

**PUBLIC UTILITIES COMMISSION**505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298**FILED**01-12-09
03:28 PM

January 12, 2009

Agenda ID #8230
Quasi-Legislative

TO PARTIES OF RECORD IN RULEMAKING 05-04-005

This is the proposed decision of ALJ Karl J. Bemesderfer. It will not appear on the Commission's agenda for at least 30 days after the date it is mailed. The Commission may act then, or it may postpone action until later.

When the Commission acts on the proposed decision, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare its own decision. Only when the Commission acts does the decision become binding on the parties.

Parties to the proceeding may file comments on the proposed decision as provided in Article 14 of the Commission's Rules of Practice and Procedure (Rules), accessible on the Commission's website at www.cpuc.ca.gov. Pursuant to Rule 14.3, opening comments shall not exceed 15 pages.

Comments must be filed either electronically pursuant to Resolution ALJ-188 or with the Commission's Docket Office. Comments should be served on parties to this proceeding in accordance with Rules 1.9 and 1.10. Electronic and hard copies of comments should be sent to ALJ Bemesderfer at kjb@cpuc.ca.gov and the assigned Commissioner. The current service list for this proceeding is available on the Commission's website at www.cpuc.ca.gov.

/s/ PHILIP SCOTT WEISMEHL for
Karen V. Clopton, Chief
Administrative Law Judge

KVC: lil

Attachment

Decision **PROPOSED DECISION OF ALJ BEMESDERFER**
(Mailed 1/12/2009)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the
Commission's Own Motion to Assess and
Revise the Regulation of
Telecommunications Utilities.

Rulemaking 05-04-005
(Filed April 7, 2005)

**DECISION GRANTING INTERVENOR COMPENSATION TO
THE UTILITY REFORM NETWORK FOR SUBSTANTIAL CONTRIBUTIONS
TO DECISION (D.) 07-09-018, D.07-09-019 AND D.08-04-057**

This decision awards \$231,973.31 in compensation to The Utility Reform Network (TURN) for its substantial contributions to Decision (D.) 07-09-018, D.07-09-019, and D.08-04-057. The award is \$8,383.25 less than the amount in TURN's amended request.¹ The reductions to TURN's request are due to work that did not substantially contribute to the cited decisions and an hourly rate adjustment in the compensation amount requested for one of TURN's representatives. The first two decisions address issues that affect all providers of

¹ TURN filed an amended request of \$240,356.56. In its initial request, TURN had included all of its hours coded as General Preparation (GP) and its direct expenses incurred for work on all Phase 2 issues. TURN later determined that 15% of the hours attributed to work on multiple issues should be allocated to Monitoring and Market Disclosure, issues that are the subject of a later phase of this proceeding. Accordingly, TURN's amended compensation request removed these hours. TURN also reduced the hours for preparation of its intervenor compensation request and the claim for direct expenses. We consider TURN's amended request of \$240,356.56 for purposes of this award.

telecommunications services in California, so the award to TURN for its work related to those two decisions will be paid from the Commission's Intervenor Compensation Fund. The third decision addresses issues specific to AT&T California (AT&T), so the award to TURN for its work on that decision will be paid by AT&T.

1. Background

This proceeding was sub-divided into a series of phases and was consolidated in Phase 2 with the Commission's proceeding to revise General Order (GO) 96 relating to advice letters (Rulemaking (R.) 98-07-038). The Phase 1 decision, D.06-08-030, found that the market for telecommunications services was competitive throughout the service territories of the state's four large incumbent local exchange carriers (large ILECs). Based on that finding, the Phase 1 decision granted pricing freedom within the large ILECs' service territories for most telecommunications services other than stand-alone basic service. The Phase 1 decision deferred consideration of certain other matters to later phases of the rulemaking.

On December 21, 2006, the assigned Commissioner issued a scoping ruling that identified the remaining issues in the proceeding as follows:

- A. Detariffing of telephone service other than basic exchange service.
- B. Prices, terms and conditions that apply to retail special access services.
- C. Elimination of Commission-specific reports and their replacement by Automated Reporting Management Information System (ARMIS) reports, other reports filed by carriers with the Federal Communications Commission (FCC), or new Commission-specific reports that can meet a cost-benefit test.

D. Implementation of the Phase 1 decision and consideration of the issues set forth in the limited rehearing granted in D.06-12-044 including:

- Determining whether there is any need for customer disclosure rules in addition to the customer disclosure rules adopted in D.06-03-013;
- Clarifying the relationship between one-day-effective advice letters (adopted in the Phase 1 decision) and the notice and protest requirements of GO 96 and the Public Utilities Code, as well as prior Commission decisions;
- Clarifying the scope of the “asymmetric administrative processes” language of Ordering Paragraph 21 of the Phase 1 decision;
- Assessing whether company-specific marketing and disclosure requirements imposed as a penalty or corrective action in a complaint or enforcement case should be continued, or whether, in the light of changed market conditions, they may be lifted by the filing of an advice letter; and
- Resolving other issues raised by protests of AT&T’s one-day-effective advice letter filings regarding its Tariff Rule 12.

The decisions that are the subject of TURN’s compensation request were adopted in Phase 2 and resolve some of the above issues, as well as all remaining issues in the GO 96 rulemaking.

Only one party responded to TURN’s compensation request: Verizon California Inc. (Verizon) opposes the request in part. Verizon proposes disallowances for unnecessary work, and also asks that it not be required to pay any part of the award insofar as the award compensates TURN for work related to the AT&T Tariff Rule 12 advice letters.

2. Requirements for Awards of Compensation

The intervenor compensation program, which is set forth in Pub. Util. Code §§ 1801-1812,² requires California jurisdictional utilities to pay the reasonable costs of an intervenor's participation if the intervenor makes a substantial contribution to a Commission decision. All of the following procedures and criteria must be satisfied for an intervenor to obtain a compensation award:

- A. 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), pursuant to Rule 17.1 of the Commission's Rules of Practice and Procedure (Rules), or at another appropriate time that we specify. (Section 1804(a).)
- B. The intervenor must be a customer or a participant representing consumers, customers, or subscribers of a utility subject to our jurisdiction. (Section 1802(b).)
- C. The intervenor must file and serve a request for a compensation award within 60 days of our final order or decision in a hearing or proceeding. (Section 1804(c).)
- D. The intervenor must demonstrate "significant financial hardship." A community organization such as TURN may meet the hardship standard by demonstrating that "the economic interest of the individual members of the group or organization is small in comparison to the costs of effective participation in the proceeding." (Section 1802(g).)
- E. The intervenor's presentation must have made a "substantial contribution" to the proceeding, through the Commission's adoption, in whole or in part, of the intervenor's contention or recommendations. "Adoption" is by a Commission order or

² All subsequent statutory references are to the Public Utilities Code unless otherwise indicated.

decision or as otherwise found by the Commission.
(Section 1802(i) and 1803(a).)

- F. The claimed fees and costs must be reasonable (Section 1801), necessary for and related to the substantial contribution (D.98-04-059), and comparable to the market rates paid to others with comparable training and experience (Section 1806). The fees and costs are subject to the further limitation that they relate to work the Commission has found to be productive (D.98-04-059).

In the discussion below, the procedural issues in Items A-D above are combined, and a separate discussion of Items E-F follows.

2.1. Preliminary Procedural Issues

Under Section 1804(a)(1) and Rule 17.1(a)(1), a customer who intends to seek an award of intervenor compensation must file an NOI before certain dates. TURN filed a timely NOI, and Administrative Law Judge (ALJ) Reed found TURN eligible for compensation in her ruling, issued October 11, 2006, in Phase 1. ALJ Reed also determined that TURN met the significant hardship standard.

Regarding TURN's customer status, Section 1802(b)(1) defines a "customer" as: (A) a participant representing consumers, customers or subscribers of a utility; (B) a representative who has been authorized by a customer; or (C) a representative of a group or organization authorized pursuant to its articles of incorporation or bylaws to represent the interests of residential or small business customers. (Sections 1802(b)(1)(A) through (C).) We find that TURN meets the definition of a customer pursuant to Section 1802(b)(1)(C).

Regarding the timeliness of the request for compensation, TURN filed its request for compensation on June 27, 2008, within 60 days of the issue date of D.08-04-057. This request includes TURN's requests for compensation for its substantial contributions to D.07-09-018 and D.07-09-019, the earlier Phase 2

decisions in this docket. The Commission adopted these latter two decisions at its September 26, 2007 meeting. They constitute the final decisions for some but not all of the issues litigated in Phase 2. In D.07-09-019, the Commission stated that it planned to address “the remainder of the issues in the Scoping Memo in a decision to be issued later this year,” *i.e.*, before the end of calendar 2007. TURN did not file a compensation request regarding the Phase 2 decisions in November 2007 because TURN expected that a final decision regarding the remaining issues would be adopted by year-end 2007. The planned decision missed that timetable, and accordingly TURN combined its compensation request for the earlier Phase 2 decisions with its request for compensation for its substantial contributions to D.08-04-057. Combining compensation requests in this manner for multiple decisions in a phased proceeding such as this rulemaking is permissible under Rule 17.3.

We find that TURN has satisfied all the procedural requirements necessary to make its request for compensation for its substantial contributions to all three decisions.

3. Substantial Contribution

In evaluating whether a customer (intervenor) made a substantial contribution to a proceeding, we look at several things. First, we determine whether the Commission adopted one or more of the factual or legal contentions, or specific policy or procedural recommendations put forward by the customer. (Section 1802(i).) Second, we determine whether, if the customer’s contentions or recommendations paralleled those of another party, the customer’s participation materially supplemented, complemented, or contributed to the presentation of the other party. (Sections 1801.3(f) and 1802.5.)

As described in Section 1802(i), the assessment of whether the customer made a substantial contribution requires the exercise of judgment. As we have stated,

In assessing whether the customer meets this standard, the Commission typically reviews the record, composed in part of pleadings of the customer and, in litigated matters, the hearing transcripts, and compares it to the findings, conclusions, and orders in the decision to which the customer asserts it contributed. It is then a matter of judgment as to whether the customer's presentation substantially assisted the Commission.³

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

TURN alleges that its involvement was extensive and included participation in hearings and preparation of numerous rounds of comments, testimony, briefs, an application for rehearing, and a protest to a compliance advice letter filing. Although TURN was not successful on every argument presented, TURN asserts that the decisions reflect the significant impacts of TURN's advocacy.

Our review of the decisions confirms the general accuracy of TURN's assertion. Specifically, for all three of the decisions to which this compensation request pertains, even when we did not adopt TURN's proposals, TURN's analysis and discussion of the related issues often contributed to our final decisions, either because we adopted TURN's proposals in part or because we resolved certain issues differently than we would have resolved them without TURN's advocacy. We next examine each decision in sequence.

³ D.98-04-059, 79 CPUC2d 628 at 653.

In D.07-09-018, relating to detariffing, the Commission adopted the following arguments and proposals made by TURN:

- a. The legal argument that Section 495.7 does not authorize mandatory detariffing of tariffed telephone services.
- b. The proposal that the Commission clarify those carriers who choose to detariff a service can no longer rely on the filed rate doctrine or any tariffed limitation of liability as a defense in any action involving the detariffed service.
- c. The proposal that carriers should post the rates and terms of detariffed services on their web sites.
- d. The proposal that carriers archive on their websites the tariffs, rates, terms, and conditions that previously governed newly detariffed services for a period of three years after detariffing.
- e. The proposal that carriers provide a 30-day notice of price increases or more restrictive terms and conditions in a detariffed service.
- f. The proposal that a customer with a term contract should be given the opportunity to cancel a service without penalty in the event a carrier seeks to raise a rate or unilaterally impose more restrictive terms and conditions.
- g. The proposal that carriers may not relieve themselves of obligations imposed as a result of a complaint or enforcement case by filing an advice letter.

In the same decision, the Commission rejected the following arguments or recommendations made by TURN:

- a. The legal argument that the market power findings of the URF Phase 1 decision were inadequate to satisfy the requirements of Section 495.7.
- b. The recommendation that the Commission review the legal effects of its detariffing order within two years of implementation.
- c. The recommendation that the Commission should adopt new rules to prohibit deceptive or abusive marketing practices.

- d. The recommendation that the Commission prohibit carriers from making unilateral changes in consumer contracts and incorporating tariff terms and conditions in them by reference.
- e. The recommendation that the Commission should place on carriers the burden of proving that their rates, terms and conditions are just, reasonable, and non-discriminatory in any complaint proceeding.

In D.07-09-019, relating to changes in GO 96, the Commission adopted, in whole or part, the following arguments and proposals made by TURN:

- a. As recommended by TURN, the Commission interpreted Industry Rule 3 (“Notice to Affected Customers”) to require notice by carriers of an increase to a rate or charge, or of a more restrictive term or condition, if the rate, charge, term, or condition is one that any of the carriers’ customers might incur or be affected by (*e.g.*, a returned check or late payment charge). *See* D.07-09-019, mimeo., pp. 41-43.
- b. As recommended by TURN, the Commission required in Industry Rule 3.3 that customer notice include both the current and proposed rate, charges, terms, or conditions. *See Id.*, mimeo., p. 17.
- c. As recommended by TURN, the Commission required carriers to publish at their Internet sites both the current and the no longer effective terms of service. The Commission specifically relied on TURN’s argument that in a competitive market, carriers are likely to make frequent changes in service terms and conditions, so customers would need to have ready access to their carriers’ canceled as well as current terms and conditions. *See Id.*, mimeo., pp. 18, 49-50.
- d. The Commission specifically agreed with TURN that a rate increase must be identified as such, and not subsumed under general headings such as “news you can use” or “rate change.” *See Id.*, mimeo., p. 45.

- e. As recommended by TURN, the Commission declined to allow Tier 1 treatment for certain kind of advice letters filed by local exchange companies that are still subject to cost-of-service regulation (namely, the “GRC-LECs”). *See Id.*, mimeo., pp. 21-25.
- f. In response to a comment by TURN, the Commission clarified the treatment of compliance advice letters. *See Id.*, mimeo., pp. 45-46.
- g. In response to a comment by TURN, the Commission clarified the treatment of withdrawal of basic service. *See Id.*, mimeo., p. 31.
- h. Adopting TURN’s recommendations in part, the Commission added clarifying requirements to its Internet publication rules for detariffed services. *See Id.*, mimeo., pp. 50-51.
- i. Adopting TURN’s recommendations in part, the Commission clarified the advice letter treatment for advice letters making non-price changes to Basic Service tariffs. *See Id.*, mimeo., pp. 57-58.
- j. As recommended by TURN, the Commission rejected the arguments by certain carriers that the rules for introducing New Service be relaxed. (The Commission, however, rejected TURN’s primary recommendation that these rules be tightened.) *See Id.*, mimeo., pp. 66-68.

On the other hand, the Commission emphatically rejected TURN’s arguments and proposals on the following issues:

- a. TURN sought major modifications to the advice letters tiers, especially Tier 1. The Commission, in rejecting these modifications, found that they were appropriate to rate-regulated utilities and would preserve the old advice letter process at the expense of policies established in Phase 1 of the Uniform Regulatory Framework. *See Id.*, mimeo., pp. 19-21.
- b. TURN sought to change the customer notice rules by requiring concurrent notice to Commission staff and others, such as TURN, to help those entities “monitor the marketplace.” The Commission found that the “nominal

benefit” from these changes would be outweighed by their costs. *See Id.*, mimeo., p. 44.

From the foregoing discussion of TURN’s work on D.07-09-018 and D.07-09-019, we find that TURN spent considerable effort on issues where its contentions or recommendations were flatly rejected. Therefore, we should discount the hours claimed for those decisions to reasonably reflect TURN’s time that did not lead to a substantial contribution. Such a discount is consistent with Section 1802(i), which provides in relevant part that when the Commission adopts some but not all of an intervenor’s contentions or recommendations, the Commission may award reasonable fees and costs incurred regarding the contentions or recommendations that the Commission did adopt.

Determining the appropriate discount requires judgment in that there is some overlap between the two decisions and between the issues they cover. Upon review of the record and the list of issues we set forth above, we will discount by 25% the hours claimed by TURN for its issue-specific work (categories DT and AL) on these two decisions.⁴ TURN requests \$15,994 for category DT work and \$16,079 for category AL work. Applying the 25% discount to these two categories, we award TURN \$11,995.50 for category DT work and \$12,059.25 for category AL work, for a total reduction of \$8,018.25.

In D.08-04-057, relating to AT&T’s Tariff Rule 12 advice letters, the Commission adopted almost all of TURN’s recommendations, both procedural

⁴ We have discounted by 25% only those fees that TURN designates as categories AL and DT. The discount does not apply to hours, such as general preparation, not reasonably allocable to particular issues. Some number of non-allocable hours are generally necessary, particularly in proceedings such as these consolidated rulemakings, where the scope is broad and the record is large.

and substantive. Specifically, on procedural issues, the Commission (1) accepted TURN's characterization of this part of the proceeding as essentially equivalent to a petition to modify a prior decision, (2) adopted in large measure TURN's proposed scope of the proceeding, and (3) ruled in TURN's favor regarding AT&T's motion for judicial notice, concluding that there was no inference to be drawn from the Court of Appeals' denial of TURN's application for a writ to review D.06-08-030.

In addition to adopting TURN's positions on these procedural issues, the Commission also adopted most of TURN's substantive positions, for example, the proposal that AT&T should be required to publish on its website the terms and rates of measured and flat-rate basic service. In part because of TURN's advocacy on this issue, the Commission added the requirement that such disclosures should be no less prominent than AT&T's promotions of its bundled service offerings and should appear on the same web page. The Commission also agreed with TURN that placing such disclosure burdens on AT&T was consistent with the intent of Section 2896.

The Commission rejected TURN's general argument (a reiteration of TURN's earlier position) that AT&T still possessed market power and was using that power to coerce customers into buying services they did not need. This argument was not necessary to support TURN's contentions regarding the need for improved consumer disclosure in connection with AT&T's marketing of telecommunications services, contentions which were the focus of TURN's efforts in Phase 2 and which we largely adopted. We therefore make no adjustment to TURN's hours as a result of rejecting this argument.

To summarize, we find that all of the hours claimed by TURN are related to its substantial contribution to D.08-04-057 and should be fully compensated

(subject to our reasonableness and productivity analysis, set out below). We essentially adopted all of TURN's specific recommendations with the exception of its recommendation regarding the scope of relief, and on that issue we adopted TURN's recommendation in part. Thus, pursuant to Section 1802(i), we may compensate TURN for all of its claimed hours, again subject to our reasonableness and productivity analysis below.

4. Contributions of Other Parties

Section 1801.3(f) requires an intervenor to avoid participation that unnecessarily duplicates that of similar interests otherwise adequately represented by another party, or participation 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, TURN states that it took all reasonable steps to keep duplication to a minimum and to ensure that its work served to supplement, complement, or contribute to the showing of the other very active party in this proceeding, DRA. (Section 1802.5.) TURN states that it collaborated closely with DRA throughout this proceeding, thus helping to minimize overlap and efficiently utilize their respective resources. We find, based on our review of the record that TURN avoided unnecessary duplication, and TURN's duplication of other parties' positions materially supplements, complements or contributes to those parties' showings.

5. Reasonableness of Requested Compensation

TURN requests \$240,356.56⁵ for its participation in this proceeding, itemized as follows:

General Advocacy

Attorney/Staff	Year	Hours	Hourly Rate	Total
Christine Mailloux	2006	31.25	\$335	\$ 10,468.75
	2007	64.00	\$360	\$ 23,040.00
William Nusbaum	2006	12.50	\$375	\$ 4,687.50
	2007	299.75	\$405	\$121,398.75
	2008	64.00	\$435	\$ 27,840.00
Regina Costa	2006	19.50	\$235	\$ 4,582.50
	2007	112.25	\$255	\$ 28,623.75
Robert Finkelstein	2006	1.00	\$405	\$ 405.00
	2007	7.00	\$435	\$ 3,045.00
Michael Shames (Expert)	2007	36.50	\$320	\$ 11,680.00
Subtotal				\$235,771.25
TURN's voluntary reduction				\$4,637.81
Amended Subtotal Hourly Compensation				\$231,133.44

Preparation of Compensation Request

Attorney/Staff	Year	Hours	Hourly Rate	Total
Christine Mailloux	2008	15.00	\$195	\$ 2,925.00
William Nusbaum	2008	15.00	\$217.50	\$ 3,262.50
Subtotal NOI and IComp Preparation Expenses				\$ 6,187.50
				\$ 3,035.62

⁵ TURN originally requested \$246,678.71 in compensation for its substantial contribution. In its reply comments to Verizon's opposition, TURN voluntarily reduced its requested fees by \$6,322.15, changing the amount of compensation requested to \$240,356.56. See footnote 1 above.

Total Requested Compensation

General Advocacy	\$ 231,133.44
Preparation of compensation	\$ 6,187.50
Expenses	\$ 3,035.62
Total Award	\$ 240,356.56

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.

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.

TURN documented its claimed hours by presenting a daily breakdown of the hours of its attorneys, accompanied by a brief description of each activity. The hourly breakdown, with minor corrections made by TURN as we discuss below, supports the claim for total hours.

Regarding the reasonableness of TURN's costs, Verizon criticized as excessive the number of hours TURN originally claimed for preparation of its request for compensation. Replying to Verizon, TURN noted the various difficulties in preparing this request but agreed to reduce the number of hours claimed for this purpose to 30 (15 hours each for attorneys Mailloux and Nussbaum). We find this reduction reasonable.

Verizon also notes that TURN included in its claim one hour from one its consultants, Trevor Roycroft, who worked on monitoring issues that were not resolve in these decisions. TURN has removed this work from its claim, resulting in a reduction of \$255.

Verizon argues that payment responsibility for compensation based on TURN's work related to D.08-04-057 should be allocated entirely to AT&T, because D.08-04-057 entirely concerned issues specific to certain AT&T advice letters and to AT&T Tariff Rule 12. TURN agrees with Verizon's argument, and TURN's response includes a further allocation of its hours between D.08-04-057 and the other two decisions at issue in this request. We address payment responsibility in Section 7 ("Award") below.

TURN and Verizon disagree, however, regarding the compensability of hours devoted to general preparation and work that is non-issue-specific (for example, attendance at a pre-hearing conference) or is otherwise not easily allocable to specific issues. Verizon urges that TURN at least allocate these hours as between the AT&T-specific decision (D.08-04-057) and the other two decisions; TURN has made such an allocation in its response. Verizon also argues that the general preparation and other hours are excessively high in relation to the hours identified by issue. TURN responds, and we agree, that this proportion is typical for far-reaching rulemakings of this kind. We find that TURN's hours for general preparation and non-issue-specific work are reasonable and fully compensable.

5.2. Intervenor Hourly Rates

We next consider whether the hourly rates requested by TURN are comparable to the market rates paid to experts and advocates having comparable

training and experience and offering similar services. With one adjustment, we approve TURN's hourly rates.

TURN seeks an hourly rate of \$360 for Mailloux for work performed in 2007. We previously approved this rate in D.08-04-037 and adopt it here.

TURN seeks an hourly rate of \$390 for Mailloux for work performed in 2008 which reflects a 3% cost of living adjustment to the 2007 approved rate and the additional 5% "step" increase available to attorneys or experts under the conditions described in D.08-04-010. We adopt this rate for Mailloux' 2008 work.

TURN seeks an hourly rate of \$375 for work performed by Nusbaum in 2006. We previously approved this rate in D.06-11-009 and adopt it here.

TURN seeks an hourly rate of \$405 for work performed by Nusbaum in 2007. We previously approved this rate in D.08-04-019 and adopt it here.

TURN seeks an hourly rate of \$435 for Nusbaum for 2008, which reflects a 3% cost of living adjustment to the 2007 approved rate and the additional 5% "step" increase available to attorneys or experts under the conditions described in D.08-04-010. We adopt this rate for Nusbaum's 2008 work.

TURN seeks an hourly rate of \$235 for work performed by Costa in 2006. We previously approved this rate in D.07-04-032 and adopt it here.

TURN seeks an hourly rate of \$255 for work performed by Costa in 2007. We previously approved this rate in D.08-04-037 and adopt it here.

TURN seeks an hourly rate of \$405 for work performed by Finkelstein in 2006. We previously approved this rate in D.06-10-018 and adopt it here.

TURN seeks an hourly rate of \$435 for work performed by Finkelstein in 2007. We previously approved this rate in D.07-12-026 and adopt it here.

TURN seeks an hourly rate of \$320 for Shames' work in this proceeding. All of Shames' work was performed in 2007, and TURN asserts that the Utility

Consumers' Action Network (UCAN) sought this hourly rate for Shames in its compensation request in Application 07-01-047. Our review shows that UCAN actually sought an hourly rate for Shames of \$310, and we approved that rate in D.08-07-044. We adopt the same rate here, which has the effect of reducing TURN's compensation request by \$365.

5.3. Direct Expenses

The itemized direct expenses submitted by TURN include the following:

Printing & Photocopying	\$1,549.40
Lexis	\$ 670.40
Telephone & Fax	\$ 203.73
Other	\$ 612.09
Total	\$3,035.62

The cost breakdown included with the request does not show the miscellaneous expenses to be commensurate with the work performed. Specifically, TURN's first requested \$2,848.80 for photocopying; however, in its Reply to Verizon, TURN reduced this request by \$1,299.40, leaving the amount shown in the table above. We find that with this reduction, TURN's costs for direct expenses are reasonable.

6. 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 its participation. This showing assists us in determining the overall reasonableness of the request.

While an intervenor that makes a substantial contribution to a decision is presumptively eligible for compensation for its reasonable fees and expenses, a finding that an intervenor made a substantial contribution does not entail approval of the entire amount of the requested compensation. For example, requested compensation for an unreasonable amount of time and effort, in relation either to the activities performed or the results achieved, may be reduced to the extent of the fees or costs that we find unreasonable. (*See* Sections 1801.3(f) and 1803.)

TURN notes that in many proceedings, which both of these rulemakings exemplify, a reasonable dollar value for an intervenor's participation is hard to establish. In a rate case, an intervenor could provide direct benefits to ratepayers by persuading the Commission to adopt a lower revenue requirement than that proposed by the utility. By way of contrast, these rulemakings have established policies and rules broadly intended to enhance competition and to help consumers in choosing among telecommunications services and providers. The intended result is that consumers will have better opportunities to obtain the telecommunications services best suited to their needs. To the extent an intervenor contributes to the adoption of such policies and rules, the intervenor has certainly benefited consumers, although we cannot easily assign a dollar value to those benefits.

TURN asserts that its advocacy in Phase 2 provided concrete benefits to consumers. We agree, and we note the following examples of actions taken, in part, through TURN's work:

- Adopted safeguards, such as Internet publication, archived tariffs, and toll-free numbers, to give consumers easy access to information about services (both tariffed and detariffed).

- Clarified the 30-day notice requirements for price increases and service withdrawals.
- Protected customers of small (still price-regulated) local exchange companies by ensuring closer regulatory review of these companies' advice letters.
- Protected customers desiring to purchase stand-alone basic service by requiring AT&T to disclose information about basic service and prices before sales representatives recommend a service "bundle."

In short, the policies and rules considered and adopted in Phase 2 will affect every consumer and every provider of telecommunications services in California. We find that the considerable effort TURN devoted to Phase 2 was reasonable in light of the scope of the proceeding and in light of the scope of TURN's participation. We further find that TURN's participation was productive within the meaning of Section 1801.3.

7. Award

As set forth in the table below, we award TURN \$231,973.31.

General Advocacy

Attorney/Staff	Year	Hours	Hourly Rate	Total
Christine Mailloux	2006	31.25	\$335	\$ 10,468.75
	2007	64.00	\$360	\$ 23,040.00
William Nusbaum	2006	12.50	\$375	\$ 4,687.50
	2007	299.75	\$405	\$121,398.75
	2008	64.00	\$435	\$ 27,840.00
Regina Costa	2006	19.50	\$235	\$ 4,582.50
	2007	112.25	\$255	\$ 28,623.75
Robert Finkelstein	2006	1.00	\$405	\$ 405.00
	2007	7.00	\$435	\$ 3,045.00
Michael Shames (Expert)	2007	36.50	\$310	\$ 11,315.00
Subtotal				\$235,406.25

TURN's voluntary reduction for advocacy				-- \$4,637.81
Amended Subtotal				\$230,768.44
25% reduction for AL and DT work				-- \$8,018.25
Amended Subtotal Hourly Compensation				\$222,750.19

Preparation of Compensation Request

Attorney/Staff	Year	Hours	Hourly Rate	Total
Christine Mailloux	2008	15.00	\$195	\$ 2,925.00
William Nusbaum	2008	15.00	\$217.50	\$ 3,262.50
Subtotal NOI and Icomp Preparation Expenses				\$ 6,187.50
				\$ 3,035.62

Total Requested Compensation

General Advocacy	\$ 222,750.19
Preparation of compensation	\$ 6,187.50
Expenses	\$ 3,035.62
Total Award	\$ 231,973.31

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 September 10, 2008, the 75th day after TURN filed its compensation request, and continuing until full payment of the award is made.

These rulemaking proceedings affected a broad array of utilities and others in the telecommunications field. As such, we find it appropriate to authorize payment of today's awards, insofar as they relate to TURN's work contributing to D.07-09-018 and D.07-09-019, from the Commission's Intervenor Compensation Fund (created in D.00-01-020). However, D.08-04-057 addresses specific AT&T advice letters, so AT&T will be responsible for paying for TURN's work contributing to that decision.

We have calculated the specific amounts to be paid by the Intervenor Compensation Fund and by AT&T. The chief basis of our calculation is TURN's allocation of hours in its response to Verizon between D.07-09-018 and D.07-09-019 (to be compensated from the fund) and D.08-04-057 (to be compensated by AT&T). We use this allocation, the disallowances we make today, and one-third of TURN's costs for compensation request preparation and direct expenses to derive AT&T's payment obligation:

Award Itemization

From Intervenor Compensation Fund	\$ 95,289.64
From AT&T	\$136,683.67
Total Award	\$231,973.31

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. TURN's records should identify specific issues for which it requested compensation, the actual time spent by each employee or consultant, the applicable hourly rates, fees paid to consultants, and any other costs for

which compensation was claimed. The records pertaining to an award of compensation shall be retained for at least three years from the date of the final decision making the award.

8. Comments on Proposed Decision

The proposed decision of ALJ Bemesderfer 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. Comments were filed on _____ and reply comments were filed on _____ by _____.

9. Assignment of Proceeding

Rachelle B. Chong is the assigned Commissioner. Jacqueline A. Reed and Karl Bemesderfer are the assigned ALJs in this proceeding.

Findings of Fact

1. TURN has satisfied all the procedural requirements necessary to claim compensation in this proceeding.
2. TURN made substantial contributions to D.07-09-018, D.07-09-019 and D.08-04-057 as described herein.
3. The hours claimed by TURN, as adjusted in this decision, are reasonable in light of the scope of the proceeding and in light of the scope of TURN's participation.
4. TURN's requested hourly rates, as adjusted herein, are reasonable for its representatives when compared to the market rates for persons with similar training and experience.
5. TURN's participation in Phase 2 was productive, in that the participation provided both concrete and generalized benefits to ratepayers.

6. TURN requested related expenses that are reasonable and commensurate with the work performed.

7. The total of the reasonable compensation is \$231,973.31.

8. D.08-04-057 is devoted entirely to resolving issues specific to AT&T.

9. The Appendix to this decision summarizes today's award.

Conclusions of Law

1. TURN has fulfilled the requirements of Sections 1801-1812, which govern awards of intervenor compensation, and is entitled to intervenor compensation for its reasonable costs, fees and expenses, incurred in making substantial contributions to D.07-09-018, D. 07-09-019, and D.08-04-057.

2. TURN should be awarded \$231,973.31 for its substantial contribution to D.07-09-018, D.07-09-019, and D.08-04-057. Payment of the award shall be allocated between the Commission's Intervenor Compensation Fund and AT&T, as described in the foregoing opinion.

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

O R D E R

IT IS ORDERED that:

1. The Utility Reform Network (TURN) is awarded \$231,973.31 as compensation for its substantial contributions to Decision (D.) 07-09-018, D.07-09-019, and D.08-04-057.

2. Within 30 days of the effective date of this decision, the Commission shall pay TURN \$95,289.64 from its Intervenor Compensation Fund for TURN's substantial contributions to D.07-09-018 and D.07-09-019.

3. Within 30 days of the effective date of this decision, AT&T shall pay TURN \$136,683.67 for its substantial contribution to D.08-04-057 (fees related to AT&T's Rule 12 advice letters).

4. 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 September 10, 2008, the 75th day after the filing date of TURN's request for compensation, and continuing until payment is made pursuant to Ordering Paragraphs 2 and 3, respectively.

This order is effective today.

Dated _____, at San Francisco, California.

APPENDIX**Compensation Decision Summary Information**

Compensation Decision:		Modifies Decision? N/A
Contribution Decision(s):	D0709018, D0709019, and D0804057	
Proceeding(s):	R0504005	
Author:	Karl J. Bemederfer and Steven Kotz	
Payer(s):	Commission Intervenor Compensation Fund, AT&T	

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Multiplier?	Reason Change/Disallowance
TURN	06-27-08 Amended on 08-12-08	\$240,356.56	\$231,973.31	No	lack of substantial contribution; adjusted hourly rate.

Advocate Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
Christine	Mailloux	Attorney	TURN	\$335.00	2006	\$335.00
Christine	Mailloux	Attorney	TURN	\$360.00	2007	\$360.00
William	Nusbaum	Attorney	TURN	\$375.00	2006	\$375.00
William	Nusbaum	Attorney	TURN	\$405.00	2007	\$405.00
William	Nusbaum	Attorney	TURN	\$435.00	2008	\$435.00
Regina	Costa	Expert	TURN	\$235.00	2006	\$235.00
Regina	Costa	Expert	TURN	\$255.00	2007	\$255.00
Robert	Finkelstein	Attorney	TURN	\$405.00	2006	\$405.00
Michael	Shames	Attorney	TURN	\$320.00	2007	\$310.00

(END OF APPENDIX)

INFORMATION REGARDING SERVICE

I have provided notification of filing to the electronic mail addresses on the attached service list.

Upon confirmation of this document's acceptance for filing, I will cause a Notice of Availability of the filed document to be served upon the service list to this proceeding by U.S. mail. The service list I will use to serve the Notice of Availability of the filed document is current as of today's date.

Dated January 12, 2009, at San Francisco, California.

/s/ LILLIAN LI

Lillian Li

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