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Decision 95-07-035 July 19, 1995

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Utility Consumers Action Network, )  
Complainant,

Case 93-04-033  
(Filed March 10, 1993)

U S WEST cellular of California, )  
Defendant.

ORIGINAL

OPINION ON REQUEST FOR COMPENSATION

Introduction  
This decision awards Utility Consumers Action Network of (UCAN) the sum of \$50,000 for its substantial contribution to the work in this proceeding.

Section 1804(a) of the Public Utilities (PU) Code, relating to intervenor compensation, requires parties to file a "notice of intent to claim compensation" within 30 days of the first prehearing conference (PHC). UCAN made such a filing on February 28, 1994 which was within 20 days of the PHC. PU Code § 1804(c) allows intervenors to file a request for award of compensation up to 60 days after issuance of a final order. The decision in this phase of the proceeding was issued on March 16, 1995, which is less than seven days from the filing of this request.

Thus, UCAN's filing of a Notice of Intent to Claim Compensation and this Request for an Award of Compensation are timely filed in comparison to the cost of participation in the decision.

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2. Eligibility

We conclude that UCAN has established its eligibility to claim compensation. UCAN is a San Diego-based consumer advocacy group supported by 42,000 San Diego residential and small business ratepayers. Since 1984, UCAN has focused its efforts upon advocacy and public education. It represents the concerns of San Diego's small ratepayers in California Public Utilities Commission (CPUC) proceedings pertaining to regulated issues.

UCAN timely filed a "Notice of Intent to Claim Compensation" on February 28, 1994.

PU Code § 1802(f) authorizes the Commission to order compensation for a complaint brought to the Commission by a qualified party. PU Code § 1804 requires that the notice of intent to claim compensation shall include a statement of the nature and extent of UCAN's participation and an itemized estimate of the compensation to be requested. It also requires, on a discretionary basis, the showing of financial hardship.

UCAN has previously been found to have met its burden of showing financial hardship in D/88-03-023, (D/87-02-031, D.86-06-055, D/86-07-012, D/88-12-085, D/89-10-032, D/90-09-073, and D/92-07-066. During 1993, UCAN was found to have shown financial hardship in (See Application (A/93-11-002, A/93-11-004, A.93-11-006, and A/93-11-011, Administrative Law Judge's (ALJ) ruling on Notice of Intent to Claim Compensation dated January 3, 1994 at p. 2). As this complaint was commenced in 1993, the financial hardship findings made by the Commission apply to this complaint.

The criterion of "financial hardship" is defined as being unable to participate without undue hardship or, in the case of a group, where the economic interest of the individual members of the group is small in comparison to the cost of participation. (PU Code § 1802(g).) UCAN satisfies both elements of the definition.

UCAN initially proposed that it would submit expert testimony, as well as consult with its experts to address questions including, but not limited to, appropriate churn rates, the costs involved in notifying customers of the advice letter rejection, the extent to which US West Cellular profited from the approximately 2,500 subscribers to the Cash Back promotion, and the company's overall profitability between 1991-1994. At the time of filing its February 28, 1994 Notice, UCAN estimated its expense to range between \$20,000-\$30,000. UCAN indicated it could not participate with this level of expenses without the prospect of receiving compensation.

The second part of § 1802 definition also applies. UCAN brought this complaint on behalf of the approximately 2,500 subscribers who signed on to the aborted promotion, as well as its 40,000+ members who may be purchasing cellular services in the future. The concerns about US West Cellular of California's (USWC) advertising and customer service raised by UCAN in the complaint apply to all existing and future customers of cellular services in the state, not merely that small portion of residential and small business customers who qualify as UCAN members. Accordingly, we conclude that in participating in this case, UCAN is experiencing significant financial hardship as defined by PU Code § 1802.

**3. Substantial Contribution**

We conclude that UCAN made a substantial contribution to D.95-03-015. PU Code § 1802 (h) defines "substantial contribution" as follows:

"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 been adopted in whole or in part on one or more factual contentions, legal contentions, or specific policy or procedural recommendations presented by the customer. Where the customer's

UCAN'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." (PU Code § 1802(h).)

UCAN asserts that it made a substantial contribution to the Commission on the issues decided in D, 95-03, 015.

Since UCAN initiated the proceeding as complainant against USWC, negotiated a resolution of disputes, and was the only party besides the defendant, we agree that UCAN made a "substantial contribution" under § 1802(h). The Settlement UCAN jointly sponsored was essentially adopted by the Commission with modification only to terms which did not change the outcome to subscribers.

UCAN identified a number of issues which were addressed in the complaint and resolved by the adopted settlement. These issues include, but are not limited to:

1. Whether USWC knew, or should have known, that its Cash Back promotion was likely to be rejected or modified by the Commission during the pendency of the promotion;
2. Whether subscribers were properly informed about available plans by USWC;
3. Whether USWC intentionally misled the Commission about essential components of both promotions; and
4. Whether and how much subscribers to the promotions should be compensated for USWC's failure to meet its obligations.

4. Itemization of UCAN's Compensation Request

Although UCAN provides support for compensable expenses of more than \$64,000, UCAN requests only a \$50,000 award. UCAN's policy of providing recommendations is based on the customer's benefit by the customer. Where the customer's

limitation of its claim to a \$50,000 cap in response to the Settlement Agreement negotiated with USWC (Item 6) which states "USWC agrees UCAN has made a significant contribution to the resolution of this complaint proceeding. The amount of the legal fees and costs to be paid to UCAN for its contribution to this proceeding will be determined in the manner provided for under Rules 76 & 71 et seq. of the CPUC's Rules of Practice and Procedure. The amount of the legal fees and costs for which UCAN will seek Commission approval will not exceed \$50,000."

In determining whether or not UCAN made a significant contribution to the Commission's resolution of settled issues, we will give no weight to the quoted language from the Settlement Agreement. The parties to the Settlement have stated that the agreement is not severable. We do not want an intervenor's ability to receive compensation to be dependent on its agreement to any particular terms in the settlement documents. There should be no temptation for an intervenor to agree to certain terms affecting the greater body of ratepayers in exchange for the support of the other parties for an eventual intervenor compensation request. We are only interested in direct evidence of the intervenor's actual contribution to the decision.

An intervenor's ability to receive compensation is independent of its decision to sign a settlement agreement. If it does not sign and chooses to contest a settlement, the level of its involvement in analyzing and advocating various issues will be clear. If it signs, it still must demonstrate its engagement in the issues. In our efforts to expand the use of alternatives to litigation, we are seeking the best ways to create the indifference concerning compensation that will allow for unencumbered involvement in negotiations.

Based purely upon the substantive merits of UCAN's compensation showing, however, we believe it has justified the \$50,000 it requests.

As set forth in Appendix A of its request, UCAN seeks reimbursement for cost incurred by UCAN for expert testimony of O'Rourke and Associates and attorneys' hours. The amount of UCAN's claimed costs for expert and attorney fees alone exceed \$50,000 by a substantial margin. UCAN's attorneys' fees range between \$43,895.50 and \$47,071.50 depending upon the hourly rate assigned to each attorney. UCAN's expert witness costs amount to \$20,116.43. In total, UCAN's compensable expenses exceed \$64,000.

UCAN computes compensable expenses for Michael Shames' hours at a rate of \$175 per hour, and for Lisa Briggs at \$120 per hour.

Michael Shames has most recently been awarded \$165 per hour by this Commission during 1993. (See D.94-01-003.) This is the rate adopted for his work during 1993. He has not been compensated for 1994 work. As most of the work in this case was during 1994, UCAN claims that compensation at the rate of \$175 is reasonable.

Lisa Briggs has been compensated at a rate of \$100 per hour for work done in 1993. At the time Briggs had no experience in cellular matters. However, for the work performed in 1994, Briggs had almost two years' experience in cellular issues. Moreover, as Associate Counsel on auto insurance issues, she has received compensation from the California Department of Insurance for legal work performed before that agency at a rate of \$120 per hour. UCAN claims that compensation at a rate of \$120 per hour for Briggs in this case is reasonable.

UCAN also provides a detailed accounting of the hours spent on the proceeding by Shames and Briggs. Based upon the hourly rate which UCAN claims is fair for this proceeding compared to rates at which it has been compensated in past proceedings, the following range of expenses results:

Based purely upon the substantive merits of UCAN's compensation showing, however, we believe it has justified the \$20,000 it requests.

**Summary of Claimed Expenses  
For Attorneys' Fees**

	Total Hours	Total Expense
For Michael Shames @ \$165/hr.	162.9	\$26,878.50
@ \$175/hr.		\$28,507.50
For Lisa Briggs @ \$100/hr.	154.7	\$17,017.00
@ \$120/hr.		\$18,564.00

UCAN also incurred costs for expert witness and consulting fees, as supported by invoiced billings from O'Rourke & Company, summarized below:

Staff	Hours	Hourly Rate	Extended Amount
O'Rourke	107.25	150.00	\$16,087.50
Nordstrom	64.60	60.00	3,876.00
<b>Total Professional Fees</b>			<b>\$19,963.50</b>
<b>Out-of-pocket Expenses</b>			<b>152.53</b>
<b>Total Project Cost</b>			<b>\$20,116.03</b>

A decision whether to increase the previously authorized hourly rate is not essential in this compensation request due to the \$50,000 cap to which UCAN limits its request. Even if we apply only the hourly rates approved in 1993 for the work of Shames and Briggs, the resulting hours, together with other expert witness costs, well exceed \$50,000.

In summary, UCAN's request for a \$50,000 compensation award is reasonable and should be approved. Because Shames served as both attorney and expert in this case, UCAN would normally have sought an adder to his hourly rate based upon efficiencies of the dual role. However, as its \$50,000 compensation cap has been fully surpassed at the unenhanced rate, UCAN does not require a ruling on the level of an adder.

without unnecessary delay.

Findings of Fact

1. UCAN is eligible to file a request for compensation in this proceeding, and it made a timely request of \$50,000 for its contributions to D.95-03-015.

2. UCAN made significant contributions to D.95-03-015.

3. Shames spent 162.9 hours and Briggs spent 154.7 hours assigned to this proceeding between March 25, 1993 and March 23, 1995.

4. Shames was most recently awarded \$165 per hour by this Commission for work done in 1993 and Briggs was awarded \$100 per hour for work done in 1993.

UCAN incurred additional costs of \$20,116 for expert witness and consulting fees for O'Rourke & Company based on 107.25 hours billed at \$150 per hour and 647.60 hours billed at \$60 per hour, plus \$152 in out-of-pocket expenses.

Even without making a finding on whether the 1993 rates for Shames and Briggs should be increased, UCAN justified total legal expenses of \$43,895.50.

7. UCAN has justified its request for an award in excess of \$50,000 in this proceeding.

8. Because UCAN seeks an award capped at \$50,000, it is not necessary to make a determination on the reasonableness of UCAN's requested increase in hourly rates over 1993 levels.

Conclusions of Law

1. UCAN is eligible for compensation in this proceeding.

2. USWC should be ordered to pay UCAN \$50,000 plus applicable interest within 30 days of the effective date of this order for attorney/witness fees and other miscellaneous costs for UCAN's contribution to D.95-03-015.

3. This order should be effective today since USWC does not object to payment of an award, and UCAN should be compensated without unnecessary delay.



O R D E R

IT IS ORDERED that:

1. Utility Consumers Action Network (UCAN) is awarded \$50,000, plus applicable interest, in compensation for its contributions to Decision 94-03-050.
2. US West Cellular of California shall, within 30 days of the effective date of this order, pay the sum of \$50,000 to UCAN, plus interest at the rate earned on prime, three-month commercial paper, as reported in the Federal Reserve Statistical Release, G-13.
3. Interest shall accrue on the award beginning 75 days after UCAN filed its compensation request (March 23, 1995), and continuing until full payment is made.

This order is effective today.

Dated July 19, 1995, at San Francisco, California.

DANIEL Wm. FESSLER  
President  
P. GREGORY CONLON  
JESSIE J. KNIGHT, JR.  
HENRY M. DUQUE  
Commissioners

I CERTIFY THAT THIS DECISION  
WAS APPROVED BY THE ABOVE  
COMMISSIONERS TODAY.

*Wesley Franklin*  
Acting Executive Director