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MAIL DATE

8/7/98

Decision 98-08-039

August 6, 1998

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

In the Matter of the Application of Pacific Bell (U 1001 C), a corporation for Authority to Increase and Restructure Certain Rates of Its Integrated Services Digital Network Services.

A.95-12-043  
(Filed December 5, 1995)

Compaq Computer Corporation and Intel Corporation.

C.96-02-002  
(Filed February 1, 1996)

**ORDER DENYING REHEARING OF DECISION 98-05-014**

**I. INTRODUCTION**

The instant application challenges an intervenor compensation award granted, in part, to Dr. Dirk Hughes-Hartogs and Mr. Thomas McWilliams (Intervenors) for their contributions to D.97-03-021. In that decision, we addressed the December 5, 1995 application by Pacific Bell (Pacific) seeking permanent status and increased rates for its Integrated Services Digital Network (ISDN) services. We also considered a complaint against Pacific filed by Compaq Computer Corporation and Intel Corporation (Compaq/Intel), alleging unreasonable rates, inadequate services, and unreasonable marketing practices. The decision at issue, D.98-05-014, awarded Intervenors \$41,176 in compensation for their contribution to D.97-03-021.

Intervenors were found to have made a substantial contribution to several of the issues identified in their Request for Intervenor Compensation

(Request). However, due to excessive attorney hours and duplication of efforts, as well as the fact that Intervenor's attorney spent considerable time assisting other parties not eligible for compensation, we ordered a reduction in the award of attorney fees for the cost study issue by one-third; promoting ISDN as a basic service by 100%; and the flat rate issue by 10%. Intervenor subsequently filed an application for rehearing alleging several errors in our decision concerning the reduction of compensation.

We have reviewed each and every allegation of legal error in the application for rehearing and conclude that sufficient grounds for granting rehearing have not been shown.

## II. DISCUSSION

Intervenor first argue that the decision "unfairly characterizes" their Request for Compensation. In particular, Intervenor take issue with the Commission's statement that Intervenor "merely recite areas in the opinion in which their names were mentioned." (See, D.98-5-014, at p. 6.) We find Intervenor's allegation without merit. We repeatedly expressed frustration with Intervenor due to their incomplete and inadequate analysis on the issue of substantial contribution. As we noted in D.98-05-014: "In most instances, we are inclined to deny outright requests that are so lacking in explanation." (D.98-05-014, at p. 6.) Moreover, Intervenor acknowledge in their application that this wording "does not seem to have factored into the amount of the compensation award."

Intervenor further assert that it is legal error for the Commission to disallow a portion of the compensation because one of their recommendations was not adopted. D.98-05-014 denied compensation for attorney hours spent on promoting ISDN as a basic service. We found inefficient use of attorney time on this issue, as we ultimately concluded that a case had not been made for declaring

ISDN a basic service. (See D.98-05-014, at pp. 10-11; Conclusion of Law No. 3.) According to Intervenors, "only the lawful criteria of efficiency and excessive duplication with other parties" may be used in reducing an award. This is simply not true. If Intervenors' argument were correct, then the Commission could never allocate compensation by issue. Contrary to Intervenors' argument, awarding compensation by contention or recommendation is clearly contemplated by Pub. Util. Code section 1802(h), and is supported by years of Commission authority.

Next, Intervenors take issue with the following statement on page 9 of the decision: "As a general matter we find the hours spent by Intervenors' attorney to have been excessive, when compared with the impact of this proceeding on the represented interest." (Emphasis in Application, at p. 4.) Intervenors express concern that this was the reasoning behind the one-third reduction for the cost study issue. Given the Intervenors' emphasis on the last portion of this statement, it appears that they are arguing that the Commission may not determine whether an attorney's hours are excessive by comparing them with the impact the represented interest has on the proceeding.

Intervenors provide no support for their argument. The Commission has been given the authority to award intervenor compensation in a manner that "encourages the effective and efficient participation of all groups that have a stake in the public utility regulation process." (Pub. Util. Code §1801.3(b).) Indeed, how else can we determine whether an intervenor's participation is efficient, except by comparing the hours claimed to the impact the represented interest had on the proceeding at issue? Intervenors' arguments are simply unavailing.

Finally, Intervenors claim that the one-third reduction on the cost study issue was excessive, arbitrary, and based on misunderstandings of Intervenors' efforts. These arguments are without merit. The Commission exercised its best judgement in awarding compensation given the incomplete and

inadequate analysis provided by Intervenors. Intervenors cannot now claim that the Commission misunderstood their efforts.

In reducing the award for the cost study issue, we found considerable overlap between the arguments advanced by Compaq/Intel, UCAN, and Intervenors. We were also particularly troubled by the fact that Intervenors' attorney spent considerable time helping other parties who were not eligible for intervenor compensation. Intervenors have provided no authority for their claim that they should be compensated for this time. The decision provides legitimate reasons for the one-third reduction in attorney fees for hours spent on the cost study issue.

### III. CONCLUSION

Having reviewed each and every allegation of error raised by Intervenors, we conclude that sufficient grounds for rehearing of D.98-05-014 have not been shown.

Therefore, **IT IS ORDERED** that:

1. Rehearing of Decision 98-05-014 is denied.
2. This proceeding is closed.

This order is effective today.

Dated August 6, 1998, at San Francisco, California.

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