hours @ $275 / hr. (1999)	=	$ 103,262.50
72.4 hours @ $275 / hr. (2000)	=	$ 19,910.00
Chris Witteman, Attorney		
317.4 hours @ $200 / hr. ('99-'00)	=	$ 63,480.00
9.9 hours @ $100 / hr. (1 / 2 rate)	=	$ 990.00
Subtotal	=	$243,185.50

Consultant / Expert Fees

John Gamboa		
63.45 hours @ $135 / hr. ('98-'00)	=	$ 8,565.75
Viola Gonzalez		

33.95 hours @ $135 / hour ('99-'00)	=	$ 4,583.25
Subtotal	=	$ 13,149.00

Paralegal Fees

Jose Hernandez

91.15 hours @ $75 / hr ('99-'00)	=	$ 6,836.25
Subtotal	=	$ 6,836.25

Other Costs

Subtotal	=	$ 4,938.18
Total fees and costs	=	$268,108.93

Award to PA:

We award $279,740.33 to PA for its contributions to D.00-03-021. The award is calculated as follows:

Advocates' Fees

Mark Savage, Attorney

20.5 hours @ $250 / hr. (’98)	=	$ 5,125.00
730 hours @ $275 / hr. (‘99-’00)	=	$200,750.00
20 hours @ $137.50 (1 / 2 hourly rate)	=	$ 2,750.00

Maria Andrade, Attorney

221.9 hours @ $160 (’99)	=	$ 35,504.00
17.4 hours @ $170 (’00)	=	$ 2,958.00

John Affeldt, Attorney

9.2 hours @ $185 (‘99-’00)	=	$ 1,702.00
Subtotal	=	$248,789.00

Consultant's Fees

Thomas Hargadon

40 hours @ $250 / hr.	=	$ 10,000.00
Subtotal	=	$ 10,000.00

Paralegal Fees

147 hours @ $75 / hr	=	$ 11,025.00
Subtotal	=	$ 11,025.00

Other Costs		
Subtotal	=	$ 9,926.33
Total Fees and Costs	=	$279,740.33

Consistent with previous Commission decisions, we will order that interest be paid on the award amounts (calculated at the three-month commercial paper rate) to each intervenor, commencing the 75th day after TURN, GL/LIF, and PA filed their compensation requests and continuing until full payment is made.

As in all intervenor compensation decisions, we put the intervenors on notice that the Commission's staff may audit intervenors' records related to this award. Thus, intervenors must make and retain adequate accounting and other documentation to support their claims for intervenor compensation. The records should identify specific issues for which compensation is requested, the actual time spent by each employee, the applicable hourly rate, fees paid to consultants, and any other costs for which compensation is claimed.

9. Comments on Both Draft Decisions

As noted on page 2, today's decision modifies D.01-09-045 in several areas. After reviewing the comments we conclude that application of a duplication penalty to reduce awards to participants that make substantial contribution is not permissible under the statues governing compensation of participating customers in Commission proceedings. Second, the hourly rates that D.01-09-045 awarded certain of GL/LIF's advocates are modified as appropriate to utilize the hourly rates adopted in D.02-05-011 for 1998 and later years.

Today's decision was issued for comment as a "revised draft decision" on July 25, 2002. GL/LIF filed comments. These comments repeat assertions and

arguments that GL/LIF made earlier, and that are fully addressed elsewhere in today's decision.

The ALJ's earlier draft decision on these compensation requests was mailed to the parties in accordance with Pub. Util. Code Section 311(g) (1) and Rule 77.7 of the Rules of Practice and Procedure. TURN, PA, and GL/LIF filed opening comments. Verizon Communications, PA, and TURN filed reply comments. We have reviewed the comments and conclude that no substantive changes to the draft decision are warranted. We make a modification to Finding of Fact 8, as discussed below, to clarify that we apply a discount for duplication of effort because the duplication was unproductive and unnecessary.

On various grounds, all the commenters challenge the disallowance for duplication. TURN and PA suggest that the draft misconstrues the statutory provision regarding duplication. GL/LIF and PA also claim that the draft decision ignores the ways in which each of them made unique contributions. Verizon Communications (successor to one of the original applicants in this proceeding) agrees generally with GL/LIF and PA that their respective fee requests should not be reduced based on duplication of effort. We first examine the statutory arguments, then respond to the arguments regarding unique contributions.

The relevant provisions of the Pub. Util. Code are Sections 1801.3(f) and 1802.5. The first provision states the legislative intent that the Commission administer the intervenor compensation program so as to avoid "unproductive or unnecessary participation that duplicates the participation of similar interests otherwise adequately represented or participation that is not necessary for a fair determination of the proceeding." (PA's emphasis.) The second provision states that customer participation that "materially supplements, complements, or

contributes to the presentation of another party…may be fully eligible for compensation if the participation makes a substantial contribution…consistent with Section 1801.3."

As we have discussed above, there is no statutory basis for a duplication discount. We will not engage in the sterile and genuinely unproductive exercise of determining whose participation was predominant in making the substantial contribution, as among PA and GL/LIF, or whether the participation of each was "merely additive" to the other. Both organizations participated effectively and made substantial contributions as the statute defines it. They are entitled to reasonable compensation, unreduced by a "duplication penalty" for which there is no statutory warrant.

GL/LIF object to the hourly rate set for determining the fees awarded their expert witnesses, and PA objects to the hourly rate for its law clerks. Turning first to GF/LIF, they suggest that we improperly distinguish in hourly rates between TURN's expert witnesses (from the firm of Murray & Cratty LLC) and GL/LIF's expert witnesses (who are part of GL/LIF's staff). According to GL/LIF, their experts were awarded lower rates because their experts are not "for hire" (GL/LIF Comments, p.10), and because their experts represent minorities. (*Id.*, p. 2.) GL/LIF are mistaken. The respective hourly rates are set with due regard for the standard set in Section 1806[20] and applied by us in setting hourly rates in this and many prior proceedings in which these particular expert witnesses have participated.

[20] Section 1806 reads, in relevant part, "The computation of compensation…shall take into consideration the market rates paid to persons of comparable training and experience who offer similar services."

As TURN correctly notes in replying to GL/LIF, the Commission can draw reasonable distinctions between expert witnesses who provide different services in a similar market, or who operate in different markets. For reasons explained below, such distinctions are evident here.

Historically, the Murray firm has provided analysis (including computer modeling) of technical issues pertinent to regulatory economics in general (for example, cost of capital) and in particular to the restructuring of traditional utility industries, especially telecommunications (for example, pricing of unbundled network elements)[21] In this proceeding, the Murray firm submitted testimony on the appropriate standard to use in analysis of merger benefits, the calculation and allocation of those benefits, and the merger's effects on local competition. TURN has provided data supporting our finding that the hourly rates set for the Murray firm reflect market rates for persons who perform the analytical work just described.

GL/LIF's experts, as compared to the Murray firm, perform different kinds of analysis. At the Commission, the GL/LIF experts have analyzed the impacts on low-income communities of changes in traditional utility industries. GL/LIF does not assert that the market rate for such analysis is the same as the market rate for the kind of analysis the Murray firm performs. GL/LIF bases its argument about market rate on the impressive credentials that their experts

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[21] As principal in her own firm, Terry L. Murray has testified before this Commission and the California Department of Insurance, the Federal Communications Commission, and the utility regulatory bodies of Colorado, Connecticut, Delaware, District of Columbia, Florida, Hawaii, Illinois, Kansas, Maryland, Michigan, Nevada, New Jersey, New York, North Carolina, Pennsylvania, South Carolina, Texas, Vermont, Virginia, Washington, and Wisconsin.

have. We do not question those credentials; however, the statute speaks not just to training and experience but also to "similar services." GL/LIF's experts did not perform services similar to those of the Murray firm, and accordingly we cannot use the Murray firm hourly rates unless we can reasonably find that the services actually performed by GL/LIF's experts command those hourly rates in the market. We have no basis on this record to make such a finding.

PA contends that the hourly rate for law clerks should be $100 per hour, rather than the $75 per hour that we utilize. PA's citation to D.00-02-044 does not convince us to modify the adopted rate. In that decision we refer to a survey showing average billing rates for paralegals between $41 and $117 per hour. This is generally consistent with the $75 per hour rate that we utilize here and that we previously adopted in D.00-04-001.

Lastly, TURN and GL/LIF argue that the Commission unduly scrutinizes the accounts presented by intervenors in support of compensation requests. We disagree. Our decisions (including today's decision) apply the statutory standards that govern compensation requests, as well as our rules and decisions where we have implemented or interpreted those standards. Unfortunately, as our experience in this proceeding illustrates, the accounts of some intervenors are sometimes very deficient. That this has happened in this proceeding and many times before with GL/LIF is regrettable, but the cure lies with GL/LIF.

Assignment of Proceeding

Henry M. Duque is the Assigned Commissioner and ALJ Mattson is the assigned ALJ in this proceeding.

Findings of Fact

1. TURN, GL/LIF, and PA have previously been found eligible for compensation in this proceeding in an ALJ Ruling dated April 1, 1999.

2. TURN, GL/LIF, and PA have demonstrated significant financial hardship in this proceeding.

3. TURN, GL/LIF, and PA have made timely requests for compensation for contributions to D.00-03-021.

4. TURN, GL/LIF, and PA all made substantial contributions to D.00-03-021.

5. Pub. Util. Code § 1803 requires that the commission award reasonable costs of participation in commission proceedings to customers who make a substantial contribution and for whom participation imposes a financial hardship.

6. Section 1801.3 does not permit application of a duplication discount or penalty to reduce the award of compensation to a customer that has made a substantial contribution.

7. The hourly rates requested by TURN for work performed by attorneys and consultants are consistent with the intent of Pub. Util. Code § 1806 that intervenor compensation awards shall take into consideration the market rates paid to persons of comparable training and experience who offer similar services. The hours billed by TURN are generally reasonable and are fully compensable.

8. The format of the information presented in the GL/LIF Request did not facilitate determination of the reasonableness of hours and fees claimed. This caused delay in the issuance of this decision. The hours claimed for work by attorneys and staff in the Request, Exhibit D, appear generally reasonable and we will compensate for those hours.

9. The hours claimed by GL/LIF for Witteman appear generally reasonable and fully compensable with the exception of 9.9 hours expended on travel and fee petition preparation. These 9.9 should have been billed at half Witteman's hourly rate, and we will compensate at that rate.

10. We find the previously adopted rates for Brown and Gnaizda reasonable and will utilize them here. Based upon his experience and qualifications a $200 per hour rate for Witteman in 1999 and 2000 is reasonable. A rate of $135 per hour is reasonable for work performed by staff member Gonzales, and is consistent with the rate previously adopted for Gamboa. A paralegal rate of $75 per hour is reasonable and consistent with D.00-04-011.

11. The format of the information presented by PA in its Request did not facilitate a determination of the reasonableness of hours and fees claimed. This caused delay in the issuance of this decision. Time spent on travel and fee petition preparation is not clearly identified and is incorrectly billed at full hourly rates. We have identified 20.8 hours of Savage's time that should have been billed at one half his hourly rate, and we will compensate it at that rate. The remainder of the hours billed appear generally reasonable and fully compensable.

12. With the exception of the hourly rate for expert Hargadon, the hourly rates proposed by PA are not consistent with prior Commission decisions. The hourly rate claimed for Hargadon is reasonable in this proceeding. The hourly rates previously adopted for Savage are reasonable and we will use them here. An hourly rate of $185 is reasonable for Affeldt in 1999 and 2000, and is consistent with the rate in D.00-02-044. Based upon her experience and qualifications the following hourly rates are reasonable for Andrade: 1998 -$150;

1999- $160; 2000 - $170. A paralegal rate of $75 per hour is consistent with D.00-04-011.

13. The miscellaneous other costs incurred by TURN in this proceeding are reasonable and fully compensable.

14. The miscellaneous other costs claimed by GL/LIF are reasonable and fully compensable, with the following exceptions. The following costs are disallowed because they are not adequately explained and documented, and do not appear reasonably incurred in this proceeding: expenses for airfare and travel totaling $1,550.11; a discrepancy of $70.13 in the Errata.

15. The miscellaneous other costs claimed by PA are reasonable and fully compensable, with the following exceptions. The following costs are disallowed because they are not adequately explained and documented, and do not appear reasonably incurred in this proceeding: expenses for airfare and travel totaling $1,881.91.

16. O'Connor and Brand, for whom PA seeks reimbursement of travel expenses, signed the CCA on behalf of Alliance for Public Technology and Universal Services Alliance. Neither organization has been found eligible for nor sought intervenor compensation in this proceeding. It appears that PA inappropriately seeks compensation for their expenses through the intervenor compensation program. The travel costs for O'Connor and Brand should be disallowed.

Conclusions of Law

1. The motion of GL/LIF for leave to late-file a Reply to the Response of PA should be granted.

2. TURN, GL/LIF, and PA have fulfilled the requirements of §§ 1801-1812 of the Pub. Util. Code, which govern awards of intervenor compensation.

3. TURN should be awarded $146,113.66 for its contributions to D.00-03-021.

4. GL/LIF should be awarded $268,108.93 for its contributions to D.00-03-021.

5. PA should be awarded $279,740.33 for its contributions to D.00-03-021.

6. D.88-12-085, D.91-12-055, D.93-06-022,D.96-06-029 and D.98-04-059 are over-ruled to the extend described in Section 6 of this Decision.

7. There is no statutory basis for applying a duplication penalty to reduce a compensation award for an eligible participant who makes a substantial contribution to adoption of a commission decision.

8. This revised decision replaces in its entirety D.01-09-045.

9. This order should be effective today so that intervenors may be compensated without unnecessary delay.

O R D E R

IT IS ORDERED that:

1. The motion of The Greenlining Institute and Latino Issues Forum (GL/LIF) for leave to late-file a Reply to the Response of Public Advocates (PA) is granted.

2. The Utility Reform Network (TURN) is awarded $146,113.66 in compensation for substantial contributions to Decision (D.) 00-03-021.

3. GL/LIF is awarded $268,108.93 in compensation for substantial contributions to D.00-03-021.

4. PA is awarded $279,740.33 in compensation for substantial contributions to D.00-03-021.

5. GTE Corporation (GTE) and Bell Atlantic Corporation (Bell Atlantic) shall pay TURN, GL/LIF, and PA any unpaid amounts associated with contribution to D.00-03-021 within 30 days of the effective date of this order. GTE and Bell

Atlantic shall also pay to TURN, GL/LIF, and PA interest on the award of each at the rate earned on prime, three-month commercial paper, as reported in Federal Reserve Statistical Release G.13, or H.15, as appropriate, beginning July 19, 2000, and continuing until full payment is made.

6. This proceeding is closed.

This order is effective today.

Dated _____, at San Francisco, California.