

Decision \_\_\_\_\_

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

Order Instituting Rulemaking Into  
Implementation of Senate Bill 669 and Assembly  
Bill 1734, as They Affect the Deaf and Disabled  
Telecommunications Equipment and Services  
Program Fund.

Rulemaking 03-03-014  
(Filed March 13, 2003)

**O P I N I O N**

This decision grants the California Coalition of Agencies Serving the Deaf and Hard of Hearing, Inc. (the Coalition) \$3,220.70 in compensation for substantial contributions to Decision (D.) 04-05-031. That decision modified an earlier decision and made changes affecting the Telecommunications Access for the Deaf and Disabled Administrative Committee (the Committee).

**1. Background**

The Commission has previously awarded the Coalition compensation for its substantial contributions to D.03-06-070 and D.04-01-019. One of the issues in that proceeding was the transfer of oversight of the TTY Placement Program from a payphone providers organization to the Committee. The Coalition urged the transfer but the Commission did not order it, believing that a transfer would contravene statutory language. The Commission agreed with the Coalition that there were compelling reasons for a transfer.

Later, Senate Bill (SB) 168 was enacted, effective January 1, 2004, deleting the statutory language that had troubled the Commission. The Coalition then filed a Petition for Modification of D.03-06-070, urging the Commission to order the transfer of the TTY Placement Program and make necessary changes to the charters of support groups. After discussions with staff, the Coalition did not pursue its petition because staff informed it that the Commission intended to reopen the rulemakings to consider changes to D.03-06-070 in light of SB 168.

In March 2004, the Assigned Commissioner issued a ruling reopening Rulemaking (R.) 03-06-014 and R.01-08-002 (the latter involving changes to the charter of Payphone Service Providers Committee), and concurrently issued the draft decision that ultimately became D.04-05-031.

Consistent with the requirement of Pub. Util. Code § 1804(c), the Coalition filed this request for compensation within 60 days of the date of issuance of D.04-05-031. No party has opposed the Coalition's request for compensation.

## **2. Requirements for Awards of Compensation**

Intervenors who seek compensation for their contributions in Commission proceedings must file requests for compensation pursuant to Pub. Util. Code §§ 1801-1812. Pub. Util. Code § 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 Coalition filed a timely NOI in this proceeding.

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 that 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 individuals with comparable training and experience who offer similar services, consistent with § 1806.

### **3. Substantial Contributions**

In evaluating whether a customer made a substantial contribution to a proceeding we look at several things. First, did the ALJ or Commission adopt one or more of the factual or legal contentions, or specific policy or procedural recommendations put forward by the customer? (See §1802(h).) Second, if the customer's contentions or recommendations paralleled those of another party, did the customer's participation materially supplement, complement, or contribute to the presentation of the other party that assisted the Commission in making its decision? (See §§1802(h) and 1802.5.) As described in §1802(h), the assessment of whether the customer made a substantial contribution requires the exercise of judgment.

In assessing whether the customer meets this standard, the Commission typically reviews the record, composed in part of pleadings of the customer and, in litigated matters, the hearing transcripts, and compares it to the findings, conclusions, and orders in the decision to which the customer asserts it contributed. It is then a matter of judgment as to whether the customer's presentation substantially assisted the Commission.<sup>1</sup>

Even where the Commission does not adopt any of the customer's recommendations, compensation may be awarded if, in the judgment of the Commission, the customer's participation substantially contributed to the decision or order. For example, if a customer provided a unique perspective that enriched the Commission's deliberations and the record, the Commission could find that the customer made a substantial contribution.

The Coalition's participation in this proceeding meets the Commission's criteria for determining whether an intervenor has made a substantial contribution to a Commission decision. It is clear that the Coalition's efforts comprised a comprehensive package that directly influenced the outcome of these proceedings. Most of the charter changes proposed by the Coalition were adopted or substantially adopted by the Commission. The Coalition proposed changes to 10 numbered paragraphs in the charters of three support committees, and the changes adopted by the Commission in seven of those paragraphs tracked the language submitted by the Coalition. In two of the other paragraphs, the Commission deleted language in a manner similar to that proposed by the Coalition. The only substantive difference between the Coalition's proposals and the adopted changes in D.04-05-031 was the Commission's addition of a specific

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<sup>1</sup> D.98-04-059, 79 CPUC2d, 628 at 653.

duty in the Committee's charter to review and make recommendations with respect to TTY placement. The Coalition made a substantial contribution to D.04-05-031.

After we have determined that a customer made a substantial contribution and have determined its scope, we then look at whether the compensation requested is reasonable.

#### **4. Reasonableness of Requested Compensation**

The Coalition requests \$3,220.70 for its participation in this proceeding, as follows:

##### **Advocate's Fees**

Kresse	6.95 Hours	X	\$335.00	=	\$ 2,328.25
Kresse	5 Hours <sup>2</sup>	X	\$167.50	=	\$ 837.50
SUBTOTAL				=	\$ 3,165.75

##### **Other Costs**

Copies	=	\$ 27.20
Postage	=	\$ 27.75
SUBTOTAL		= \$ 54.95
TOTAL REQUESTED		= \$ 3,220.70

The components of this request must constitute reasonable fees and costs of the customer's participation that resulted in a substantial contribution. Thus, only those fees and costs associated with the customer's work that the Commission concludes made a substantial contribution are reasonable and eligible for compensation.

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<sup>2</sup> Travel and time spent on Supplemental Request for Compensation.

Also, to assist us in determining the reasonableness of the requested compensation, D.98-04-059 directed customers to demonstrate productivity by assigning a reasonable dollar value to the benefits of their participation to ratepayers. The costs of a customer's participation should bear a reasonable relationship to the benefits realized through their participation. This showing assists us in determining the overall reasonableness of the request.

Next, we must assess whether the hours claimed for the customer's efforts that resulted in substantial contributions to Commission decisions are reasonable. Finally, in determining compensation, we take into consideration the market rates for similar services from comparably qualified persons.

The Coalition does not assign a dollar value to the benefits achieved through its contribution to D.04-05-031. However, we find that the supplemental costs claimed here are outweighed by the value of the Coalition's social contribution on behalf of hearing-impaired persons.

The Coalition has presented its attorney hourly records in its request for compensation. The information reflects the hours devoted to preparation of the Petition for Modification, reviewing the records, and participating in proceedings. Consistent with Commission policy, the Coalition billed half of its attorney rate for time related to preparation of this compensation request and for out-of-town travel time. The hours the Coalition claims are reasonable.

The Coalition requests an hourly rate for Kresse of \$335, a rate found reasonable by the Commission in the earlier compensation request. (D.04-01-019, at 9.) In that decision, the Commission noted that "the work in this proceeding required specialized knowledge and experience not widely available in the legal community." (D.04-01-019, at 9.) This rate remains reasonable.

The Coalition claims \$54.95 in copying and postage expenses associated with its work. We find them reasonable.

### **5. Award**

We award the Coalition \$3,220.70 for its substantial contributions to D.04-05-031. 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 on the 75<sup>th</sup> day after the Coalition filed this compensation request (the 75<sup>th</sup> day is September 16, 2004) and continuing until full payment of the award has been made.

This rulemaking proceeding affected a broad array of utilities and others in the telemarketing field. As such, we find it appropriate to authorize payment of the compensation award from the intervenor compensation program fund, as described in D.00-01-020.

### **6. Waiver of Comment Period**

This is a compensation matter in which the decision grants the relief requested. Accordingly, pursuant to Pub. Util. Code § 311(g)(3), the otherwise applicable 30-day review and comment period is being waived.

### **7. Assignment of Proceeding**

Susan P. Kennedy is the Assigned Commissioner and Timothy Kenney is the assigned Administrative Law Judge in this proceeding.

### **Findings of Fact**

1. The Coalition timely requests supplemental compensation for contributions to D.04-05-031, as set forth herein.
2. The Coalition requests an hourly rate for its attorney that was approved earlier by the Commission.

3. The miscellaneous costs incurred by the Coalition in this matter are reasonable.

**Conclusions of Law**

1. The Coalition has fulfilled the requirements of Pub. Util. Code §§ 1801-1812, which govern awards of intervenor compensation.

2. The Coalition should be awarded \$3,220.70 in compensation for substantial contributions to D.04-05-031.

3. This order should be effective today so that the Coalition may be compensated without unnecessary delay.

**O R D E R**

**IT IS ORDERED** that:

1. The California Coalition of Agencies Serving the Deaf and Hard of Hearing, Inc. (the Coalition) is awarded \$3,220.70 as set forth herein for substantial contributions to Decision (D.) 04-05-031.

2. The award should be paid from the intervenor compensation program fund, as described in D.00-01-020. Interest shall be paid at the rate earned on prime, three-month commercial paper as reported in the Federal Reserve Statistical Release, H.15, with interest beginning on September 16, 2004, and continuing until full payment has been made.

3. This proceeding is closed.

This order is effective today.

Dated \_\_\_\_\_ at San Francisco, California.

**Compensation Decision Summary Information**

<b>Compensation Decision:</b>	
<b>Contribution Decision(s):</b>	D0405031
<b>Proceeding(s):</b>	R0303014
<b>Author:</b>	ALJ Kenney
<b>Payer(s):</b>	Commission

**Intervenor Information**

<b>Intervenor</b>	<b>Claim Date</b>	<b>Amount Requested</b>	<b>Amount Awarded</b>	<b>Reason Disallowance</b>
California Coalition of Agencies Serving the Deaf and Hard of Hearing, Inc.	08/03/2004	\$3,220.70	\$3,220.70	—

**Advocate Information**

<b>First Name</b>	<b>Last Name</b>	<b>Type</b>	<b>Intervenor</b>	<b>Hourly Fee Requested</b>	<b>Year Hourly Fee Requested</b>	<b>Hourly Fee Adopted</b>
J. Kendrick	Kresse	Attorney	California Coalition of Agencies Serving the Deaf and Hard of Hearing, Inc.	\$335	2004	\$335