

Decision 06-09-011 September 7, 2006

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Joint Application of SBC Communications Inc. ("SBC") and AT&T Corp. ("AT&T") for Authorization to Transfer Control of AT&T Communications of California (U-5002), TCG Los Angeles, Inc. (U-5462), TCG San Diego (U-5389), and TCG San Francisco (U-5454) to SBC, Which Will Occur Indirectly as a Result of AT&T's Merger With a Wholly-Owned Subsidiary of SBC, Tau Merger Sub Corporation.

Application 05-02-027
(Filed February 28, 2005)

**OPINION GRANTING AWARDS FOR INTERVENOR COMPENSATION
TO GREENLINING INSTITUTE, LATINO ISSUES FORUM,
DISABILITY RIGHTS ADVOCATES, COMMUNITY TECHNOLOGY
FOUNDATION AND THE UTILITY REFORM NETWORK FOR THEIR
CONTRIBUTIONS TO DECISION 05-11-028**

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**OPINION GRANTING AWARDS FOR INTERVENOR COMPENSATION
TO GREENLINING INSTITUTE, LATINO ISSUES FORUM,
DISABILITY RIGHTS ADVOCATES, COMMUNITY TECHNOLOGY
FOUNDATION AND THE UTILITY REFORM NETWORK FOR THEIR
CONTRIBUTIONS TO DECISION 05-11-028**

1. Summary

This decision awards intervenor compensation to The Utility Reform Network (TURN), the Greenlining Institute (Greenlining), Latino Issues Forum (LIF), Disability Rights Advocates (Dis. RA), and the Community Technology Foundation of California (CTFC), (collectively, intervenors). These awards are made for substantial contributions to Decision (D.) 05-11-028, which granted the application of SBC Communications, Inc. (SBC) and AT&T Corp. (AT&T) (collectively applicants) for the transfer of control of AT&T operations in California resulting from AT&T's merger with SBC.

The table below shows the amount requested and the corresponding amount awarded for each intervenor. The reduction to each award is discussed herein.

<u>Intervenor</u>		<u>Amount Requested</u>	<u>Award</u>
TURN		\$557,970.00	\$528,401.62
Greenlining		\$224,798.91	\$199,924.41
LIF		\$163,552.39	\$147,244.89
Dis. RA		\$74,131.44	\$66,088.44
CTFC		\$636,963.00	\$212,813.20

D.05-11-028 approved the transfer of control pursuant to the merger transaction with conditions. Regarding approval requirements, we determined

that § 854(a)¹ applied to the transaction, finding it appropriate to grant an exemption under § 853(b), and thus that §§ 854(b) and (c) did not apply. The decision adopted applicants' agreement to: (a) contribute \$45 million over five years to the California Emerging Technology Fund (CETF), a non-profit organization tasked with ensuring that all California residents have ubiquitous access to broadband and advanced services by 2010; (b) to boost corporate philanthropy over five years by \$47 million; (c) to participate in a statewide Broadband Task Force; and (d) increase supplier diversity goals for minority business enterprises to a minimum of 27% by 2010. SBC was also required, by June 30, 2006, to cease forcing customers to purchase separately traditional local phone service as a condition for obtaining stand-alone Digital Subscriber Line (DSL) service (commonly known as "naked DSL"). SBC also accepted additional merger conditions imposed by the Federal Communications Commission (FCC).

2. Requirements for Awards of Compensation

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

¹ All statutory references are to the Public Utilities Code, unless otherwise noted.

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

1. The intervenor must satisfy certain procedural requirements including the filing of a sufficient notice of intent (NOI) to claim compensation within 30 days of the prehearing conference (PHC), or in special circumstances at other appropriate times that we specify. (§ 1804(a).)
2. The intervenor must be a customer or a participant representing consumers, customers, or subscribers of a utility subject to our jurisdiction. (§ 1802(b).)
3. The intervenor should file and serve a request for a compensation award within 60 days of our final order or decision in a hearing or proceeding. (§ 1804(c).)
4. The intervenor must demonstrate “significant financial hardship.” (§§ 1802(g), 1804(b)(1).)
5. The intervenor’s presentation must have made a “substantial contribution” to the proceeding, through the adoption, in whole or in part, of the intervenor’s contention or recommendations by a Commission order or decision. (§§ 1802(i), 1803(a).)
6. The claimed fees and costs are reasonable (§ 1801), necessary for and related to the substantial contribution (D.98-04-059), comparable to the market rates paid to others with comparable training and experience (§ 1806), and productive (D.98-04-059).

For discussion here, the procedural requirements summarized in Items 1-3 above are combined, followed by separate discussions on Items 4-6.

The PHC in this matter was held on April 20, 2005. The five intervenors named herein timely filed NOIs on or before May 20, 2005 pursuant to § 1804(a). No opposition was filed to the NOIs.

Section 1802(b)(1) defines a “customer as: A) a participant representing consumers, customers or subscribers of a utility; B) a representative who has

been authorized by a customer; or C) a representative of a group or organization authorized pursuant to its articles of incorporation or bylaws to represent the interests of residential or small business customers. All five intervenors are customers pursuant to § 1802(b)(1)(C).

The intervenors all filed requests for compensation, pursuant to § 1804(c), within 60 days of D.05-11-028 being issued. On February 22, 2006, the applicants filed a consolidated response to the five compensation requests, pursuant to § 1804(c). The intervenors filed replies on March 9, 2006.

3. Showing of Significant Hardship

“Significant financial hardship” is defined in § 1804(g):

“Significant financial hardship” means either that the customer cannot without undue hardship afford to pay the costs of effective participation, including advocate fees, expert witness fees, and other reasonable costs of participation, or that, in the case of a group or organization, the economic interest of the individual members of the group or organization is small in comparison to the costs of effective participation in the proceeding.

TURN, Dis. RA and Greenlining asserted financial hardship in their NOIs. LIF and CTFC, pursuant to § 1804(a)(2)(B), made financial hardship showings in their requests for compensation. A discussion on each follows.

3.1 TURN

TURN presented its annual showing of significant financial hardship, pursuant to § 1804, in this proceeding. TURN meets the financial hardship condition, and shows that the economic interest of its individual members is small in comparison with the costs of effective participation.

3.2 Greenlining and Dis. RA

Greenlining and Dis. RA meet the financial hardship condition through a rebuttable presumption of eligibility, pursuant to § 1804(b)(1), because each

was found eligible in another proceeding within one year of the commencement of this proceeding (Joint Commissioner Ruling dated April 1, 2004 in Investigation 04-02-007 for Greenlining; and ALJ Ruling dated November 22, 2004 in Rulemaking 03-04-003 for Dis. RA).

3.3. LIF

LIF showed that it represents the interests of low-income customers, language minority customers, immigrants and other vulnerable communities. LIF's costs of participating for individual low income and moderate income customers are prohibitive and in great excess of the individual benefit derived.

3.4 CTFC

CTFC was established following Commission approval of the Pacific Telesis Group and SBC Communications, Inc. merger by Commission Resolution 16172, dated July 23, 1998. CTFC's mission is to meet the needs of California's underserved communities for full and equal access to basic and advanced telecommunications infrastructure and services. CTFC asserts that the economic interests of individual members of the underserved communities that it represents is miniscule, compared to the costs of effective participation in a proceeding of this nature and scope. In this proceeding, CTFC retained the services of an outside attorney firm on a reduced fee/contingent fee basis. Applicants argue that CTFC has not satisfied the showing of significant financial hardship required to be eligible for intervenor compensation. Applicants claim CTFC cannot demonstrate that it would suffer financial hardship if the Commission were to deny an award for legal services that CTFC obtained for free. Applicants contend that CTFC produced no evidence that it actually paid, or has any obligation to pay, for legal services by obtaining pro bono legal services.

D.03-11-021 rejected SBC's similar argument in a previous case as unsupported by the statute. Were we to adopt such arguments, intervenors who are able to obtain the services of lawyers and experts on a reduced fee, contingent fee, or no fee basis would be hard-pressed to demonstrate significant financial hardship. By adopting such arguments, we would communicate to intervenors that, on the one hand, they risk rejection of excessive costs, but on the other hand, they could lose their hardship status if they keep their costs low. This result could only discourage public participation at the Commission, contrary to the intent of the Legislature. D.05-01-059 denied rehearing of D.03-11-021.

Accordingly, consistent with previous Commission policy on this issue, CTFC's financial hardship status should not be denied merely because it elected to retain and pay outside attorneys on a reduced fee/contingent fee basis. We find that CTFC has made the requisite showing of financial hardship.

In view of the above discussion, we find that TURN, Greenlining, LIF, Dis. RA and CTFC have satisfied the procedural requirements for financial hardship.

4. Substantial Contribution

As a basis for awarding intervenor compensation, we must find that an intervenor has made a substantial contribution to the Commission's decision. In evaluating whether a party made a substantial contribution, we look at several things. First, we consider whether the ALJ or Commission adopted one or more of the factual or legal contentions, or specific policy or procedural recommendations put forward by the intervenor. (*See* § 1802(i).) Second, we consider if the party's contentions or recommendations paralleled those of another party, or if the participation materially supplemented, complemented, or

contributed to the presentation of the other party or to the development of a fuller record that assisted the Commission in making its decision. (*See* §§ 1802(i) and 1802.5.) As described in § 1802(i), the assessment of whether a party made a substantial contribution requires the exercise of judgment.

Section 1801.3(f) requires an intervenor to avoid unnecessary participation that duplicates that of similar interests otherwise adequately represented by another party, or unnecessary for a fair determination of the proceeding. In a proceeding involving multiple participants, it is virtually impossible to completely avoid some duplication of the work of other parties. As discussed below, we find that the parties took all reasonable steps to keep duplication to a minimum and to ensure that their work served to supplement, complement, or contribute to the showing of the other parties.

In assessing whether a party made a substantial contribution, the Commission typically reviews the record, composed in part of pleadings and, in litigated matters, the hearing transcripts, and compares it to the findings conclusion, and orders in the decision to which the party asserts it contributed. It is then a matter of judgment as to whether the party's presentation substantially assisted the Commission.

Should the Commission not adopt any of the party's recommendations, compensation may still be awarded if the party's participation substantially contributed to the decision in other ways. With this guidance in mind, we consider the claimed contributions of each intervenor.

4.1 TURN

TURN made a substantial contribution, focusing primarily on the applicability of §§ 854(b) and (c), by arguing that insufficient competition existed to ensure that the merger would not have negative competitive impacts. TURN

also analyzed merger synergies and developed a calculation for sharing a portion of such synergies with consumers pursuant to § 854(b). TURN also presented proposed conditions on any approval of the merger relating to economic benefits to be shared with consumers and impacts on competition.

Applicants oppose TURN's request for compensation, claiming that TURN duplicated almost completely the same work undertaken by the Commission's Office of Ratepayer Advocates (ORA).² TURN responds that, although it worked closely with ORA to avoid duplication, some overlap in such a complex analysis of a synergies model was unavoidable. Further, TURN's independent analysis raised several issues not addressed by ORA. In several instances, ORA supported recommendations made by TURN that ORA did not originate.

Applicants also object to TURN's presence at the deposition of SBC witness Kahan as being duplicative. TURN's presence, however, permitted the discovery of additional relevant information relating to the synergy model, and allowed TURN and other intervenors to minimize the cross-examination of Kahan, thus shortening the hearing schedule.

The intervenor compensation statute in this regard explicitly provides:

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 1801.3.³

² ORA subsequently became the Division of Ratepayer Advocates, effective January 1, 2006, pursuant to Senate Bill 608.

³ § 1802.5.

We decline to reduce TURN's award here based on claims of duplication since we have found that TURN materially supplemented, complemented and contributed to the contributions made by other parties.

Applicants claim further they "attempted to limit the scope of this proceeding to key legal issues, and to proceed on an expedited schedule, which should have significantly limited the scope of this proceeding."⁴ Thus applicants argue that TURN expended excessive resources, expanding its scope of review unnecessarily. Applicants also claim that TURN spent too much time or resources on discovery.

We do not find that TURN's expenditure of resources was excessive. TURN, along with other parties, prevailed in procedural disputes about the appropriate scope of the proceeding and the need to conduct evidentiary hearings. The application, as originally filed, requested Commission authorization of the transaction pursuant to Pub. Util. Code § 854(a) on an expedited basis with no evidentiary hearings. Applicants did not initially include a showing under § 854(b), claiming that the transaction was exempt from that statute.⁵ Applicants also believed that § 854(c)⁶ should not apply, but supplied information relating to § 854(c).

⁴ Consolidated Response of Applicants SBC Communications Inc. and AT&T Corp. to requests for Intervenor Compensation, Fen 22, 2006, p. 1 ("Response").

⁵ § 854(b) requires the Commission to find that the proposed change in control provides short-and long-term benefits to customers (§ 854(b)(1), equitably allocate forecasted short-and long-term economic benefits where the Commission has ratemaking authority (§ 854(b)(2), and determine that the change in control does not adversely affect competition (§ 854(b)(3)).

⁶ § 854(c) requires the Commission to apply eight criteria in its evaluation of whether a transaction is in the public interest.

On March 16, 2005, an Assigned Commissioner's Ruling (ACR) required supplementation of the application to comply with Pub. Util. Code §§ 854(b) and (c). The ACR deferred ruling on whether §§ 854(b) and (c) applied, but required the supplementation in the interest of ensuring that any potential disagreement over the statute's applicability not cause delay in adjudicating the application.

We therefore find no basis to fault the intervenors for proceeding in a manner consistent with the scope as authorized by the ACR. TURN's synergies and market analyses were conducted within the scope of §§ 854(b) and (c) as discussed above. Although D.05-11-028 ultimately determined that these sections do not apply, TURN was acting within the scope of the proceeding.

An intervenor should not be denied compensation based on the risk that issues that were explicitly within the scope of the proceeding may be treated differently in the final decision. Rather, the intervenor compensation program is intended to encourage participation by groups that have a stake in the public utility regulation process.⁷

Moreover, although discovery was a highly contentious and time-consuming process, we conclude that TURN's discovery focused on issues within the scope of the proceeding. TURN predominantly prevailed in its motion to compel, with the ALJ ordering SBC to provide access to its national synergy model and supporting workpapers.

Applicants further contend that TURN did not make a substantial contribution because the Commission rejected most of TURN's arguments and

⁷ Pub. Util. Code § 1801.3(b).

proposals. Applicants cite D.96-10-072 as an example of where intervenor compensation was denied where factual contentions and specific recommendations were neither adopted nor relied upon.⁸ While the Commission denied intervenor compensation in D.96-10-072, the rationale was that the intervenor proposal was beyond the scope of the proceeding and had been denied in prior proceedings. Such factors do not apply to TURN's request in the instant proceeding. Although the final decision did not agree with most of TURN's conclusions, the Commission did express concern that intermodal competition might not exert sufficient competitive pressure on traditional telephone service. To address this concern, the Commission ordered SBC to "cease and desist from forcing customers to separately purchase traditional local phone services as a condition of purchasing SBC's DSL service."⁹ Thus the requirement in D.05-11-028 for "naked DSL" reflects Commission agreement with TURN's concerns that existing levels of competition would not adequately protect ratepayers (at least with respect to DSL bundling).

Moreover, although the Commission rejected most of TURN's arguments in its final decision, the Commission has previously found that an intervenor can make a substantial contribution and granted full compensation even where an intervenor's specific recommendations were not wholly adopted.¹⁰

⁸ Response, p. 9.

⁹ D.05-11-028, p. 42.

¹⁰ See, for example, D.98-11-014, p. 8 ("TURN contributed to D.97-08-055 by raising this issue and developing the record on the implications of this conflict.); D.99-08-006, 1999 Cal. PUC LEXIS 497, *3-4 (where the Commission held that by the intervenor is rejected")' and D.00-02-008, pp. 4-7, 10 (A.97-06-021), where the Commission awarded

Footnote continued on next page

A substantial contribution to a final decision may also be supported by contributions to the ALJ's Proposed Decision (PD), even where the Commission's final decision adopts different outcomes.¹¹ In this proceeding, the ALJ's PD¹² cited and adopted several of TURN's proposals. The PD agreed with TURN's analysis that the transaction did not merit an exemption under § 853(b), and should be reviewed under the requirements of §§ 854(b) and (c).¹³ The PD also adopted a number of TURN's recommendations regarding merger synergies.

Applicants also assert that TURN opposed the Greenlining and LIF settlement that was adopted in D.05-11-028. TURN explains, however, that it merely asked the Commission to delay consideration of the settlement to more fully consider its implications.

In view of these facts, we conclude that while D.05-11-028 did not adopt most of TURN's substantive positions, TURN nonetheless made a substantial contribution, as discussed above, justifying an award of compensation.

4.2 Greenlining

Greenlining represents the interests of low-income and other communities. Greenlining especially focused on promoting benefits of the

TURN the full amount of hours claimed even though it unsuccessfully opposed adoption of a settlement agreement. In D.06-02-016, the Commission rejected TURN's proposal for an "independent administrator" to administer energy efficiency programs, but still found that TURN's arguments benefited the record by encouraging debate over the full range of legal, policy and implementation issues associated with alternative models. The Commission awarded TURN compensation for all hours included in the request, including all those devoted to the administrative structure issue.

¹¹ D.99-11-006 (SDG&E PBR A.98-01-014), pp. 9-10 (citing D.99-04-004 and D.96-08-023); D.01-06-063 (SoCalGas CEMA A.99-03-049), pp. 6-7.

¹² PD of ALJ Pulsifer (Mailed 10/19/2005) (PD).

¹³ PD pp. 14-21. TURN Opening Brief, pp. 5-20.

merger in the form of supplier diversity, philanthropy, and bridging the digital divide. Greenlining took the lead in sponsoring the “Greenlining Agreement,” and served as one catalyst for the Commission’s decision to enlarge the California Emerging Technology Fund (CETF).

The “Greenling Agreement” contained standards on supplier diversity and statements on workforce and director diversity, and committed the applicants to maintain SBC’s industry standard in language services. The “Greenling Agreement” also contained measures addressing quality and affordable services.

The Commission adopted the full “Greenlining Agreement,” noting that its provisions addressed the Digital Divide, as well as other issues. (See D.05-11-028, pp. 76-77.)

We find that the Commission benefited from Greenlining’s participation in this proceeding even where the Commission chose not to adopt all of Greenlining’s specific recommendations. Therefore, we find that Greenlining’s made a substantial contribution.

4.3 LIF

LIF substantially contributed to D.05-11-028 in documenting the continuing problem of the Digital Divide (*i.e.*, the existence of communities underserved with access to telecommunications technology). LIF advocated that merger resources be directed to address the Digital Divide and other issues. LIF joined with Greenlining in negotiating the “Greenlining Agreement” that called for an increase in Applicants’ corporate philanthropy, with a majority of it directed to underserved communities, and also proposed that \$45 million be directed to the CETF.

In connection with the creation of the CETF, LIF proposed that the governing board include a group representing underserved communities. The Commission adopted this recommendation. (*See* D.05-11-028, p. 78 & n. 187.)

We agree that LIF made a substantial contribution, and its compensation should not be reduced due to any perceived duplication with the work of Greenlining.

4.4 Dis. RA

Dis. RA made substantial contribution by helping to develop the record on whether the merger was in the public interest, particularly with respect to consumers with disabilities. Dis. RA argued, as a condition of any approval of the merger, that measures be adopted to ensure people with disabilities benefited from the merger.

We recognize that Dis. RA has also requested intervenor compensation for its contribution in connection with D.05-11-029 (A.05-04-020 of Verizon Communications, Inc. (Verizon) and MCI Inc. (MCI)), in which we approved the transfer of control of MCI's California subsidiaries as a result of the Verizon/MCI merger transaction. Although we adopted similar outcomes in both this proceeding and in D.05-11-029 with respect to merger conditions relating to citizens with disabilities, the underlying record in each proceeding was distinct, and took into account facts specific to each company. Thus, the request for compensation due Dis. RA is evaluated taking into account its specific level of contribution in each of the merger proceedings. We evaluate Dis. RA's compensation request here taking into account the fact that Dis. RA helped to develop the record as to SBC's past performance concerning issues of concern to members of the public with disabilities.

By contrast to this proceeding, the Verizon/MCI merger proceeding did not involve evidentiary hearings. Accordingly, Dis. RA conducted no cross examination of Verizon witnesses as they did with witnesses in this proceeding. Likewise, the assigned ALJ issued a separate proposed decision in this proceeding, but did not do so in the Verizon/MCI merger proceeding. These differences have a bearing on our evaluation of the relative contribution made by Dis. RA in each of the two proceedings.

D.05-11-028 adopted conditions specifically proposed by Dis. RA, including the extension of SBC's Disability Advisory Group (DAG) at the new entity and inclusion of universal design as an issue to be evaluated by the DAG in the future. Dis. RA was the only party to cross-examine applicants about the purpose, function and effectiveness of the DAG, and the proposed role of DAG in the future. Dis. RA also addressed the issue of universal design in its briefs, explaining its importance to people with disabilities. Dis. RA established through cross examination that none of the recommendations made by the DAG had been addressed as part of the proposed merger, nor had any commitment been made by applicants to maintain the DAG or to implement its recommendations. Dis. RA submitted into the record documents showing the current status of Applicants' universal design policies and that SBC's commitment to universal design had wavered in recent years (*see* Exhibit 45, p. 2).

The Commission relied in part on Dis. RA's factual contentions in ordering the establishment of CETF for the purpose of improving access, usage, and adoption of broadband among underserved communities, including people with disabilities.

The Commission in previous instances has considered an ALJ's Proposed Decision in assessing intervenors' significant contributions even where, as here, the Commission did not adopt all of the conclusions of the ALJ. The ALJ's Proposed Decision in this proceeding found functional limitations in cable telephony and VOIP in serving the mass market, particularly in terms of lack of reliability in natural disasters and emergencies as compared to wire line service. Dis. RA raised concerns over such limitations as they affect people with disabilities. Therefore, in view of these factors, we find the request made by Dis. RA in this proceeding, adjusted as described herein, is reasonable given its level of contribution.

Applicants claim that Dis. RA's request is "excessive" and should be discounted. Applicants argue that Dis. RA's unique contributions were "limited," and that Dis. RA should not recover compensation where it did not offer any unique expertise. Applicants argue Dis. RA should not receive credit for the "Greenlining Agreement" in which it played no role in negotiating.

We find that Dis. RA provided a unique focus on the needs of consumers with disabilities that provided the Commission with a broader perspective. We conclude that Dis. RA made a substantial contribution, as explained above, notwithstanding objections by applicants.

4.5 CTFC

CTFC made a substantial contribution by being the only intervenor in the proceeding to advocate for establishment of a fund of at least \$100 million to address both broadband infrastructure and technology education for underserved communities. CTFC also contributed by organizing participation by 98 individuals representing the underserved community at the Public Participation Hearings. CTFC also contributed on the issues of economic net

benefits to consumers and the competitive impacts of the merger, particularly relating to underserved consumers.

Applicants oppose CTFC’s request, arguing that CTFC offered no unique contributions and attempted to advance its own interests over those communities it purported to represent. Applicants claim that to the extent that CTFC raised the issues of the Digital Divide, philanthropy, and service to underserved communities, it duplicated contributions made by Greenlining and LIF. Applicants dispute the claim of CTFC that its “substantial contribution” was the creation of the CETF, noting that CTFC opposed the Alternate Decision that adopted the CETF.

We conclude that CTFC made a substantial contribution to D.05-11-028. CTFC contributed evidence to the record regarding the establishment of a separate fund of at least \$100 million for the benefit of underserved communities, and thereby helped to frame the overall context within which the Commission considered the “Greenlining Agreement.” We also conclude, however, that the level of hours claimed by CTFC is excessive, and make adjustments in the level of its award as discussed in Section 5.5 below.

5. Reasonableness of Requested Compensation

In general, the components of a compensation request must constitute reasonable fees and costs of the customer’s preparation for and participation in a proceeding that resulted in a substantial contribution. Each request is discussed below, along with the issues we consider to determine reasonableness.

5.1 TURN

TURN requests compensation of \$555,782 for expenses incurred as set forth in the table below.

Attorney/Advocate Fees	Year	Hours	Hourly	Claim

			Rates	
William Nusbaum (attorney)	2005	656.25	\$400	\$262,500.00
Comp Request		22	\$200	\$4,400
Regina Costa (expert)	2005	12.50	\$230	\$2,875.00
Christine Mailloux (attorney)	2005	5.25	\$325	\$1,706.25
Robert Finkelstein (attorney)	2005	23	\$395	\$9,085.00
Comp Request		6.50	\$197.50	\$1,283.75
			Subtotal	\$281,850.00
Expert Witness Fees				
Terry L. Murray	2005	420.25	\$350	\$147,087.50
Scott Cratty	2005	312.25	\$225	\$70,256.25
Elizabeth R.Y. Kientzle	2005	236.25	\$225	\$53,156.25
			Subtotal	\$270,500
Expenses				
Photocopying				\$2,800.60
Postage				\$28.50
FedEx				\$131.10
Lexis				\$387.81
Phone				\$42.26
Fax				\$21.60
Parking/Tolls				\$21.00
			subtotal	\$3,432.87
			TOTAL	\$555,782.87

5.1.1 Hours and Costs Related to and Necessary for Substantial Contribution

First we first assess whether the hours claimed for the customer's efforts that resulted in substantial contributions to Commission decisions are reasonable by determining to what degree the hours and costs are related to the work performed and necessary for the substantial contribution. TURN provided a breakdown of the specific tasks performed by its staff attorneys and consultants/witnesses in connection with this proceeding. The hourly breakdown reasonably supports TURN's claim for total hours. Given the length, complexity, and significance of this proceeding, we conclude that the total hours claimed by TURN are reasonable and warrant compensation.

5.1.2 Market Rate Standard

Next, we next take into consideration whether the claimed fees and costs are comparable to the market rates paid to experts and advocates having comparable training and experience and offering similar services.

TURN seeks hourly rates of \$395 for attorney Finkelstein, \$325 for attorney Mailloux, and \$230 for expert Costa for work performed in 2005. We previously approved these same rates in D.06-04-021 and adopt them here.

For attorney Nusbaum, TURN seeks an hourly rate of \$400 for 2005 work. Nusbaum was TURN's lead attorney in this proceeding, with primary responsibility for litigation, representation during the evidentiary hearings, and drafting most of its pleadings. We previously authorized a rate of \$365 for Nusbaum for work performed in both 2004 (D.05-04-014), and 2005 (D.06-05-020 and D.06-04-036). TURN asserts that the increase from \$365 to \$400 is based on Nusbaum's overall experience, as he has nearly thirty years experience as an attorney, and over 25 years' telecommunications experience in legal and business strategy positions. TURN argues that Nusbaum's qualifications and experience warrant an hourly rate at the top of the range for attorneys with comparable amounts of experience.

In D.05-11-031, we adopted guidelines and principles for setting intervenors' hourly rates for work performed in 2005. D.05-11-031 generally does not authorize rate increase above previously approved 2004 rates, except under specific conditions. These conditions include cases where we may consider rate increases to reflect "additional experience since the last authorized rate...to bring the representative's hourly rate *within the range of the representative's peers at a higher level*" or where "a representative's last authorized rate is *below that of the range of rates...for representative's with comparable*

qualifications." (Emphasis added.) The range of rates for attorneys with Nusbaum's qualifications, as set forth in D.05-11-031, is between \$270-\$490. At \$365, Nusbaum's 2005 rate is well within the range for attorneys with comparable qualifications. We adopt a 2005 rate of \$365/hour for Nusbaum in this proceeding and accordingly reduce TURN's request by \$23,353.75.¹⁴

TURN also seeks compensation for the services of outside experts from the consulting firm of Murray & Cratty LLC. Murray, Cratty and Kientzle assisted in developing TURN strategy and positions, prepared rebuttal testimony, and assisted with discovery and depositions. Murray and Kientzle also prepared to be cross-examined during the evidentiary hearings.

TURN seeks hourly rates of \$350 for Murray, and \$225 each for Cratty and Kientzle for work performed in 2005. In D.05-12-038, we previously approved rates for 2001 work of \$320 for Murray and \$185 each for Cratty and Kientzle. D.05-11-031 sets forth guidelines for setting intervenor rates for 2005 for representatives whose last authorized rate was for work done before 2004, allowing for annual increases of 3% from the last authorized rate. Considering the 3% annual escalation factor, we adopt 2005 rates of \$350 for Murray (rate requested), and \$210 each for Cratty and Kientzle (\$15/hour less than requested). Accordingly, we reduce TURN's award by \$8,227.50.¹⁵

¹⁴ The disallowance is derived by multiplying (1) the total hours of 656.25 for Nusbaum times an hourly disallowance of \$35 to yield \$22,968.75 plus (2) the total hours assigned at one-half the allowable rate for preparing the compensation request, equal to 22 hours times an hourly disallowance of \$17.50 to yield \$385. The resulting sum of the disallowance is \$23,353.75.

¹⁵ Disallowance is \$4,683.75 for Cratty (\$15/hour x 312.25 hours); and \$3,543.75 for Kientzle (\$15/hour x 236.25 hours).

5.1.3 Productivity

In D.98-04-059, the Commission adopted a requirement that a customer must demonstrate that its participation was “productive,” as that term is used in § 1801.3, where the Legislature gave the Commission guidance on program administration. In that decision, we discuss the requirement that participation must be productive in the sense that the costs of participation should bear a reasonable relationship to the benefits realized through such participation. Customers are directed to demonstrate productivity by assigning a reasonable dollar value to the benefits of their participation to ratepayers. This exercise assists us in determining the reasonableness of the request and in avoiding unproductive participation.

It would be difficult to assign a specific dollar value to this proceeding, or to TURN’s contribution, given the nature of the merger and its effects on customers. While we do not establish a specific dollar amount, we conclude that TURN made a substantial contribution, as previously discussed. Moreover, this proceeding was broad in its range of issues and had exceptional significance for millions of California customers. We thus find that TURN’s costs of participation bear a reasonable relationship to the benefits realized through its participation, and that TURN’s work in this proceeding was productive.

5.1.4 Miscellaneous Expenses

TURN itemized miscellaneous costs of \$3,432. We find these costs reasonable.

5.2 Greenlining

Greenlining requests compensation of \$224,798.91, as outlined below:

Attorneys	Year	Hours	Rate	Total
Robert Gnaizda	2005	288.2	\$490.00	\$141,218.00
Robert Gnaizda	2006	3.3	\$490.00	\$1470.00
Itzel Berrio	2005	123.1	\$325.00	\$40,007.50
Carrie Camarena	2005	4	\$250.00	\$1000.00

Subtotal: \$183,695.50

Staff	Year	Hours	Rate	Total
Chris Vaeth	2005	80.25	\$150.00	\$12,037.50
Chris Vaeth	2006	3	\$150.00	\$450.00
Noelle Abastillas	2005	11.4	\$125.00	\$1425.00
Jasper Cacananta	2005	55.1	\$125.00	\$6887.50
Millie Lapidario	2005	21.1	\$125.00	\$2637.50
Millie Lapidario	2006	1.2	\$125.00	\$150.00
Pamela Palpallatoc	2005	57.5	\$110.00	\$6325.00
Pamela Palpallatoc	2006	.5	\$110.00	\$55.00

Subtotal: \$29,967.50

Staff	Year	Hours	Rate	Total
John Gamboa	2005	14.5	\$360.00	\$5220.00
Michael Phillips	2005	10	\$360.00	\$3600.00

Subtotal: \$8820.00

Direct Expenses	Total
Photocopying (6,374 x \$0.10 each)	\$637.40
Postage costs	\$221.85
Travel	\$1,456.66
Subtotal	\$2,315.91
TOTAL	\$224,798.91

5.2.1 Hours and Costs Related to and Necessary for Substantial Contribution

Greenlining provided daily listings of the specific tasks performed in connection with this proceeding as set forth in the appendices of Greenlining's request for its attorneys, experts and support staff. Greenlining supported its

listings of the specific tasks on a daily basis in connection with this proceeding. The work done by Greenlining’s representatives, as a team and as individuals, demonstrates that the hours claimed are reasonable, subject to certain disallowances, given the scope and timeframe of this proceeding.

According to Greenlining’s timesheets, its participation in this proceeding included extensive discovery, preparation of pleadings and development of the proposed settlement agreement with Applicants. Pursuant to § 1802, Greenlining may properly seek compensation for activities that contributed to the Commission “in the making of its order or decision.” As noted in D.05-08-028, however, post-decision work cannot be characterized as assisting Commission in the making of the Commission decision. We therefore find that Greenlining’s compensation should not include hours related to activities that occurred *after* the D.05-11-028 was adopted. We thus disallow those hours resulting in the following adjustments:

<u>Representative</u>	<u>Disallowed Hours</u>	<u>Hourly Rate</u>	<u>Disallowed Amount</u>
Gnaizda	38.6	\$490	\$18,914
Camarena	4	\$250	\$ 1,000
Papallatoc	17.25	\$110	<u>1,897.50</u>
Total Disallowed			\$21,811.50

We also disallow those hours described in Greenlining’s timesheets as typing documents, since such routine administrative tasks are or should be captured in an attorney’s hourly rates. The resulting disallowances for such tasks total \$1,628, as outlined below:

<u>Representative</u>	<u>Disallowed Hours</u>	<u>Hourly Rate</u>	<u>Disallowed Amount</u>
Lapidario	11.8	\$110	\$1,298
Abastillas	3	\$110	\$ 330
Total			\$1,628

5.2.2 Market Rate Standard

Greenlining seeks hourly rates of \$490 for attorney Gnaizda, \$325 for attorney Berrio, \$360 for expert Gamboa, and \$150 for expert Vaeth for work performed in 2005. We previously authorized these same rates in D.06-04-021 and D.06-04-027, and adopt them here.

Greenlining seeks an hourly rate of \$250 for attorney Camarena for 2005 work. Camarena is new to our proceedings. This rate is within the range of rates set forth in D.05-11-031 for attorneys with Camarena's level of experience (5-7 years) and we adopt that rate here.

Greenlining seeks an hourly rate of \$360 for expert Phillips. D.06-04-021 previously authorized a rate of \$335 for Phillips for 2005 work, and we adopt that rate here.

Greenlining seeks an hourly rate of \$125 for paralegal Abastillas. D.06-04-021 previously authorized a rate of \$110/hour for Abastillas for 2005 work, and we adopt that rate here. We adopt this same \$110/hour rate for Greenlining's other three paralegals (Cacananta, Lapidario and Palpallatoc). We adopt the 2005 rates above for the small number of authorized hours for work Greenlining performed in 2006.

5.2.3 Productivity

As previously noted, in D.98-04-059, the Commission adopted a requirement that a customer must demonstrate that its participation was "productive," as that term is used in § 1801.3. Participation must be productive

in the sense that the costs of participation should bear a reasonable relationship to the benefits realized through such participation. While we do not establish a specific dollar amount of benefits, we conclude that Greenlining’s costs of participation bear a reasonable relationship to the societal benefits realized through its participation. We therefore find that Greenlining’s work in this proceeding was productive.

5.2.4 Miscellaneous Expenses

Greenlining requests reimbursement of miscellaneous expenses of \$2,315.91 as shown above. We approve these expenses as reasonable and necessary for Greenlining’s substantial contribution.

5.3 LIF

LIF seeks compensation of \$163,552.39, as summarized below:

Itemization of Attorney’s Fees and Costs

Attorney/Expert	Year	Hours	Rate	Total
Susan Brown	2005	213.25	\$450	\$95,962.50
Luis Arteaga	2005	48.75	\$350	\$17,062.50
Richard Chabran	2005	58	\$200	\$11,600.00
Ana Montes	2005	17.25	\$150	\$2,587.50
Enrique Gallardo	2005	121	\$300	\$36,300.00
Total Claimed from Attorney/Expert Hours				\$163,512.50

Miscellaneous Costs

Copies	\$2.60
Postage	\$34.10
Supplies	\$3.19

TOTAL **\$163,552.39**

5.3.1 Hours and Costs Related to and Necessary for Substantial Contribution

LIF provided a breakdown of the specific tasks performed by its staff attorneys and experts in connection with this proceeding. The hourly breakdown reasonably supports LIF's claim for total hours.

5.3.2 Market Rate Standard

For attorneys Brown and Gallardo, LIF seeks hourly rates of \$450 and \$350, respectively, for work performed in 2005. D.06-04-036 previously authorized rates of \$390 for Brown and \$275 for Gallardo for 2005 work, and we adopt those rates here.

For experts Chabran and Montes, LIF seeks hourly rates of \$200 and \$150, respectively, for work performed in 2005. D.06-04-036 previously authorized these same rates for 2005 work, and we adopt them here.

For expert Arteaga, LIF seeks an hourly rate of \$350 for 2005 work. D.05-05-009 authorized a rate of \$340 for Arteaga for 2004 work. D.05-11-031 set forth guidelines for establishing 2005 rates, and generally does not authorize increases from previously authorized 2004 rates. We therefore adopt a rate of \$340 for Arteaga here.

LIF correctly computed an allowance of only one half for all hours incurred in travel or in seeking compensation are claimed.

The use of the hourly rates for Brown, Arteaga, and Gallardo, as adopted above, results in a reduction in the LIF award in the amount of \$16,307.50, derived as follows:

LIF Representative Hours	Hourly Rate	Total Disallowance
Brown	213.25	\$ 12,795.00
Arteaga	48.75	\$ 487.50
Gallardo	121	\$ 3,025.00

Total \$ 16,307.50

5.3.3 Productivity

As previously noted, a customer must demonstrate that its participation was “productive,” as that term is used in § 1801.3. Consistent with our previous discussion, we find that LIF’s costs of participation bear a reasonable relationship to the societal benefits realized through its participation. We therefore find that LIF’s work in this proceeding was productive.

5.3.4 Expenses

LIF itemized miscellaneous expenses for copies, postage and supplies as summarized above. We find these costs reasonable.

5.4 Dis. RA

Dis. RA seeks compensation of \$74,131.44, as outlined below:

Costs Relating to Substantive Issues

Attorney/Staff	2005 Rate	Hours	Total
Melissa Kasnitz	\$425	70.50	\$29,962.50
Kevin Knestrick	\$190	148.3	\$28,177.00
Paralegals & Law Clerks	\$90	109	\$9,810
		Sub total	\$67,949.50

Costs of Preparing Compensation Request

Attorney/Staff	2005 Rate	Hours	Total
Melissa Kasnitz	\$425	.40	\$170.00
Kevin Knestrick	\$190	19.2	\$3,648.00
Paralegals & Law Clerks	\$90	2.9	\$261.00
		Total	\$4,079.00
		Adjusted Total (50%)	\$2,039.50

Miscellaneous Costs

Photocopying	\$1,953.00
Postage & Delivery	\$80.50
Telephone & Fax	\$3.57
Travel/Parking Expenses	\$65.80
Sub total	\$2,102.94
Total	\$74,131.44

5.4.1 Hours and Costs Related to and Necessary for Substantial Contribution

Dis. RA provided a daily listing of tasks performed by its representatives in connection with the proceeding. We conclude that Dis. RA has reasonably documented its hours and provided a breakdown of the specific tasks performed by its attorneys and staff in connection with this proceeding. The hourly breakdown reasonably supports Dis. RA’s claim for total hours, except for the disallowances noted below. Although Dis. RA correctly discounts hours spent preparing its compensation request by 50% in its supporting table, Dis. RA erroneously incorporated 100% of those hours in its total requested claim amount. Accordingly, we reduce Dis. RA’s claim to reflect compensation for 50% of its hours spent preparing the claim request. Also, we disallow Dis. RA’s request by \$655 relating to costs for activities performed after the Commission issued D.05-11-028. As noted in D.05-08-028, post-decision work cannot be characterized as assisting the Commission in the making of the Commission decision.

The \$655 reduction is attributable to the following elements:

Representative	Hours	Hourly Rate	Disallowed Costs
Kasnitz	0.2	\$425	\$ 8
"	0.6	"	255
"	0.8	"	152
"	0.3	"	127.5
Law Clerks	0.1	\$ 90	9
	0.3	\$ 90	<u>27</u>
Total			<u><u>\$655.5</u></u>

5.4.2 Market Rate Standard

Dis. RA seeks hourly rates of \$425 for Kasnitz, and \$90 for law clerks for work performed in 2005. D.06-05-030 authorized an hourly rate of only \$350 for Kasnitz for 2005. We apply the \$350 hourly rate here.

Dis. RA seeks an hourly rate of \$190 for attorney Knestrick for 2005 work. Knestrick is new to our proceedings, and has less than three years of legal experience. D.05-11-031 establishes an hourly rate range of \$135-\$190 for attorneys with 0-2 years experience as reasonable. Knestrick's requested rate is comparable to other attorneys of similar experience and we therefore adopt it.

5.4.3 Productivity

As previously noted, a customer must demonstrate that its participation was "productive," as that term is used in § 1801.3. Consistent with our previous discussion, we find that Dis. RA's costs of participation bear a reasonable relationship to the societal benefits realized through its participation. We therefore find that Dis. RA's work in this proceeding was productive.

5.4.4 Expenses

Dis. RA itemized miscellaneous expenses for photocopying, postage, telephone, and travel/parking, as summarized above. We find these costs reasonable.

5.5 CTFC

CTFC seeks compensation of \$636,963, as outlined below. Because CTFC did not have in-house resources or expertise to participate in this proceeding, it retained attorneys at the law firm of Folger Levin & Kahn LLP (FLK) "on a reduced fee/contingent fee basis." FLK agreed to accept a substantially lesser rate than its standard billing rates in recognition of CTFC's nonprofit status as a public foundation dedicated to increasing access to and use of information and telecommunications technology by underserved communities. The terms of engagement further provided that CTFC would seek intervenor compensation at FLK's standard market rates, and that if CTFC recovered intervenor compensation in an amount greater than the billed amount

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under the reduced fee arrangement, such additional amounts would be payable to FLK.

Name of Representative	Hours	Rates	Total Fees
Outside Counsel at FLK			
Michael A. Kahn	6.4	490.00	\$3,136.00
Gregory D. Call	39.00	490.00	\$19,110.00
Jiyun Cameron Lee	508.05	400.00	\$203,220.00
Janine L. Scancarelli	514.75	270.00	\$138,982.50
Ingrid L. Auyón	480.10	200.00	\$96,020.00
Trina D. Russell (summer associate)	19.10	125.00	\$2,387.50
Stefani DelliQuadri (summer associate)	20.30	125.00	\$2,537.50
Lionel River (summer associate)	15.80	125.00	\$1,975.00
Vanessa I. Mendoza (paralegal)	125.10	100.00	\$12,510.00
Sean Murphy (paralegal)	220.10	100.00	\$22,010.00
Joseph Ha (paralegal)	2.90	100.00	\$290.00
Deuel Ross (paralegal)	3.00	100.00	\$300.00
Subtotal for Outside Counsel			\$502,478.50
Experts			
Yale M. Braunstein	111	360.00	\$39,960.00
Robert Fairlie	32	300.00	\$9,600.00
Subtotal for Experts			\$49,560.00
CTFC Internal Staff			
Tessie Guillermo	12.8	200.00	\$2,560.00
Laura Efurd	127.0	175.00	\$22,225.00
Phillippe Wallace	72.0	175.00	\$12,600.00
Elaine Carpenter	42.0	175.00	\$7,350.00
Karen Hanson	130.0	125.00	\$16,250.00
Margaret Stangl	50.0	125.00	\$6,250.00
Subtotal for CTFC Internal Staff			\$67,235.00
Other Miscellaneous			
Photocopying			\$11,241.29
Computerized Legal Research (Lexis & Westlaw)			\$2,830.49
Filing Fees			\$255.00
Messengers & Deliveries			\$361.01
Court Reporter Fees			\$699.00
Service Fees			\$997.50
Postage			\$282.20
Telephone & Facsimile Fees			\$271.47
Travel, Lodging, Meals & Other Expenses			\$697.38
Word Processing @ 25/hr			\$55.00
Subtotal of Costs			\$17,690.34
TOTAL FEES AND COSTS			\$636,963.84

5.5.1 Hours and Costs Related to and Necessary for Substantial Contribution

CTFC provided a daily listing of tasks performed by its representatives in connection with this proceeding.

Applicants argue that CTFC's claim should be rejected, and that CTFC has failed to justify time that has not been allocated to specific issues. CTFC reports 90 hours for unspecified strategy sessions and conference calls that are not allocated to any specific matters for which CTFC claims to have made a substantial contribution. CTFC also reports time spent preparing testimony for unidentified witnesses. Applicants also oppose CTFC's claimed time spent by paralegals at FLK whose time consists largely of "file maintenance and organization" and "managing database."

CTFC seeks to defend its failure to allocate hours to specific issues on the basis of prior Commission decisions recognizing that certain hours cannot easily be allocated to specific issues.

The costs of an intervenor's participation should bear a reasonable relationship to the work performed in its participation. (*See* D.98-04-059.) In the case of CTFC, we conclude that claimed hours for legal fees are unduly excessive and not adequately justified on an issue-by-issue basis. We appreciate that this proceeding was complex and involved a significant expenditure of resources by parties. Nonetheless, we note that the CTFC claim for costs of participation of \$636,963 exceeds that of any other single party seeking intervenor compensation. In fact, the size of CTFC's claim exceeds that of the combined claims of Greenlining, LIF, and Dis. RA.

Even after recognizing the potential for some overlap in its contribution with that of other parties with similar constituencies, CTCF has not provided a satisfactory justification for such a significant disparity in costs

relative to its contribution to D.05-11-028, as compared with other parties. Accordingly, we conclude that the CTFC has not justified an award of compensation for the full amount it has requested. We shall discount CTFC's request for the excessive number of hours that do not appear to be productive in comparison with the showings by other parties.

On the other hand, CTFC should not be denied any recovery at all, as applicants contend. CTFC is entitled to a reasonable level of compensation based on the substantial contribution that it has made. As a fair approximation of a reasonable number of hours to allow for CTFC, we shall use the Greenlining compensation claim as a benchmark. Because the excessive hours claimed by CTFC appears to be concentrated in the area of attorney fees (as opposed to expert witness fees), we shall limit the disallowance to hours claimed for CTFC attorney fees.

Although CTFC focused on somewhat different issues compared with Greenlining, we are not persuaded that in terms of overall hours, CTFC made a more significant contribution than did Greenlining. Yet, in terms of the total hours claimed for legal fees (excluding expert witness time), Greenlining claimed only about 27% as much as did CTFC. Therefore, as a measure of productive time, we conclude that only 27% of the CTFC claimed hours for legal fees warrant an award of compensation. We remain unconvinced that the remaining 73% of the claimed hours for CTFC legal costs warrant compensation. We shall uniformly reduce the allowable hours for legal fees accordingly. CTFC has requested a total of \$569,713.50 for legal fees, including both outside counsel and internal legal staff. We shall thus discount these costs by 73%, disallowing the excess hours, thereby granting CTFC compensation for legal costs of \$144,410.

We also disallow \$55 described in CTFC's timesheets as word processing, since such administrative tasks are or should be captured in an attorney's hourly rates.

In the case of the hours claimed for CTFC expert witnesses, however, we find that CTFC has limited its request to a reasonable level. Therefore, we shall grant full compensation for the CTFC claim relating to expert witnesses. Likewise, we shall permit recovery of CTFC miscellaneous expenses except for excessive photocopying as discussed below.

5.5.2 Market Rate Standard

The Commission has not previously set hourly rates for any of CTFC's representatives. CTFC submitted supporting information regarding the background and experience of each representative for whom an hourly rate is proposed. We have reviewed the supporting information and conclude that the hourly rates that CTFC proposed for each of its representatives are consistent with the guidelines set by the Commission in D.05-11-031. As discussed above, intervenor compensation based on a reduced fee/contingent fee basis is consistent with prior Commission practice. Accordingly, we approve the requested hourly rates for the CTFC representatives applied to the reduced base of allowable CTFC hours, as noted above.¹⁶

¹⁶ Although we shall accept CTFC's hourly rates for the limited purpose of this proceeding, we do not consider CTFC's rates as precedential for use in other proceedings. We make this qualification particularly in view of the unusual reduced fee/contingent fee arrangement used and our discounting of the total CTFC hours claimed.

5.5.3 Productivity

As previously noted, a customer must demonstrate that its participation was “productive,” as that term is used in § 1801.3. Consistent with our previous discussion, we find that subject to the disallowance for excessive hours as discussed above, CTFC’s costs of participation bear a reasonable relationship societal to the benefits realized through its participation. We therefore find that CTFC’s work in this proceeding, net of the disallowance for excessive hours, was productive.

5.5.4 Expenses

CTFC itemized its miscellaneous expenses as summarized above. For most of the categories itemized, we find CTFC’s costs reasonable. We find CTFC’s claim for photocopying expenses, however, to be excessive. CTFC claims \$11,241.29 for photocopying. CTFC has not provided adequate justification for a photocopying cost claim that is so disproportionate to that of any other intervenor. We shall limit CTFC’s allowance for photocopying by discounting the claimed costs by 73%, consistent with the approach we apply above to CTFC’s excessive legal fees. Based on application of the 73% discount factor, we allow CTFC \$3,035.15 for photocopying.

6. Award

Consistent with our discussion above, we grant the following awards:

We award TURN \$528,401.62.

We award Greenlining \$199,924.41.

We award LIF \$147,244.89.

We award Dis. RA \$66,088.44.

We award CTFC \$212,813.20.

The underlying calculations setting forth the adopted awards are set forth in Appendix A.

Consistent with previous Commission decisions, we order that interest be paid on the award amount (at the rate earned on prime, three-month commercial paper, as reported in Federal Reserve Statistical Release H.15) commencing on April 5, 2006, the 75th day after each respective intervenor filed its compensation request, and continuing until full payment of the award is made.¹⁷

Pursuant to the discussion above, we hereby direct AT&T to pay intervenor compensation to Greenlining, LIF, Dis. RA, CTFC and TURN, respectively, in the amount as authorized for each of them above.

We remind all intervenors that Commission staff may audit records relevant to this award, and that intervenors must make and retain adequate accounting and other documentation to support all claims for intervenor compensation. The records of Greenlining, LIF, Dis. RA, CTFC and TURN should identify specific issues for which each requested compensation, the actual time spent by each employee or consultant, the applicable hourly rate, fees paid to consultants, and any other costs for which compensation was claimed.

7. Waiver of Comment Period

This is an intervenor compensation matter. Accordingly, as provided by Rule 77.7(f)(6) of our Rules of Practice and Procedure, we waive the otherwise applicable 30-day comment period for this decision.

¹⁷ Each intervenor filed its request on January 20, 2006.

8. Assignment of Proceeding

Michael R. Peevey is the Assigned Commissioner and Thomas R. Pulsifer is the assigned ALJ in this proceeding.

Findings of Fact

1. TURN made a substantial contribution to D.05-11-028 as described herein.
2. Greenlining made a substantial contribution to D.05-11-028 as described herein.
3. LIF made a substantial contribution to D.05-11-028 as described herein.
4. Dis. RA made a substantial contribution of D.05-11-028 as described herein.
5. CTFC made a substantial contribution to D.05-11-028 as described herein.
6. The hourly rates for the individual representatives of the intervenors as approved in this order, and as discussed above, are reasonable when compared with the market rates for persons of similar training and experience.
7. The total of the reasonable compensation for TURN is \$528,401.62.
8. The total reasonable compensation for Greenlining is \$199,924.41.
9. The total reasonable compensation for LIF is \$147,244.89.
10. The total reasonable compensation to Dis. RA is \$66,088.44.
11. The total reasonable compensation to CTFC is \$212,813.20.

Conclusions of Law

1. TURN has fulfilled the requirements of Pub. Util. Code §§ 1801-1812, which govern awards of intervenor compensation, and is entitled to intervenor

compensation for its claimed compensation, as set forth herein, incurred in making substantial contributions to D.05-11-028.

2. Greenlining has fulfilled the requirements of Pub. Util. Code §§ 1801-1812, which govern awards of intervenor compensation, and is entitled to intervenor compensation for its claimed compensation, as set forth herein, incurred in making substantial contributions to D.05-11-028.

3. LIF has fulfilled the requirements of Pub. Util. Code §§ 1801-1812, which govern awards of intervenor compensation, and is entitled to intervenor compensation for its claimed compensation, as set forth herein, incurred in making substantial contributions to D.05-11-028.

4. Dis. RA has fulfilled the requirements of Pub. Util. Code §§ 1801-1812, which govern awards of intervenor compensation, and is entitled to intervenor compensation for its claimed compensation, as set forth herein, incurred in making substantial contributions to D.05-11-028.

5. CTFC has fulfilled the requirements of Pub. Util. Code §§ 1801-1812, which govern awards of intervenor compensation, and is entitled to intervenor compensation for its claimed compensation, as set forth herein, incurred in making substantial contributions to D.05-11-028.

6. The claims for intervenor awards for Greenlining and LIF should be reduced to exclude hours relating to activities that occurred after D.05-11-028 was issued and for hours spent merely performing typing tasks.

7. The claim for intervenor award by CTFC should be reduced to exclude excessive amounts beyond the level that represents a reasonably productive level of hours relating to legal costs.

8. The claim for hours that TURN has documented in its request serves as a suitable benchmark for purposes of approximating a reasonable level of hours to allow for legal costs attributable to the CTFC claim.

9. Hourly rates for intervenors approved in this decision are limited to amounts within the guidelines established in D.05-11-031.

10. Pursuant to Rule 77.7(f)(6), the comment period for this compensation decision may be waived.

11. This order should be effective today so that Greenlining, LIF, Dis. RA, CTFC, and TURN may be compensated without further delay.

12. This application should be closed.

O R D E R

IT IS ORDERED that:

1. The Utility Reform Network is awarded \$528,401.62 in compensation for its contribution to Decision (D.) 05-11-028.

2. Greenlining Institute is awarded \$199,924.41 in compensation for its contribution to D. 05-11-028.

3. Latino Issues Forum is awarded \$147,244.89 in compensation for its contribution to D. 05-11-028.

4. Disability Rights Advocates is awarded \$66,088.44 in compensation for its contribution to D. 05-11-028.

5. Community Technology Foundation of California is awarded \$212,813.20 in compensation for its contribution to D.05-11-028.

6. Within 30 days of the effective date of this decision, the awards described herein shall be paid by AT&T Corp. Payment of the award shall include interest at the rate earned on prime, three-month commercial paper as reported in

Federal Reserve Statistical Release H.15, beginning the 75th day after the respective filings, effective April 5, 2006, and continuing until full payment is made.

7. Application 05-02-027 is closed.

This order is effective today.

Dated September 7, 2006, at San Francisco, California.

MICHAEL R. PEEVEY
President
GEOFFREY F. BROWN
DIAN M. GRUENEICH
JOHN A. BOHN
RACHELLE B. CHONG
Commissioners

APPENDIX A
Compensation Decision Summary Information

Compensation Decision(s):	D0609011
Contribution Decision(s):	D0511028
Proceeding(s):	A0502027
Author:	
Payer(s):	AT&T Corp.

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Reason Change/ Disallowance
TURN	1/20/2006	\$557,970	\$528,401.62	Hourly Rate Discounted
Greenlining	1/20/2006	\$224,798	\$199,924.41	Hourly Rate; Post-Decision hours, clerical fees
Latin Issues Forum	1/20/2006	\$163,552	\$147,244.89	Hourly rate Discounted
Disability Rights Advocates	1/20/2006	\$74,131.44	\$66,088.44	Post-Decision hours; Hourly Rate Discounted
Community Technology Foundation	1/20/2006	\$636,963	\$212,813.20	Excessive hours discounted

Adopted Compensation Figures for TURN

Attorney/Advocate Fees	Year	Hours	Hourly Rates	Award
William Nusbaum (attorney)	2005	656.25	\$365	\$239,531.25
Comp Request		22	\$200	\$ 4,015.00
Regina Costa (expert)	2005	12.50	\$230	\$2,875.00
Christine Mailloux (attorney)	2005	5.25	\$325	\$1,706.25
Robert Finkelstein (attorney)	2005	23	\$395	\$9,085.00
Comp Request		6.50	\$197.50	\$1,283.75
			Subtotal	\$258,496.25
Expert Witness Fees				
Terry L. Murray	2005	420.25	\$350	\$147,087.50
Scott Cratty	2005	312.25	\$210	65,572.50
Elizabeth R.Y. Kientzle	2005	236.25	\$210	49,612.50
			Subtotal	\$266,472.50
Expenses				
Photocopying				\$2,800.60
Postage				\$28.50
FedEx				\$131.10
Lexis				\$387.81
Phone				\$42.26
Fax				\$21.60
Parking/Tolls				\$21.00
			subtotal	\$3,432.87
			TOTAL	\$528,401.62

Adopted Compensation Figures for Greenlining

Attorneys	Year	Hours	Hourly Rates	Award
Robert Gnaizda	2005	252.9	\$490.00	\$123,921
Robert Gnaizda	2006	0	\$490.00	0
Itzel Berrio	2005	123.1	\$325.00	\$40,007.50
Carrie Camarena	2005	0	\$250.00	0

Subtotal: \$163,928

Staff	Year	Hours	Rate	Total
Chris Vaeth	2005	80.25	\$150.00	\$12,037.50
Chris Vaeth	2006	3	\$150.00	\$450.00
Noelle Abastillas	2005	8.4	\$110.00	\$924.00
Jasper Cacananta	2005	55.1	\$110.00	\$6,061.00
Millie Lapidario	2005	10.5	\$110.00	\$1,155.00
Millie Lapidario	2006	0	\$110.00	\$ 0
Pamela Palpallatoc	2005	40.75	\$110.00	\$4,482.50
Pamela Palpallatoc	2006	.5	\$110.00	\$ 0

Subtotal: \$25,110

Staff	Year	Hours	Rate	Total
John Gamboa	2005	14.5	\$360.00	\$5220.00
Michael Phillips	2005	10	\$335.00	\$ 3350.00

Subtotal: \$8,570.00

Miscellaneous Expenses	Total
Photocopying (6,374 x \$0.10 each)	\$637.40
Postage costs	\$221.85
Travel	\$1456.66

Subtotal: \$2,315.91

Total Compensation: \$199,924.41

Adopted Compensation Figures for Latino Issues Forum

Itemization of Attorney's Fees and Costs

Attorney/Expert	Year	Hours	Hourly Rate	Total Award
Susan Brown	2005	213.25	\$ 390	\$83,167
Luis Arteaga	2005	48.75	\$340	\$16,575
Richard Chabran	2005	58	\$200	\$11,600.00
Ana Montes	2005	17.25	\$150	\$2,587.50
Enrique Gallardo	2005	121	\$275	\$33,275
Subtotal				\$147,205

Miscellaneous

Copies	\$2.60
Postage	\$34.10
Supplies	\$3.19

Total Compensation

\$147,244.89

**Adopted Compensation Figures for Disability Rights Advocates
Costs Relating to Substantive Issues**

Attorney/Staff	2005 Hourly Rate	Hours	Total Award
Melissa Kasnitz	\$350	68.6	\$24,010.00
Kevin Knestrick	\$190	148.3	\$28,177.00
Paralegals & Law Clerks	\$90	108.6	\$9,774.00
		Subtotal	\$61,871.00

Costs of Preparing Compensation Request (at 50% Rate Discount)

Attorney/Staff	2005 Rate	Hours	Total
Melissa Kasnitz	\$175	.40	\$70.00
Kevin Knestrick	\$95	19.2	\$1,824.00
Paralegals & Law Clerks	\$45	2.9	\$130.50
		Subtotal	\$2,024.50

Miscellaneous Costs

Photocopying	\$1,953.00
Postage & Delivery	\$80.50
Telephone & Fax	\$3.57
Travel/Parking Expenses	\$65.80
Subtotal	\$2,102.94

Total Compensation

\$66,088.44

**Adopted Compensation Figures for
Community Technology Forum of California**

Representative	Hours	Rates	Total Award
Outside Counsel			
Michael A. Kahn	1.73	490.00	\$847.70
Gregory D. Call	10.53	490.00	\$5,159.70
Jiyun Cameron Lee	137.17	400.00	\$54,868.00
Janine L. Scancarelli	138.98	270.00	\$37,524.60
Ingrid L. Auyón	129.63	200.00	\$25,926.00
Trina D. Russell (summer associate)	5.16	125.00	\$645.00
Stefani DelliQuadri (summer associate)	5.48	125.00	\$685.00
Lionel River (summer associate)	4.27	125.00	\$533.75
Vanessa I. Mendoza (paralegal)	33.78	100.00	\$3,378.00
Sean Murphy (paralegal)	59.43	100.00	\$5,943.00
Joseph Ha (paralegal)	0.78	100.00	\$78.00
Deuel Ross (paralegal)	0.81	100.00	\$81.00
Subtotal	527.75		\$135,669
Experts			
Yale M. Braunstein	111	360.00	\$39,960.00
Robert Fairlie	32	300.00	\$9,600.00
Subtotal	143		\$49,560.00
CTFC Internal Staff			
Tessie Guillermo	3.46	200.00	\$692.00
Laura Efurd	34.29	175.00	\$6,000.75
Phillippe Wallace	19.44	175.00	\$3,402.00
Elaine Carpenter	11.34	175.00	\$1,984.50
Karen Hanson	35.10	125.00	\$4,387.50
Margaret Stangl	13.50	125.00	\$1,687.50
Subtotal	117.13		\$18,154.25
Other Miscellaneous			
Photocopying			\$3,035.15
Computerized Legal Research (Lexis & Westlaw)			\$2,830.49
Filing Fees			\$255.00
Messengers & Deliveries			\$361.01
Court Reporter Fees			\$699.00
Service Fees			\$997.50
Postage			\$282.20
Telephone & Facsimile Fees			\$271.47

Travel, Lodging, Meals & Other Expenses			\$697.38
Word Processing @ 25/hr			0
Subtotal			\$9,429.20
Total Compensation			\$212,813.20