

Decision 07-01-007 January 11, 2007

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Joint Application of Verizon Communications, Inc. ("Verizon") and MCI Inc. ("MCI") to Transfer Control of MCI's California Utility Subsidiaries to Verizon, Which Will Occur Indirectly as a Result of Verizon's Acquisition of MCI.

Application 05-04-020
(Filed April 21, 2005)

**OPINION DENYING THE PETITION FOR MODIFICATION
OF THE GREENLINING INSTITUTE OF DECISION 06-09-008**

The petition for modification of Decision (D.) 06-09-008, filed October 27, 2006, by the Greenlining Institute (Greenlining), is denied. D.06-09-008 awarded Greenlining an intervenor compensation award of \$92,241.46 for its substantial contributions to D.06-09-008, which granted the merger application of Verizon Communication, Inc. (Verizon) and MCI Inc. Greenlining had requested \$116,623.46. In its petition, Greenlining seeks compensation of an additional \$22,688.25 to the amount already awarded. Verizon opposes Greenlining's petition. No application for rehearing of D.06-09-008 was filed.

Petition

In assessing the reasonableness of Greenlining's contribution, the Commission in D.06-09-008 disallowed 70.8 hours claimed by four individuals for post-decision work. The bulk of this time and expense was associated with a meeting with Verizon's chief executive officer *after* the Commission's decision.

The Commission reasoned that these hours should be disallowed in that Pub. Util. Code § 1802(c)(i) refers to activities that contributed to the Commission “in the making of its order or decision.”

Greenlining argues that its post-decision work was necessary or helpful in carrying out the terms of the settlement agreement that the Commission approved in the Verizon merger decision. Specifically, it cites *San Francisco NAACP v. San Francisco Unified School Dist.* (9th Cir. 2002) 284 F.3d 1163, as standing for the proposition that post-decision fees can be recovered in certain circumstances. Greenlining also objects that while it was awarded about 79% of its compensation request, The Utility Reform Network (TURN) was awarded about 88% of its request.

Discussion

Procedurally, Greenlining has filed a petition for modification under Rule 16.4 of the Rules of Practice and Procedure, rather than an application for rehearing under Rule 16.1. A petition for modification seeks “changes to the text of an issued decision,” generally in light of changes occurring since the decision was issued, while an application for rehearing deals with a claim that a decision is “unlawful or erroneous.” Greenlining acknowledges that its claim should have been filed as an application for rehearing, but it states that a shortage of staff prevented it from filing within the statutory 30-day deadline and compelled a petition for modification. We find little merit in Greenlining’s claim that it lacked time to file properly. The statute is an absolute bar to an untimely application for rehearing, and Greenlining has provided no reasonable basis for treating this request as a petition to modify.

Substantively, we find that Greenlining has failed to demonstrate error in the Commission’s conclusion that the type of post-decision work claimed

(preparation for and participation in a meeting with Verizon to discuss implementing the decision) should be disallowed. Our earlier conclusion in D.05-08-028 (post-decision work cannot be characterized as assisting the Commission in its work) put Greenlining on notice that post-decision activity of this nature would not be compensated. The *San Francisco NAACP* decision is distinguishable in that it dealt with “an original prevailing party who later defends a decree against a collateral attack in a separate action.” (284 F.3d at 1166.) No such collateral attack or subsequent legal proceeding occurred in this case.

The fact that we awarded TURN a greater percentage than Greenlining of the compensation sought is irrelevant since TURN did not request compensation for post-decision work.

The subject petition does not include any new or changed facts and does not justify an increase in the award of compensation. The petition is denied.

Waiver of Comment Period

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

Assignment of Proceeding

Michael R. Peevey is the assigned Commissioner and Glen Walker is the assigned Administrative Law Judge in this proceeding.

Finding of Fact

There are no new or changed facts that justify granting the relief requested in Greenlining’s petition to modify D.06-09-008.

Conclusion of Law

For the reasons set forth in the foregoing discussion, the subject petition should be denied.

O R D E R

IT IS ORDERED that:

1. The petition for modification is dismissed.
2. Application 05-04-020 is closed.

This order is effective today.

Dated January 11, 2007, at San Francisco, California.

MICHAEL R. PEEVEY

President

DIAN M. GRUENEICH

JOHN A. BOHN

RACHELLE B. CHONG

Commissioners