

Decision 98-11-041 November 19, 1998

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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

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

Compaq Computer Corporation and Intel Corporation,

ORIGINAL

Complainants,

Case 96-02-002
(Filed February 1, 1996)

vs.

Pacific Bell (U-1001-C),

Defendant.

OPINION

This decision grants Utility Consumers' Action Network (UCAN) an award of \$18,691.68 in compensation for its contributions to Decision (D.) 98-09-071 which found that Pacific Bell (Pacific) failed to submit timely and correct information regarding its Integrated Services Digital Network (ISDN) service quality and to present a witness to explain why the information was filed late.

1. Background

These consolidated proceedings have been the forum for reviewing the rates and service quality for Pacific's ISDN services. ISDN is a technology which improves the local transmission of voice and, more commonly, data. In

D.97-03-021, issued in this proceeding, the Commission found that, unlike some other related services or products, ISDN has been economical for residential and small commercial customers. That decision granted Pacific substantial rate increases and found that its ISDN service quality was inadequate. We therein directed Pacific to improve its service quality in various ways and required it to submit information to us every six months regarding its ISDN customers' satisfaction with ISDN services. This survey information would be used to determine the extent to which our continued oversight would be required.

Subsequently, UCAN sent the assigned Administrative Law Judge (ALJ) a letter expressing concern that the survey information Pacific had provided to the Commission pursuant to D.97-03-021 was incomplete. Shortly thereafter, UCAN filed a motion alleging that Pacific had violated D.97-03-021 and asking the Commission to investigate.

At UCAN's request, the assigned Commissioner and ALJ issued a ruling initiating an investigation of whether Pacific had violated D.97-03-021 and directing Pacific to present witnesses who could respond to questions on the matter. Following hearings, the Commission issued D.98-09-071, finding that Pacific had violated D.97-03-021 and had failed to present witnesses who could respond to the Commission's inquiry, as the ruling required.

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) Codes §§ 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 filed an NOI to claim compensation in this proceeding on March 11, 1996. The assigned ALJ issued a ruling on May 20, 1996 granting UCAN's request for a finding of eligibility for compensation in this proceeding.

4. Contributions to Resolution of Issues

A party may make a substantial contribution to a decision in three ways.¹ The party may offer a factual or legal contention upon which the Commission relied in making a decision.² Or the party may advance a specific policy or procedural recommendation that the ALJ or Commission adopted.³ A substantial contribution includes evidence or argument that supports part of the decision even if the Commission does not adopt a party's position in total.⁴ The Commission has provided compensation even when the position advanced by the intervenor is rejected.⁵

UCAN made a substantial contribution to D.98-09-071. We adopted UCAN's position that Pacific had not complied with a requirement of D.97-03-021 and found that ISDN service was inadequate. D.98-09-071 referred several times to UCAN's contributions to the development of the record. Perhaps more significantly, UCAN brought the matter to our attention and pursued its resolution. As the Commission increasingly focuses its regulatory emphasis on enforcement of rules which apply to hundreds of regulated entities, it will sometimes rely on the efforts of outside parties, such as UCAN and utility competitors, to identify and pursue compliance issues. We commend UCAN for its action in this regard.

¹ Cal. PUC § 1802(h).

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ D.89-03-96 (awarding San Luis Obispo Mothers For Peace and Rochelle Becker compensation in Diablo Canyon Rate Case because their arguments, while ultimately unsuccessful, forced the utility to thoroughly document the safety issues involved).

5. The Reasonableness of Requested Compensation

UCAN requests compensation in the amount of \$18,691.68 as follows:

Michael Shames @ \$185 an hour	\$ 3,311.50
Barry Fraser @ \$125 an hour	<u>14,575.00</u>
Subtotal	\$17,886.50
Other costs, including postage, telephone, copying	\$ 805.18
Total	\$18,691.68

5.1. Hours Claimed

In its filing, UCAN explains that the number of hours requested for attorney work - - over 120 - - is high in this part of this proceeding, commenting that this case should not have engendered as much work as it did. UCAN alleges that Pacific's litigation strategy required considerable time in discovery and after hearings.

UCAN explains it worked closely with other interested parties in order to avoid duplicative contributions in cross-examination, briefing and comments.

UCAN's claimed hours are reasonable under the circumstances and we adopt UCAN's claimed hours accordingly.

5.2. Hourly Rates

Section 1806 requires the Commission to compensate eligible parties at a rate which reflects the "market rate paid to persons of comparable training and experience who offer similar services."⁶

⁶ Cal. PU Code § 1806.

UCAN seeks funding for the work of two attorneys. UCAN seeks compensation for Barry Fraser at an hourly rate of \$125. The requested hourly rate for work accomplished in 1997-1998 is \$5 more than the Commission granted Mr. Fraser for work undertaken in 1996. We find this 4% increase to be reasonable especially in this case where Mr. Fraser was very familiar with issues related to ISDN service. UCAN requests compensation for Michael Shames at an hourly rate of \$185. D.98-08-027 approved this rate for Mr. Shames for work undertaken in the same period. We therefore apply it here.

5.3. Other Costs

UCAN claims \$805.18 for such items as postage, photocopying and telephone calls. This amount is a small percentage of its request and is reasonable in light of the work accomplished in the proceeding.

6. Award

We award UCAN \$18,691.68 for its contributions to D.98-09-071.

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 December 7, 1998, the 75th day after UCAN filed this compensation request and continuing until the utility makes its full payment of award.

Findings of Fact

1. UCAN has made a timely request for compensation for its contribution to D.98-09-071 as set forth herein.
2. UCAN has requested hourly rates that have either already been approved by the Commission or may be considered market rates for individuals with comparable training and experience.
3. The miscellaneous costs incurred by UCAN in this proceeding are reasonable.

Conclusions of Law

1. UCAN has fulfilled the requirements of Sections 1801-1812 which govern awards of intervenor compensation.
2. UCAN should be awarded \$18,691.68 for its contributions to D.98-09-071 in this proceeding.
3. 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. The Utility Consumers' Action Network (UCAN) is awarded \$18,691.68 in compensation for its substantial contributions to Decision 98-09-071.
2. Pacific Bell shall pay UCAN \$18,691.68 within 30 days of the effective date of this order or interest would apply 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 December 7, 1998 and continuing until full payment is made.

3. Application 95-12-043 and Case 96-02-002 are closed.

This order is effective today.

Dated November 19, 1998, at San Francisco, California.

RICHARD A. BILAS

President

P. GREGORY CONLON

JESSIE J. KNIGHT, JR.

HENRY M. DUQUE

JOSIAH L. NEPPER

Commissioners