Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the Commission's Own Motion to Establish Consumer Rights and Consumer Protection Rules Applicable to All Telecommunications Utilities.	Rulemaking 00-02-004 (Filed February 3, 2000)

O P I N I O N

This decision awards $13,642.24 to the California Small Business Roundtable (CSBRT) in compensation for contributions to Decision (D.) 01-07-030. That decision adopted interim rules governing the inclusion of non-communications charges in telephone bills.

1. Background

The Commission's adoption of the interim rules was done within the broader rulemaking devoted to developing comprehensive new telephone consumer protection rules. In a future final decision, the Commission is expected to issue rules that will incorporate and possibly modify the interim rules adopted in D.01-07-030.

CSBRT seeks compensation at this time for its contributions to the interim decision, which specifically addresses "cramming," or unauthorized charges on telephone bills. CSBRT states that because many small business owners have been victims of cramming, it filed comments in this proceeding urging adoption of protective rules and suggesting that such rules be modeled on those for credit card holders under the federal Truth in Lending Act, 15 U.S.C. §§ 1601 *et seq.*

While D.01-07-030 does not close the proceeding, the Commission has stated previously that intervenors may file for compensation for their contribution to intermediate Commission decisions rather than wait for the last decision in a particular docket. (*See* D.97-10-026.)

Administrative Law Judge McVicar on October 6, 2000, found CSBRT eligible to seek intervenor compensation in this proceeding.

2. Requirements for Awards of Compensation

Intervenors who seek compensation for their contributions in Commission proceedings must file requests for compensation pursuant to Pub. Util. Code §§ 1801-1812. Pub. Util. Code § 1804(a) requires an intervenor to file a notice of intent (NOI) to claim compensation within 30 days of the prehearing conference or by a date established by the Commission. CSBRT timely filed its NOI.

Other code sections address requests for compensation filed after a Commission decision is issued. Section 1804(c) requires an intervenor requesting compensation to provide a detailed description of services and expenditures and a description of the customer's substantial contribution to the hearing or proceeding. Section 1802(h) states that "substantial contribution" means that,

> "in the judgment of the commission, the customer's presentation has substantially assisted the commission in the making of its order or decision because the order or decision has adopted in whole or in part one or more factual contentions, legal contentions, or specific policy or procedural recommendations presented by the customer. Where the customer's participation has resulted in a substantial contribution, even if the decision adopts that customer's contention or recommendations only in part, the commission may award the customer compensation for all reasonable advocate's fees, reasonable expert fees, and other reasonable costs incurred by the customer in preparing or presenting that contention or recommendation."

Section 1804(e) requires the Commission to issue a decision that determines whether or not the customer has made a substantial contribution and the amount of compensation to be paid. The level of compensation must take into account the market rate paid to people with comparable training and experience who offer similar services, consistent with § 1806.

3. Contributions to Resolution of Issues

A party may make a substantial contribution to a decision in various ways. It may offer a factual or legal contention upon which the Commission relied in making a decision. It may advance a specific policy or procedural recommendation that the Commission adopted. A substantial contribution includes evidence or argument that supports part of the decision even if the Commission does not adopt a party's position in total.

As noted in D.01-07-030, the Legislature enacted Sections 289.9 and 2890 of the Public Utilities Code to deter cramming. The legislation authorized the Commission to adopt rules to deal with the practice. On January 3, 2001, Commissioner Wood issued a first draft of proposed rules governing non-communications charges on telephone bills and asked for comments. Revised rules were mailed out for comment on June 1, 2001. The rules ultimately adopted in D.01-07-030 reflect further revisions based on parties' comments and the Commission's own further study.

CSBRT filed comments on June 2, 2000; February 5, 2001; and June 20, 2001. It urged that if carriers are allowed to bill for non-communications services and products, consumers should have a right to dispute a charge appearing on their bills, and carriers should be required to conduct a reasonable investigation of the complaint. CSBRT also urged that carriers should bill for non-communications services and projects only with the prior consent of the

customer. In particular, CSBRT urged that any consumer protection rules adopted cover small business as well as residential customers. The final rules adopt several of the positions urged by CSBRT, among them:

- The rules should be patterned after the Truth in Lending Act.
- The rules should protect individual consumers and businesses alike.
- The rules should apply to wireless and wireline carriers.
- Billing telephone companies should be required to obtain the express permission of subscribers before placing non-communications charges on their bill.
- Billing telephone companies should be responsible for ensuring that complaints concerning non-communications charges are investigated and resolved according to procedures required under federal regulations governing credit card transactions.
- While investigations are pending, subscribers should not be required to pay disputed charges.
- The rules should be revisited after they have been in effect for 18 months to assess how effective they have been in protecting consumers.

In sum, the Commission adopted CSBRT's recommendations on several major issues. CSBRT states that its contributions did not duplicate the showings of other parties since its emphasis was on the needs of small businesses rather than on residential consumers. We conclude that CSBRT has shown that it avoided unnecessary duplication, and that it is not necessary to reduce the compensation award for duplication of the showings of other parties. We also find that CSBRT has demonstrated that it made a substantial contribution to D.01-07-030.

4. The Reasonableness of Requested Compensation

CSBRT requests compensation for all direct expenses and attorney fees, for a total request of $13,642.24. Documentation attached to the request shows the following compilations:

Carl K. Oshiro:	
43.7 professional hours @ $265	$11,580.50
8.4 compensation hours @ 132.50	1,113.00
Other:	
Copies and Postage	$948.74
Total	**$13,642.24**

4.1 Hours Claimed

CSBRT seeks compensation for 52.1 hours of attorney time expended in this proceeding. CSBRT filed three sets of comments addressing non-communications charges on behalf of itself and, later, the California Small Business Association. A breakdown of the attorney hours is provided in Attachment A to the request. Attachment A also briefly describes each activity and allocates time between various issues. We find that the compilation of hours claimed is reasonable.

4.2 Hourly Rates

Section 1806 requires the Commission to compensate eligible parties at a rate that reflects the "market rate paid to persons of comparable training and experience who offer similar services."

In this proceeding CSBRT was represented by Carl K. Oshiro, who has more than 20 years of experience in regulatory matters. CSBRT asks for attorney fees of $265 per hour for Oshiro. Attached to its request are survey results pertaining to attorney fees in California. CSBRT also directs our attention

to fees allowed various counsel in prior Commission decisions. Oshiro has many years of practice before this Commission, and the submitted data supports the requested rate. Therefore, we will authorize a rate of $265 per hour for his attorney fees and, consistent with our long-standing practice, half that rate for preparing the compensation request.

4.3 Other Costs

CSBRT claims $948.74 for costs relating to photocopying and postage, a reasonable sum that we adopt here.

5. Award

We award CSBRT $13,642.24 for contributions to D.01-07-030. Consistent with previous Commission decisions, we will order that interest be paid on the award amount (calculated at the three-month commercial paper rate), commencing the 75th day after CSBRT filed this compensation request (November 20, 2001) and continuing until full payment is made. The award granted today should be paid from the intervenor compensation program fund, as described in D.00-01-020.

6. Waiver of Comment Period

This is an intervenor compensation matter. Accordingly, pursuant to Pub. Util. Code § 311(g)(2), the otherwise applicable 30-day review and comment period is being waived.

Findings of Fact

1. CSBRT timely requested compensation for contributions to D.01-07-030 as set forth herein.

2. CSBRT requested hourly rates for its attorney that reflect market rates within the meaning of § 1806.

3. The miscellaneous costs incurred by CSBRT in this proceeding are reasonable.

Conclusions of Law

1. CSBRT has fulfilled the requirements of Pub. Util. Code §§ 1801-1812,which govern awards of intervenor compensation.

2. CSBRT should be awarded $13,642.24 for contributions to D.01-07-030 in this proceeding.

3. This order should be effective today so that CSBRT may be compensated without unnecessary delay.

O R D E R

IT IS ORDERED that:

1. The California Small Business Roundtable (CSBRT) is awarded $13,642.24 as set forth herein for substantial contributions to Decision (D.) 01-07-030.

2. The award should be paid from the intervenor compensation program fund, as described in D.00-01-020. Interest shall be paid at the rate earned on prime, three-month commercial paper as reported in the Federal Reserve Statistical Release, G.13, with interest beginning on November 20, 2001, and continuing until full payment has been made.

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

This order is effective today.

Dated _____, at San Francisco, California.