Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Utility Consumers' Action Network (UCAN), Complainant, vs. MCI Communications Services, Inc., dba WorldCom LLC (U 5378 C) and related entities collectively "MCI," Defendant.	Case 06-10-023 (Filed October 13, 2006)

DECISION GRANTING INTERVENOR COMPENSATION TO UTILITY CONSUMERS' ACTION NETWORK FOR SUBSTANTIAL CONTRIBUTION TO DECISION 08-03-015

This decision awards Utility Consumers' Action Network $19,879.25 in compensation for its substantial contributions to Decision (D.) 08-03-015. This award is a reduction of $4,512.75 (18.5%) from the amount requested due to adjustments in hourly rates, excessive hours and a disallowance for clerical tasks.

Today's award will be paid by MCI Communication Services Inc. and the related entities, collectively known as MCI. A Settlement Agreement between the parties resolved all issues in the complaint, and closes the proceeding.

1. Background

On October 13, 2006, Utility Consumers' Action Network (UCAN) filed its formal complaint with the Commission alleging that MCI Communication Services Inc. (MCI) as early as May 2006, began "cramming"[1] certain customers by erroneously charging particular local service-only customers a long distance-associated "Basic Monthly Fee" and related fees, taxes and surcharges. MCI began its own investigation following the receipt of UCAN's complaint. MCI's investigation revealed that there was a computer coding error that failed to exempt certain customers from being assessed the long distance basic monthly fee. MCI acknowledged that between June 2006 and October 2006 some California customers were erroneously charged a basic monthly fee and related taxes, fees and surcharges.

In November 2006, MCI conducted a credit recovery to ensure that it properly credited for overcharges any customer who experienced these billing errors. MCI issued credits of fees, taxes and surcharges equal to or greater than those previously charged to all its customers impacted by the coding error. MCI has fully credited all customers.

2. Requirements for Awards of Compensation

The intervenor compensation program, set forth in Pub. Util. Code §§ 1801-1812,[2] requires California jurisdictional utilities to pay the reasonable costs of an intervenor's participation if that party makes a substantial

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[1] "Cramming" refers to the submission or inclusion of unauthorized, misleading, or deceptive charges on consumers' local telephone bills.

[2] All subsequent statutory references are to the Public Utilities Code unless otherwise indicated.

contribution to the Commission's proceedings. The statute provides that the utility may adjust its rates to collect the amount awarded from its ratepayers.

All of the following procedures and criteria must be satisfied for an intervenor to obtain a compensation award:

1. The intervenor must satisfy certain procedural requirements including the filing of a sufficient notice of intent (NOI) to claim compensation within 30 days of the prehearing conference (PHC), pursuant to Rule 17.1 of the Commission's Rules of Practice and Procedure (Rules), or at another appropriate time that we specify. (§ 1804(a).)
2. The intervenor must be a customer or a participant representing consumers, customers, or subscribers of a utility subject to our jurisdiction. (§ 1802(b).)
3. The intervenor must file and serve a request for a compensation award within 60 days of our final order or decision in a hearing or proceeding. (§ 1804(c).)
4. The intervenor must demonstrate "significant financial hardship." (§§ 1802(g) and 1804(b)(1).)
5. The intervenor's presentation must have made a "substantial contribution" to the proceeding, through the adoption, in whole or in part, of the intervenor's contention or recommendations by a Commission order or decision or as otherwise found by the Commission. (§§ 1802(i) and 1803(a).)
6. The claimed fees and costs must be reasonable (§ 1801), necessary for and related to the substantial contribution (D.98-04-059), comparable to the market rates paid to others with comparable training and experience (§ 1806), and productive (D.98-04-059).

In the discussion below, the procedural issues in Items 1-4 above are combined and a separate discussion of Items 5-6 follows.

2.1. Preliminary Procedural Issues

Under § 1804(a)(1) and Rule 17.1(a)(1), a customer who intends to seek an award of intervenor compensation must file an NOI before certain dates.

In a proceeding in which a PHC is held, the intervenor must file and serve its NOI between the dates the proceeding was initiated, until 30 days after the PHC is held. (Rule 17.1(a)(1).) In a ruling of November 16, 2006, the Administrative Law Judge (ALJ) set a telephonic PHC for December 14, 2006. UCAN timely filed its NOI on January 12, 2007.

UCAN opted to make its showing of significant financial hardship in its NOI pursuant to Section 1804 (a)(2)(B), which states that:

> The notice of intent may also include a showing by the customer that participation in the hearing or proceeding would pose a significant financial hardship. Alternatively, such a showing shall be included in the request submitted pursuant to subdivision (c).

A finding of significant financial hardship for UCAN was made in a ruling issued by ALJ Bushey in Complaint 05-07-022 dated May 31, 2006. This proceeding commenced within one year of the date of ALJ Bushey's finding, so the rebuttable presumption was applied to this complaint.

No party challenged UCAN's eligibility for compensation in this proceeding, so UCAN's eligibility was conclusive.

Section 1802(b)(1) defines a "customer" as: (A) a participant representing consumers, customers or subscribers of a utility; (B) a representative who has been authorized by a customer; or (C) 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).) On February 9, 2007, the ALJ issued a ruling that found UCAN a customer pursuant to § 1802(b)(1)(B).

Regarding the timeliness of the request for compensation, UCAN filed its request for compensation on May 8, 2008, within 60 days of D.08-03-015 being issued. No party opposed the request. In view of the above, we affirm the ALJ's

ruling and find that UCAN has satisfied all the procedural requirements necessary to make its request for compensation in this proceeding.

3. Substantial Contribution

In evaluating whether a customer made a substantial contribution to a proceeding, we look at several things. First, we look at whether the Commission adopted one or more of the factual or legal contentions, or specific policy or procedural recommendations put forward by the customer. (§ 1802(i).) Second, if the customer's contentions or recommendations paralleled those of another party, we look at whether the customer's participation unnecessarily duplicated or materially supplemented, complemented, or contributed to the presentation of the other party. (§§ 1801.3(f) and 1802.5.)

As described in § 1802(i), 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.[3]

With this guidance in mind, we turn to the claimed contributions UCAN made to the proceeding.

In its complaint, UCAN charged that the defendant (MCI) was violating California law and Commission regulations regarding required authorization for placing charges on telephone bills. From mid May until June 20, 2007, UCAN

[3] D.98-04-059, 79 CPUC2d 628 at 653.

and MCI communicated extensively and jointly resolved UCAN's remaining issues through the Settlement Agreement which was adopted by the Commission.

Under the terms of the Settlement Agreement, MCI acknowledged that many California customers were erroneously charged fees. UCAN identified three key concerns in this proceeding: (1) the reasons(s) why the customers were erroneously billed charges; (2) the reason(s) why the accounts were not credited by their customer service representatives despite complaints; and (3) prevention and prompt resolution of further billing errors for other consumers. The Settlement Agreement resolved all issues in the complaint.

Rule 12.1(d) of the Commission's Rules of Practice and Procedure provides that a settlement must be reasonable in light of the whole record, consistent with the law, and in the public interest for the Commission to approve it. The findings in D.08-03-015[4] affirm that the Settlement Agreement between UCAN and MCI did provide all three criteria.

UCAN argues that the Settlement Agreement reached promotes the fair and proper treatment of the customers the Commission is required to protect as well as compliance with all applicable statutes and Commission decisions. We affirm that UCAN's participation in this proceeding made a substantial contribution to D.08-03-015.

4. Contributions of Other Parties

Section 1801.3(f) requires an intervenor to avoid participation that duplicates that of similar interests otherwise adequately represented by another

[4] *See* D.08-03-015 pp. 5-8.

party, or participation unnecessary for a fair determination of the proceeding. Section 1802.5, however, allows an intervenor to be eligible for full compensation where its participation materially supplements, complements, or contributes to the presentation of another party if that participation makes a substantial contribution to the Commission order.

In this proceeding, UCAN was the only party (complainant) in this complaint and as such, its efforts were not duplicated.

After we have determined the scope of a customer's substantial contribution, we then look at whether the amount of the compensation request is reasonable.

5. Reasonableness of Requested Compensation

UCAN requests $24,392 for its participation in this proceeding, as follows:

Work on Proceeding				
Attorney/Staff	**Year**	**Hours**	**Hourly Rate**	**Total**
Art Neill	2006	34.25	$160.00	$ 5,480.00
Art Neill	2007	58.4	$160.00	$ 9,344.00
Art Neill	2008	1.0	$160.00	$ 160.00
Michael Shames	2006	10.1	$320.00	$ 3,232.00
Michael Shames	2007	16.1	$320.00	$ 5,152.00
Subtotal Hourly Compensation:				**$23,368.00**
Preparation of NOI and Compensation Request[5]				

[5] In the Request, instead of indicating that attorney's rate for work on intervenor compensation matters are reduced by half, UCAN reduces by half its time spent on these matters. In our award, we use the correct amount of time spent on intervenor compensation matters and adjust the requested hourly rate by half, to reflect the correct itemization. We also note that UCAN incorrectly records .5 hours that Neill spent on its NOI as time spent on substantive issues of the proceeding, and bills at the full hourly rate. Our award re-calculates this time at half-rate. To avoid future reductions, award requests must show the proper appropriation.

Work on Proceeding				
Attorney/Staff	**Year**	**Hours**	**Hourly Rate**	**Total**
Art Neill	2008	5.0	$160.00	$ 800.00
Michael Shames	2006	.7	$320.00	$ 224.00
Subtotal NOI Compensation:				**$ 1,024.00**
Total Requested Award				**$24,392.00**

In general, the components of this request must constitute reasonable fees and costs of the customer's preparation for and participation in a proceeding that resulted in a substantial contribution. The issues we consider to determine reasonableness are discussed below:

5.1. Hours and Costs Related to and Necessary for Substantial Contribution

We first assess whether the hours claimed for the customer's efforts that resulted in substantial contributions to Commission decisions are reasonable by determining to what degree the hours and costs are related to the work performed and necessary for the substantial contribution.

UCAN has documented its claimed hours by presenting a daily breakdown of the hours of its attorney, accompanied by a brief description of each activity.

Although UCAN's participation in the proceeding was important and valuable, the number of hours claimed for compensation is excessive in light of the volume and complexity of certain tasks performed by this intervenor when compared to the quantity of work the intervenor produced. As such, the Commission has reduced the amount of the award to represent our policy on reasonableness of hours.

We also note that UCAN frequently requests compensation for tasks described as clerical, such as "filing," "submitting," or "meeting scheduling,"

which are excluded from compensation by the Commission. In accordance with this practice, we disallow clerical tasks as listed.

5.2. Intervenor Hourly Rates

We next take into consideration whether the claimed fees and costs are comparable to the market rates paid to experts and advocates having comparable training and experience and offering similar services.

UCAN seeks an hourly rate of $320 for Michael Shames for his work in this proceeding. We previously approved the requested rate of $310 for his work in 2006 (D.07-02-029 and D.07-09-015) and 2007 (D.08-02-034). Since UCAN now requests a higher rate of $320 for the year 2007, to reflect the 3% cost-of-living adjustment as approved in D.07-01-00, we adjust his previously adopted 2007 rate of $310 to $320, accordingly. We approve here the rate of $310 for Shames' work in 2006, and the rate of $320 for his work in 2007.

Neill is new to the Commission. UCAN requests an hourly rate of $155 for his 2006-2008 work on this proceeding (Request, pp. 6 and 7), but bases its calculations on the rate of $160 (Attachment A to the Request).[6] According to UCAN, Neill was licensed to practice law in California in 2006 and has worked on public utility related issues. The rate of $155 is within the rate range for attorneys with Mr. Neill's experience. In accordance with UCAN's request, we adopt the rate of $155 for Neill's work in 2007, and we use this rate for his work

[6] We note that a few months after UCAN filed its claim for compensation in this proceeding, UCAN requested compensation in A.06-12-009, et al. In this claim, UCAN also requested the rate of $155 for Neill's work in 2007 (*See* page 19 of UCAN's request of September 4, 2008, filed in A.06-12-009/A.06-12-010/I07-02-013, and Art Neill's timesheet attached to that request).

in 2006. The rate of $160 is adopted here for his work in 2008, to reflect a 3% cost-of-living adjustment applied to his 2007 rate, as requested by UCAN.

5.3. Direct Expenses

UCAN waives reimbursement for travel, telephone or copying costs as these fees were minimal.

6. Productivity

D.98-04-059 directed customers to demonstrate productivity by assigning a reasonable dollar value to the benefits of their participation to ratepayers. (D.98-04-059, pp. 34-35.) The costs of a customer's participation should bear a reasonable relationship to the benefits realized through its participation. This showing assists us in determining the overall reasonableness of the request. In this proceeding, only the issue of the charges resulting from MCI's billing error and subsequent crediting procedures were addressed, so it is impossible to quantify the benefits to customers based on cost allocation and savings by issue. In this proceeding in response to UCAN's complaint, MCI has made whole all customers affected by this billing error and made additional improvements in its operations to avoid future crediting issues. The settlement reached between UCAN and MCI is in the public interest and as such, the public at large benefits from the Settlement Agreement. Therefore, we conclude that UCAN's efforts have been productive. While UCAN's participation was important in reaching a Settlement Agreement, we discount its request for hourly compensation as follows for excessiveness of efforts:

Participant	Task	Hours Requested	Hours Disallowed	Approved hours
A. Neill	Work on files-2006	12.5	2.5	10.0
A. Neill	Preparing complaint-2006	9.0	2.0	7.0
A. Neill	Review of answer -2006	3.0	1.0	2.0
A. Neill	Preparing for PHC-2006	5.5	2.0	3.5

Participant	Task	Hours Requested	Hours Disallowed	Approved hours
A. Neill	Filing-2006	.45	.45	0
A. Neill	**Total 2006 Work Disallowed**		**7.95**	
A. Neill	Discovery matter-2007	40.8	10.0	30.8
A. Neill	Scheduling-2007	.85	.85	0
A. Neill	Filing-2007	.40	.40	0
A. Neill	**Total 2007 Work Disallowed**		**11.25**	
M. Shames	Preparing complaint-2006	4.5	1.0	3.5
M. Shames	**Total 2006 Work Disallowed**		**1.0**	
M. Shames	Discovery matters-2007	8.8	2.0	6.8
M. Shames	**Total 2007 Work Disallowed**		**3.0**	

While UCAN's award has not been reduced further, there are many incidences where attorneys are performing clerical and administrative work. UCAN's claim includes many of the following tasks: filing, editing, drafting. The Commission does not compensate for clerical time and future claims may be reduced accordingly to disallow this type of work.

7. Award

As set forth in the table below, and consistent with the discussion above, we award UCAN $19,879.25.

Work on Proceeding				
Attorney/Staff	**Year**	**Hours**	**Hourly Rate**	**Total**
Art Neill	2006	26.30	$155.00	$ 4,076.50
Art Neill	2007	46.70	$155.00	$ 7,238.50
Art Neill	2008	1.0	$160.00	$ 160.00
Michael Shames	2006	9.1	$310.00	$ 2,821.00
Michael Shames	2007	14.10	$320.00	$ 4,512.00
Subtotal Hourly Compensation:				**$18,808**
Preparation of NOI and Compensation Request				
Attorney/Staff	**Year**	**Hours**	**Hourly Rate**	**Total**
Art Neill	2007	.5	$ 77.50	$ 38.75
Art Neill	2008	10.0	$ 80.00	$ 800.00
Michael Shames	2006	1.5	$155.00	$ 232.50

Subtotal NOI Compensation:		**$ 1,071.25**
TOTAL AWARD		**$19,879.25**

Pursuant to § 1807, we order MCI Communication Services, Inc. as the regulated entity to pay this award. Consistent with previous Commission decisions, we order that interest be paid on the award amount (at the rate earned on prime, three-month commercial paper, as reported in Federal Reserve Statistical Release H.15) commencing on July 22, 2008 , the 75th day after UCAN filed its compensation request, and continuing until full payment of the award is made.

We remind all intervenors that Commission staff may audit their records related to the award and that intervenors must make and retain adequate accounting and other documentation to support all claims for intervenor compensation. UCAN's records should identify specific issues for which it requested compensation, the actual time spent by each employee or consultant, the applicable hourly rates, fees paid to consultants, and any other costs for which compensation was claimed. The records pertaining to an award of compensation shall be retained for at least three years from the date of the final decision making the award.

8. Waiver of Comment Period

This is an intervenor compensation matter. Accordingly, as provided by Rule 14.6(c)(6) of the Commission's Rules of Practice and Procedure, we waive the otherwise applicable 30-day public review and comment period for this decision.

9. Assignment of Proceeding

Rachelle B. Chong is the assigned Commissioner, and Jacqueline A. Reed is the assigned ALJ in this proceeding.

Findings of Fact

1. UCAN has satisfied all the procedural requirements necessary to claim compensation in this proceeding. UCAN made a substantial contribution to D.08-03-015 as described herein.

2. UCAN requested hourly rates for its representatives, as adjusted herein, that are reasonable when compared to the market rates for persons with similar training and experience.

3. The total of the reasonable compensation is $19,879.25.

4. The Appendix to this decision summarizes today's award.

Conclusions of Law

1. UCAN has fulfilled the requirements of §§ 1801-1812, which govern awards of intervenor compensation, and is entitled to intervenor compensation for its claimed expenses incurred in making substantial contributions to D.08-03-015.

2. UCAN should be awarded $19,879.25 for its contribution to D.08-03-015.

3. This order should be effective today so that UCAN may be compensated without further delay.

4. This proceeding should be closed.

O R D E R

IT IS ORDERED that:

1. Utility Consumers' Action Network (UCAN) is awarded $19,879.25 as compensation for its substantial contributions to Decision 08-03-015.

2. Within 30 days of the effective date of this decision, MCI Communication Services, Inc., shall pay UCAN the total award. Payment of the award shall include interest at the rate earned on prime, three-month commercial paper as

reported in Federal Reserve Statistical Release H.15, beginning July 22, 2008, the 75th day after the filing date of UCAN's request for compensation, and continuing until full payment is made.

3. Case 06-10-023 is closed.

This order is effective today.

Dated _____, at San Francisco, California.

APPENDIX

Compensation Decision Summary Information

Compensation Decision:		Modifies Decision? No
Contribution Decision(s):	D0803015	
Proceeding(s):	C0610023	
Author:	ALJ Reed	
Payer(s):	MCI Communications Services, Inc.	

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Multiplier?	Reason Change/Disallowance
Utility Consumers' Action Network	05-08-08	$24,392.00	$19,879.25	No	hourly rate adjustments; excessive hours; disallow clerical tasks

Advocate Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
Art	Neill	Attorney	Utility Consumers' Action Network	2006	$160.00	$155.00
Art	Neill	Attorney	Utility Consumers' Action Network	2007	$160.00	$155.00
Art	Neill	Attorney	Utility Consumers' Action Network	2008	$160.00	$160.00
Michael	Shames	Attorney	Utility Consumers' Action Network	2006	$320.00	$310.00
Michael	Shames	Attorney	Utility Consumers' Action Network	2007	$320.00	$320.00

(END OF APPENDIX)