

Decision 09-05-036 May 21, 2009

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

Utility Consumers' Action Network,

Complainant,

vs.

SBC Communications, Inc. dba SBC Pacific  
Bell Telephone Company (U-1001-C) and  
related entities (collectively "SBC"),

Defendants.

Case 05-11-011  
(Filed November 14, 2005)

Utility Consumers' Action Network,

Complainant,

vs.

Cox California Telecom II, LLC, doing  
business as Cox Communications, and related  
entities (collectively "Cox"),

Defendants.

Case 05-11-012  
(Filed November 14, 2005)

**DECISION GRANTING INTERVENOR COMPENSATION  
TO UTILITY CONSUMERS' ACTION NETWORK FOR SUBSTANTIAL  
CONTRIBUTION TO DECISION 08-08-017**

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**DECISION GRANTING INTERVENOR COMPENSATION  
TO UTILITY CONSUMERS' ACTION NETWORK FOR SUBSTANTIAL  
CONTRIBUTION TO DECISION 08-08-017**

This decision awards Utility Consumers' Action Network (UCAN) \$252,417.44<sup>1</sup> in compensation for its substantial contributions to Decision (D.) 07-07-020 and D.08-08-017 (Decision). The Decision pertained to two cases, Case (C.) 05-11-011 and C.05-11-012. While we did not consolidate those cases and disposed of them separately, UCAN filed a single request for intervenor's compensation covering both cases. Our award represents a decrease of \$17,066.60 (6% reduction) from the amount requested due to a finding of unjustified attorney and expert witness fees. Today's award payment will be allocated to AT&T California (AT&T), a "doing business as" for Pacific Bell Telephone Company (C.05-11-011), and Cox California Telecom II, LLC, doing business as Cox Communications, and related entities (collectively "Cox Communications" (Cox) (C.05-11-012). Today's award payment is allocated to the affected utilities disproportionately because the proceeding against Cox was ultimately dismissed. Both proceedings are closed.

**1. Background**

**1.1. Public Utility Code Provision at Issue**

Section 2883, adopted by the Legislature in 1995, requires "[a]ll local telephone corporations, excluding wireless and cellular telephone corporations, to the extent permitted by existing technology or facilities, [to] provide every

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<sup>1</sup> UCAN's Request for Intervenor Compensation (September 5, 2008) at 1 and Attachment C at 15 makes a total compensable claim for \$269,429.81 but a correct addition of the items in its direct cost category increases the amount by \$55.13 to a total of \$269,484.94. We use this corrected figure in our consideration of this award.

existing and newly installed residential telephone connection with access to '911' emergency service regardless of whether an account has been established." The purpose of the section is to expand the availability of 911 emergency services throughout California.

## **1.2. History of Proceedings**

In its complaint, filed on November 14, 2005, and First Amended complaint, filed on April 17, 2006, UCAN alleged that American Telephone & Telegraph<sup>2</sup> had not fulfilled the requirements of § 2883. Similarly, in its Complaint, filed on November 14, 2005, in C.05-11-012, UCAN alleged that Cox had not fulfilled the requirements of § 2883.<sup>3</sup>

UCAN alleged that AT&T terminated the availability of 911 service to residences formerly having billed telephone service after an arbitrary 180-day period. UCAN also alleged that AT&T did not make 911 service available to new residential units, even when the technology and facilities were in place to do so and 911 availability would have actually produced financial benefits for the company. For remedies, UCAN sought imposition of a \$62 million penalty.

AT&T denied liability under § 2883, saying that existing technologies and facilities were not available for it to provide perpetual 911 service where a customer had voluntarily terminated existing residential service or the company had terminated service to a residential unit because of nonpayment or similar

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<sup>2</sup> At the time of filing the defendant named was SBC Communications, Inc. dba SBC Pacific Bell Telephone Company but since then the defendant's name has been changed to Pacific Bell Telephone Company dba AT&T California (AT&T).

<sup>3</sup> Because the latter complaint against Cox ultimately was dismissed, the following summary of the history of the proceedings will focus on AT&T in C.05-11-011 unless otherwise indicated by a reference to Cox.

reasons. AT&T also argued, if § 2883 is properly interpreted, the carrier would not be required to provide 911 service for new residential units unless a physical connection exists over which telephone calls are actually capable of being placed and received.

After AT&T answered UCAN's complaint, a prehearing conference (PHC) was held on January 4, 2006, and a scoping memo was issued on January 20, 2006, setting forth the issues to be decided and the schedule for proceedings. The schedule called for AT&T (along with Cox in the coordinated proceeding) to file motions to dismiss the complaint. After briefing and argument on the motion to dismiss, the Presiding Officer determined that UCAN had alleged facts sufficient to state one or more causes of action with respect to subsections (a) and (c) of § 2883, but that UCAN had failed to state sufficient facts supporting other allegations. Defendants' motions were, accordingly, granted in part and denied in part.<sup>4</sup> UCAN thereafter filed a First Amended complaint reasserting its § 2883(b) claim with additional facts, and AT&T and Cox did not again seek dismissal of this cause of action. The parties continued their preparation in anticipation of the evidentiary hearing scheduled to begin on July 31, 2006.

After completing discovery, UCAN and Cox notified the Presiding Officer that the complaint against Cox would be dismissed. At the final PHC in advance of the evidentiary hearing on UCAN's complaint against AT&T, those two parties stipulated to the submission on the merits of the complaint and defenses solely on the basis of the prepared testimony and a stipulated set of

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<sup>4</sup> Administrative Law Judge's (ALJ) Ruling on Motions to Dismiss (April 6, 2006).

exhibits, to be followed by briefing by UCAN and AT&T. The Presiding Officer agreed to this procedure, and the evidentiary hearing was vacated. The proceeding was submitted on December 6, 2006.

Before these agreements to dismiss the complaint against Cox and to not have an evidentiary hearing on the complaint against AT&T, the Presiding Officer learned of alleged impermissible *ex parte* communications by AT&T and Cox representatives with certain of the Commissioners' personal advisors. Pursuant to a joint ruling, the assigned Commissioner and Presiding Officer initiated proceedings to resolve these allegations and notified the parties that the dismissal of UCAN's complaint against Cox would not be approved until the *ex parte* allegations were resolved.<sup>5</sup> The alleged *ex parte* violations were addressed in a separate Presiding Officer Decision. The Commission rendered a decision on the *ex parte* allegations in D.07-07-020, imposing a penalty of \$40,000 each against AT&T and Cox. The revised proposed decision also authorized the dismissal of UCAN's complaint against Cox in C.05-11-012.

The proceeding against AT&T in C.05-11-011 continued through six more decisions, including the one that closed the proceeding, D.08-08-017. The statutory deadline was extended five times in C.05-11-011.

### **1.3. Issues Posed and Resolved in the Proceeding**

Section 2883 addresses the availability of 911 service in two common situations: (a) in previously occupied or currently occupied residential units where normal voice service has been discontinued voluntarily by the customer or involuntarily by the carrier (*e.g.*, for failure to pay the bill); and (b) in new

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<sup>5</sup> Joint Ruling of the Assigned Commissioner and Presiding Officer (June 26, 2006).

residential units where normal voice service previously has not been available. The availability of 911 service in these situations is often called “warm line access” or “quick dial tone” (QDT).

The first situation raises a relatively simple issue: Under what circumstances can a carrier discontinue 911 access in a previously or currently occupied residential unit? The second situation, involving new residential units, presents a different set of factual and legal issues. For purposes of the statute, what constitutes a “newly installed residential telephone connection?”

In addition, AT&T’s contentions raised the issue of whether the provisions of § 2883 relieve a carrier of its 911 access obligation in the circumstances present here. Two provisions in the statute qualify the obligation to provide warm line service. Subsection (a) requires local exchange carriers “to the extent permitted by existing technology or facilities” to provide access to 911 services. Subsection (e) further states: “Nothing in this section shall require a local telephone corporation to provide ‘911’ access . . . if doing so would preclude providing service to subscribers of residential telephone service.” These provisions should be read to create an exception that is stated twice in the statute: a carrier need not comply with the full extent of § 2883 requirements if it faces certain obstacles. AT&T claimed this exception applied to its circumstances because of numbering concerns.

In D.08-08-017 the Commission found that AT&T violated § 2883(a) in terminating 911 access to currently or previously occupied residential units where billed service had been voluntarily or involuntarily terminated. It also found that AT&T had violated § 2883(a) in failing to provide access to 911 emergency services in new residential units, but also concluded that UCAN had failed to provide convincing evidence of the extent of that violation. The

foregoing conclusions reflected that AT&T had not established that limitations on its “technology or facilities” relieved it of the obligation to provide 911 access to new and previously occupied residential units. Furthermore, D.08-08-017 found that AT&T had violated § 2883(c) by not affirmatively providing accurate 911 emergency access information to subscribers whose service had been discontinued, whether voluntarily or involuntarily. Finding that AT&T’s conduct amounted to a violation of law, the Decision stated that liability was not limited by AT&T’s tariff, and imposed a penalty of \$1,691,000 (\$500 x 3,382 days).

Following the Decision’s issuance, AT&T filed an application for rehearing,<sup>6</sup> asserting claims of legal error. We denied the application in D.09-04-036 issued on April 20, 2009, while at the same time modifying the Decision in ways that did not materially affect UCAN’s request for compensation.<sup>7</sup>

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

The intervenor compensation program, which is set forth in Pub. Util. Code §§ 1801-1812,<sup>8</sup> requires California jurisdictional utilities to pay the reasonable costs of an intervenor’s participation if that party makes a substantial contribution to the Commission’s proceedings. The statute provides that the utility may adjust its rates to collect the amount awarded from its ratepayers.

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<sup>6</sup> Application for Rehearing of the Modified Presiding Officer’s D.88-08-017, dated September 26, 2008.

<sup>7</sup> See “Order Modifying Decision 08-08-017 and Denying Rehearing of Decision 08-08-017 as Modified Herein.”

<sup>8</sup> All subsequent statutory references are to the Public Utilities Code unless otherwise indicated.

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 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 a NOI to Claim Compensation before certain dates. In a proceeding initiated by a complaint, the intervenor

must file its NOI any time after the start of the proceeding until 30 days after the prehearing conference, held on January 4, 2006. (Rule 17.1(a)(1).) UCAN timely filed its NOI in C.05-11-011 and C.05-11-012 on February 3, 2006.

In its NOI, UCAN asserted financial hardship. Section 1802(b)(1) of the Public Utilities Code 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 27, 2006, the ALJ issued a ruling that found UCAN a customer pursuant to § 1802(b)(1)(C) and eligible to receive intervenor compensation in both proceedings as a Category 3 customer under the standard of significant financial hardship. UCAN has made a showing of financial hardship in its NOI, based on a rebuttable presumption of eligibility, pursuant to § 1804(b)(1), as the organization was found eligible in another proceeding (Application 05-02-019) that commenced within one year of this proceeding. No party has attempted to rebut this presumption.

UCAN filed its request for compensation on September 5, 2008, within 60 days of the August 21, 2008 mailing date of D.08-08-017. 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.<sup>9</sup>

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

UCAN alleges that it made substantial contributions to D.08-08-017, starting with its lodging of the complaints against AT&T and Cox. The complaints alleged that those utilities violated § 2883 by terminating service after an arbitrary period to residences formerly having billed telephone service and by not making 911 service available to new residential units.

We find that UCAN made a substantial contribution on these issues.

In accord with the complaints filed by UCAN, D.08-08-017 at 8-9 concluded that unless limited by either facilities or the unavailability of telephone numbers the carrier has an obligation to provide 911 access to

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<sup>9</sup> D.98-04-059, 79 CPUC2d 628 at 653.

residential units currently occupied that were previously disconnected. Consistent with UCAN's arguments, the Decision similarly found that, barring a valid lack-of-facilities defense, § 2883 obligates the carrier to provide 911 access at currently or recently vacant residential units where telephone service was previously provided.<sup>10</sup>

The statutory interpretation which gained the most attention in the Decision, was whether § 2883 requires the provision of 911 access in new residential units where telephone service has never been available and an account for residential service has never been established. Resolution of the issue depends in part on the meaning of the phrase, "newly installed residential telephone connection," in § 2883(a). The assigned ALJ, unlike UCAN and like AT&T, found the language unambiguous, making unnecessary the delving into legislative history. He concluded, favorable to UCAN's position and against AT&T's, however, that the "minimum infrastructure" of "a path allowing the transmission of voice and other signals from the interior wiring to the line side of the central office" is a "telephone connection" within the meaning of § 2883.<sup>11</sup>

UCAN positively contributed to our analysis of the issue whether AT&T was able to show that limitations on its "technology or facilities" relieved it of the obligation to provide 911 access to new and previously occupied residential units. UCAN produced documentary evidence that "AT&T's state-wide warm line policy is not rationally related to its stated purpose of proactively managing

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<sup>10</sup> D.08-08-017 at 10.

<sup>11</sup> *Id.* at 15.

numbering resources to avoid shortages because limitations in available telephone numbers do not occur state-wide.”<sup>12</sup>

UCAN also was successful in its argument, opposed by AT&T, that the law requires the carrier affirmatively to provide adequate 911 access information to customers. The “cryptic” information selectively provided by AT&T was found to be inadequate.

UCAN offered expert testimony that 400,000 households in this state may have been adversely affected by the AT&T’s termination of emergency access after 180 days and failure to connect new residential units where the necessary infrastructure existed. No evidence of actual personal injury or property damage was produced, however, a deficiency expressly noted in the Decision at 30. Further, UCAN’s evidence that AT&T benefitted financially from not following § 2883, was found to be “both imprecise and unconvincing.”<sup>13</sup>

UCAN sought a penalty of \$62 million and reparations of at least \$7.5 million. In contrast, the Decision, at 58, ordered a penalty of \$1,691,000 (\$500 per day for 3,382 days of violation). For purposes of the instant decision, however, that disparity is overshadowed by the fact that the complaint brought by UCAN proved to be meritorious and the supporting evidence produced by UCAN in meeting its burden of proof, resulted in a Decision penalizing non-compliance with an important Public Utilities Code mandate.

An earlier part of the proceeding related to an *ex parte* rule violation by Cox and AT&T (*see* D.07-07-020). Each carrier was penalized \$20,000. For its participation in that part of the proceeding, UCAN was found to be

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<sup>12</sup> D.09-04-036 at 77.

“conclusively entitled to reasonable attorney’s fees and costs ...”

UCAN may claim specific amounts, not to exceed \$7,500, in its post-proceeding claim for intervenor compensation. The amount will be assessed jointly and severally against AT&T and Cox. The penalties and attorneys’ fees are chargeable to shareholders and not to ratepayers.<sup>14</sup>

Decision 07-07-020 at 26-27. UCAN’s claim for \$7,169 for participation in the *ex parte* part of the proceedings (Mansfield’s 11.8 hours valued at \$4,720 and Shames’ 7.9 hours valued at \$2,449) falls within this \$7,500 cap and is enclosed in the award made in the instant decision, which also allocates equal shares of \$3,584.50 to AT&T and Cox.

#### 4. Reasonableness of Requested Compensation

UCAN requests \$269,485.04<sup>15</sup> for its participation in this proceeding, as follows:

Work on Proceeding				
Attorney/Staff	Year	Hours	Hourly Rate	Total
Michael Shames	2005	10.40	\$300	3,120
Michael Shames	2006-2008	101.3	\$310	\$31,403
Alan Mansfield	2005	41.75	\$390	\$16,282.50
Alan Mansfield	2006-2008	470.80	\$400	\$188,320
<b>Subtotal:</b>				<b>\$239,125.50</b>
Expert	Year	Hours	Hourly Rate	Total
Terry Murray	2006	42.15	\$350	\$14,752.50
Scott Cratty	2006	61.57	\$225	\$13,853.25
<b>Subtotal:</b>				<b>\$28,605.75</b>
Preparation of NOI and Compensation Request				

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<sup>13</sup> D.08-08-017 at 35.

<sup>14</sup> D.07-07-020 at 26-27.

<sup>15</sup> As noted in Footnote 1, we have corrected UCAN’s miscalculation to arrive at this figure.

Attorney/Staff	Year	Hours	Hourly Rate	Total
Michael Shames	2008	3.5	\$310	\$1,085
<b>Subtotal Hourly Compensation:</b>				<b>\$1,085</b>
<b>Expenses</b>				<b>\$668.69</b>
<b>Total Requested Compensation</b>				<b>\$269,484.94</b>

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. We consider issues of reasonableness below.

#### 4.1. 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 a Commission decision are reasonable by determining to what degree the hours and costs are related to the work performed and necessary for the substantial contribution. UCAN believes that the total number of hours claimed is reasonable given the scope of this proceeding and the complexity of the issues. Although UCAN did not allocate its time and costs among issues, making it more difficult to determine the reasonableness of the aggregate hours claimed, the aggregate hours claimed are about 94% commensurate with the contribution made. The hours disallowed are itemized below.<sup>16</sup>

Reductions for Michael Shames

Date	Task	Requested Hours	Approved Hours	Justification
2/14/06	Non-Disclosure Agreement	1.6	0.8	Excessive time spent on subject.
3/7/06	Motion to Dismiss	1.8	0.6	Excessive time spent on

<sup>16</sup> Since the individual time entries on the sheets submitted by UCAN commonly covered work on multiple subjects, we were forced to estimate what portion of the requested hours pertained to a particular subject.

				subject.
6/23/06	Legislative History	3	0	Research excessive and ruled irrelevant.
8/21 thru 8/24/06	Post-hearing Brief	7	3	Excessive time spent on subject.
11/30/07	Appeal Brief	4	3	Excessive time spent on subject.
	<b>Total</b>	17.4	7.4	

## Reductions for Alan Mansfield

Date	Task	Requested Hours	Approved Hours	Justification
11/4 and 11/7/05	Legislative History	10.75	0	Research excessive and ruled irrelevant.
1/9 thru 1/11/06	Scheduling	11.75	9.75	Excessive time spent on subject.
2/10 thru 2/24/06	Non-Disclosure Agreement	14.25	6.25	Excessive time spent on subject.
1/27 thru 4/6/06	Motion to Dismiss	47	42	Excessive time spent on subject.
8/14 thru 8/24/06	Post-hearing Brief	40	36	Excessive time spent on subject.
11/9 thru 12/12/3/07	Appeal Brief	30	27	Excessive time spent on subject.
	<b>Total</b>	147.75	115	Excessive time spent on subject.

## Reductions for Terry Murray

Date	Task	Requested Hours	Approved Hours	Justification
7/14/06	Motion to Strike	4.25	3.0	Excessive time spent on subject
	<b>Total</b>	4.5	3.0	

## Reductions for Scott Cratty

Date	Task	Requested Hours	Approved Hours	Justification
6/28/09	Attachments	4.25	2.25	Excessive time spent on subject
	<b>Total</b>	4.25	2.25	

We advise UCAN that its failure to allocate its time and costs among issues in future claims will result in disallowances.

#### 4.2. 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 for Michael Shames of \$300 in 2005 and \$310 in 2006-2008, which is in accord with what the Commission authorized in D.06-06-048, D.07-02-029, D.07-09-015 and D.08-02-034. UCAN requests an hourly rate for Alan Mansfield of \$390 in 2005 and \$400 in 2006-2007, which complies with the Commission's actions in

D.07-09-015, D.07-02-029, and D.07-09-015. UCAN seeks an hourly rate for Terry Murray of \$350 in 2006, the rate he was authorized to use in 2005 in D.06-09-008. The 2006 hourly rate sought for Scott Cratty is \$225 which comports with what was authorized in D.07-04-029.

### 4.3. Direct Expenses

The itemized direct expenses submitted by UCAN include the following:

<b>Travel, Food &amp; Lodging</b>	\$483.00
<b>Photocopying</b>	\$130.56
<b>Postage</b>	\$55.13
<b>Total Expenses</b>	\$668.69

The cost breakdown included with the request shows the miscellaneous expenses to be commensurate with the work performed. With regard to travel expenses, UCAN was required to make appearances before the Commission in this proceeding. The travel expenses were not for routine commuting and would not have been incurred but for UCAN's participation. We therefore find the claimed costs of \$668.69 reasonable.

### 5. 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, at 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.

We find that UCAN's participation in the proceeding was largely efficient and productive. The small fraction of fees disallowed is an exception. While not measurable in terms of monetary benefits, the impact of UCAN's participation, as reflected in the unquestionable value the public gains from having access to

emergency services through the 911 telephone number and enforcement of § 2883, far outweighs the fees and costs that are the subject of this decision.

## 6. Award

As set forth in the table below, we award UCAN \$252,417.44:

<b>Work on Proceeding</b>				
<b>Attorney/Staff</b>	<b>Year</b>	<b>Hours</b>	<b>Hourly Rate</b>	<b>Total</b>
Michael Shames	2005	10.40	\$300	\$3,120
Michael Shames	2006- 2008	91.3	\$310	\$28,303
Alan Mansfield	2005	31.0	\$390	\$12,090
Alan Mansfield	2006- 2008	448.80	\$400	\$179,520
<b>Subtotal:</b>				<b>\$223,033</b>
<b>Expert</b>				
<b>Expert</b>	<b>Year</b>	<b>Hours</b>	<b>Hourly Rate</b>	<b>Total</b>
Terry Murray	2006	40.65	\$350	\$14,227.50
Scott Cratty	2006	59.57	\$225	\$13,403.25
<b>Subtotal:</b>				<b>\$27,630.75</b>
<b>Preparation of NOI and Compensation Request</b>				
<b>Attorney/Staff</b>	<b>Year</b>	<b>Hours</b>	<b>Hourly Rate</b>	<b>Total</b>
Michael Shames	2008	3.5	\$310	\$1,085
<b>Subtotal Hourly Compensation:</b>				<b>\$1,085</b>
<b>Expenses</b>				\$668.69
<b>Total Requested Compensation</b>				<b>\$269,484.04</b>
<b>Fees Disallowed</b>				<b>\$17,066.60</b>
<b>TOTAL AWARD</b>				<b>\$252,417.44</b>

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 November 19, 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 must 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.

### **7. Waiver of Comment Period**

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

### **8. Assignment of Proceeding**

Michael R. Peevey is the assigned Commissioner and Gary Weatherford is the assigned Administrative Law Judge in this proceeding.

### **Findings of Fact**

1. UCAN has satisfied all the procedural requirements necessary to claim compensation in this proceeding.
2. UCAN made a substantial contribution to D.07-07-020 and D.08-08-017 as described herein.
3. UCAN requested hourly rates for its representatives that are reasonable when compared to the market rates for persons with similar training and experience.
4. UCAN requested related expenses, as adjusted herein, that are reasonable and commensurate with the work performed.
5. The total of the reasonable compensation is \$252,417.44.
6. 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.07-07-020 and D.08-08-017.

2. UCAN should be awarded \$252,417.44 for its substantial contribution to D.07-07-020 and D.08-08-017.

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

4. C.05-11-011 and C.05-11-012 are closed.

## **O R D E R**

**IT IS ORDERED** that:

1. Utility Consumers' Action Network is awarded \$252,417.44 as compensation for its substantial contributions to Decision 07-07-020 and Decision 08-08-017.

2. Within 30 days of the effective date of this decision, AT&T California, a "doing business as" for Pacific Bell Telephone Company, and Cox California Telecom II, LLC, doing business as Cox Communications, and related entities (collectively "Cox Communications") shall pay the Utility Consumers' Action Network their respective shares of the award. AT&T California's share is \$248,832.94 and Cox Communications share is \$3,584.50. 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 November 19, 2008, the 75<sup>th</sup> day after the filing date of the Utility Consumers' Action Network's request for compensation, and continuing until full payment is made.

3. Case 05-11-011 and Case 05-11-012 are closed.

This order is effective today.

Dated May 21, 2009, at San Francisco, California.

MICHAEL R. PEEVEY  
President  
DIAN M. GRUENEICH  
JOHN A. BOHN  
RACHELLE B. CHONG  
TIMOTHY ALAN SIMON  
Commissioners

## APPENDIX

## Compensation Decision Summary Information

<b>Compensation Decision:</b>	D0905036	<b>Modifies Decision?</b> No
<b>Contribution Decision(s):</b>	D0707020 and D0808017	
<b>Proceeding(s):</b>	C0511011 and C0511012	
<b>Author:</b>	ALJ Gary Weatherford	
<b>Payer(s):</b>	AT&T California, and Cox Communications	

## Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Multiplier?	Reason Change/Disallowance
Utility Consumers' Action Network	9/05/08	\$269,484.94	\$252,417.44	NO	Excessive time spent on subjects and unproductive efforts

## Advocate Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
Michael	Shames	Attorney	Utility Consumers' Action Network	\$300 \$310	2005 2006-2008	\$300 \$310
Alan	Mansfield	Attorney	Utility Consumers' Action Network	\$390 \$400	2005 2006-2008	\$390 \$400
Terry	Murray	Expert	Utility Consumers' Action Network	\$350	2006	\$350
Scott	Cratty	Expert	Utility Consumers' Action Network	\$225	2006	\$225

(END OF APPENDIX)