

**PUBLIC UTILITIES COMMISSION**505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298**FILED**05-28-13
02:42 PM

May 28, 2013

Agenda ID #12138
Ratesetting

TO PARTIES OF RECORD IN APPLICATION 12-02-011:

This is the proposed decision of Administrative Law Judge (ALJ) Sullivan. It will not appear on the Commission's agenda sooner than 30 days from 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 pursuant to Rule 1.13 either electronically or in hard copy. 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 Sullivan at tjs@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/ RICHARD SMITH for
Karen V. Clopton, Chief
Administrative Law Judge

KVC:cla

Attachment

Decision **PROPOSED DECISION OF ALJ SULLIVAN** (Mailed 5/28/2013)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Joint Application of Consolidated Communications Holdings, Inc., Consolidated Communications, Inc. and WH Acquisition II Corp. and Surewest Communications, Surewest Telephone (U1015C), Surewest Long Distance (U5817C), and Surewest Televideo (U6324C) to Authorize the Acquisition of Control of Surewest Telephone (U1015C), Surewest Long Distance (U5817C), and Surewest Televideo (U6324C).

Application 12-02-011
(Filed February 10, 2012)

DECISION GRANTING REQUEST OF THE UTILITY REFORM NETWORK FOR INTERVENOR COMPENSATION FOR SUBSTANTIAL CONTRIBUTIONS TO DECISION D.12-06-004

Claimant: The Utility Reform Network (TURN)	For contribution to D.12-06-004
Claimed (\$): 30,600.82	Awarded (\$): 33,235.32¹
Assigned Commissioner: Michael R. Peevey	Assigned ALJ: Timothy J. Sullivan

PART I: PROCEDURAL ISSUES

A. Brief Description of Decision:

This Final Decision approves an Application filed by Consolidated Communications Holdings, Inc., Consolidated Communications Inc. and WH Acquisition II Corp. and SureWest Communications, SureWest Telephone, SureWest Long Distance and SureWest TeleVideo. The Application requests approval for the sale of the SureWest companies to Consolidated. The Final Decision accepts a Settlement Agreement between TURN, DRA and Frontier Communications that sets forth conditions for

¹ The final awarded amount is higher than the amount claimed by TURN due to a Cost-of-Living Adjustment (COLA) increase of 2.2% (rounded to the nearest \$5 increment), as allowed in Resolution ALJ-281.

approval of the sale.

B. Claimant must satisfy intervenor compensation requirements set forth in Pub. Util. Code §§ 1801-1812:

	As Stated by Claimant	CPUC Verified
Timely filing of notice of intent to claim compensation (NOI) (§ 1804(a)):		
1. Date of Prehearing Conference:	March 30, 2012	March 30, 2012
2. Other Specified Date for NOI:		
3. Date NOI Filed:	April 30, 2012	April 30, 2012
4. Was the NOI timely filed?		Yes
Showing of customer or customer-related status (§ 1802(b)):		
5. Based on Administrative Law Judge (ALJ) ruling issued in proceeding number:	A.09-09-013	Correct
6. Date of ALJ ruling:	January 7, 2010	Correct
7. Based on another CPUC determination:		
8. Has the Claimant demonstrated customer or customer-related status?		Yes
Showing of "significant financial hardship" (§ 1802(g)):		
9. Based on ALJ ruling issued in proceeding number:	R.11-11-008	Correct
10. Date of ALJ ruling:	January 3, 2012	Correct
11. Based on another CPUC determination:		
12. Has the Claimant demonstrated significant financial hardship?		Yes
Timely request for compensation (§ 1804(c)):		
13. Identify Final Decision:	D.12-06-004	Correct
14. Date of Issuance of Final Decision:	June 7, 2012	June 11, 2012
15. File date of compensation request:	August 10, 2012	Correct
16. Was the request for compensation timely?		Yes

PART II: SUBSTANTIAL CONTRIBUTION

A. Claimant’s description of its contribution to the final decision (see § 1802(i), § 1803(a) & D.98-04-059):

Contribution	Specific References to Claimant’s Presentations and to Decision (Provided by Claimant)	Showing Accepted by CPUC
<p>1. Standard of Review</p> <p>In its Joint Protest with DRA, TURN argued that the Commission should apply the criteria set forth in Pub. Util. Code § 854 (b) and (c) during its review of the merger. SureWest and Consolidated (also known as the Applicants) argued that only § 854(a) should be applied. The Settlement Agreement directly addresses this issue by finding that there was enough information and “the transaction... provides enough customer benefit to ensure it is in the public interest, consistent with Section 854, and fair and reasonable in light of the whole record.” The Final Decision agrees with the Settlement and finds that the Settlement is in the public interest and consistent with § 854(b) and (c).</p>	<p>Joint Protest of DRA & TURN, March 19, 2012 (Protest), at 2-3.</p> <p>Settlement Agreement, paragraph 9.</p> <p>Final D.12-06-004, at 20; FOFs 25, 26; COL 4.</p>	<p>Correct</p> <p>Correct</p> <p>Correct</p>
<p>2. Financial Condition of Merged Company</p> <p>A significant issue for TURN was the financial condition of the merged company if the merger was approved and the potential impacts on SureWest customers. In the Protest TURN expressed concerns about a number of financial issues that could result in a lack of investment available for SureWest after the merger that could negatively impact service quality and reasonableness of rates. Among these issues was the fact that Consolidated</p>	<p>Protest, at 3-7.</p> <p>Settlement Agreement, paragraphs 2, 3 and 4.</p>	<p>Correct</p> <p>Correct</p>

<p>had a history of paying dividends in excess of earnings and had no plans to change this practice. Further, TURN expressed concerns that Consolidated appeared to be a highly leveraged company with a high debt load and junk category bond ratings.</p> <p>In the Settlement Agreement Applicants agreed to focus on mitigating any potential financial issues through a two-year rate freeze on SureWest rates, a two-year commitment to invest \$3 million per year in capital expenditures on the SureWest network, and service quality assurances. D.12-06-004 adopted the settlement conditions.</p>	<p>D.12-06-004, at 20; FOFs 25, 26; COLs 3, 4.</p>	<p>Correct</p>
<p>3. Service Quality</p> <p>Another concern TURN expressed with the proposed merger was the need for assurances that SureWest would maintain or exceed SureWest’s pre-merger service quality. TURN wanted to make sure customers would continue to receive the same high quality service SureWest currently provides.</p> <p>In the Settlement Agreement Applicants committed “to meet or exceed specified GO 133-C service quality standards. Failure to meet standards, depending on the number of failures, result in a continuation of the rate freeze for one or two additional years.” D.12-06-004 adopted this settlement condition.</p>	<p>Protest, at 7-8.</p> <p>Settlement Agreement, paragraph 4. D.12-06-004, p. 20; FOFs 25, 26; COLs 3, 4.</p>	<p>Correct</p> <p>Correct</p> <p>Correct</p>
<p>4. Rate Protection</p> <p>TURN also expressed concerns that Applicants meet the commitment expressed in the Application that “customers will continue to enjoy the same rates, terms and conditions of service as they currently do.” TURN’s</p>	<p>Protest, at 10-11.</p>	<p>Correct</p>

<p>concerns were particularly exacerbated by discovery responses provided by the Applicants that “rates will be reviewed and adjusted, if appropriate, on an on-going basis.”</p> <p>The Settlement Agreement provides that SureWest will “freeze rates for regulated stand-alone residential service, single line business service, Caller ID, Call Waiting, Directory Assistance, Inside Wire and Non-Published service for two years from the closing date of the Transaction,” with limited exceptions for “exogenous events.” D.12-06-004 adopted this settlement condition.</p>	<p>Settlement Agreement, paragraph 2. D.12-06-004, p. 20; FOFs 25, 26; COLs 3, 4.</p>	<p>Correct Correct</p>
<p>5. Broadband/Backhaul</p> <p>During the Settlement negotiations, TURN raised the concern about Applicants’ commitment to continuing SureWest’s current practice of providing reasonably priced, high-quality broadband and backhaul services to its customers.</p> <p>In the Settlement Agreement, Consolidated specifically committed to these conditions. D.12-06-004 adopted this settlement condition.</p>	<p>Settlement Agreement, paragraph 2. D.12-06-004, p. 20; FOFs 25, 26; COLs 3, 4.</p>	<p>Correct Correct</p>
<p>6. Other Issues</p> <p>Other issues raised in the Protest and advocated more directly by DRA with TURN’s support related to maintaining the SureWest walk-in retail centers; preserving the SureWest Foundation; and a commitment to current employee benefits. Applicants agreed to specific terms on each of these issues. D.12-06-004 adopted these settlement conditions.</p>	<p>Protest, at 9 – 10.</p> <p>Settlement Agreement, paragraphs 1, 5, 7. D.12-06-004, at 20; FOFs 25, 26; COLs 3, 4.</p>	<p>Correct Correct Correct</p>

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

	Claimant	CPUC Verified
a. Was the Division of Ratepayer Advocates (DRA) a party to the proceeding?	Yes	Correct
b. Were there other parties to the proceeding with positions similar to the Claimant's?	Yes	Correct
c. Names of other parties (if applicable): Frontier Communications Corporation.		Correct
<p>d. Claimant's description of how Claimant coordinated with DRA and other parties to avoid duplication or of how Claimant's participation supplemented, complemented, or contributed to that of another party:</p> <p>TURN worked closely with DRA in developing the Joint Protest as well as in developing and negotiating settlement terms. As part of this effort, TURN and DRA disaggregated the issues with TURN taking lead on issues relating to financial concerns, infrastructure investment, rate protection, service quality, and broadband commitments. By working so closely with DRA and by dividing the issues between the two organizations duplication was significantly minimized. Under these circumstances, TURN submits that no reduction to our compensation due to duplication is warranted.</p> <p>With regards to Frontier, TURN was aware of Frontier's narrow issue but did no work on it and is claiming no time on that issue.</p>		Correct

PART III: REASONABLENESS OF REQUESTED COMPENSATION

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

a. Explanation by Claimant of how the cost of Claimant's participation bore a reasonable relationship with benefits realized through participation.	CPUC Verified
<p>The small number of hours recorded by TURN advocates in this case produced significant benefit for SureWest customers. Through TURN's work in the docket with DRA, SureWest customers are protected from any negative financial results of this merger through a combination of a two-year rate freeze on SureWest rates, a two-year commitment to invest \$3 million per year in capital expenditures on the SureWest network, and service quality assurances. SureWest customers will be spared rate increases for essential services such as basic exchange and directory assistance for at least two years.</p>	<p>Correct, the decision states that the merger complies with 854(a) and is in the public interest in light of the settlement agreement, although it reviewed the transaction in light of the criteria of § 854(b) and (c), it does not specifically adopt the</p>

<p>Furthermore, SureWest has made specific commitments re service quality that have consequences in the event service quality falls short of the requirements in Go 133-C. In addition, broadband and backhaul quality and prices are protected and employee benefits are preserved.</p> <p>The Final Decision addressed compliance with Pub. Util. Code § 854(b) and (c) in a manner consistent with conducting such review of future mergers, rather than finding that these statutes were inapplicable (the merger application position).</p>	<p>criterion of (b) and (c)</p>
<p>b. Reasonableness of Hours Claimed.</p> <p>Mr. Nusbaum was the lead attorney for this proceeding for TURN responsible for general management of TURN’s efforts and key negotiator for TURN in the settlement discussions. In addition, he focused primarily on the standard of review, financial and service quality issues.</p> <p>Mr. Nusbaum was assisted by Ms. Costa who performed necessary research and also focused on rate impact, infrastructure and broadband issues. The Commission should find that this was an effective and efficient allocation of resources.</p> <p>TURN utilized two consultants in this proceeding. Initially, TURN engaged Dr. Trevor Roycroft to review the application and assist in analysis for the Protest. In particular, Dr. Roycroft identified some significant issues with the proposed transaction and these were reflected in the Protest. Dr. Roycroft only expended 5 hours on this effort. For some of the complex financial issues implicated by the application, TURN obtained the services of James Weil, who has had extensive experience in CPUC proceedings dealing with the types of financial concerns raised by TURN. Mr. Weil’s work was solely focused on these financial issues and assisted TURN in developing possible mitigation measures and participated in the settlement discussions only on these issues. Mr. Weil’s total time was less than 19 hours. Under these circumstances, both Dr. Roycroft and Mr. Weil should receive their full compensation. TURN also notes that Dr. Roycroft bills TURN at \$230 per hour although the approved CPUC rate for Dr. Roycroft is \$210. TURN is not seeking an increase to the approved rate for Dr. Roycroft at this time given how few hours he expended.</p> <p>The total hours included in this request represent slightly more than two 40-hour weeks of attorney, advocate and expert time. In light of the importance and complexity of the policy issues addressed, the Commission should find TURN’s request for intervenor compensation to be reasonable.</p>	<p>Correct</p>
<p>c. Allocation of Hours by Issue.</p> <p>TURN has allocated all of our attorney and advocate time by issue area or</p>	<p>Correct</p>

<p>activity, as evident on our attached timesheets.</p> <p>The following codes relate to specific substantive issue and activity areas addressed by TURN:</p> <p>GP - General Preparation: time for activities necessary to participate in the docket</p> <p>S – The standard of review that the Commission should utilize in considering the application</p> <p>F – The financial condition of the merged entity if the transaction was approved and the impact on SureWest CA customers</p> <p>SQ – The impact of the proposed transaction on service quality for SureWest CA customers</p> <p>R – The impact of the proposed transaction on the rates for SureWest CA customers</p> <p>B – The impact of the proposed transaction on the provision of broadband services to SureWest CA customers</p> <p>Misc – The impact of the proposed transaction on SureWest CA walk-in retail centers, the SureWest Foundation, and on employee benefits</p> <p>COMP - Preparation of compensation request and TURN’s notice of intent.</p> <p># - Where time entries cannot easily be identified with a specific activity code. For these entries, the allocation of time spent on activities can be broken down as such: S 10%, F 25%, SQ 25%, R 25%, B 10%, Misc 5%</p> <p>Settlement – Activities associated with settlement</p>	
--	--

B. Specific Claim*:

CLAIMED						CPUC AWARD			
ATTORNEY, EXPERT AND ADVOCATE FEES									
Item	Year	Hours	Rate	Basis for Rate	Total	Year	Hours	Rate	Total
William Nusbaum	2012	40.25	\$435	D.10-07-014; Resolution ALJ 247 (4/13/10)	\$17,508.75	2012	40.25	\$445	\$19,711.25
Regina Costa	2012	19.75	\$275	Res. ALJ 247	\$5,431.25	2012	19.75	\$285	\$5,628.75
Trevor Roycroft	2012	5	\$210	D.11-07-023	\$1,050	2012	5	\$215	\$1,075
James Weil	2012	18.70	\$300	D.08-05-033, OP 2	\$5,610	2012	18.7	\$310	\$5,797
Subtotal:					\$29,600	Subtotal:			\$32,212.00

OTHER FEES										
Item	Year	Hours	Rate	Basis for Rate	Total	Year	Hours	Rate	Total	
[Person 1]			\$		\$			\$	\$	
[Person 2]										
<i>Subtotal:</i>						<i>Subtotal:</i>				
INTERVENOR COMPENSATION CLAIM PREPARATION **										
Item	Year	Hours	Rate	Basis for Rate	Total	Year	Hours	Rate	Total	
William Nusbaum	2012	4.5	\$217.50	Res. ALJ 247	\$978.75	2012	4.5	\$222.50	\$1001.25	
[Preparer 2]										
<i>Subtotal:</i>					\$30,578.75	<i>Subtotal</i>				\$33,213.25
COSTS										
#	Item	Detail	Amount	Amount						
	Copies	Copies of NOI	\$2.40	\$					\$2.40	
	Phone	FAX NDA; Conf calls	\$17.47						\$17.47	
	Postage	Mail NOI	\$2.20						\$2.20	
<i>Subtotal:</i>			\$22.07						\$22.07	
TOTAL REQUEST \$:			\$30,600.82					TOTAL AWARDED	\$33,235.32	
<p>* 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 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.</p> <p>** Reasonable claim preparation time typically compensated at ½ of preparer’s normal hourly rate (the same applies to the travel time).</p>										

C. Attachments or Comments

Attachments or comments	Comment

D. CPUC Disallowances & Adjustments:

#	Reason
William Nusbaum Hourly Rates	TURN requests an hourly rate of \$435 per hour for 2012 and bases the claim on D.10-07-014. We determined that an hourly rate was appropriate then and adopt it here with a Cost-of-Living Adjustment(COLA) increase of 2.2%(rounded to the nearest \$5 increment), as allowed in Resolution ALJ-281. The hourly rate for Mr. Nusbaum is \$445.
Regina Costa Hourly Rate	TURN requests an hourly rate of \$275 per hour for 2012 and bases the claim on Resolution ALJ-247. We also awarded Ms. Costa an hourly rate of \$275 in D.11-10-013. We determined that an hourly rate was appropriate then and adopt it here with a Cost-of-Living Adjustment(COLA) increase of 2.2%(rounded to the nearest \$5 increment), as allowed in Resolution ALJ-281. The hourly rate for Ms. Costa is \$285.
Trevor Roycroft Hourly Rates	TURN requests an hourly rate of \$210 per hour for 2012 and bases the claim on D.11-07-023. We determined that an hourly rate was appropriate then and adopt it here with a Cost-of-Living Adjustment(COLA) increase of 2.2%(rounded to the nearest \$5 increment), as allowed in Resolution ALJ-281. The hourly rate for Ms. Roycroft is \$215.
James Weil Hourly Rates	TURN requests an hourly rate of \$300 per hour for 2012 and bases the claim on D.08-05-033. We also awarded Mr. Weil an hourly rate of \$300 in D.12-01-029. We determined that an hourly rate was appropriate then and adopt it here with a Cost-of-Living Adjustment(COLA) increase of 2.2%(rounded to the nearest \$5 increment), as allowed in Resolution ALJ-281. The hourly rate for Mr. Weil is \$310.

PART IV: OPPOSITIONS AND COMMENTS

A. Opposition: Did any party oppose the claim?	Yes
---	-----

If so:

Party	Reason for Opposition	CPUC Disposition
Consolidated Communications Holdings, Inc., Consolidated Communications Inc. and WH Acquisition II Corp. and SureWest Communications, SureWest Telephone (U1015C), SureWest Long	Joint applicants assert that on April 30, 2012, the date that TURN filed its NOI, the parties had completed settlement negotiations and the joint motion for adoption of the settlement had been submitted to the commission. This is corroborated by the time records that were submitted by TURN which shows no further work was performed by TURN after the NOI was submitted	TURN admits to a recordkeeping error which resulted in a 25% lower estimate in the NOI. An estimate made in an NOI, however, is not binding on the claimant. Specifically, P.U. Code § 1804(b)(2) provides “ the failure of the customer... to precisely estimate potential compensation shall not preclude an award of reasonable compensation if a substantial contribution is made.” We note that the Joint Applicants do not deny that TURN made a substantial contribution to the outcome of the application. We find that TURN made a substantial contribution to the outcome of the decision, and that the hours

<p>Distance (U5817C), and SureWest TeleVideo (U6324C) (Joint Applicants)</p>	<p>except in connection with preparation of the final Intervenor Claim.</p> <p>Joint applicants assert that TURN should be bound by the estimate it submitted to the Commission on April 30, 2012 since all work related to the settlement were known at that time, and no further work was done after that date except to prepare the final claim.</p> <p>Joint applicant requests that the award be reduced to \$22,952.50, which is the estimate plus the hours expended by TURN to prepare the final claim.</p> <p>In response, TURN admits to a recordkeeping error, but notes that an NOI is not binding on the claimant. TURN also points out that there is no dispute as to TURN’s substantial contribution to the outcome of the application or the hours claimed.</p>	<p>claimed are reasonable in light of the size and complexity of the case at hand.</p>
--	---	--

<p>B. Comment Period: Was the 30-day comment period waived (see Rule 14.6(c)(6)) (Y/N)?</p>	<p>No, since the application was opposed a comment period should be allowed.</p>
--	--

If not:

Party	Comment	CPUC Disposition

FINDINGS OF FACT

1. TURN has made a substantial contribution to Decision D.12-06-004
2. The claimed fees and costs, as adjusted herein, are comparable to market rates paid to experts and advocates having comparable training and experience and offering similar services.
3. The total of reasonable compensation is \$33,235.32.

CONCLUSION OF LAW

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

ORDER

1. The Utility Reform Network is awarded \$33,235.32.
2. Within 30 days of the effective date of this decision, Consolidated Communications Holdings, Inc. and its joint applicants shall pay The Utility Reform Network 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 October 24, 2012, the 75th day after the filing of The Utility Reform Network's request, and continuing until full payment is made.
3. The comment period for today's decision was not waived.

This order is effective today.

Dated _____, at San Francisco, California.

APPENDIX

Compensation Decision Summary Information

Compensation Decision:		Modifies Decision? No
Contribution Decision(s):	D1206004	
Proceeding(s):	A1202011	
Author:	Timothy J. Sullivan	
Payer(s):	Consolidated Communications Holdings, Inc., Consolidated Communications Inc. and WH Acquisition II Corp. and SureWest Communications, SureWest Telephone, SureWest Long Distance and SureWest TeleVideo	

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Multiplier	Reason Change/Disallowance
The Utility Reform Network (TURN)	August 10, 2012	\$30,600.82	\$33,235.32	2.2% COLA	R. ALJ-281

Advocate Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
William	Nusbaum	Attorney	TURN	\$435	2012	\$445
Regina	Costa	Attorney	TURN	\$275	2012	\$285
Trevor	Roycroft	Consultant	TURN	\$210	2012	\$215
James	Weil	Consultant	TURN	\$300	2012	\$310

(END OF APPENDIX)