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**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Order Instituting Investigation on the Commission's Own Motion Into the Planned Purchase and Acquisition by AT&T Inc. of T-Mobile USA, Inc., and its Effect on California Ratepayers and the California Economy.

Investigation 11-06-009  
(Filed June 9, 2011)

**ADMINISTRATIVE LAW JUDGE'S RULING  
REGARDING NOTICE OF INTENT TO CLAIM  
COMPENSATION OF PHILLIP MOSKAL**

**1. Summary**

This ruling responds to the notice of intent to claim compensation filed in this docket by Phillip Moskal pursuant to California Public Utilities Code, Section 1804.<sup>1</sup>

**2. Background – Standards for Notice of Intent (NOI) Review**

Under § 1804(a)(1), “[a] customer who intends to seek an award under this article, shall within 30 days after the prehearing conference (PHC) is held, file and serve on all parties to the proceeding a notice of intent to claim compensation. In cases where no prehearing conference is scheduled...the commission may determine the procedure to be used in filing these requests.”

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<sup>1</sup> Unless otherwise indicated, all future reference to Section means the California Public Utilities Code.

The Order Instituting Investigation itself in Ordering Paragraph 18, dated June 9, 2011, set the date for filing of NOIs as September 6, 2011. This date was extended by ALJ email ruling to September 12, 2011. Phillip Moskal (Moskal) timely filed an NOI on September 12, 2011. No oppositions were filed.

Section § 1804(a)(2) sets forth those items that must be addressed in an NOI. Decision (D.) 98-04-059 provides that the preliminary ruling on eligibility must determine whether the intervenor is a customer, as defined in § 1802(b). The intervenor may qualify as a customer in one of three ways: as a participant representing customers (§ 1802(b)(1)(A)); a representative authorized by a customer (§ 1802(b)(1)(B)); or a representative of a group or organization that is authorized by its bylaws or articles of incorporation to represent the interests of residential customers (§ 1802(b)(1)(C)). Participation in Commission proceedings by parties representing the full range of affected interests is important and assists the Commission in ensuring that the record is fully developed and that each customer group receives adequate representation.

Section 1804(a)(2)(B) provides that only those customers for whom participation or intervention would impose a significant financial hardship may receive intervenor compensation. Section 1802(g) defines “significant financial hardship” to mean “either that the customer cannot without undue hardship afford to pay the costs of effective participation, including advocate’s fees, expert witness fees, and other reasonable costs of participation, or that, in the case of a group or organization, the economic interest of the individual members of the group or organization is small in comparison to the costs of effective participation in the proceeding.”

If the intervenor includes a financial hardship showing in the NOI, the preliminary ruling shall address the showing rather than deferring it to the

request. Section 1804(b)(1) provides that “[a] finding of significant financial hardship shall create a rebuttable presumption of eligibility for compensation in other commission proceedings commencing within one year of the date of that finding.”

In addition to the required assessment of eligibility, the preliminary ruling may address other issues raised by the NOI, such as the nature and cost of planned participation.

### **3. Phillip Moskal’s NOI**

Section 1802(b)(1) defines a “customer” as: (1) a participant representing consumers, customers or subscribers of a utility; (2) a representative who has been authorized by a customer; or (3) a representative of a group or organization authorized pursuant to its articles of incorporation or bylaws to represent the interests of residential or small business customers. (§ 1802(b)(1)(A) through (C).)

Moskal states that he is a current customer of T-Mobile and has been for several years. He also states he is unemployed, low-income, and a single parent, with an economic interest in ensuring his family’s access to affordable, reliable, and innovative mobile telecommunications services. Moskal states that he plans to participate as a consumer advocate for affordable wireless services, representing low-income residents and their families, including those who receive public assistance, and the growing homeless population.

In order to be considered a Category 1 customer, Moskal must demonstrate that more than simple self-interest is motivating his participation in this proceeding. Through his stated intent of representing the perspective of low-income and unemployed individuals in California, Moskal has demonstrated that he is a Category 1 customer.

**4. Itemized Estimate of Expected Compensation**

Section 1804(a)(2)(A)(ii) and Rule 17.1(c) require an NOI to provide an estimate of the total compensation the intervenor expects. Moskal’s NOI satisfied this requirement by providing the following table:

<u>Name</u>	<u>Item</u>	<u>Total</u>
Phillip Moskal	200 hrs. @150/hr.	\$30,000
Total Estimated Cost		\$30,000

Rule 17.1(c) requires an intervenor’s NOI to separately state the expected budget for participation on each major issue. A portion of the estimated compensation may also be designated as general costs that are not allocable to any particular issue. Although Moskal’s NOI has identified the issues on which he plans to participate, it fails to estimate its costs by major issue. I remind Mr. Moskal of the requirement to furnish this information to the Commission if he submits a request for compensation at a later date.

Moskal reasonably presents his estimated costs of participation.

**5. Planned Participation**

Moskal states that he intends to participate in the proceeding by attending workshops and public participation hearings in San Diego County, watching video and reading transcripts of more distant workshops and public participation hearings, analyzing and researching the documents provided by AT&T and other parties, filing briefs and comments, and collaborating with other parties in this proceeding. Moskal plans to provide his perspective as an unemployed, low-income customer to analyze the probability and effects of AT&T’s promised job creation if the merger is approved.

Moskal reasonably states his planned participation.

**6. Intervenor Cost Estimates and Duplication of Effort**

Six intervenors have filed NOIs seeking eligibility for intervenor compensation in this case. The combined estimated costs of those interventions is presently at \$672,375 which is a large sum, especially considering the potential for overlap in interests of The Center for Accessible Technology, The Greenlining Institute, Utility Consumers' Action Network, New Media Rights, Private Rights Clearinghouse, The Utility Reform Network, Black Economic Council, the National Asian American Coalition, the Latino Business Chamber of Greater Los Angeles, and Moskal. Although there is no mention in Moskal's NOI of his intentions to collaborate with other parties with similar interests, I reiterate in this ruling that each intervenor will have the burden to demonstrate the reasonableness of the costs it may ultimately claim for compensation and to demonstrate that its efforts were not unreasonably duplicative of the work of other parties.

Part of the burden is that each intervenor must demonstrate that it has taken all reasonable steps to coordinate its participation with that of other similarly-interested parties. Each intervenor is responsible to understand the types of activities that are eligible for compensation and other policies regarding intervenor compensation, and to coordinate with other parties to minimize duplication of effort. All of the intervenors listed above, plus Moskal, are under an obligation to meet and confer with each other and other parties likely to take the same or similar positions in this case and coordinate with other intervenors, and distinguish their participation from the work of other intervenors.

## **7. Significant Financial Hardship**

Significant financial hardship means:

...either that the customer cannot afford, without undue hardship, to pay the costs of effective participation, including advocate's fees, expert witness fees, and other reasonable costs of participation, or that, in the case of a group or organization, the economic interest of the individual members of the group or organization is small in comparison to the costs of effective participation in this proceeding.<sup>2</sup>

A Category 1 customer must show that he cannot afford to pay the costs of participation without undue hardship. Moskal states that he is low-income and unemployed currently. A party may defer documentation of its showing of "significant financial hardship" until submitting a request for intervenor compensation. Moskal makes no such showing in his NOI. As such, this showing must be addressed in Moskal's compensation claim, if filed at a later date.

Moskal has met the preliminary criteria for eligibility to claim intervenor compensation, subject to later proof of significant financial hardship.

## **8. Other**

The fact that an intervenor is eligible to request compensation in no way ensures that he will receive compensation. Compensation is limited to activities which result in a "substantial contribution" to the Commission's decision because the decision has "adopted in whole or part one or more factual contentions, legal contentions, or specific policy or procedural recommendations

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<sup>2</sup> § 1802(g).

presented by the 'customer'"<sup>3</sup> In addition, all intervenors must keep daily records of time and costs spent on each issue for which it intends to request compensation.

**IT IS RULED**, after consultation with the Assigned Commissioner, that:

1. Phillip Moskal is preliminarily determined to be eligible for compensation in this proceeding subject to later proof of significant financial hardship.
2. A preliminary finding in no way assures compensation.
3. Phillip Moskal shall make every effort to reduce duplication of contribution.

Dated December 15, 2011, at San Francisco, California.

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/s/ JESSICA HECHT  
Jessica Hecht  
Administrative Law Judge

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<sup>3</sup> §§ 1801.3(d). 1802(i).