

Decision **ALTERNATE PROPOSED DECISION OF COMMISSIONER PETERMAN**
(Mailed 7/28/14)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's Own Motion into the Operations, Practices, and Conduct of Comcast Phone of California, LLC (U5698C) and its Related Entities (Collectively "Comcast") to Determine Whether Comcast Violated the Laws, Rules, and Regulations of this State in the Unauthorized Disclosure and Publication of Comcast Subscribers' Unlisted Names, Telephone Numbers, and Addresses.

Investigation 13-10-003
(Filed October 3, 2013)

DECISION GRANTING LEAVE TO THE GREENLINING INSTITUTE AND THE CONSUMER FEDERATION OF CALIFORNIA TO FILE A NOTICE OF INTENT TO CLAIM INTERVENOR COMPENSATION

1. Summary

This decision responds to the July 2, 2014 Assigned Commissioner's Ruling on whether the Greenlining Institute (Greenlining) and the Consumer Federation of California (CFC) are permitted to file a notice of intent (NOI) to claim intervenor compensation. Due to an inadvertent calendaring error, CFC and Greenlining were respectively one day and two days late in filing their NOIs.¹

¹ Public Utilities Code Section 1804(a)(1) states a party seeking intervenor compensation shall file an (NOI with the Commission within 30 days of the prehearing conference (PHC).

Consistent with rules of statutory interpretation and the language in Public Utilities Code (Pub. Util. Code) Section 1804(a)(1), the Commission grants CFC and Greenlining leave to file an NOI as a motion to do so was filed within 30 days of the second PHC. Further, granting leave for the filing of an NOI within 30 days of the second PHC is a reasonable interpretation that is in accord with the legislative intent under Pub. Util. Code § 1801.3(b), to encourage the effective and efficient participation of intervenors. This will avoid a narrow interpretation of Pub. Util. Code § 1804(a)(1) that would thwart this specific intent of the Legislature. We find that CFC and Greenlining should have been permitted to file an NOI after the second PHC and that the Ruling denying Greenlining's motion to file after this PHC was in error. Accordingly, we reverse the ALJ's June 11, 2014 Ruling and permit CFC and Greenlining to file an NOI to seek compensation within 30 days of the issuance of this decision. If submitted, CFC and Greenlining's filings will be considered timely and within 30 days of the second PHC, with respect to this proceeding only. However, granting leave to file a NOI does not necessarily guarantee an award of compensation. CFC and Greenlining must make a substantial contribution to the Commission's decision in this proceeding as set forth in Pub. Util. Code § 1803. In addition, if CFC or Greenlining duplicate the efforts of other parties by taking the same approach to the same issues, then the Commission could reduce the amount of compensation ultimately awarded.

2. Background

The first Prehearing Conference (PHC) in this case was held on January 9, 2014. Parties' Notice of Intent (NOI) to seek intervenor compensation was due

on February 10, 2014.² On February 11, 2014 Consumer Federation of California (CFC) filed a motion for leave to late file an NOI due to an inadvertent calendaring error. On February 12, The Greenlining Institute (Greenlining) filed a similar motion.

The Administrative Law Judge (ALJ) denied CFC and Greenlining's motion (by rulings dated February 21 and March 5, respectively) on the grounds that Pub. Util. Code § 1804(a)(1) confers no discretion on the Commission to excuse customers who fail to comply with the statute's strict requirement.

A second PHC was held on May 21, 2014 where Greenlining inquired "whether it would be appropriate for Greenlining to file a new NOI within 30 days of this [second] prehearing conference."³ The ALJ treated the inquiry as a motion for leave to file an NOI and, in a June 11 ruling, denied the motion on the grounds that no new issues were raised during the second PHC and Greenlining did not contend that, within 30 days of the first PHC, it had insufficient time to identify issues on which it planned to participate.⁴

In the interim, on March 19, Greenlining filed a motion seeking interlocutory review of the ALJ's March 5 ruling denying it leave to late-file its NOI. By Assigned Commissioner Ruling dated July 2, 2014 and pursuant to Rule 13.6(c), the request for granting leave to file an NOI was granted and the matter referred to the Commission for its determination.

² Pub. Util. Code § 1804(a)(1).

³ *Second Prehearing Conference Transcript*, May 21, 2014, at 121:21-24.

⁴ *See*, Pub. Util. Code § 1804(a)(1).

3. Discussion

3.1. The Legislative History Confirms that a Notice of Intent for Intervenor Compensation May Be Filed Within 30 Days of Any Prehearing Conference

This decision grants CFC and Greenlining leave to file an NOI based on the fact that parties can file an NOI within 30 days of a second PHC.

Pub. Util. Code § 1804(a)(1) states, in pertinent part,

A customer who intends to seek an award under this article shall, within 30 days *after the* prehearing conference is held, file and serve on all parties to the proceeding a notice of intent to claim compensation. (Emphasis added.)

As a matter of statutory construction, Pub. Util. Code § 1804(a)(1) is ambiguous on whether an NOI has to be submitted 30 days from “the first” PHC or 30 days from “any” PHC. In several cases, California courts have stated that we must refer to the legislative history if the meaning of a statute is ambiguous or is susceptible to more than one meaning.⁵

The legislative history behind Pub. Util. Code § 1804(a)(1) supports the conclusion that an intervenor may file an NOI within 30 days of “any” PHC. In 1992, in order to effectuate the participation of consumer groups in Commission proceedings, Assembly Member Gwen Moore introduced Assembly Bill (AB) 1975 to amend the intervenor compensation statutes with “the enactment of provisions to facilitate the compensation of intervening consumer groups for their expenses.”⁶ As part of the goal of facilitating intervenor participation and compensation, AB 1975 amended specific language in Pub. Util. Code §

⁵ *Halbert's Lumber, Inc. v. Lucky Stores, Inc.*, 6 Cal.App.4th 1233, 1239; and *Long Beach Police Officers Association v. City of Long Beach* (1988) 46 Cal.3d 736, 743.

1804(a)(1).⁷ Prior to the 1992 amendment, Pub. Util. Code § 1804(a)(1) read as follows:

A customer seeking an award under this article shall file, within 30 days *of the first prehearing conference or within 45 days after the close of the evidentiary record*, and serve on all parties to the hearing or proceeding, a request for finding of eligibility for compensation.⁸ (Emphasis added.)

By explicitly replacing the more restrictive requirement that a customer provide notice of intervenor compensation within 30 days “of the first” PHC with broader language requiring a customer to provide notice within 30 days “after the” PHC, the Legislature considered and eliminated the statutory language that would have contained the more restrictive requirement. AB 1975 further loosened restrictions to filing a notice of intervenor compensation by deleting a second option whereby a party could file a notice with the Commission “45 days after the close of the evidentiary record.” In contrast, the Legislature adopted shorter and broader language whereby a party seeking intervenor compensation simply needed to file an NOI within 30 days “after the” PHC, leading to the conclusion that parties can file an NOI within 30 days of “any” PHC. Such a construction would be consistent with the principle that statutory language should be construed in a manner that is consistent with, as opposed to antagonistic with, the intent of the Legislature. Here, the intent to

⁶ *Assembly Bill No. 1975, 1992 Cal ALS 942.*

⁷ *Id.*

⁸ Pub. Util. § 1804(a)(1) (Pre-1992 Amendment).

facilitate intervenor participation and compensation is stated within AB 1975's legislative history.⁹

Furthermore, in line with the Legislature's intent to promote participation in proceedings, the Commission has historically portrayed to parties that intervenors are permitted to file their NOIs within 30 days of "a" PHC, and not "the first" PHC. The Commission's Form for a Notice of Intent to Claim Intervenor Compensation, available on the Commission's website, clearly states that a party's NOI may be filed within 30 days after "a" PHC.¹⁰

For the reasons stated above, we grant leave to CFC and Greenling to file a NOI to claim intervenor compensation.

3.2. Granting Leave for the Filing of a Notice of Intent Harmonizes Legislative Intent with the Language in Public Utilities Code Section 1804(a)(1)

If the intervenor compensation statutes are viewed as a whole, granting leave to CFC and Greenlining to file an NOI within 30 days of the second PHC is a reasonable interpretation that harmonizes legislative intent under Pub. Util. Code § 1801.3(b) with the language in Pub. Util. Code § 1804(a)(1). This would avoid a restrictive interpretation of Pub. Util. Code § 1804(a)(1) that would be inconsistent with the Legislature's intent.

Pub. Util. Code § 1801.3(b) states that it is the Legislature's intent that the intervenor compensation program "shall be administered in a manner that encourages the effective and efficient participation of all groups that have a stake

⁹ See, *Assembly Bill No. 1975*, 1992 Cal ALS 942.

¹⁰ *Form A: Blank Notice of Intent to Claim Intervenor Compensation*, Revised May 2014 at 3, available at: <<http://www.cpuc.ca.gov/NR/ronlyres/A827F618-4F22-4D7C-9654-7E8E6C4A3D8C/0/UpdatedNoticeofIntentForm0614.docx>>.

in the public utility regulation process.” In Decision (D.) 98-04-059, the Commission adopted the Legislature’s intent mentioned above and stated that, when administering the intervenor compensation program, “The Commission should encourage the presentation of multiple points of view, even on the same issues” and “[c]ooperation among intervenors should be encouraged where feasible and appropriate.”¹¹ In addition, “the [C]ommission observed that the intent of the [intervenor compensation] program is to assure the availability of compensation to those deserving parties advocating customer interests that otherwise would go un- or under-represented.”¹²

Granting leave to CFC and Greenlining to file a NOI within 30 days of the second PHC would certainly encourage participation in the current proceeding and assure that all points of view are heard as both parties represent customer interests that would otherwise go underrepresented or unrepresented.

The current proceeding relates to Comcast’s release of approximately 74,000 California residential subscribers’ phone numbers and private customer information as well as whether Comcast’s activities violated privacy rights under state law. The Legislature and the Commission had a clear intent to encourage the effective and efficient participation of all groups in a complex case that affects a broad range of California customers, such as the present Order Instituting Investigation.

Viewing Pub. Util. Code §§ 1801.1(b) and 1804(a)(1) as a whole, it must be concluded that the Legislature did not intend to preclude the efficient and effective participation of intervenors by restricting the filing of an NOI to within

¹¹ *Re Commission’s Intervenor Compensation Program* (1998) 79 CPub. Util.C 2d 642 [D.98-04-059].

¹² *Id.* at 630, 648.

30 days of the first PHC. Instead, granting leave for the filing of an NOI within 30 days of any PHC is a reasonable interpretation that is in accord with legislative intent. This interpretation harmonizes the provisions of the statutes and is the most reasonable.

4. Reduction of Comment Period

Pursuant to Rule 14.6(b) of the Commission's Rules of Practice and Procedure, all parties stipulated to reduce the 30-day public review and comment period required by Section 311 of the Public Utilities Code to 11 days. Pursuant to the parties' stipulation, comments in support of the Alternate Proposed Decision were filed by TURN on August 7, and by Greenling on August 8, 2014.

5. Assignment of Proceeding

Carla J. Peterman is the assigned Commissioner and Dan Burcham is the assigned ALJ for this proceeding.

Findings of Fact

1. On January 9, 2014, the ALJ held the first prehearing conference in this proceeding.
2. Parties' NOI to file for intervenor compensation was due February 10, 2014 under Pub. Util. Code § 1804(a)(1).
3. On February 11, 2014, the CFC filed a motion for leave to late-file a notice of intent due to an inadvertent calendaring error.
4. On February 12, 2014, Greenling filed a motion for leave to late-file an NOI due to an inadvertent calendaring error.
5. The ALJ denied the motion by the CFC on February 21, 2014 by Ruling. The ALJ denied the motion by Greenling on March 5, 2014 by Ruling. In both Rulings the ALJ stated that § 1804(a)(1) of the Pub. Util. Code confers no

discretion on the Commission to excuse intervenors who fail to file an NOI within 30 days of the PHC.

6. On March 19, 2014, Greenlining filed a motion seeking interlocutory review of the ALJ's March 5, 2014 Ruling denying Greenlining's late-filed NOI.

7. On May 21, 2014 the ALJ held a second PHC.

8. At the May 21, 2014 PHC, Greenlining inquired whether it would be appropriate to file a new NOI within 30 days of the second PHC.

9. On June 11, 2014, the ALJ denied Greenlining's motion to file a notice of intent within 30 days of the second PHC. The ALJ interpreted Pub. Util. Code § 1804(a)(1) as allowing a notice of intent only within 30 days of the first PHC.

Conclusions of Law

1. Under Pub. Util. Code § 1804(a)(1), an intervenor shall file an NOI to claim compensation within 30 days after the PHC is held.

2. Pub. Util. Code § 1804(a)(1) is ambiguous on whether an NOI has to be submitted 30 days from "the first" PHC or 30 days from "any" PHC.

3. The legislative history behind Pub. Util. Code § 1804(a)(1) supports the conclusion that an intervenor may file a notice of intent to claim compensation within 30 days of "any" PHC.

4. Under Pub. Util. Code § 1801.3(b), it is the Legislature's intent that the intervenor compensation program be administered in a manner that encourages the effective and efficient participation of all groups that have a stake in the public utility regulation process.

5. In D.98-04-059, the Commission stated its intent that when administering the intervenor compensation program it should encourage the presentation of multiple points of view. The Commission further stated in D.98-04-059 that the

Commission should encourage cooperation among intervenors where feasible and appropriate.

6. Viewing Pub. Util. Code §§ 1801.1(b) and 1804(a)(1) as a whole, the Legislature did not intend to preclude the efficient and effective participation of intervenors by restricting the filing of an NOI to within 30 days of the first PHC.

ORDER

IT IS ORDERED that:

1. The Greenlining Institute and the Consumer Federation of California are granted leave to file a Notice of Intent to claim intervenor compensation within 30 days of the issuance of this decision.

2. If submitted, Consumer Federation of California's and The Greenlining Institute's filings will be considered timely and within 30 days of the second Prehearing Conference with respect to this proceeding only.

This order is effective today.

Dated _____, at San Francisco, California.