

Decision 09-10-008 October 15, 2009

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own motion into the operations, practices, and conduct of Pacific Bell Wireless LLC dba Cingular Wireless, U-3060, U-4135 and U-4314, and related entities (collectively "Cingular") to determine whether Cingular has violated the laws, rules and regulations of this State in its sale of cellular telephone equipment and service and its collection of an Early Termination Fee and other penalties from consumers.

Investigation 02-06-003
(Filed June 6, 2002)

**DECISION RESOLVING ALL OUTSTANDING ISSUES
AND PROVIDING FOR CLOSURE OF REPARATIONS FUNDS A AND B**

1. Summary

This decision resolves all outstanding issues concerning two previously established reparations funds. The decision:

- Revises Ordering Paragraph 1 of Decision (D.) 08-02-015, which directed the claims administrator to pay the Utility Consumers' Action Network's (UCAN) second intervenor compensation award from the residue of Fund B, to instead authorize reimbursement to AT&T Mobility LLC (AT&T), since AT&T paid the award to UCAN directly prior to the issuance of D.08-02-015.
- Directs the claims administrator to return to AT&T the balance remaining, if any, from the \$600,000 deposited by AT&T for notice and claims administration. Calculation of the balance due to AT&T shall be made once all additional monies due to the claims administrator have been paid and shall exclude the

\$61,783.09 paid for telephone support from another source, pursuant to D.08-02-015.

- Directs the claims administrator to distribute to the Telecommunications Consumer Protection Fund the residual balances in Funds A and B, which total approximately \$1.9 million (as of the period ending May 31, 2009). These balances represent monies in both funds that cannot be repaid to customers and are not subject to escheatment, together with all otherwise unallocated interest.

2. Background

Decision (D.) 04-09-062 fined Cingular Wireless (Cingular) \$12.14 million for its unlawful early termination fee (ETF) policies and other corporate practices. The decision also ordered Cingular to pay reparations, later estimated to be valued at \$18,467,220.38, to affected customers and declared that any unpaid reparations would escheat to the State of California General Fund.

Following continued litigation, including an application for rehearing at the Commission and appeal to the courts, Cingular now known as AT&T Mobility LLC (AT&T), the Utility Consumers' Action Network (UCAN), and the Commission's Consumer Protection and Safety Division (CPSD) entered into an all-party settlement. D.07-03-048 adopted this settlement, which resolved all litigation resulting from D.04-09-062 and required Cingular to pay the \$12.14 million penalty previously assessed, as well as customer reparations. The settlement also established the details of the reparations plan, which was designed to provide restitution to two different customer groups. Group A customers consisted of the 115,623 customers (identified in the settlement as the "Actual Identified Claimants") who were known to have paid an ETF, a supplemental equipment charge, or both, to Cingular or an independent Cingular dealer or retailer. Group B consisted of another 91,722 customers

(identified in the settlement as the “Potential Agent Claimants”) who potentially had paid an ETF or a supplemental equipment charge to an independent Cingular dealer or retailer. Since Cingular did not have records to establish whether the Group B payments had been made and since many of the independent entities were no longer in business, Group B customers (unlike Group A customers) were required to submit a claim form once they had been located.

The all-party settlement provided for Rust Consulting, Inc. (Rust) to serve as the neutral claims administrator and also addressed, in a very general way, the distribution of any money remaining in the reparations accounts after all possible restitution had been made. The settlement required the parties to file a report showing “how much money in refund checks have been cashed, how much money remains outstanding in issued checks, and how much money remains in Reparations Funds A and/or B.”¹ Regarding any residual balance, the settlement stated:

If any funds remain in Reparations Funds A and/or B, the Commission shall subsequently determine in a separate decision how any remaining funds are to be distributed or otherwise utilized, **but no funds remaining in Reparations Funds A and/or B shall be returned to Cingular.** Consistent with prior Commission decisions, including *TURN v Pacific Bell*, 54 Cal. PUC 2d 122 (1994), *In Re GTE California*, 1998 Cal PUC LEXIS 910 (1998), and *In Re CTS International*, 2000 Cal. PUC LEXIS 202 (2000), where the Commission has ordered distribution for other equitable purposes **in addition to escheatment pursuant to C.C.P. Section 1519.5**, some or all of such amounts may be **distributed to the Telecommunications Consumer Protection**

¹ D.07-03-046, Appendix A (Settlement Agreement, Paragraph 6).

fund administered by the California Consumer Protection Foundation.²

Subsequently, D.07-09-015 granted UCAN a second intervenor compensation award in the amount of \$171,996.30 for its substantial contribution to D.07-03-048. (Previously, the Commission awarded UCAN \$367,401.25 for its substantial contribution to D.04-09-062.) In October 2007, AT&T filed a status report on the progress of the reparations process and thereafter D.08-02-015 authorized the use of a portion of the undistributed settlement monies remaining in the Group B reparations account to pay UCAN's second intervenor compensation award. D.08-02-015 also authorized the use of a portion of the interest earned on the principal in the Group A reparations account to reimburse the claims administrator for \$61,783.09, the cost of providing live telephone support. This sum was in addition to the \$600,000 that the all-party settlement required Cingular to deposit to cover the initial estimates for notice, administration, and monitoring costs associated with the reparations plan.

As the settlement states, the California Consumer Protection Foundation (Foundation) administers the Telecommunications Consumer Protection Fund (TCPF). The Foundation, established in 1991 following *California v. Levis Strauss & Co.* and incorporated under § 501(c)(4) of the Internal Revenue Code, administers numerous consumer trust funds and provides grants to eligible grantees pursuant to a rigorous application process.³ The Foundation currently

² *Id.*, emphasis added.

³ *California v. Levis Strauss & Co.* (1986) 41 Cal.3d 460 [equitable doctrine of *cy pres*, also called "fluid recovery," invoked to govern distribution of residual monies from class action settlement].

administers consumer trust funds established and/or approved by agencies such as the Department of Consumer Affairs and the Attorney General's Office, as well as this Commission. Commission-established funds include the Community Collaborative Fund, the Electric Education Trust, and the TCPF. Grants from the TCPF are restricted to funding telecommunications consumer education and protection programs for limited English speaking consumers in California.

3. Procedural History

On July 3, 2008, UCAN filed a motion recommending how the Commission should dispose of the monies remaining in Funds A and B and attached the balance sheets, as of April 30, 2008, for each fund. By ruling filed August 6, 2008, the Administrative Law Judge (ALJ) directed UCAN to amend its motion to more fully explain its rationale and authorized other parties to file responses. UCAN filed an amended motion on August 29, 2008. No responses were filed. On February 23, 2009, at the ALJ's request, UCAN filed a second amendment to its motion, updating the Funds A and B balances as of January 31, 2009. Again, no responses were filed

The ALJ's proposed decision, mailed on April 7, 2009, recommended that the Commission grant UCAN's motion.⁴ On April 27, 2009, AT&T concurrently filed (1) an additional status report, which also sought modification of Ordering Paragraph 1 of D.08-02-015, and (2) comments on the proposed decision, which

⁴ Proposed Decision of ALJ Vieth, entitled "*Decision Granting Motion of Utility Consumers' Action Network for Distribution of Residue of Reparations Funds to the Telecommunications Consumer Protection Fund.*"

sought additional relief. On May 1, 2009, UCAN filed a reply to AT&T's comments.

Thereafter, the April 7, 2009 proposed decision was withdrawn. By ruling on May 26, 2009, the ALJ set a telephone conference call for June 12 to discuss the various issues raised by AT&T and UCAN and directed them to be prepared to respond to a number of questions set out in that ruling. On June 12, 2009, prior to the telephone conference call, AT&T and UCAN filed a joint exhibit addressing questions in the May 26 ruling. On June 19, 2009, AT&T filed a brief on several of those questions.

4. Three Issues Presented

At the time the April 7, 2009 proposed decision was mailed, a single issue was before us:

- should the residue of Reparations Funds A and B, which are not subject to escheat, be distributed to the TCPF as UCAN proposed?

Subsequently, AT&T has raised the following additional issues:

- should Ordering Paragraph 1 of D.08-02-015, which directed the claims administrator to pay UCAN's second intervenor compensation award from the residue of Fund B (as AT&T's October 15, 2007 status report requested), be modified to instead authorize reimbursement to AT&T since AT&T paid that award, in the amount of \$175,171.91, to UCAN directly prior to the issuance of D.08-02-015?
- should AT&T be reimbursed \$58,536.22 (based on figures available as of May 31, 2009) from the \$600,000 advanced to cover the costs of the claims administrator?

We dispose of AT&T's issues first and then address distribution of the residue of Funds A and B.

5. Discussion

5.1. Modification of Ordering Paragraph 1 of D.08-02-015

Ordering Paragraph 1 of D.08-02-015 provides:

AT&T Mobility LLC aka Cingular Wireless (AT&T Mobility) shall direct Rust Consulting, Inc. (Rust) to disburse to Utility Consumers' Action Network (UCAN) the amount from the residue of Fund B, described herein, sufficient to fully discharge the intervenor compensation award to UCAN ordered by Decision (D.) 07-09-015. Should the residue of Fund B be inadequate to pay the award in full, Rust shall disburse the residue of Fund B to UCAN and AT&T Mobility, promptly, shall pay the balance required to comply fully with D.07-09-015. An accounting of the payment to UCAN shall be provided in an appropriate, subsequent Status Report, which shall be filed in this docket.

AT&T states that it made an out-of-pocket payment of this intervenor compensation award and therefore is entitled to reimbursement of the full amount paid, \$175,171.91. AT&T's request is unopposed. We agree that AT&T should be reimbursed, from Fund B, for the intervenor compensation payment which D.08-02-015 ordered Rust to pay from Fund B. We will overlook AT&T's failure to file a Petition for Modification, though Rule 16.4 of our Rules of Practice and Procedure (Rules) specifies exactly how to request changes to an issued decision and also, when the request is made more than a year after the decision's issuance, requires explanation of the delay. Because there is no indication that AT&T acted in bad faith, we will liberally construe our rules, as Rule 1.2 permits, and excuse the error in order to prevent further expense to the parties and further delay. We caution AT&T to be more careful in the future as oversights of this kind - which necessitate the withdrawal of a proposed decision

-- interfere with the Commission's timely, orderly, and efficient use of its limited resources.

5.2. Claims Administration Costs

As of May 31, 2009, the claims administrator has been paid a total of \$461,176.29 from two sources -- \$399,393.20 has been paid from the \$600,000 that AT&T deposited into Fund A for notice and administration (as required by Section 3 of the settlement approved by D.07-03-048) and \$61,783.09 has been paid for live telephone support from interest earned on Fund A, pursuant to D.08-02-015. According to the parties' June 12 joint exhibit, invoices totaling \$97,101.58 remain outstanding and another \$45,000 (approximately), will be incurred to complete the project. Thus, the claims administrator's total costs, including the telephone support component, are estimated at just over \$603,000.

The question is whether AT&T should be responsible for all of the claims administrator's costs above \$600,000, in which case it must fund the final \$3,000 (approximately), or whether live telephone support should be excluded, leaving AT&T entitled to an eventual reimbursement of \$58,500 (approximately). AT&T contends that because telephone support was not contemplated in the initial estimate of the costs of notice and administration, AT&T should not be obliged to fund it directly. UCAN had supported AT&T's request that Fund A interest be used for this purpose and is now silent on this issue.

The settlement approved by D.07-03-048 is not dispositive. Section 2 of the settlement does not define the claims administrator's tasks, but does describe the \$600,000 as an initial estimate. Section 3 of the settlement provides that the utility shall transfer additional sums if the actual costs exceed the estimate and that if they are lower, the difference shall be returned.

D.08-02-015, which approved the payment for live telephone support from Fund A interest, makes two findings particularly relevant here:

4. The cost of live telephone support was not included in Rust's original estimate for notice, settlement administration and monitoring. Live telephone support was added at CPSD's request and clearly has a proper settlement-related purpose.
5. Rust's total costs are likely to exceed its estimate of \$600,000 because of the addition of live telephone support.

The parties' joint exhibit and AT&T's brief explain that subsequent events affected the information on which D.08-02-015 relied. Specifically, AT&T challenged some of Rust's then-outstanding invoices, which totaled more than \$515,000, and Rust issued a credit for \$66,268. There is no indication that the information presented to the Commission was inaccurate at the time that AT&T made the request to use Fund A interest to cover the costs of live telephone support.

We will not revise D.08-02-015 to require AT&T to absorb the costs of telephone support in the \$600,000 it advanced towards notice and administration. Nothing related above clearly requires AT&T to bear those costs, nor did D.08-02-015 require AT&T to reimburse those costs, or any portion of them, if Rust's expenses ultimately totaled less than \$600,000. Finally, it appears that AT&T acted responsibly in its review of Rust's invoices, which led to issuance of a sizeable credit.

However, since Rust's work is not done and will not be done until the multi-state escheatment process is complete later this year or early next year, the final cost of notice and administration is unknown. The parties expect Rust to tender additional invoices, estimated at up to \$45,000. Nonetheless, we need not wait until final payments are made to Rust to decide this issue. Consistent with

Sections 2 and 3 of the settlement, we direct that once all additional monies due to the claims administrator have been paid from the \$600,000 deposited by AT&T for this purpose, the balance remaining, if any, shall be returned to AT&T. The calculation of the balance remaining shall exclude the \$61,783.09 paid for telephone support from Fund A interest.

5.3. Distribution of the Residue from Funds A and B

The claims administrator has issued checks to all eligible Group A and Group B customers who could be located and the uncashed checks have begun to escheat to the State of California in accordance with Code of Civil Procedure § 1519.5, and to other states and territories, where a customer's last known address is outside California. UCAN proposes distribution to the TCPF of the residual balances in Funds A and B, which total approximately \$1.9 million (as of the period ending May 31, 2009). UCAN relies on several prior Commission decisions and argues that no other alternative is readily apparent. AT&T's brief concurs with UCAN's proposal.

UCAN's proposed distribution relies on the different purposes of Funds A and B, their different funding sources, and the law governing escheat. The escheatment process attaches to monies traceable to particular persons; if a customer cannot be identified, any sums due that unidentified customer cannot escheat.

5.3.1. Source of the Residual Balances from Funds A and B

The restitution process has been quite successful and is drawing to a close. The settlement established that Fund A would be created with Cingular's deposit of \$18,467,220.38, which represented the total reimbursement for ETF and related

equipment charge payments, including interest, due to Group A customers. As of May 31, 2009, checks worth \$13,830,287.58 had cleared from Fund A (86,525 checks) and checks worth \$3,560,232.64 remained outstanding (22,316 checks).

Fund B was created with two deposits totaling \$1,168,838.50, all of it consisting of interest that accrued while the \$12.14 million penalty was escrowed with the Commission. As of May 31, 2009, checks valued at \$323,106.73 had cleared from Fund B (1,489 checks) and checks worth \$3,833.95 remained outstanding (21 checks).

Escheatment in California is largely complete. As of June 15, 2009, Rust has transferred \$3,148,047.50, representing unclaimed funds associated with particular persons, to the State Controller's Office. Some additional monies may still escheat in California and the escheatment process continues for nearly \$300,000 in unclaimed checks where the payee's last known address is outside California.

The approximately \$1.9 million now at issue represents monies in Fund A and Fund B that were never converted to checks, together with all otherwise unallocated interest. The Fund A component is approximately \$1.2 million, as of May 31, 2009; it does not include any sums attributable to uncashed checks which either will be cashed or will escheat, any payments to Rust, or the balance (still unknown) due to AT&T on its \$600,000 deposit towards notice and claims administration. The Fund B component can be identified more precisely and is \$704,100.42, as of May 31, 2009.

5.3.2. Escheat and the Commission's Equitable Authority

Code of Civil Procedure § 1519.5, added to the California Unclaimed Property Law in 1984, governs escheat of unclaimed utility refunds, including

the restitution ordered to customer Groups A and B here.⁵ In the case of money, the escheat process involves transmission of the cash to the state treasurer, along with written notice to the state controller that sets forth the amount of cash transmitted, the name and last known address of the person entitled to it or for whose benefit it is transmitted, and other identifying information the controller requires from the records of the holder of the cash.⁶ Thus, this process is not meant to handle cash which belongs to no one. Moreover, the objectives of the Unclaimed Property Law are:

(1) to protect unknown owners by locating them and restoring their property to them, and (2) to give the state, rather than the holders of the unclaimed property, the benefit of its retention, since experience shows most abandoned property will never be claimed [citations omitted].⁷

The Commission has examined application of Code of Civil Procedure § 1519.5 to various fact patterns where the ultimate question was how to dispose of the remains of a reparations fund. Paragraph 2(a) of the parties' settlement in

⁵ The Unclaimed Property Law is codified at Code of Civil Procedure § 1500 et seq. Code of Civil Procedure § 1519.5 provides, in pertinent part:

[A]ny sums held by a business association that have been ordered to be refunded by ... the Public Utilities Commission, which have remained unclaimed by the owner for more than one year after becoming payable in accordance with the final determination or order providing for the refund ... escheats to this state.

....

[I]t is the intent of the Legislature that nothing in this section shall be construed to change the authority of a court or administrative agency to order equitable remedies.

⁶ See California Jurisprudence 3d (2006), Vol, 1, Abandoned, Lost, and Escheated Property §§ 26-100, Escheat of Property to the State.

⁷ *Id.*, § 56.

this docket, which we quote in Section 2 above, cites three major decisions:

TURN v Pacific Bell (D.94-04-057),⁸ *In Re GTE California* (D.98-12-084),⁹ and *In Re CTS International* (D.00-04-027).¹⁰

The *CTS* decision, the most recent of the three, discusses both of the other decisions and summarizes the development of the Commission's interpretation of the statutorily undefined area between mandatory escheat under Code of Civil Procedure § 1519.5 and the Commission's own authority to order equitable remedies, which § 1519.5 expressly recognizes. At the time the *CTS* decision issued, the Commission already had approved establishment of the TCPF. D.99 04-023, which preceded the *CTS* decision in the same docket, had rejected a settlement that proposed distribution to the TCPF of all undeliverable and uncashed reparations checks, relying on the 1995 Supreme Court case

⁸ *TURN v Pacific Bell*, D.94-04-057, 54 Cal. PUC 2d 122 (1994) [construed Code Civ. Proc. § 1519.5 to permit use of Commission's equitable authority to distribute any unclaimed customer refunds to benefit those most likely to have been injured by the unlawful practices which gave rise to the refund ordered in D.93-05-062 (an earlier decision in the same docket); however, D.97-06-062 (a subsequent decision in that docket), ordered escheatment, stating that use of the residual refunds to provide upfront support for consumer advocacy groups, the distribution the parties proposed, served no equitable function connected with the proceeding].

⁹ *In Re GTE California*, D. 98-12-084; 1998 Cal. PUC LEXIS 910 [approved settlement agreement to create the Telecommunications Consumer Protection Fund as a supplemental, equitable remedy for alleged abusive marketing practices resulting in the unauthorized transfer of long-distance service ("slamming") and requiring distribution to it of the residue of a previously ordered reparations fund].

¹⁰ *In Re CTS International*, D.00-04-027, 2000 Cal PUC LEXIS 202 (2000) [approved modification of settlement agreement approved in D.99-06-005 (an earlier decision in the same docket), thereby authorizing equitable distribution of nearly \$1 million, the portion of reparations fund that could not be converted to checks because of lack of addresses, to the Telecommunications Consumer Protection Fund].

Assembly v PUC.¹¹ D.99-04-023 determined that such checks must escheat.¹² The subsequent *CTS* decision addressed a different question:

[W]hether the portion of the reparations fund that was never converted into checks, because of lack of current addresses, can be paid over to the Telecommunications Consumer Protection Fund.¹³

The *CTS* decision determined that “use of this portion of the reparations fund is legally permissible” and that the TCPF was a proper recipient.¹⁴ The *CTS* decision reasoned:

[T]he allocation of the remainder of the reparations fund to the Telecommunications Consumer Protection Fund serves an important equitable function in this proceeding, because the Fund is designed to provide consumer education about telecommunications matters to limited English speaking and non--English speaking customers, a group that was a major target of *CTS* illegal marketing practices. In addition, in the Pacific Bell late payment charge case [*TURN v Pacific Bell*], we noted that the majority of customers had received their refunds. Here in contrast, the majority of the customers who filed PIC [presubscribed interexchange carrier]

¹¹ 12 Cal. 4th 87 (1995) [CPUC lacked authority under rate refund statute, Pub. Util. Code § 435.5, to create an equitable fund for purpose of advancing the State policy of improving telecommunications consumer education and school telecommunications infrastructure since that statute required distribution of rate refunds to present and past customers].

¹² D.99-04-023 determined, however, that ordering the use of a portion of the uncashed checks drawn on common fund (a reparations fund) to pay an outstanding intervenor compensation award was consistent with the equitable authority retained by the Commission under Code of Civil Procedure § 1519.5, as well as with two controlling Supreme Court decisions: *Consumers Lobby Against Monopolies v PUC (CLAM)*, 25 Cal. 3d 891 (1975) [CPUC possess equitable power to award attorney fees under the common fund doctrine in quasi-judicial reparation actions].

¹³ 2000 Cal PUC LEXIS 202 *10.

¹⁴ *Id.*

disputes never received any reparation, making this case more the situation we faced in D.98-12-084 (the GTEC marketing abuse case [*In Re GTE California*]), where the restitution remedies had not been adequate.¹⁵

5.3.3. Rationale for Distribution to TCPF

Though the facts here are somewhat different than those underlying the *CTS* decision, the significant parallel is that the residue of Funds A and B consists of monies never converted to checks. Moreover as discussed above, the monies at issue here cannot really be characterized as refunds belonging to individuals to whom they could be sent if only current addresses were available -- none of the residue represents monies known to be owed to identified persons. UCAN's characterization of the residue is apt -- it now consists of "monies designed to disgorge unjust enrichment, not reimburse identifiable customers."¹⁶ Thus, based on the terms of the settlement and on the accountings provided, it does not appear that the residue is subject to escheat.

Specifically, the Fund A portion of the residue consists of as yet unallocated interest on the original principal deposit from Cingular and that portion of the principal that could not be converted to reparations checks. There is no dispute that all checks issued on Fund A, which have not been cashed within the requisite statutory period, will escheat.

The Fund B portion of the residue consists of the remainder of the initial deposit (comprising the interest that accrued during the years the penalty was in escrow with the Commission), plus subsequent interest. As previously noted,

¹⁵ 2000 Cal PUC LEXIS 202 *14.

¹⁶ August 29, 2009 Amended Motion at 6.

Group B customers (unlike Group A customers) were those with merely a potential, rather than an actual, entitlement to restitution, given the uncertainty about whether Group B customers had paid ETFs, etc., and if so, how much they had paid. For this reason, Group B customers were required to file claims for restitution and no Fund B monies were converted to checks in advance of receipt and approval of those claims.

Thus, we reach essentially the same question that the *CTS* decision raised--whether the portion of the reparations fund that was never converted into checks can be distributed to the TCPF? The *CTS* decision's affirmative response relied upon the TCPF serving a meaningful equitable function *vis a vis* the harm for which reparations were ordered, in that case, unfair marketing to customers with no- or limited-English proficiency, since the Fund's purpose is to provide grants for programs to educate and protect such consumers. Does such a nexus exist here?

Our decisions in this docket (D.04-09-062 and D.07-03-048) levied not only a \$12.14 million penalty but also ordered reparations for what we found to be widespread, unfair corporate policies and practices related to the marketing of cellular services in this state over a span of several years and the resulting failure to provide just and reasonable service to customers. Among other things:

We concluded that Cingular's advertising and coverage maps misled consumers into signing up for wireless service in areas where the cell phone did not work , and then imposed ETFs when the customer tried to cancel, allowing for no grace period to return the phone.¹⁷

¹⁷ D.07-03-048 at 2, referencing D.04-09-062 at 67-69.

The Commission did not focus on the comparative harm to one language group over another, but rather on the injury to customers at large, since all groups, regardless of language, experienced the harm. Thus, though the evidence included written marketing solicitations in languages other than English, we cannot readily quantify the percentage of the approximately 200,000 Groups A and B customers who had no- or limited-English proficiency. Given our broader regulatory experience with this issue, however, we think it highly likely both Groups included some number of such individuals.¹⁸ What we can calculate is that the eventual amount of the residue (an estimated \$1.9 million, as of January 31, 2009) will be on the order of 10% of the total of the amounts paid in restitution (\$14.1 million as of May 31, 2009 -- with 806 recently reissued checks outstanding) plus the amounts subject to escheat (\$3.4 million as of June 15, 2009 - with additional amounts still to escheat). From this perspective, the Funds A and B residue is not large.

Were we to decline to authorize distribution of the residue of Funds A and B to the TCPF, we are unsure what use lawfully could be made of the monies. The ALJ's August 6, 2008 ruling directed UCAN (and invited other parties) to suggest alternative disposition of the residue. UCAN's response, the only one

¹⁸ See for example, D.07-07-043 and D.08-10-016, as modified by D.08-12-029, issued in Rulemaking 07-01-021, *Order Instituting Rulemaking to Address the Needs of Telecommunications Customers Who Have Limited English Proficiency* [adopting, respectively, rules requiring telecommunications carriers that market in a language other than English to provide "in-language" support for such services and rules for in-language market trials].

filed, states that transfer to the TCPF is the “only specific recommendation that UCAN can offer the Commission.”¹⁹ UCAN’s response explains:

UCAN is unaware of any other non-profit or state-affiliated NGO that has the track record, the existing network, the familiarity with the nuances of telecommunications sales practices and the ability to efficiently disburse what is a modest amount of money for potential grants.²⁰

AT&T’s recent brief requests that the Commission distribute the residue of Funds A and B to the TCPF.

The funding guidelines of the TCPF provide that the grants will be awarded to grassroots, community-based-organizations to provide consumer information, to assist clients with individual telecommunications complaints, and for related activities. The funding guidelines list the goals and priorities that shall prevail in making awards, including:

- Utilize the local ethnic and community media to educate consumers about telecom marketing abuses and the availability of TCPF grantees to assist consumers;
- Provide information, assistance, and referral to individual consumers regarding telecommunications grievances or complaints
- To reach or empower individual consumers to access consumer information on their own and advocate on their own behalf;
- To develop the long term capacity of grassroots, non-profit organizations to provide telecommunications consumer education and assistance to limited-English speaking communities.

¹⁹ August 29, 2008 Amended Motion at 8.

²⁰ *Id.* at 8.

Recognizing that the Cingular reparations funds were established to address marketing abuses, we find that distribution of the residue of the funds to the TCPF for further distribution according to its funding guidelines would be consistent with the settlement. However, we clarify that given Cingular's statewide service territory, the Fund A and Fund B residue should be distributed throughout the State. Further, given that these monies are being provided to the TCPF as a result of the Cingular settlement, we clarify that as long as the monies remain in that fund, the TCPF should issue an annual report to the Commission (instead of Verizon, as was its earlier practice) describing its grant activities with specificity. Based on the foregoing discussion, once the claims administration process has concluded, we authorize distribution of the residue of Reparations Funds A and B to the TCPF.

6. Comments on Proposed Decision

The proposed decision of the ALJ in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. No comments were filed.

7. Assignment of Proceeding

Michael R. Peevey is the assigned Commissioner and Jean Vieth is the assigned ALJ in this proceeding.

Findings of Fact

1. AT&T should be reimbursed from Fund B for \$175,171.91, the amount of UCAN's second intervenor compensation award, which AT&T paid directly to UCAN prior to the issuance of D.08-02-015, which authorized payment of that award from Fund B.

2. The balance remaining, if any, once all additional monies due to the claims administrator have been paid from the \$600,000 deposited by AT&T for this purpose should be returned to AT&T and the calculation of the balance remaining should exclude the \$61,783.09 paid for telephone support from Fund A interest, per D.08-02-015. AT&T acted responsibly in its review of Rust's invoices, which led to issuance of a sizeable credit against the invoices tendered prior to the issuance of D.08-02-015.

3. The Motion of the Utility Consumers' Action Network Regarding Distribution of Remaining Funds, filed July 3, 2008, as amended on August 29, 2008 and February 20, 2009, and as further qualified by the June 12, 2009 joint exhibit, is unopposed. AT&T's June 19, 2009 brief supports the requested distribution.

4. Pursuant to the settlement approved by D.07-03-048, Fund A was created with a deposit of approximately \$18,467,220.38, which represented the total reimbursement for ETF and related equipment charge payments, and interest, due to Group A customers, consisting of persons and entities who were known to have paid an ETF or equipment charge, or both, to Cingular or an independent Cingular dealer or retailer.

5. Pursuant to the settlement approved by D.07-03-048, Fund B was created with deposits of \$1,168,830.50, representing the interest accrued on the \$12.14 million penalty while it was escrowed with the Commission. The purpose of Fund B was to provide restitution to Group B customers, consisting of persons and entities who may have paid an ETF or a supplemental equipment charge to an independent Cingular dealer or retailer. Because, due to lack of records, it was unknown whether Group B customers had made such payments, and if so,

what the amount of those payments had been, Group B customers were required to submit a claim form for restitution.

6. The residue of Funds A and B does not constitute monies that, but for current addresses, could be submitted to persons or entities known to be entitled to restitution.

7. Rust has identified \$3,441,048.06 in issued but uncashed checks that is subject to escheat. Most of that sum (\$3,148,047.50) has escheated to the State of California. No party disputes that these monies must escheat.

8. The ultimate residue from Funds A and B is estimated to be approximately \$1.9 million, as of May 31, 2009 (approximately \$1.2 million from Fund A and \$704,100.42 from Fund B).

9. Though the evidence received in this docket included written marketing solicitations in languages other than English, we cannot readily quantify the percentage of the approximately 200,000 Groups A and B customers who had no- or limited-English proficiency.

10. The TCPF's purpose is to provide grants to grassroots, community-based-organizations for consumer education, assistance with telecommunications-related complaints, and related activities.

11. Given Cingular's statewide service territory, the residue of Funds A and B distributed to the TCPF should be made available to grantees throughout the State.

12. As long as the Fund A and Fund B residue remains in the TCPF, the TCPF should issue an annual report to the Commission (instead of Verizon, as was its earlier practice) describing its grant activities with specificity.

13. Apart from the distribution to the TCPF, no other equitable use of the residue of Funds A and B has been proposed.

Conclusions of Law

1. Since there is no indication that AT&T acted in bad faith, AT&T's failure to file a petition to modify D.08-02-015, as required by Rule 16.4, should be excused under the authority of Rule 1.2, in order to prevent further expense to the parties and further delay.

2. Neither the settlement approved by D.07-03-048, nor D.08-02-015, which approved the funding for live telephone support, requires AT&T to absorb the costs of telephone support in the \$600,000 it advanced towards notice and claims administration.

3. Pursuant to the settlement approved by D.07-03-048, no funds remaining in Funds A and/or B shall be returned to Cingular other than the unspent portion, if any, of the \$600,000 deposited for notice and claims administration.

4. All checks drawn on monies in Fund A and Fund B, if uncashed, are subject to escheat under Code of Civil Procedure § 1519.5, or the law of other states or territories.

5. All monies remaining in Fund A and Fund B, which were not converted to checks to provide restitution to customers, are not subject to escheat under Code of Civil Procedure § 1519.5, given the facts established.

6. UCAN's motion, filed July 3, 2008, as amended on August 29, 2008 and February 20, 2009, and as further qualified by the June 12, 2009 joint exhibit and AT&T's June 19, 2009 brief, should be granted to the extent set forth in the ordering paragraphs.

7. Distribution of the residue of Fund A and Fund B to the TCPF should be conditioned upon the TCPF: (a) continuing to make grants in accordance with its funding guidelines; (b) making grants available to grantees throughout the State;

and (c) issuing an annual report to the Commission detailing its grant activities with specificity.

O R D E R

IT IS ORDERED that:

1. Ordering Paragraph 1 of Decision (D.) 08-02-015 is modified to read:

Rust Consulting, Inc. (Rust) shall disburse from the residue of Fund B, described herein, to AT&T Mobility LLC aka Cingular Wireless (AT&T Mobility or AT&T) the sum of \$175,171.91, in full reimbursement to AT&T of its direct payment to the Utility Consumers' Action Network (UCAN) of the intervenor compensation award to UCAN ordered by Decision (D.) 07-09-015.

2. Once all additional monies due to the claims administrator have been paid from the \$600,000 deposited by AT&T Mobility LLC (AT&T) for this purpose, the balance remaining, if any, shall be returned to AT&T. The calculation of the balance remaining shall exclude the \$61,783.09 paid for telephone support from Fund A interest, per D.08-02-015.

3. *The Motion of the Utility Consumers' Action Network Regarding Distribution of Remaining Funds*, filed July 3, 2008, as amended on August 29, 2008 and February 20, 2009, and as further qualified by the joint exhibit of AT&T and Utility Consumers' Action Network, filed June 12, 2009 and by AT&T's brief, filed June 19, 2009, is granted to the extent set forth in these Ordering Paragraphs and is otherwise denied. After reimbursement to AT&T as provided in Ordering Paragraphs 1 and 2, all monies remaining in Reparations Fund A and Reparations Fund B, which were not converted to checks to provide restitution to customers, and which, therefore, are not subject to escheat under Code of Civil Procedure § 1519.5 or other applicable law, shall be distributed to the Telecommunications Consumer Protection Fund (TCPF) for use in awarding

grants consistent with the TCPF's funding guidelines. Such grants shall continue to be made in accordance with the TCPF's funding guidelines, shall be made available to grantees throughout the State, and, as long as the funds remain in the TCPF, the TCPF shall issue an annual report to the Commission detailing its grant activities with specificity.

4. Investigation 02-06-003 is closed.

This order is effective today.

Dated October 15, 2009, at San Francisco, California.

MICHAEL R. PEEVEY
President

DIAN M. GRUENEICH

JOHN A. BOHN

RACHELLE B. CHONG

TIMOTHY ALAN SIMON

Commissioners