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Decision 97-12-012 December 3, 1997

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

In the Matter of the Application of Pacific Bell  
for Authority to Increase and Restructure  
Certain Rates of its Integrated Services Digital  
Network Services.

**ORIGINAL**  
Application 95-12-043  
(Filed December 5, 1995)

**OPINION**

This decision grants Utility Consumers' Action Network (UCAN) an award of \$79,068.06 in compensation for its contribution to Decision (D.) 97-03-021.

**1. Background**

D.97-03-021 addressed the December 5, 1995 application by Pacific Bell (Pacific) seeking permanent status and increased rates for its Integrated Services Digital Network (ISDN) services. The decision also considered a complaint against Pacific filed by Compaq/Intel, alleging unreasonable rates, inadequate service, and unreasonable marketing practices. D.97-03-021 granted Pacific's rate increase in part, while imposing service standards designed to address the issues raised by Compaq and other intervenors.

D.97-03-021 was issued following two weeks of hearings in the consolidated proceedings. Prior to the hearings, several parties met to discuss settlement. However, the assigned Administrative Law Judge (ALJ) declined to postpone hearings pursuant to a proposed settlement between Pacific and four other parties because the settlement was protested by other complainants. Nine intervenors were active in the proceeding.

Our decision concluded that ISDN, a service most commonly used to increase the speed of data transmission between computers, has no comparable service and is not offered by competitors. Pacific was nonetheless found eligible for a moderate rate increase in order to recover costs and improve service, subject to alterations in rate design allowing for 200 free hours of off-peak usage to residential ISDN customers. As a

result of service quality concerns expressed by intervenors, we directed that Pacific provide credits for missed installation appointments, discount installation charges for delayed installation beyond the initial period following service requests, and provide credits for repair delays.

UCAN intervened in this proceeding, advocating that the rate increase should be denied and raising service quality issues. UCAN advanced a number of arguments designed to illustrate that Pacific's cost studies were flawed and that the lack of competition in ISDN service created a monopolistic environment rendering a rate increase inadvisable. On March 31, 1997, UCAN filed its Request for Compensation (Request) for its participation in D.97-03-021, seeking \$110,442.06 in fees.

## **2. Requirements for Awards of Compensation**

Intervenors who seek compensation for their contributions in Commission proceedings must file requests for compensation pursuant to Public Utilities (PU) Code §§ 1801-1812. Section 1804(a) requires an intervenor to file a notice of intent (NOI) to claim compensation within 30 days of the prehearing conference or by a date established by the Commission. The NOI must present information regarding the nature and extent of compensation and may request a finding of eligibility.

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

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

costs incurred by the customer in preparing or presenting that contention or recommendation."

Section 1804(e) requires the Commission to issue a decision which determines whether or not the customer has made a substantial contribution and the amount of compensation to be paid. The level of compensation must take into account the market rate paid to people with comparable training and experience who offer similar services, consistent with § 1806.

**3. NOI to Claim Compensation**

UCAN timely filed its NOI after the first prehearing conference and was found to be eligible for compensation in this proceeding by a ruling dated May 20, 1996. UCAN submitted its request for compensation on March 31, 1997, well within the allotted 60 days following issuance of D.97-03-021 on March 11, 1997.

**4. Contributions to Resolution of Issues**

UCAN believes that while the Commission did not adopt its ultimate recommendations, many of its legal contentions were reflected in the positions adopted. Although UCAN sought rejection of the rate increase, UCAN also argued for action addressing service quality issues. UCAN points to its expert testimony demonstrating lack of competition within the market for ISDN services, flawed cost studies by Pacific, and high installation charges. UCAN also notes its presentation of witnesses testifying to the inadequacy of customer service for ISDN. Finally, UCAN contends that its argument for rejection of all rate increases until Pacific could demonstrate improved customer service was reflected in the Commission's grant of only part of the requested rate increase and its implementation of specific guidelines addressing customer services concerns.

We agree that UCAN contributed substantially to this proceeding. UCAN's arguments were useful in examining the market for ISDN as well as problems with Pacific's cost studies, issues contributing to a reduction in the amount of the rate increase ultimately granted. UCAN's witnesses contributed by illustrating concerns

regarding delays in installation and repairs, as well as inadequacy of Pacific's customer service representatives. While UCAN called for harsher measures than those the Commission chose to employ in addressing the issues raised with regard to market, rate design and customer service for ISDN, UCAN's efforts were clearly valuable in identifying areas of inquiry and exploring policy options.

**5. The Reasonableness of Requested Compensation**

UCAN requests compensation in the amount of \$110,442.06 as follows:

**Attorney Fees**

Michael Shames					
98.3 hours	X	\$180	=	\$17,694.00	
Barry Fraser					
644.3 hours	X	\$120	=	\$77,316.00	
		<b>Subtotal</b>	=	<b>\$95,010.00</b>	

**Expert Witness Fees and Expenses**

D. Scott Cratty					
96.3 hours	X	\$125	=	\$12,037.50	
		<b>Subtotal</b>	=	<b>\$12,037.50</b>	

**Other Costs**

Travel	=	\$2,055.00	
Photocopying	=	\$415.20	
Postage	=	\$568.16	
Telephone	=	\$171.20	
Overnight delivery	=	\$165.00	
		<b>Subtotal</b>	= \$3,374.56
		<b>TOTAL</b>	= <b>\$110,442.06</b>

**5.1. Reasonableness of Hours Claimed**

After carefully reviewing UCAN's request, we have found it necessary to reduce UCAN's award for several reasons.

UCAN's contributions, although valuable, were substantially duplicated by other parties. UCAN's contentions regarding Pacific's cost studies, caps imposed on off-peak usage, high installation rates and customer service quality were all augmented

by similar arguments from Compaq/Intel, Dirk Hughes-Hartogs, and the Office of Ratepayer Advocates (ORA). UCAN claims that any reduction for such duplication of effort would be unjustified, arguing that "UCAN worked in conjunction with DRA [ORA] and other intervenors in order not to duplicate work....Even though similar arguments on quality of service and cost justification were made by Hughes-Hartogs and Intel, the facts asserted by UCAN's experts—uniquely—were cited in the final decision." (Request, p. 5-6.) However, this assertion fails to account for the fact that multiple parties addressed nearly every argument UCAN advanced, often providing equally useful facts and analyses to support their position. In addition, UCAN argued extensively in areas more thoroughly covered by other parties.

While § 1802.5 allows full compensation for participation "that materially supplements, complements, or contributes to the presentation of another party," we are further directed to administer the statute "in a manner that avoids unproductive or unnecessary participation that duplicates the participation of similar interests otherwise adequately represented . . . ." (§ 1801(f)). UCAN's contribution was not sufficiently unique to justify a full award of compensation.

UCAN's request is also problematic due to the extent and scope of its participation. While UCAN argued effectively, its efforts were out of proportion to the impact of this proceeding on most residential ratepayers. UCAN seeks compensation for 743 hours of attorney work for a proceeding in which hearings lasted only two weeks. Even assuming a substantial amount of prehearing and litigation activity, this is still a far from efficient use of resources, representing more than 18 weeks of work spent full-time on this proceeding. Whether UCAN's excess time is accountable to unnecessary duplication or overpreparation, it is simply too much. UCAN could have established the same positions with far less work.

The intervenor compensation statute was intended to provide compensation for *reasonable* fees of public utility customers participating in Commission proceedings. (§ 1801.) It is worth noting that fees awarded under the statute are ultimately funded by ratepayers. For this reason, it is contrary to public policy to

compensate unlimited participation by interest groups representing extremely small segments of the consumer market. Although some businesses may have a substantial stake in the deployment of ISDN service, most ratepayers do not.

UCAN seeks an extremely sizable award of compensation for activities that do not now directly impact the vast majority of California public utility customers. However, we expect the deployment of high quality, reasonably priced ISDN services will benefit the California economy and, ultimately, ratepayers generally. We saw the outcome of this proceeding as helping us to lay the groundwork for increased residential usage of ISDN services. We expect the availability of this service to help California's economy grow. On balance, it is reasonable to compensate UCAN for its contribution, but, given the points we make above, in an amount lower than UCAN requests.

UCAN requests well over double the estimated compensation for attorney time as reported in its NOI. Such a cost overrun is not in itself grounds for a reduction, provided we have a reasonable explanation for the overrun. However, where a party's participation is duplicative of other parties, an extreme cost overrun should be given greater weight in examining the reasonableness of hours incurred. In the past, the Commission has expressed concern over requests that greatly exceed estimates:

"We do not demand that estimates be realized. Unexpected events...may occur. Notwithstanding, we think it reasonable to expect a closer correlation than was obtained in this claim. Presentation of a budget is not a bureaucratic exercise but rather an integral element of the legislation which sought to balance the benefit of intervenor participation against the financial burden on ratepayers." (D.95-08-041, p. 7.)

UCAN's excess hours over and above those budgeted are symptomatic of an approach that can only be described as overkill.

For these reasons, we will reduce UCAN's award for attorney fees by one-third (or \$31,354) for a total of \$63,656 in attorney fees. We note that this is still a very substantial award, in view of the concerns expressed above. In D.96-05-064, we applied

a 20% reduction to UCAN's award where more than 300 attorney hours were spent in generating a settlement. In the future, UCAN must streamline its advocacy efforts, tailoring them to the proceeding at hand.

Full compensation is claimed for a total of 8 hours spent drafting UCAN's compensation request, 6 hours by Barry Fraser and 2 hours by Michael Shames. We have previously noted that preparation of a compensation request is somewhat administrative in character, capable of completion by support personnel and not justifying compensation at attorney billing rates. (See D.93-04-048, D.93-10-023, D.96-11-040.) While we note here that UCAN has given the majority of the work to its lesser-paid attorney, UCAN's request presented no novel issues warranting full attorney compensation. However, since we limit the award for attorney time as described above, we will not further reduce the award to specifically reflect this adjustment.

#### 5.2. Hourly Rates

UCAN requests an hourly rate of \$180 for the work of attorney Michael Shames in 1996 and 1997, and an hourly rate of \$120 for attorney Barry Fraser. Since we are not applying hourly rates in determining the award for attorney time, we will not address this aspect of UCAN's request.

UCAN requests an hourly rate of \$125 for expert D. Scott Cratty, noting that although he has prior experience before the Commission, a rate has not been established because he has not sought compensation. UCAN contends that Cratty's experience is comparable to that of TURN's analyst Regina Costa, who was awarded an hourly rate of \$125 in 1995. Cratty's resume indicates 12 years' experience in telecommunications and regulatory matters in various capacities at AT&T before joining Murray & Associates. The rate requested is comparable to that of other expert consultants before the Commission and commensurate with Cratty's experience.

**5.3. Other Costs**

UCAN's miscellaneous costs, including travel, lodging, postage, telephone and photocopying, are in keeping with the extent of UCAN's participation in this proceeding. UCAN's requested expenses are reasonable and will be compensated.

**6. Award**

We award UCAN \$57,912.06, calculated as summarized below:

**Attorney Fees**

Michael Shames  
Barry Fraser

Subtotal = \$63,656.00

**Expert Witness Fees and Expenses**

D. Scott Cratty  
96.3 hours

X \$125 = \$12,037.50  
Subtotal = \$12,037.50

**Other Costs**

Travel = \$2,055.00  
Photocopying = \$415.20  
Postage = \$568.16  
Telephone = \$171.20  
Overnight delivery = \$165.00  
Subtotal = \$3,374.56

**AWARD = \$79,068.06**

Consistent with previous Commission decisions, we will order that interest be paid on the award amount (calculated at the three-month commercial paper rate), commencing June 14, 1997, (the 75<sup>th</sup> day after UCAN filed its compensation request) and continuing until the utility makes its full payment of award.

As in all intervenor compensation decisions, we put UCAN on notice that the Commission's Telecommunications Division may audit UCAN's records related to this award. Thus, UCAN must make and retain adequate accounting and other documentation to support all claims for intervenor compensation. UCAN's records should identify specific issues for which it requests compensation, the actual time spent

by each employee, the applicable hourly rate, fees paid to consultants, and any other costs for which compensation may be claimed.

#### **Findings of Fact**

1. UCAN has made a timely request for compensation for its contribution to D.97-03-021.
2. UCAN was found eligible to claim compensation in this proceeding by an ALJ's ruling dated May 20, 1996.
3. UCAN contributed substantially to D.97-03-021.
4. UCAN's participation substantially duplicated that of other parties to the proceeding.
5. UCAN has requested hourly rates for experts that are no greater than the market rates for individuals with comparable training and experience.
6. Since we do not apply the requested hourly rates for attorneys in calculating the award, we come to no conclusion as to their reasonableness.
7. The miscellaneous costs incurred by UCAN are reasonable.

#### **Conclusions of Law**

1. UCAN has fulfilled the requirements of Sections 1801-1812 which govern awards of intervenor compensation.
2. UCAN's unnecessarily extensive use of attorney time and duplicative participation in this proceeding warrants reducing the award of attorney fees by one-third.
3. UCAN should be awarded \$79,068.06 for its contribution to D.97-03-021.
4. This order should be effective today so that UCAN may be compensated without unnecessary delay.

### **O R D E R**

#### **IT IS ORDERED that:**

1. Utility Consumers' Action Network (UCAN) is awarded \$79,068.06 in compensation for its substantial contribution to Decision 97-03-021.

2. Pacific Bell (Pacific) shall pay UCAN \$79,068.06 within 30 days of the effective date of this order. Pacific shall also pay interest on the award at the rate earned on prime, three-month commercial paper, as reported in Federal Reserve Statistical Release G.13, with interest, beginning June 14, 1997, and continuing until full payment is made.

This order is effective today.

Dated December 3, 1997, at San Francisco, California.

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