

Decision 10-08-018 August 12, 2010

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

Utility Consumers’ Action Network (UCAN),  
 Complainant,  
 vs.  
 Sprint Telephony PCS, L.P. (U3064C) dba Sprint  
 PCS, aka Sprint Spectrum L.P., aka Sprint Nextel,  
 aka Wireless L.P. (U3062C), and related entities  
 collectively “Sprint,”  
 Defendant.

Case 08-08-026  
 (Filed August 25, 2008)

**DECISION AWARDING INTERVENOR COMPENSATION TO UTILITY CONSUMERS’ ACTION NETWORK FOR SUBSTANTIAL CONTRIBUTION TO DECISION 10-04-016**

<b>Claimant:</b> Utility Consumers’ Action Network	<b>For contribution to</b> Decision (D.) 10-04-016
<b>Claimed (\$):</b> \$91,943.65 <sup>1</sup>	<b>Awarded (\$):</b> \$86,980.25 (reduced 5%)
<b>Assigned Commissioner:</b> Dian M. Grueneich	<b>Assigned ALJ:</b> Maribeth A. Bushey

**PART I: PROCEDURAL ISSUES**

**A. Brief Description of Decision:**

This decision approves a settlement between Utility Consumers’ Action Network (UCAN) and the Sprint Telephony PCS, L.P. dba Sprint PCS aka Sprint Nextel, aka Wireless L.P. (Sprint). The terms of the settlement agreement provide for customer refunds estimated at \$521,000 and opportunities for changes to service plans.

<sup>1</sup> We correct a minor miscalculation by UCAN in this claim. The corrected total is \$91,943.65, not \$92,111.65 as originally requested.

**B. Claimant must satisfy intervenor compensation requirements set forth in Public Utilities Code Sections 1801-1812:**

	<b>Claimant</b>	<b>CPUC Verified</b>
<b>Timely filing of notice of intent (NOI) to claim compensation (§ 1804(a)):</b>		
1. Date of Prehearing Conference:	December 17, 2008	Yes
2. Other Specified Date for NOI:		
3. Date NOI Filed:	January 16, 2009	Yes
4. Was the notice of intent timely filed?		Yes
<b>Showing of customer or customer-related status (§ 1802(b)):</b>		
5. Based on ALJ ruling issued in proceeding number:		This decision
6. Date of ALJ ruling:		
7. Based on another CPUC determination (specify):	UCAN'S NOI, filed in A.05-02-019 on June 28, 2005, no amendments to by-laws since the time of this earlier submission.	See Part II-Section C, comment 1 below
8. Has the claimant demonstrated customer or customer-related status?		Yes
<b>Showing of "significant financial hardship" (§ 1802(g)):</b>		
9. Based on ALJ ruling issued in proceeding number:		This decision
10. Date of ALJ ruling:		
11. Based on another CPUC determination (specify):	Here, in UCAN's claim for compensation	See Part II-Section C, comment 2 below
12. Has the claimant demonstrated significant financial hardship?		Yes
<b>Timely request for compensation (§ 1804(c)):</b>		
13. Identify Final Decision	D.10-04-016	Yes
14. Date of Issuance of Final Decision:	April 12, 2010	Yes
15. File date of compensation request:	June 4, 2010	Yes
16. Was the request for compensation timely?		Yes

**PART II: SUBSTANTIAL CONTRIBUTION**

**A. Claimant’s description of its claimed contribution to the final decision:**

<b>Contribution</b>	<b>Citation to Decision or Record</b>	<b>Showing Accepted by CPUC</b>
<p>1. On August 25, 2008, UCAN filed a complaint and a request for a cease and desist order against Sprint for imposing unauthorized charges due to billing errors on Sprint’s Pioneer Program, as well as requiring Sprint to provide notice to customers about those errors, and offering customers the ability to change, terminate, or reactivate their plan without an early termination fee.</p>	<p>C.08-08-026</p>	<p>Yes</p>
<p>2. The Commission adopted UCAN &amp; Sprint’s negotiated Settlement Agreement stating that it was reasonable in light of the record as a whole and in the public interest because the parties analyzed Sprint’s Pioneer program’s billing issues and “carefully developed” a plan to address those issues by bringing prompt refunds to customers and allowing customers to change plans without incurring additional fees. (D.10-04-016 at 4). The Commission found that this settlement “serves the public interest by expeditiously resolving issues that otherwise would have been litigated.” (D.10-04-016 at 4). Finally the Commission noted that “The parties should be commended for their skillful efforts in resolving this matter.” (D.10-04-016 at 4). The benefits to both consumers and Sprint, would not have been achieved but for UCAN filing this proceeding, and providing its legal and technical expertise to the final settlement.</p>	<p>D.10-04-016 at 4</p>	<p>Yes</p>
<p>3. The Commission decision itself details the benefits of the settlement negotiated by UCAN as follows:</p> <p>“As set forth in the settlement agreement, Sprint agrees to address various billing errors that occurred for its Pioneer Plan customers by:</p>	<p>D.10-04-016 at 3</p>	<p>Yes</p>

<p>1. correcting the errors,</p> <p>2. crediting or refunding those customers who received unauthorized charges due to billing errors, with total estimated credits and refunds estimated at \$521,281.67,</p> <p>3. providing notice to customers of the corrections,</p> <p>4. offering customers an opportunity to reactivate accounts that were terminated, and</p> <p>5. allowing dissatisfied customers to change or terminate plans without incurring an early termination fee." (D.10-04-016 at 3)</p>		
<p>Sprint Pioneer customers, who pay per minute, will also receive 25 minutes of free usage per month for 12 months.</p>	<p>D.10-04-016 Attachment A at 5</p>	<p>Yes</p>

**B. Duplication of Effort (§§ 1801.3(f) & 1802.5):**

	Claimant	CPUC Verified
<p>a. Was DRA a party to the proceeding?</p>	<p>No</p>	<p>Correct</p>
<p>b. Were there other parties to the proceeding?</p>	<p>No</p>	<p>Correct</p>

**C. Additional Comments on Part II:**

#	Claimant	CPUC	Comment
<p>1</p>		<p>X</p>	<p>In its NOI, filed on 01-16-09 in this proceeding, UCAN asserts that it is a Category 3 customer, representing “a group or organization authorized pursuant to its articles of incorporation or bylaws to represent the interests of residential ratepayers.” UCAN provided the relevant portion of its articles of incorporation in its NOI submitted in A.05-02-019 dated June 28, 2005. D.98-04-059 directs groups such as UCAN to indicate the percentage of their members that are residential ratepayers. UCAN states that it has approximately 36,000 dues paying members, of whom they believe the vast majority are residential and small business ratepayers.</p> <p>We affirm here, that UCAN is a Category 3 customer and is eligible to claim compensation in this proceeding.</p>
<p>2</p>		<p>X</p>	<p>Pursuant to rule 1804(a)(2)(B) UCAN included its showing of significant financial hardship in this request. As a Category 3 customer,</p>

		<p>UCAN must demonstrate that it meets the comparison test to establish “significant financial hardship.” The comparison test requires that the economic interest of the individual members of the organization must be small in comparison to the costs of effective participation in the proceeding.</p> <p>The cost of UCAN’s participation in CPUC proceedings, which in this proceeding was \$91,943.65, substantially outweighs the benefit to the individuals members it represents. Intervenor’s members are residential customers whose individual interests in CPUC proceedings are significantly lower than the cost of participating in CPUC proceedings. In this proceeding, specific costs to customers were not contemplated; rather UCAN’s participation concerned correcting billing errors and customer service practices with the Sprint Pioneer plan. Accordingly, these economic interests are small relative to the costs of participation. It is unlikely that UCAN’s members will see financial benefits that will exceed the costs of UCAN’s intervention.</p> <p>We find that UCAN is a customer as defined in Public Utilities Code Section 1802(b), has made the requisite showing of significant financial hardship, and is determined to be eligible to claim intervenor compensation in this proceeding.</p>
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**PART III: REASONABLENESS OF REQUESTED COMPENSATION**

**A. General Claim of Reasonableness (§§ 1801 & 1806):**

<b>Claimant’s explanation as to how the cost of claimant’s participation bore a reasonable relationship with benefits realized through claimant’s participation</b>	<b>CPUC Verified</b>
<p>UCAN’s participation in this case and the creative solutions in the Settlement Agreement provide benefits for both existing and future Sprint customers. (D.10-04-016 at 4). Under the settlement agreement, Sprint agrees to address various billing errors that occurred for its Pioneer Plan customers. (D.10-04-016 at 3). Sprint is required to correct the errors for future customers and refund prior and existing customers’ unauthorized charges. (D.10-04-016 at 3). Additionally, prior and existing customers will benefit because they will be allowed to change, terminate, or reactive their accounts without incurring charges. (D.10-04-016 at 3). Finally, the settlement positively impacts Sprint customers by providing notice of these corrections to Sprint customers. (D.10-04-016 at 3). The settlement was crafted by UCAN and Sprint in a manner where customer interests were made paramount with the intent to reduce the harm caused Sprint’s billing errors, and improve customer information. As UCAN was the party that filed the complaint, and UCAN engaged with Sprint extensively to</p>	<p>After the reductions and disallowances we make to UCAN’s claim, the remaining hours and costs are reasonable and should be compensated.</p>

<p>discover the best solution to the issues presented, the benefits of the settlement were necessarily a result of UCAN’s efforts. The time spent was justified by the diversity and complexity of the problems faced by Pioneer customers. The correction of various billing system errors, resulting credits to various classes of effected customers, as well as the benefits provided in free minutes to Pioneer customers, serve to make Pioneer customers whole and as a deterrent against similar problems recurring in the future.</p>	
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**B. Specific Claim:**

CLAIMED						CPUC AWARD			
ATTORNEY AND ADVOCATE FEES									
Item	Year	Hours	Rate \$	Basis for Rate*	Total \$	Year	Hours	Rate \$	Total \$
A. Neill	2008	181.80	160	D.09-11-026	29,088.00	2008	168.30	160	26,928.00
A. Neill	2009 (Jan. 1 <sup>st</sup> – Dec 1 <sup>st</sup> )	208.10 <sup>2</sup>	168	D.09-11-026 with UCAN's second request of a 5% "step increases" (in the "0-2" years of experience compensation range) of \$8 as authorized by D.07-01-009	34,960.80	2009 (Jan. 1 <sup>st</sup> – Dec 1 <sup>st</sup> )	203.80	168	34,238.40
A. Neill	2009 (Dec 1 <sup>st</sup> – Dec 31 <sup>st</sup> )	32.50	205	D.08-04-010 and Resolution ALJ-235	6,662.50	2009 (Dec 1 <sup>st</sup> – Dec 31 <sup>st</sup> )	27.50	205	5,637.50
A. Neill	2010	9.50	205	Rate adopted here and Resolution ALJ-247	1,947.50	2010	9.50	205	1,947.50
M. Shames	2008	28.70	330	D.09-10-053	9,471.00	2008	28.70	330	9,471.00
M. Shames	2009	24.30	330	D.09-10-053	8,019.00	2009	21.10	330	6,963.00
<b>Subtotal: \$90,148.80</b>						<b>Subtotal: \$85,185.40</b>			
OTHER FEES: Travel									
Item	Year	Hours	Rate \$	Basis for Rate*	Total \$	Year	Hours	Rate \$	Total \$
Travel- Neill	2008	7.80	80	(1/2) of 2008 adopted rate in D.09-11-026	624.00	2008	7.80	80	624.00
<b>Subtotal: \$624.00</b>						<b>Subtotal: \$624.00</b>			
INTERVENOR COMPENSATION CLAIM PREPARATION **									
Item	Year	Hours	Rate \$	Basis for Rate*	Total \$	Year	Hours	Rate \$	Total \$

<sup>2</sup> UCAN’s fails to reduce by ½ the two hours in 2009 that Neill spent preparing UCAN’s NOI. Here, these hours are billed at full professional rate. To correct UCAN’s error, we remove these hours from Neill’s professional hours and reallocate them in the appropriate category under intervenor compensation preparation, and recalculate UCAN’s claim.

A. Neill	2009	2.00 <sup>3</sup>	84	½ rate adopted here	168.00	2009	1.90	84	84.00
A. Neill	2010	8.50	102.50	(1/2) of 2010 rate adopted here and Resolution ALJ-247	871.25	2010	8.50	102.50	871.25
<b>Subtotal: \$1,039.25</b>					<b>Subtotal: \$1,039.25</b>				
<b>COSTS</b>									
<b>#</b>	<b>Item</b>	<b>Detail</b>			<b>Amount \$</b>	<b>Amount \$</b>			
1	Travel Costs-Airfare/BART	See Attachment 4			131.60	131.60			
<b>Subtotal: \$131.60</b>					<b>Subtotal: \$131.60</b>				
<b>TOTAL REQUEST: \$91,943.65</b>					<b>TOTAL AWARD: \$86,980.25</b>				

When entering items, type over bracketed text; add additional rows as necessary.

\*If hourly rate based on CPUC decision, provide decision number; otherwise, attach rationale.

\*\*Reasonable claim preparation time typically compensated at ½ of preparer's normal hourly rate.

**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. Claimant's records should identify specific issues for which it seeks 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.**

**C. CPUC Adoptions, Disallowances & Adjustments:**

#	Reason
<p>In D.08-12-055 and D.09-10-053, we reduced UCAN's claims for excessiveness and duplication of effort. We make similar reductions here. Again, we admonish UCAN that when multiple participants are utilized to perform the same task, that it must provide the Commission with sufficient information to ensure that this work is not duplicative of the efforts of others. While UCAN may find it necessary to have several individuals involved in the same work efforts, without a clear explanation of how these efforts differ from one another, we see no reason why ratepayers should pay for inefficient efforts. In addition, we do not compensate for clerical tasks as they are subsumed in the hourly rates of UCAN's attorneys.</p>	
<b>Disallowances for Neill</b>	
1/9/08	Disallow time for meeting with complainant (Dale Kubacki). This duplicates the same compensated efforts of Shames. Reduce 1 hr.
August 2008	Neill logs a total of 42 hours to prepare UCAN's complaint document. This amount of time is excessive given the scope of the work and brevity of the document. We reduce this time by 12 hrs. This adjusted total more closely reflects our standards on reasonableness of hours.
8/25/08	We disallow .50 hrs. for the "filing of complaint." This is a clerical task and is non-compensable.

<sup>3</sup> See footnote 1.

1/15/09	Neill logs 2 hrs. for “drafting UCAN’s NOI.” This time is excessive, given the use of the expedited check-a-box form. We reduce this time by 1 hr. If this time also includes “filing time,” this is a clerical task and as such, is non-compensable.
6/9/09	Disallow 1.5 hrs spent on “UCAN’s proposal for Sprint notice to Pioneer customers.” This duplicates the same compensated efforts of Shames.
8/20/09	Disallow .80 hrs. “meeting with Kutka and Selby.” This duplicates the same compensated efforts of Shames.
10/14/09	Disallow .50 hrs. spent on a “meeting and follow-up regarding settlement.” This duplicates the same compensated efforts of Shames.
10/15/09	Reduce time spent on an internal communication with Shames by .50 hrs. This adjustment reflects the same amount of time Shames spent on the same internal communication with Neill.
12/04/09	Disallow time spent on a “meeting with Kutka and Selby regarding a settlement.” This duplicates the same compensated efforts of Shames. Reduce 1 hr.
12/16/09	Neill combines the tasks of “final review of settlement and preparation for filing.” We have cautioned UCAN in the past, as we do again today, to not combine multiple tasks on its timesheet entries. We reduce this time by 4 hrs. equal to ½ the hours Neill logs for these two tasks.
12/17/09	
<b>Disallowances for Shames</b>	
1/29/09	Disallow time spent on a “meeting with Sprint regarding a settlement.” This duplicates the same compensated efforts of Neill. Reduce 1 hr.
6/5/09	Disallow time spent on a “teleconference with Sprint regarding a settlement.” This duplicates the same compensated efforts of Neill. Reduce .70 hrs.
9/10/09	Disallow time spent on a “teleconference with Sprint regarding a settlement.” This duplicates the same compensated efforts of Neill. Reduce .50 hrs.
12/2/09	Disallow time spent on “emails with Sprint regarding settlement terms.” This duplicates the same compensated efforts of Neill. Reduce 1 hr.
<b>Rates adopted here</b>	
2009 hourly rate for Neill from January 1 thru December 1.	As authorized by D.07-01-009, UCAN requests a second 5% "step increase" (equal to \$8.00) over Neill’s 2008 rate adopted in D.09-11-026. We find the requested rate increase to be reasonable and adopt it here.
2009 hourly rate for Neill from December 1 thru December 31.	Neill has worked on public utilities related issues, particularly at the California Public Utilities Commission, consistently since June 2005, as both a legal intern and as an attorney for UCAN. He has been a member of the California Bar Association since December 1, 2006. Neill’s experience has involved extensive participation in telecommunications and energy related proceedings including adjudicatory, rulemaking, and other Commission proceedings.  With his work in 2009, Neill had at least 3-4 years of experience. Resolution ALJ-235 adopted the intervenor compensation rates for 2009. The 2009 range for Attorneys with 3-4 years experience is \$200-\$235 as outlined in D.08-04-010. We find UCAN’s rate of \$205 for Neill’s 2009 work to be within the range of rates

	approved by Commission decisions and adopt it here.
2010 hourly rate for Neill	Resolution ALJ-247 disallows COLA increases for intervenor work in 2010. As such, we apply Neill's 2009 rate approved here to his work performed in 2010.

**PART IV: OPPOSITIONS AND COMMENTS**

**A. Opposition: Did any party oppose the claim?**

No
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**B. Comment Period: Was the 30-day comment period waived?**

Yes
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**FINDINGS OF FACT**

1. Claimant has made a substantial contribution to Decision (D.)10-04-016.
2. The claimed fees and costs are comparable to market rates paid to experts and advocates having comparable training and experience and offering similar services.
3. The total of reasonable contribution is \$86,980.25.

**CONCLUSION OF LAW**

1. The claim, with any adjustment set forth above, satisfies all requirements of Public Utilities Code §§ 1801-1812.

**ORDER**

1. Claimant is awarded \$86,980.25.
2. Within 30 days of the effective date of this decision, Sprint Telephony PCS, L.P. shall pay claimant 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 August 18, 2010, the 75th day after the filing of claimant's request, and continuing until full payment is made.

C.08-08-026 ALJ/MAB/gd2

3. The comment period for today's decision is waived.

4. Case 08-08-026 is closed.

This decision is effective today.

Dated August 12, 2010, at San Francisco, California.

MICHAEL R. PEEVEY  
President  
DIAN M. GRUENEICH  
JOHN A. BOHN  
TIMOTHY ALAN SIMON  
NANCY E. RYAN  
Commissioners

**APPENDIX****Compensation Decision Summary Information**

<b>Compensation Decision:</b>	D1008018	<b>Modifies Decision?</b> No
<b>Contribution Decision(s):</b>	D1004016	
<b>Proceeding(s):</b>	C0808026	
<b>Author:</b>	ALJ Maribeth A. Bushey	
<b>Payer(s):</b>	Sprint Telephony PCS, L.P.	

**Intervenor Information**

<b>Intervenor</b>	<b>Claim Date</b>	<b>Amount Requested</b>	<b>Amount Awarded</b>	<b>Multiplier?</b>	<b>Reason Change/Disallowance</b>
Utility Consumers' Action Network	06-04-10	\$91,943.65	\$86,980.25	No	failure to discount intervenor compensation preparation time, duplication of effort, and the disallowance of clerical work.

**Advocate Information**

<b>First Name</b>	<b>Last Name</b>	<b>Type</b>	<b>Intervenor</b>	<b>Hourly Fee Requested</b>	<b>Year Hourly Fee Requested</b>	<b>Hourly Fee Adopted</b>
Art	Neill	Attorney	Utility Consumers' Action Network	\$160	2008	\$160
Art	Neill	Attorney	Utility Consumers' Action Network	\$168	2009 <sup>4</sup>	\$168
Art	Neill	Attorney	Utility Consumers' Action Network	\$205	2009 <sup>5</sup>	\$205
Art	Neill	Attorney	Utility Consumers' Action Network	\$205	2010 <sup>6</sup>	\$205
Michael	Shames	Attorney	Utility Consumers' Action Network	\$330	2008	\$330
Michael	Shames	Attorney	Utility Consumers' Action Network	\$330	2009	\$330

**(END OF APPENDIX)**

<sup>4</sup> Adopted here, this rate includes UCAN's request for a second 5% step increase for Neill work as approved in D.07-01-009.

<sup>5</sup> Adopted here, during this time Neill moved into the 2009 range for attorneys with 3-4 years of experience as approved in D.08-04-010.

<sup>6</sup> Equal to Neill's 2009 rate adopted here. See Resolution ALJ-247.