



## I. INTRODUCTION

Mpower's response shows little respect for the Commission, its precedent, and its practices. First, Mpower incorrectly quotes a Commission decision to put forth its assertion that UCAN's claim should be disallowed as a whole. Second, it asserts that UCAN should have been omniscient as to the outcome of this proceeding and have only put forth arguments upon which Administrative Law Judge McKenzie's ultimately based his decision. UCAN, unfortunately lacking in such omniscience, chooses instead to keep its arguments consistent with the scope of the proceeding as determined by Judge McKenzie and Commissioner Simon in the SCOPING MEMO AND RULING OF ASSIGNED COMMISSIONER AND ADMINISTRATIVE LAW JUDGE. Lastly, UCAN stands by the reasonableness of its intervenor request and its justifications as stated within its request, but will address Mpower's assertion concerning UCAN's reply brief.

## II. MPOWER'S ASSERTION THAT UCAN'S CLAIM SHOULD BE REJECTED IS WITHOUT BASIS

Mpower claims that UCAN has been warned that it must provide an allocation of time among issues when presenting intervenor compensation claims or it will be denied such compensation. This is an incorrect statement on the part of Mpower regarding the decision of the Commission. In Decision 09-05-036, the Commission stated "We advise UCAN that its failure to allocate its time and costs among issues in future claims will result in **disallowances**." (D.09-05-036 at 16 emphasis added). The Commission did not state it would completely deny UCAN any award, but rather that it may have some claims disallowed if its allocations were not

clear. While the oversight on Mpower's part appears minor it has resulted in Mpower making an unsupported argument to the Commission that UCAN would be remiss not to correct.

Mpower's assertion that UCAN should only be compensated for its arguments related to the basis upon which Administrative Law Judge McKenzie made his decision upon is also without basis. UCAN filed its complaint asserting violations of Public Utilities Code Sections 451, 2890, and 2896. UCAN made those allegations based upon the facts it has ascertained and set forth its arguments accordingly. If either Commissioner Simon or Judge McKenzie had determined that any of UCAN's allegations or arguments were without merit, they would have likely eliminated those arguments from the scope of the proceeding. UCAN proceeded with its arguments under the guidance and direction of the Commission and should be reasonably compensated for its time related to all issues within the scope of the proceeding.

### **III. UCAN'S CLAIM IS REASONABLE, CONSISTENT WITH ITS PRIOR CLAIMS FOR COMPENSATION, AND THUS SHOULD BE AWARDED WITHOUT ADJUSTMENT**

UCAN maintains that its claim for intervenor compensation is reasonable and that it adequately justified its claims. UCAN's filed claim in this proceeding is quite similar to its claim for intervenor compensation in C.08-08-026, UCAN v. Sprint Telephony PCS, L.P. for which it was recently awarded compensation in Decision 10-10-018. While UCAN notes that a few of its requests were disallowed by the Commission for what it determined duplicative efforts or non-compensable requests, the Commission did not find UCAN's allocation of time and costs among issues improper. As UCAN has attempted to follow this request methodology it would be unreasonable and inconsistent to disallow claims in one proceeding, while allowing claims in

another. It is again worth noting that the Commission has never completely disallowed UCAN's entire request for compensation where it had made a substantial contribution to the proceeding.

#### **IV. UCAN PROPERLY ASSERTED RULE 1.1 VIOLATIONS**

UCAN believes that it has thoroughly justified its claims for compensation within its Request for Compensation. However, Mpower raises one claim to which UCAN feels inclined to respond to. Mpower asserts that contrary to UCAN's assertions in its Reply Brief that "quite obviously, Mpower did not engage in Rule 1.1 violations by arguing which inferences and conclusions should be reached by the Commission." Mpower would be correct if it had actually been making inferences and drawing conclusions from the stipulated facts, but it was not. Mpower was stating facts that clearly and directly contradicted the facts it had agreed to in the joint stipulation of facts. In making such assertions Mpower was misleading the Commission by artifice and false statements of fact, a direct violation of Rule 1.1. UCAN, in noting these actions, was obligated to inform the Commission to ensure that it did not mislead the Commission by omission. Further, in pointing out where Mpower misstated the facts UCAN was working to ensure that the Commission used the correct stipulated facts to reach its decision. Therefore, it was necessary for UCAN to put forth the same information in its Reply Brief.

#### **V. CONCLUSION**

Ultimately, it is the Commission's decision to determine whether UCAN's Request for Compensation is reasonable. UCAN believes that the Request for Compensation it filed with the Commission is consistent with its past filings and adequately reflects and justifies the costs that UCAN incurred in this proceeding. UCAN, however, feels obliged to point out the misinterpretations and incorrect statements of Mpower. Specifically, UCAN notes, first, that the

Commission did not state it would reject a request for compensation based upon the clarity of its time and cost allocations, rather that it may disallow some of UCAN's claims if the requests were not adequately clear. Second, that UCAN filed Claim for Compensation is consistent with its filed claim in C.08-08-026, for which UCAN was recently awarded compensation without disallowances for its time and cost allocation. Third, that all of the arguments UCAN raised and presented evidence on were held within the scope of the proceeding and UCAN should be reasonably compensated for its time spent on issues within the scope of the proceeding, as one of only two parties within the proceeding. Fourth, with regards to UCAN's Reply Brief, UCAN needed to explain Mpower's misstatement of the facts, as stipulated previously in the case in its Reply. UCAN also was obligated under Rule 1.1 to inform the Commission when a party appears to be misleading the Commission with false statements of facts.

Lastly, Mpower states that its counsel spent significantly less time on this case than UCAN's counsel. However, what Mpower fails to acknowledge is that perhaps if more time was spent to consider the issues presented under California law and Commission rules in the first place, UCAN would not have had to bring this complaint to inform the Commission of Mpower's violations. UCAN would then have been able to preserve not only its own time and resources, but the Commissions' time and resources as well.

UCAN further requests that its compensation request to be supplemented by the hours it took to draft this response, an additional 2 attorney hours at Mr. Neill's 2010 rate.



**PROOF OF SERVICE**

I, Laura Impastato, declare: I am employed in the City and County of San Diego, California. I am over the age of 18 years and am not a party to this action. On September 1, 2010, I electronically served the UCAN's reply to MPower Communications Corp's response to Utility Consumers' Action Network's Request for Intervenor Compensation upon the electronic service list in this case, the defendants in this case, as well as the ALJ.

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Laura Impastato

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