

Decision 07-09-015 September 6, 2007

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)

OPINION GRANTING INTERVENOR COMPENSATION TO UCAN FOR SUBSTANTIAL CONTRIBUTIONS TO JUDICIAL REVIEW OF DECISION 04-09-062 AND TO DECISION 07-03-048

This decision awards Utility Consumers' Action Network (UCAN) \$171,996.30 in compensation for its substantial contributions (1) in the course of judicial review of Decision (D.) 04-09-062 and (2) in challenging the initial Restitution Plan and subsequently working toward a post-appeal, all-party settlement, both of which underlie D.07-03-048. This award represents a decrease of \$3,200 from the amount requested. This proceeding is closed.

1. Background

The Commission opened this investigation in 2002. In D.04-09-062, which issued following evidentiary hearing, the Commission found that from 2000 to 2002, Pacific Bell Wireless LLC, dba Cingular Wireless (Cingular) advertised and marketed its services heavily without disclosing its network coverage problems

to customers.¹ The Commission 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 Early Termination Fees (ETFs) when the customer tried to cancel, allowing for no grace period to return the phone. D.04-09-062 found that Cingular's official no return/no refund ETF policy constituted an unfair business practice that failed to provide adequate, just and reasonable service to customers, in violation of California Public Utilities Code Sections 451, 702, 2896 and D.95-04-028. D.04-09-062 imposed a \$12.14 million fine on Cingular and ordered Cingular to refund all ETFs collected from January 2000 to April 2002. D.04-09-062 did not specify how the refund would be implemented, but instead ordered Cingular to "file a refund plan accomplishing the customer reparations," and delegated to our Telecommunications Division (TD) the responsibility to "monitor implementation of the plan." (D.04-09-062, p. 67.) Cingular submitted a Restitution Plan to TD about 60 days after D.04-09-062 issued. In January 2005, UCAN and the Commission's Consumer Protection and Safety Division (CPSD) jointly filed protests to Cingular's proposed plan. Cingular had already filed an application for rehearing of D.04-09-062 and the proposed Restitution Plan was neither refined nor implemented pending that review or the judicial review which followed.

The Commission denied Cingular's application for rehearing by D.04-12-058, whereupon Cingular commenced court challenges of that decision and D.04-09-062. On June 20, 2006, the California Court of Appeal, Fourth

¹ Cingular is now known as AT&T Mobility LLC.

Appellate District, issued a written opinion denying all of Cingular's appeals. (*Pacific Bell Wireless, LLC v. Public Utilities Commission* (2006) 140 Cal.App.4th 718.) On October 11, 2006, the California Supreme Court summarily denied Cingular's petition for review. (Cal Sup. Ct. Case No. S145516, Petition for Review denied October 11, 2006.) Thereafter on March 9, 2007, after twice seeking and receiving extensions of the filing deadline, Cingular filed a petition for a writ of certiorari with the United States Supreme Court.

At various times during the pendency of judicial review, Cingular and one or both of the other parties engaged in settlement negotiations. By motion filed March 14, 2007, the parties sought adoption of an all-party settlement. D.07-03-048, the most recent decision in this investigation, adopted the settlement. The settlement sets out the details of a refund plan for Cingular's customers, requires Cingular to pay the full penalty previously ordered, and resolves all pending litigation.

UCAN timely filed a request for intervenor compensation after D.04-09-062 issued. By D.05-02-005, the Commission awarded UCAN \$367,401.25 for substantial contribution to D.04-09-062. The present request seeks compensation for work associated with opposition to Cingular's 2004 Restitution Plan, with judicial review of D.04-09-062 (together with D.04-12-058, which denied rehearing) and with the settlement adopted by D.07-03-048. Cingular's response, filed May 24, 2007, opposes the request. With the leave of the Administrative Law Judge (ALJ), UCAN filed a reply on June 15, 2007, and on July 10, 2007, filed an amendment to the reply, which consists of a supplemental declaration of its outside counsel, Alan Mansfield of Rosner & Mansfield.

2. Requirements for Awards of Compensation

The intervenor compensation program, enacted in Pub. Util. Code §§ 1801-1812, requires California jurisdictional utilities to pay the reasonable costs of an intervenor's participation if the intervenor 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. (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 prehearing conference (PHC), or in special circumstances at other appropriate times 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 should 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), 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. (§§ 1802(i), 1803(a).) As relevant to today's decision, an intervenor who has made a "substantial contribution" may also, in certain circumstances,

receive a compensation award for fees and costs incurred in “obtaining judicial review.” (§ 1802(a); *See Southern California Edison Co. v. PUC* [(April 19, 2004, B166993), 2004 Cal. App. LEXIS 568, affirming D.02-06-070 and D.03-04-034].)

6. The claimed fees and costs are 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).

For discussion here, the procedural issues in Items 1-4 above are combined, followed by separate discussions of Items 5-6.

3. Procedural Issues

D.05-02-005, which awarded UCAN compensation for substantial contribution to D.04-09-062, determined that UCAN had met each of the procedural requirements described above, including financial hardship. However, because this request concerns work performed after the issuance of D.04-09-062, we must renew our examination of timeliness.² UCAN filed this request on April 24, 2007, within 60 days of the issuance of D.07-03-048.

Cingular challenges the timeliness of the request because that filing date is more than six months after the issuance of the California Supreme Court’s decision denying Cingular’s petition for review. Cingular fails to mention that whether it would file a petition for writ of certiorari remained a live issue during that six month interval.

The Commission addressed timeliness, among other issues, in D.05-09-011, which resolved UCAN’s request for compensation in a different proceeding.

² Rule 1.7(f), which requires a supplemental NOI if an intervenor participates in judicial review, became effective on March 27, 2007, and does not apply here.

There, UCAN, as appellant, initiated the subsequent judicial review. On the issue of timeliness the Commission stated:

Since judicial review of a Commission decision usually occurs well after 60 days from the issuance of the Commission decision, we find that the [California] Supreme Court's denial of UCAN's petition for review on November 10, 2004, triggered the 60-day period, and thus find that UCAN's January 7, 2005, request for compensation was timely filed. (D.05-09-011 at 6.)

D.05-09-011 does not mention any further court challenges and it appears that judicial review went no further after the state Supreme Court acted. In contrast, the procedural history of this investigation does not end at the State Supreme Court but includes Cingular's petition for writ of certiorari (filed five months after the state Supreme Court denied Cingular's petition for review) and an all-party settlement (filed less than one week after Cingular filed the certiorari petition). Given these specific events, we find that UCAN acted reasonably to file its request within 60 days of the issuance of D.07-03-048, which adopted the settlement. Accordingly, we find that UCAN's request was timely-filed and that therefore, UCAN has satisfied all the procedural requirements necessary to make its supplemental request for compensation in this proceeding.

4. Substantial Contribution

UCAN states that its efforts and related substantial contributions fall within three broad areas: appellate work (2005 through 2006); opposition to Cingular's initial Restitution Plan (in early 2005); and participation in settlement negotiations (late 2006 through early 2007). UCAN retained the law firm of Rosner & Mansfield to assist it with the appeals and to develop a restitution model. Michael Shames, UCAN's Executive Director, also assisted with the appeals process and the negotiation of the settlement.

We examine each of these broad issue groups below. The second and third of these, where work was done within the umbrella of the Commission investigation itself, require what is now largely a standardized review for compliance with the statutory provisions governing assessment of substantial contribution. Appellate review, however, falls within an area where guidance in interpreting relevant statutes is evolving still.

In performing our review, we have relied largely upon the parties pleadings. We note that Cingular's opposition included, as attachments, the following documents from the judicial proceedings: UCAN's appellate brief; the Commission's appellate brief; a print-out of the docket entries from both the Court of Appeal and the California supreme Court; and UCAN's letter urging the Court to deny review. These were all helpful to us. Such documents, and any transcripts, should be a standard part of any request for compensation for work performed in the course of judicial review. They enable the Commission to engage in an objective review of the appellate record. Here no transcripts were available, but we obtained directly from the Court of Appeal an audio CD of the oral argument held on May 16, 2006. We direct the ALJ to have a copy of the CD placed in the formal file for this proceeding.

4.1. Appellate Work

As noted above in Section 2, § 1802(a) permits compensation for the fees and costs "of obtaining judicial review." We begin by summarizing legal precedent on substantial contribution to the judicial review process.

In *Southern California Edison v. Public Utilities Commission, supra*, the California Court of Appeal held that an intervenor that successfully defends a Commission decision is eligible for intervenor compensation. (117 Cal.App.4th at 1046.) The court also opined that "the Legislature specifically provided for

compensation to customers, even if their efforts may duplicate to some extent those of the PUC.” (*Id.* at 1052, citing § 1802.5.) The Commission itself has noted that the legislative mandates within the intervenor compensation statutes “encourage effective intervenor participation” in defending a Commission’s decision through judicial review. (D.03-04-034 at 10, citing § 1801.3(b).)

Likewise: “The intervenor may join the Commission in opposing the appeal of another party that threatens to overturn the decision regarding positions or recommendations of the intervenor that the decision had adopted.”

(D.05-04-049 at 9.)

D.05-09-011 further advises:

[T]he work related to appellate review before the Court of Appeal can be compensated as long as there is a sufficient nexus between that work and the substantial contribution made in the Commission decision for which compensation is sought. Specifically, under governing Commission and judicial precedents, the work in the reviewing court must be related to or necessary for the substantial contribution. (D.05-09-011 at 12-13, emphasis in original.)

D.05-09-011, citing examples where previous intervenors were compensated for participating in judicial review, notes that “[t]he common thread among these decisions is that in order for the judicial forum work to be compensable, the work must be related to or necessary for the intervenor’s substantial contribution for which compensation is sought. (*Id.* at 14; see D.03-04-034 at 5; D.05-01-059 at 9-10; D.05-04-049 at 9-11; 117 Cal.App.4th at 1052, 1053.)

UCAN claims that it participated actively and substantially in the appellate proceedings and that such participation was necessary to defend its success in the Commission investigation which led to D.04-09-062. UCAN’s Request, at page 5, describes how UCAN helped to obtain affirmation of the

Commission's decision – by preparing its own response to the writ petition; by taking a major role in gathering and presenting evidence for the hearing, which was set before a special master, on whether the writ was filed in the proper venue; by submitting an index of selected exhibits from the Commission's hearing to assist the court in reviewing the full record; by participating at oral argument before the appellate panel, where UCAN explained why the ETFs were not a rate for preemption purposes (one of the main points in the court's denial of Cingular's petition); and by sending letters to the California Supreme Court to urge the Court not to entertain review of, modify, or depublish the opinion of the Court of Appeal.

Cingular vigorously opposes UCAN's request for any compensation for its appellate work. Cingular claims that UCAN's presentation added nothing to the arguments and positions presented by the Commission and, consequently, did not substantially contribute to the court's decision. We disagree. Below, we comment upon Cingular's primary criticisms, and conclude that Cingular's criticisms are invalid in all respects but one.

Cingular contends that UCAN's analysis was adequately briefed by the Commission's attorneys and mirrors their work. We do not question the competence of Commission staff to represent us adequately in the courts; nonetheless, it is an overstatement to say that UCAN's analysis was identical or that it provided no supplemental benefit at all. We recognize, for example, that the briefs filed by UCAN and the Commission both focus on the *Spielholz*.³

³ See *Spielholz v. Superior Court*, 86 Cal. App. 4th 1366 (2001) [petitioners' claims for damages did not directly challenge a provider's rates but ought to compensate petitioners for provider's alleged false advertising, and any effect on such rates was merely incidental].

However, *Spielholz* is a primary case on the limitations on the scope of federal preemption of cellular rate regulation and it is highly unlikely that anyone filing briefs in response to Cingular's writ petition would not have discussed *Spielholz*. We note that a subsequent appellate court decision, *Pacific Bell Wireless v. PUC.*, devotes several pages to *Spielholz*. (See 140 Cal.App.4th 718, 733-35 (2006).)

It is also true that in one particular instance where UCAN took a different approach than the Commission to distinguishing contrary federal authority, the Court of Appeal's decision cites the Commission's analysis.⁴ The court does not criticize or disavow UCAN's analysis, however. Even if a position advanced by an intervenor does not prevail, that party can still be rewarded intervenor compensation if its contributions were relevant and useful. (See, D.07-05-043 at 8, D.07-05-012 at 7, D.06-10-018 at 10, D.06-11-010 at 11.) Here, where UCAN did not "lose," we see no basis to conclude that UCAN's analysis did not supplement the legal analysis in a productive way.

Another briefing issue Cingular points to concerns the standard of review an appellate court must apply when reviewing a Commission decision. UCAN argued for *Chevron*-like deference for the Commission's decision.⁵ While the

⁴ We refer to discussion of *Bastien v. AT&T Wireless*, 205 F.3d 983 (7th Cir. 2000) [held that plaintiff's complaint did not raise consumer protection issues, but challenged defendant's rates and right to enter the market on the terms specified by the Federal Communications Commission]. UCAN's analysis of *Bastien* relied upon *Fedor v. Cingular*, 355 F.3d 1069 (7th Cir. 2004), whereas we relied upon *In re Wireless Consumers Alliance* (2000) 15 F.C.C.R. 17021.

⁵ See *Chevron USA v. Natural Resources Defense Council*, 467 U.S. 837 (1984) [a reviewing court determines (1) whether a statute permits or forbids an agency's interpretation, and (2) if a statute is not clear on step (1), then decides whether the agency's statutory interpretation is reasonable or permissible; if an agency's interpretation is reasonable, the court will defer to the agency's reading of the statute].

court declined to apply that standard, the court did agree with UCAN that *Yamaha* was part of the standard of review.⁶ UCAN made a substantial contribution towards this aspect of the case and should be compensated for its efforts.

We do agree with Cingular's opposition to UCAN's request to be compensated for the special index of "key evidence" that it put together to aid the Court of Appeal in understanding the evidence. (UCAN Request at 5.) Cingular objects to this index as a one-sided evaluation of the evidence. We need not make our own assessment since, in footnote 1 of its opinion, the court states explicitly that it did not use the index in reaching its decision. We find that the unsolicited index was an unproductive document that made no substantial contribution to the court's decision and we decline to award compensation for time spent preparing it.

We turn, next, to the parties' heavily contested venue dispute. Ultimately the court decided this issue against UCAN and the Commission. Cingular argues that because the special master assigned to hear the venue dispute rejected the position advanced by UCAN (and the Commission), the time UCAN spent preparing for and participating in the venue hearing should not be compensated. However, as discussed previously above, the Commission has discretion to authorize compensation if the intervenor did not prevail as long as the intervenor's contributions were relevant and useful. The venue challenge

⁶ See *Yamaha Corporation v. State Board of Equalization*, 19 Cal.4th 1 (1998) [the reviewing court exercises its independent judgment in reviewing an agency's interpretation of law, giving deference to the determination of the agency appropriate to the circumstances of the agency's action].

was a serious dispute, and not some arbitrary, procedural stratagem. UCAN took the lead in developing the venue challenge, including production of a sizeable body of evidence. We find that UCAN's participation in the venue hearing was substantial, relevant and useful.

UCAN also participated in oral argument before the appellate panel, where it supplemented the Commission's presentation. UCAN expounded upon the nature of ETFs and was able to help the court understand the reasoning behind the idea that ETFs should not be considered a rate for preemption purposes. This was a major point at issue in the appeal.

Subsequently, when Cingular attempted to have the opinion of the Court of Appeal reviewed by the California Supreme Court, and also sought to have the opinion depublished, both UCAN and the Commission sent letters in opposition. Expressing such views by letter (as opposed to a lengthier pleading) is standard practice. As the Supreme Court both denied review and declined to depublish, UCAN (and the Commission) prevailed. We conclude that UCAN made a substantial contribution towards resisting the review or depublication of the appellate court's opinion.

4.2. Restitution Plan

D.04-09-062 ordered Cingular to develop a Restitution Plan that would compensate those who were adversely affected by Cingular's ETF policy. UCAN and CPSD both objected to the initial Restitution Plan Cingular proposed, and they characterized it as being inadequate for a number of different reasons. UCAN's consumer advocacy and its efforts to develop a mechanism to ensure fair and comprehensive restitution ultimately led to the all-party settlement that addressed all of these concerns without requiring further Commission intervention. We find that UCAN's participation in this area made a substantial

contribution to D.07-03-048 and we grant, in full, this portion of its compensation request.

4.3. Settlement

The all-party settlement approved by D.07-03-048 on March 15, 2007, resolved all of the remaining differences between the parties. It is very similar to the original penalty and reparation order adopted by D.04-09-062, though it adds the details for implementing reparations. The parties engaged in settlement negotiations over a nine-month period prior to the 2007 decision. We include a brief chronology to aid the subsequent discussion. In November 2006, UCAN and Cingular presented CPSD with a proposed agreement that would have reduced the fine and included a payment to the California Consumer Protection Foundation to be used for cy pres purposes. This settlement was rejected by CPSD as reducing the penalty to a de minimus amount. The parties abandoned a later version of the settlement in January 2007, when it became apparent that the Commission would not approve its terms. Thereafter the parties entered into the all-party settlement adopted by D.07-03-048.

Cingular opposes UCAN's request for compensation for work performed during the settlement process because much of UCAN's effort went to the settlement abandoned in January 2007. Cingular claims that UCAN's participation was not needed during the negotiations that led to the adopted all-party settlement.

We find that UCAN was a substantial and material participant in the settlement negotiations and actively engaged in each of the settlements that eventually led to the adopted, all-party settlement. Though Cingular claims that in December 2006 settlement discussions "UCAN was deliberately excluded on grounds that its participation was not needed and its involvement unwanted,"

Cingular provides no support for that contention. (Cingular Opposition at 13.) To the contrary, some of the e-mail selections UCAN has attached to its reply show that Cingular's counsel actively sought UCAN's involvement at several stages during the negotiations. Furthermore, whether or not UCAN participated in each and every settlement discussion, UCAN's position on implementation of numerous reparation issues carried over across successive settlement efforts and influenced the final, all-party settlement. The Supplemental Declaration of Alan Mansfield, of Rosner & Mansfield, relates that Mansfield contacted Commission staff in an effort to obtain confirmation of UCAN's contribution to the settlement process. Mansfield reports that the Commission's General Counsel "indicated to me that he believes UCAN made an important contribution to the final settlement agreement." (Amendment to Reply, Supplemental Mansfield Declaration at Paragraph 3.) The Commission may consider representations like this one that would be barred by strict application of the evidentiary rules against admission of hearsay.⁷ Neither Commission staff nor Cingular has sought to challenge Mansfield's statement.

Thus, we disregard Cingular's argument that UCAN should receive no compensation for its efforts culminating in the settlement abandoned in January 2007, without Commission decision. Commission precedent clearly provides that compensation may be available for activity that did not result in a decision on the merits. (See authority cited in D.06-10-007 at 10, footnote 10.) We see no reason to deny UCAN compensation for this part of its request, particularly

⁷ Rule 13.6(a) of the Commission's Rules of Practice and Procedure provides that "the technical rules of evidence ordinarily need not be applied" but requires that deviations not impede preservation of the "substantial rights of the parties."

when the Commission later adopted the all-party settlement which replaced the abandoned settlement.

4.4. Contributions of Other Parties

Section 1801.3(f) requires an intervenor to avoid unnecessary participation that duplicates that of similar interests otherwise adequately represented by another party, or unnecessary for a fair determination of the proceeding.

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

Regarding contributions by other parties, we agree with UCAN that because there were only two parties to the complaint, UCAN and the Commission, many of the duplication concerns from other multi-party cases were not present. UCAN was in regular contact with the Commission (as evidenced by the time logs of near constant communications) to ensure that duplication of effort was minimized. UCAN's close working relationship with the Commission assured, generally, a productive use of time and resources.

5. Reasonableness of Requested Compensation

UCAN requests \$175,196.30⁸ for its participation in this proceeding, as follows:

| | Year | Rate Requested | Hours Billed | Total Fees | Subtotal by Category |
|----------------------|-----------|----------------|--------------|--------------|----------------------|
| Shames | 2005 | \$300 | 42.2 | \$ 12,660.00 | |
| Shames | 2006-2007 | \$310 | 53.70 | \$ 16,647.00 | |
| Subtotal | | | | | \$ 29,307.00 |
| Rosner & Mansfield | 2005 | \$390 | 150.9 | \$ 58,851.00 | |
| Rosner & Mansfield | 2006-2007 | \$400 | 209.8 | \$ 83,920.00 | |
| Subtotal | | | | | <u>\$142,771.00</u> |
| Fees Subtotal | | | | | \$172,078.00 |
| Misc. Costs | | | | | <u>\$ 4,118.30</u> |
| TOTAL | | | | | \$175,196.30 |

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

⁸ This is the corrected sum. UCAN's request contains an arithmetic error in the calculation of Shames' requested fee for 2005, and under-reports it by \$60, resulting in total of \$175,136.30.

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

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

With one exception, we agree that the total number of hours claimed is reasonable given the scope of this proceeding and the complexity of the issues. We find that the 10.5 hours Mansfield spent on preparing the special index of the evidentiary record was unproductive and we disallow compensation for that work.

We are not persuaded by Cingular's claim that Shames' involvement in the settlement process was as a client of its outside counsel, Rosner & Mansfield, and not as UCAN's attorney or advocate. We find that Shames attended settlement meetings not as a spectator, but as an active participant in UCAN's legal team and an advocate for its positions. Shames brought his unique perspective as a consumer advocate and his intimate factual knowledge of the case to meetings with the Commission staff and Cingular and used his skills as an attorney to formulate settlement strategy and tactics with Rosner & Mansfield. The hours recorded by Shames and Rosner & Mansfield, respectively, do not suggest double billing and appear reasonable overall.

5.2. Market Rate Standard

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

UCAN seeks an hourly rate of \$300 for Shames' work in 2004-2005 and \$310 for work in 2006-2007. We previously approved these rates for Shames in D.06-06-048 and D.07-02-029, respectively, and adopt them here. For Mansfield, UCAN seeks an hourly rate of \$390 for work in 2005 and \$400 for work in 2006-2007. We previously approved both rates for Mansfield in D.07-02-029 and adopt the rates here as well.

For Rosner, UCAN also seeks hourly rates of \$390 for 2005 and \$400 for 2006-2007. The Commission's last compensation award to Rosner was for work done in 2002, where D.03-01-070 set rates for Mansfield and Rosner at the same level, \$300 per hour. UCAN argues that we should continue to peg Roster's rate to the Mansfield's and we do so, adopting the increases UCAN requests.

5.3. Productivity

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

Cingular has agreed to reimburse over 100,000 customers for ETFs that should not have been imposed by Cingular; in doing so, Cingular will return at least \$18 million to customers. Cingular also will pay a \$12.14 million penalty to the State. While the penalty does not directly benefit the ratepayer, it does send a message to similarly situated companies that the Commission will not tolerate consumer abuse and will move forcefully against exploitation of ratepayers. In addition, the all-party settlement may serve as a template for restitution plans the Commission may order in the future. We find that UCAN's defense of the

Commission’s decision and work towards settlement in the second phase of this proceeding has been productive.

5.4. Direct Expenses

The itemized direct expenses submitted by UCAN include costs for travel, photocopying, postage and delivery, and telephone/teleconferencing and total \$4,118.30. The cost breakdown included with the request shows the miscellaneous expenses to be commensurate with the work performed. We find these costs reasonable.

6. Award

As set forth in the table below, we award UCAN \$171,996.30:

| | Year | Rate Requested | Hours Billed | Total Fees | Subtotal by Category |
|---------------------------------|-------------|-----------------------|---------------------|-------------------|-----------------------------|
| Shames | 2005 | \$300 | 42.2 | \$12,660.00 | |
| Shames | 2006-2007 | \$310 | 50.70 | \$15,717.00 | |
| Shames ½ rate | 2007 | \$155 | 6 | \$930.00 | |
| Subtotal | | | | | <u>\$29,307.00</u> |
| Rosner & Mansfield | 2005 | \$390 | 150.9 | \$58,851.00 | |
| Rosner & Mansfield | 2006-2007 | \$400 | 197.3 | \$78,920.00 | |
| Rosner & Mansfield ½ rate | 2007 | \$200 | 4 | \$800.00 | |
| Subtotal | | | | | <u>\$138,571.00</u> |
| Fees Subtotal | | | | | <u>\$167,878.00</u> |
| Misc. Costs | | | | | <u>\$4,118.30</u> |
| TOTAL | | | | | <u>\$171,996.30</u> |

We have revised UCAN's request to reflect the fact that the Commission awards one half the approved hourly rate for travel and for time spent preparing compensation requests, rather than calculating ½ of the time at full rate.

Consistent with previous Commission decisions, we order that interest be paid on the award amount (at the rate earned on prime, three-month commercial paper, as reported in Federal Reserve Statistical Release H.15) commencing on July 8, 2007, the 75th day after UCAN filed its compensation request, and continuing until full payment of the award is made. The award is to be paid by Cingular as the regulated entity in this proceeding.

We remind all intervenors that Commission staff may audit their records related to the award and that intervenors must make and retain adequate accounting and other documentation to support all claims for intervenor compensation. UCAN's records should identify specific issues for which it requested compensation, the actual time spent by each employee or outside counsel, the applicable hourly rate, fees paid to outside counsel and any other costs for which compensation was claimed.

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 Jean Vieth is the assigned ALJ in this proceeding.

Findings of Fact

1. UCAN's request was timely filed and UCAN has satisfied all other procedural requirements necessary to claim compensation in this proceeding
2. UCAN made substantial contributions to D.07-03-048 as described herein.
3. UCAN's requested hourly rates for its representatives are reasonable when compared to the market rates for persons with similar training and experience.
4. UCAN requested related expenses that are reasonable and commensurate with the work performed.
5. The total amount of reasonable compensation is \$171,996.30.
6. The appendix to this opinion summarizes today's award.

Conclusions of Law

1. UCAN has fulfilled the requirements of Pub. Util. Code §§ 1801-1812, which govern awards of intervenor compensation, and is entitled to intervenor compensation, as discussed herein, incurred in making substantial contributions to D.07-03-048 .
2. UCAN should be awarded \$171,996.30 for its contribution to D.07-03-048.
3. Pursuant to Rule 14.6(c)(6), the comment period for this compensation decision may be waived.
4. This order should be effective today so that UCAN may be compensated without further delay.
5. A copy of the audio CD of the oral argument before the Court of Appeal should be delivered to the Commission's Central Files to be placed in the formal file for this proceeding.
6. This proceeding should be closed.

O R D E R

IT IS ORDERED that:

1. Utility Consumers' Action Network (UCAN) is awarded \$171,996.30 as compensation for its substantial contributions to Decision 07-03-048.
2. Within 30 days of the effective date of this decision, Pacific Bell Wireless LLC, doing business as Cingular Wireless, and now known as AT&T Mobility, shall pay UCAN the total award. Payment of the award shall include interest at the rate earned on prime, three-month commercial paper as reported in Federal Reserve Statistical Release H.15, beginning July 8, 2007, the 75th day after the filing date of UCAN's request for compensation, and continuing until full payment is made.
3. The comment period for today's decision is waived.
4. The assigned Administrative Law Judge shall deliver to the Commission's Central Files, to be placed in the formal file for this proceeding, a copy of the audio CD of the oral argument before the Court of Appeal.
5. Investigation 02-06-003 is closed.

This order is effective today.

Dated September 6, 2007, 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**

| | | |
|----------------------------------|-------------------|--|
| Compensation Decision: | D0709015 | Modifies Decision? Supplement to Award in D.05-02-005 |
| Contribution Decision(s): | D0703048 | |
| Proceeding(s): | I0206003 | |
| Author: | Jean Vieth | |
| Payer(s): | Cingular Wireless | |

Intervenor Information

| Intervenor | Claim Date | Amount Requested | Amount Awarded | Multiplier? | Reason Change/Disallowance |
|-------------------|-------------------|-------------------------|-----------------------|--------------------|-------------------------------------|
| UCAN | 4/24/2007 | \$175,136.30 | \$171,996.30 | No | unproductive effort/excessive hours |

Advocate Information

| First Name | Last Name | Type | Intervenor | Hourly Fee Requested | Year Hourly Fee Requested | Hourly Fee Adopted |
|-------------------|------------------|-------------|-------------------|-----------------------------|----------------------------------|---------------------------|
| Michael | Shames | Attorney | UCAN | \$300 | 2005 | \$300 |
| Michael | Shames | Attorney | UCAN | \$310 | 2006-2007 | \$310 |
| Alan | Mansfield | Attorney | UCAN | \$390 | 2005 | \$390 |
| Alan | Mansfield | Attorney | UCAN | \$400 | 2006-2007 | \$400 |
| Hallen | Rosner | Attorney | UCAN | \$390 | 2005 | \$390 |
| Hallen | Rosner | Attorney | UCAN | \$400 | 2006-2007 | \$400 |

(END OF APPENDIX)