

Decision 99-02-090 February 18, 1999

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.

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 97-12-012**I. INTRODUCTION**

This application challenges an intervenor compensation award we granted UCAN for its contributions to D. 97-03-021. There, we addressed the application Pacific Bell (Pacific) filed on December 5, 1995, seeking permanent status and increased rates for its Integrated Services Digital Network (ISDN) services. In D. 97-03-021, we also considered a complaint that Compaq Computer Corporation and Intel Corporation (Compaq/Intel) filed against Pacific. That complaint alleged that Pacific charged unjust and unreasonable rates for its ISDN services, provided inadequate support to customers and conducted unreasonable marketing practices.

UCAN intervened in the application and complaint proceedings (hereinafter the ISDN proceeding) by briefing several issues, putting forth expert testimony and cross-examining witnesses on various technical matters. Through its arguments, UCAN: 1) provided valuable information on the status of the

market for ISDN services, 2) illuminated problems with Pacific's costs studies and concerns regarding delays in installation and repairs for ISDN service and 3) identified the inadequacy of Pacific's customer service representatives. For its participation in the ISDN proceeding, we awarded UCAN \$79,068.06 in compensation.

In D. 97-12-012, we concluded that UCAN contributed substantially to the ISDN proceeding. However, we reduced UCAN's award of attorney fees by one-third because we found duplication of efforts among UCAN, Compaq/Intel, Dr. Dirk Hughes-Hartogs and Mr. Thomas McWilliams (Dirk Hughes) and the Office of Ratepayer Advocates (ORA) (hereinafter the Intervenors), as well as excessive attorney hours and unreasonable participation.¹ UCAN subsequently filed an application for rehearing alleging several errors in our decision concerning the reduction of compensation.

II. DISCUSSION

First, UCAN asserts that its participation did not substantially duplicate that of Compaq/Intel, Dirk Hughes and the ORA because Intervenors "took specific actions to avoid duplicative efforts." (Application of UCAN for Rehearing of D. 97-12-012 (hereinafter *Rehearing*), at p. 2.) For example, UCAN points out that Intervenors conducted several telephone conference calls, held numerous informal discussions in person and established an e-mail mailing list to exchange information and coordinate litigation activities. (*Id.*, Declaration of Richard Kashdan, para. 5.)

With respect to intervenor contribution in Commission proceedings, we have stated that we expect intervenors to participate efficiently, will reward intervenors who achieve extraordinary efficiencies and will try to ensure that our policies promote efficient and effective participation for all intervening parties.

¹ UCAN sought an award of \$110,442.06. We reduced UCAN's award by \$31,374.

(D. 98-04-059, at p. 25; see, e.g., D. 95-03-066, where we awarded intervenors efficiency adders for extraordinary efficiencies.) Although it is clear that Intervenor attempted to coordinate efforts and avoid duplicative labor, we do not believe Intervenor achieved their goal.

In D. 97-12-012, we pointed to four areas of argument—Pacific’s cost studies, caps imposed on off-peak usage of ISDN service, high ISDN installation rates and customer quality service issues—where we found substantial overlap among Intervenor’s work. In two other decisions dealing with the ISDN proceeding, we also concluded that there was substantial duplication among Intervenor’s participation. In D. 98-05-014, at p. 9, we found “substantial duplication and inefficient use of resources by all the parties.” In D. 98-08-039, at p. 4, we found “considerable overlap between the arguments advanced by Compaq/Intel, UCAN, and Intervenor” with respect to the cost studies issue. Nothing in our review of the record here leads us to conclude otherwise in this decision.

We also disagree with UCAN’s assertion that full compensation for its participation is just because Intervenor avoided duplicative efforts by dividing the issues among themselves to make the most efficient use of their resources. (See, Opening Brief of Dirk Hughes, at pp. 12-20; Opening Brief of the ORA, at pp. 11-12; Opening Brief of Compaq/Intel, at pp. 28-53; and Opening Brief of UCAN, at pp. 40-48, for evidence of inefficient participation with respect to analysis of Pacific’s cost studies.)

In light of the duplication in labor, our reduction of UCAN’s award is legally sound. California Public Utilities Code Section 1801.3 (f) mandates that we administer intervenor compensation “in a manner that avoids unproductive or unnecessary participation that duplicates the participation of similar interests.” Furthermore, our practice is consistent with the law. In past decisions, we have

reduced the amount of compensation awarded on the basis of duplication of contributions by intervenors. (See, e.g., D. 88-12-085, D. 91-12-055, D. 93-06-022 and D. 96-06-029; see, also, D. 96-08-040, at p. 24, "full compensation is not guaranteed...when significant duplication exists.")

Next, UCAN argues that its participation is unique, and thus should be fully compensated, for two reasons. First, UCAN states that it was the only party to develop an alternative cost study proposal and that Intervenor "relied heavily" on UCAN's cost study analysis in their arguments. (*Rehearing*, at p. 3.) Second, UCAN argues that it was the only party to present "direct evidence of residential customer service and service quality problems" and to argue "extensively for the imposition of service quality standards as a condition of the rate increase." (*Rehearing*, at p. 4.)

We have previously concluded that Intervenor's participation in the ISDN proceeding was not sufficiently unique to justify full compensation. (See, D. 97-12-012, at p. 5, where we found that "UCAN's contribution was not sufficiently unique to justify a full award of compensation"; see, also, D. 98-05-014, where we reduced by one third an intervenor's award even though the intervenor made an integral impact in the ISDN proceeding when forcing Pacific "to admit that it had used old cost figures as the basis for its proposed increase.") Thus, we believe UCAN's unique contribution argument lacks merit.

UCAN also argues that we incorrectly concluded that "UCAN's attorney hours were out of proportion to the impact of the proceeding and were the result of overpreparation." (*Rehearing*, at pp. 4-5.) The intervenor maintains that we failed to consider "various complicating factors which necessitated a higher than normal number of hours to adequately participate in this proceeding." (*Id.*) UCAN's assertion is without merit. In D. 97-12-012, at p. 5, we stated that UCAN

did not make efficient use of resources “even assuming a substantial amount of prehearing and litigation activity.”

Finally, UCAN argues that we were incorrect in reducing UCAN attorney compensation, in part, because we concluded that public policy disfavors the compensation of “unlimited participation by interest groups representing extremely small segments of the consumer market.” (*Rehearing*, at p. 6.) We disagree. Commission policy dictates that the cost of intervenor participation should bear a reasonable relationship to the benefits realized through such participation. (D. 98-04-059, at p. 56.) Because we found in D. 97-12-012, at p. 6, that UCAN seeks “an extremely sizable award of compensation for activities” not “now directly impact[ing] the vast majority of California public utility customers,” the reduction in UCAN’s award was appropriate.

We have reviewed the allegations of error UCAN raises and conclude that UCAN has not shown sufficient grounds for rehearing of D. 97-12-012.

Therefore, **IT IS ORDERED** that:

1. Rehearing of D.97-12-012 is denied.
2. This proceeding is closed.

This order is effective today.

Dated February 18, 1999, at San Francisco, California.

RICHARD A. BILAS
President
HENRY M. DUQUE
JOSIAH L. NEEPER
Commissioners