



BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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Order Instituting Investigation into the State
of Competition Among
Telecommunications Providers in
California, and to Consider and Resolve
Questions raised in the Limited Rehearing
of Decision 08-09-042

I. 15-11-007
(Filed November 5, 2015)

**SUPPLEMENTAL NOTICE OF INTENT TO CLAIM COMPENSATION OF THE
UTILITY REFORM NETWORK COVERING JUDICIAL REVIEW-RELATED WORK**

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SUPPLEMENTAL NOTICE OF INTENT TO CLAIM COMPENSATION OF THE UTILITY REFORM NETWORK COVERING JUDICIAL REVIEW-RELATED WORK

I. INTRODUCTION

Pursuant to Rule 17.1(f) of the Commission's Rules for Practice and Procedure, the Utility Reform Network (TURN) hereby files this supplemental Notice of Intent to Claim Compensation (Supplemental NOI). TURN filed its original NOI in this proceeding on February 19, 2016.

On May 5, 2016, a coalition of carriers¹ that are parties to this proceeding (Coalition) filed a *Complaint for Temporary Restraining Order, Preliminary Injunction, Permanent Injunction, and Declaratory Judgment* (Complaint) and filed an *Application for Temporary Restraining Order* and a *Motion for Preliminary Injunction* (Motion) in the Northern District of California of the federal District Court, San Francisco Division.² The Coalition named the five Commissioners and Administrative Law Judge Bemesderfer,³ in their official capacities, as Defendants.

The Coalition's Complaint and Motion seeks judicial review and an injunction from enforcement of the Assigned Commissioner's and Administrative Law Judge's May 3, 2016 Ruling. This May 3, 2016 Ruling requires Respondents to this proceeding, including the

¹ The carries requesting judicial review from the federal District Court are: NEW CINGULAR WIRELESS PCS, LLCd/b/a AT&T MOBILITY, a Delaware limited liability company; PACIFIC BELL TELEPHONE COMPANY d/b/a AT&T CALIFORNIA, a California corporation; CALIFORNIA CABLE & TELECOMMUNICATIONS ASSOCIATION, a 501(c)(6) exempt trade association; COMCAST PHONE OF CALIFORNIA, LLC, a Delaware limited liability company; COX CALIFORNIA TELCOM, LLC, a Delaware corporation; CTIA- THE WIRELESS ASSOCIATION®, a District of Columbia non-profit corporation; CELLCO PARTNERSHIP d/b/a VERIZON WIRELESS, a Delaware general partnership; MCI COMMUNICATIONS SERVICES, INC., a Delaware corporation.

² *New Cingular Wireless PCS, LCC, et al. v. Michael Picker, et al.*, Case No. 3:16-cv-02461-VC

³ On May 31, 2016, the parties to the federal action filed a stipulation to dismiss ALJ Bemesderfer with certain conditions. The stipulation was granted on June 1, 2016.

Coalition, to provide geographically disaggregated service subscription data to third parties pursuant to a Protective Order.

TURN, as a real party in interest to the federal action, filed a Motion to Intervene in the federal proceeding on May 12, 2016, and, contemporaneously with its Motion to Intervene, filed an Opposition to the Coalition's Motion for Preliminary Injunction. The Court granted TURN's Motion to Intervene from the bench during the May 18, 2016 hearing on the Preliminary Injunction request.⁴

On May 20, 2016 the Court granted the Coalition's Motion for Preliminary Injunction, thus temporarily preventing TURN and other parties to the proceeding from receiving the subject data. The Court's Order set a schedule for further briefing, including cross motions for summary judgment, and set a hearing on the Coalition's request for judicial review and a permanent injunction of the ALJ Ruling.

II. DISCUSSION

Rule 17.1(f) provides that an intervenor who intends to request compensation for costs of judicial review shall file a supplemental notice of intent within 30 days after the date that the intervenor first appears or files a pleading in the judicial review proceeding. This Supplemental NOI covers work performed by TURN in the pending action before the federal District Court. Because this Supplemental NOI is filed within 30 days of TURN's first appearance before the federal District Court on May 12, 2016, this Supplemental NOI is timely filed.

Rule 17.1(f) directs that the supplemental NOI shall 1) "identify the issues upon which the intervenor intends to participate in judicial review"; 2) include "an itemized estimate of the compensation that the intervenor expects to request by reference to those identified issues"; and

⁴ *New Cingular Wireless PCS, LCC, et al. v. Michael Picker, et al.*, Case No. 3:16-cv-02461-VC, Transcript of the Proceeding of the Official Sound Recording, p. 4

3) if the intervenor intends to support the Commission's decision on review, address why the intervenor expects that its participation in judicial review will supplement, complement or contribute to the Commission's defense of its decision. TURN addresses each of these requirements below.

A. Issues to be Addressed by TURN in Judicial Review

TURN's opposition to the Coalition's Motion for Preliminary Injunction urged the Court to reject the Motion and allow the Commission to enforce its May 3 Ruling, thus allowing third party access to the carrier subscription data at issue. TURN addressed issues of federal preemption, interpretation of FCC regulations, protection of carrier confidential data, and due process rights of parties in Commission proceedings.

TURN will file a response to the Coalition's Complaint and its Motion for Summary Judgment. TURN will also file a cross Motion for Summary Judgment pursuant to the Court's Order. In these filings TURN expects to address the following issues: the requirement that administrative agencies support their final decisions with a clear and open evidentiary and administrative record; the public interest in access to this data by third parties to ensure a full and meaningful litigation of the issues and review of the Commission's final decision; the FCC's regulations allowing the collection and protection of carrier confidential data by state commissions; the absence of any federal intent to preempt state commission disclosure and use of the data; current state law and Commission regulations protecting confidential carrier data and mitigation of any potential harm to the carriers from third party access to this data.

B. Estimate of Costs Associated with Participating in Judicial Review

TURN estimates that it will request compensation for the following costs and expenses:

Attorney/Category	Estimated Hours	Hourly Rate	Estimated Cost
Christine Mailloux	100	\$445	\$44,500
William Nusbaum	55	\$470	\$25,850
Tom Long	25	\$575	\$14,375
Direct Expenses			\$250
TOTAL:			\$84,975

The actual amount of any future request for compensation will depend upon the procedural course that the judicial review follows and the resulting work of TURN's advocates. The above estimate includes hours already incurred to intervene in the federal case and to oppose the Coalition's request for a preliminary injunction. The estimate assumes that the schedule in the case will remain as it is currently set out in the Court's June 1, 2016 Order Approving the Joint Stipulation. If the pending issues, schedule, or events in the case change significantly over the course of the next few months, TURN's estimate would necessarily change.

TURN will address the reasonableness of the requested hourly rates in its Request for Compensation. TURN understands that a finding of eligibility in no way assures the granting of intervenor compensation.

C. TURN has Taken Reasonable Steps to Ensure That its Participation Will Supplement, Complement or Contribute to the Commission's Defense of its Decision

TURN is a real party in interest in the federal action requesting judicial review of the May 3, 2016 Ruling. This judicial review reflects a rare interlocutory appeal of an Assigned Commissioner/Administrative Law Judge's Ruling issued in the above referenced docket. Parties, including TURN, are currently litigating the case, filing testimony, and submitting data. Therefore, federal judicial review of the Administrative Law Judge's rulings will directly impact TURN, along with other parties to the proceeding. This federal proceeding will determine whether TURN (and others) can have access to data that TURN argues is critical for the

development and presentation of its full affirmative case, its ability to properly analyze and respond to other parties' testimony and filings, as well as the Commission's proposed and final decisions in this case. This federal action could have implications for intervenor access to data beyond this proceeding.

To date, in the federal action, TURN has coordinated with counsel for the Commission regarding approaches and strategies to the case so that TURN can provide the Court with a different perspective and emphasis on the pending issues. TURN will provide information regarding an intervenor's need for the data to litigate the case and to develop a strong record. As a real party in interest, TURN will address the public interest benefits to ensuring third party access to the data while generally describing TURN's history in protecting carrier confidential data. Moreover, TURN submitted separate data requests to the Coalition requesting similar but not identical data at issue in the federal action. TURN will address issues related to its right to discovery of this data.

III. CONCLUSION

TURN submits that it has met all of the requirements of Rule 17.1(f) and supplements its February 19, 2016 NOI to reflect additional work in the judicial review requested by the carrier Coalition of the May 3rd Ruling in the above referenced proceeding. If the Commission believes further information is necessary to satisfy Rule 17.1(f), TURN requests an opportunity to provide such information before any ruling issues.

Dated: June 13, 2016

Respectfully submitted,

/S/

Christine Mailloux