

Decision 97-03-009 March 7, 1997

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Michael and Kathleen Lyon,

Complainant,

vs.

Matrix Telecom,

Defendant.

ORIGINAL

(ECP)

Case 93-06-051
(Filed June 17, 1993)

Investigation on the Commission's Own Motion and Order to Show Cause Why Matrix Telecom, a Long Distance Carrier, Should Not Be Held in Contempt for Failure to Appear and Fined for Violating Its Tariff.

Investigation 94-03-020
(Filed March 9, 1994)

U-5227-C.

OPINION DENYING COMPENSATION FROM THE ADVOCATES' TRUST FUND

This order denies the request of Michael and Kathleen Lyons for compensation from the Advocates' Trust Fund for their efforts in this investigation and for an unspecified amount of additional work related to the rehearing of portions of Decision (D.) 94-03-045. However, the Lyons may pursue a finding of eligibility and (if eligible) a request for compensation under the Commission's Intervenor Compensation Program.

Background

The Lyons filed a complaint against Matrix on June 17, 1993, alleging that Matrix had unlawfully switched one of the Lyons' business lines to its long distance service. In D.94-03-045, the Commission found in favor of the Lyons and ordered Matrix to refund the difference between Matrix' rates and those of the Lyons' selected carrier. In addition, the Commission issued an Order to Show Cause and Investigation to

determine whether or not Matrix should be fined for slamming-related tariff violations, held in contempt for failure to participate in the complaint proceeding, and divested of its operating authority. Subsequently, in D.94-07-069, the Commission recalendared three issues for further hearing:

1. The status of out-of-state regulatory proceedings in which Matrix has been named and their relevance, if any, to this matter.
2. Whether or not Matrix should be required to mail the earlier decision to its past and current California customers.
3. Whether or not interest should be added to the reimbursements ordered in D.94-03-045.

The Commission consolidated the complaint with the investigation in order to consider these issues.

In D.95-03-040, the Commission granted the Lyons \$17,883 in reimbursement from the Advocates' Trust Fund for their participation in the expedited complaint proceeding. Now, the Lyons seek an additional \$96,078.69 for their participation in the consolidated dockets.

Discussion

As we stated in D.95-03-040, the Advocates' Trust Fund is designed especially to provide compensation where it might not otherwise be available, for example, through our intervenor compensation program as set forth in Rule 18.8. While the Commission found that the Lyons' earlier activities were arguably eligible for compensation under the intervenor compensation rules, it was also appropriate for the Lyons to seek funding from the Trust Fund. As we also stated in D.95-03-040, we created the Trust Fund on November 11, 1982 to be used for intervenor fees in "quasi-judicial" complaint cases as defined in *Consumers Lobby Against Monopolies (CLAM) v. Public Utilities Commission*, 25 Cal. 3d 891 (1979). While the initial expedited complaint was such a "quasi-judicial" proceeding, the broader investigation undertaken by the Commission in this consolidated docket is not.

The Trust Fund provides an opportunity to support complainants whose acts of private enforcement stand to benefit many others. This type of additional support is of greatest value in matters such as the Lyons' expedited complaint where the Commission staff and other parties are least likely to devote the resources needed for broader advocacy on behalf of ratepayers. However, the Lyons' complaint was a success, for which they were compensated. One of the ways in which they were successful was by bringing this matter to the Commission's attention and prompting the Commission to open a broader investigation and devote staff resources to help develop an adequate evidentiary record. When this occurred, the proceeding became something other than the discreet, quasi-judicial matter it had once been. Having reached this stage, this proceeding is no longer of the type most likely to benefit from the support of the Advocates' Trust Fund.¹

However, the Lyons can choose to seek eligibility and (if found eligible) compensation under the Commission's intervenor compensation rules. We will permit the Lyons to seek a finding of eligibility within 30 days of the date of this decision. We strongly encourage the Lyons to seek the assistance of the Public Advisor's Office before making such a filing. It is important to keep in mind that in reviewing any such request, we will pay attention to such issues as whether the Lyons have avoided duplication of the efforts of our staff investigators. In addition, the Lyons should be aware that this Commission has previously rejected their proposal to be compensated for lost business opportunities.

¹ It is arguable that the Lyons expended some effort for which it is seeking compensation, here, on activities that relate solely to the initial complaint. The matter of interest charges on reimbursements fits most clearly in this category. However, it is not possible to distinguish hours devoted to this issue from those devoted to the broader questions raised in the consolidated dockets. Regardless, if the Lyons are found eligible for intervenor compensation, they can seek compensation in this area, as well.

Finding of Fact

It is not appropriate for the Lyons to seek compensation for their participation in these consolidated dockets from the Advocates' Trust Fund.

Conclusions of Law

1. The Lyons' Motion for Compensation should be denied.
2. The Lyons should be given an opportunity to seek a finding of eligibility and (if eligible) compensation under the Commission's intervenor compensation program.

O R D E R

IT IS HEREBY ORDERED that:

1. The Motion for Compensation from the Advocates' Trust Fund is denied.
2. No later than 30 days from the date of this decision, Michael and Kathleen Lyons may file a request for a finding of eligibility for intervenor compensation for its participation in these consolidated dockets.
3. Case 93-06-051 and Investigation 94-03-020 are closed.

This order is effective today.

Dated March 7, 1997, at San Francisco, California.

P. GREGORY CONLON
President
JESSIE J. KNIGHT, JR.
HENRY M. DUQUE
JOSIAH L. NEEPER
RICHARD A. BILAS
Commissioners