

Decision 15-03-036 March 26, 2015

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking to Consider Modifications to the California Advanced Services Fund.	Rulemaking 12-10-012 (Filed October 25, 2012)
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**DECISION GRANTING COMPENSATION TO THE UTILITY REFORM NETWORK FOR SUBSTANTIAL CONTRIBUTION TO DECISION 14-02-018**

<b>Claimant: The Utility Reform Network</b>	<b>For contribution to Decision (D.) 14-02-018</b>
<b>Claimed: \$16,763.65</b>	<b>Awarded: \$16,797.40</b>
<b>Assigned Commissioner: Michael Picker</b>	<b>Assigned ALJ: W. Anthony Colbert</b>

**PART I: PROCEDURAL ISSUES**

<b>A. Brief Description of Decision:</b>	Decision implements revised eligibility rules for the CASF program and additional safeguards for non-telephone corporations applying for CASF funding.
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**B. Claimant must satisfy intervenor compensation requirements set forth in Pub. Util. Code §§ 1801-1812:**

	<b>Claimant</b>	<b>CPUC Verified</b>
<b>Timely filing of notice of intent to claim compensation (NOI) (§ 1804(a)):</b>		
1. Date of Prehearing Conference:	n/a	Verified
2. Other Specified Date for NOI:	30 days after reply comments	Verified
3. Date NOI Filed:	1/17/2013	1/14/2013
4. Was the NOI timely filed?		Yes
<b>Showing of customer or customer-related status (§ 1802(b)):</b>		
5. Based on ALJ ruling issued in proceeding number:	A.12-04-015	Verified
6. Date of ALJ ruling:	7/20/2012	Verified

7. Based on another CPUC determination (specify):	n/a	N/A
8. Has the Claimant demonstrated customer or customer-related status?		Yes
<b>Showing of “significant financial hardship” (§ 1802(g)):</b>		
9. Based on ALJ ruling issued in proceeding number:	R.11-11-008	Verified
10. Date of ALJ ruling:	1/3/2012	Verified
11. Based on another CPUC determination (specify):	n/a	N/A
12. Has the Claimant demonstrated significant financial hardship?		Yes
<b>Timely request for compensation (§ 1804(c)):</b>		
13. Identify Final Decision:	D.14-02-018	Verified
14. Date of Issuance of Final Order or Decision:	3/4/14	Verified
15. File date of compensation request:	5/5/14	Verified
16. Was the request for compensation timely?		Yes

**PART II: SUBSTANTIAL CONTRIBUTION**

**A. In the fields below, describe in a concise manner Claimant’s contribution to the final decision (see § 1802(i), § 1803(a) & D.98-04-059).**

Intervenor’s Claimed Contribution(s)	Specific References to Intervenor’s Claimed Contribution(s)	CPUC Discussion
1. TURN has consistently argued that the Commission should allow non-telephone corporations to be eligible for CASF funding subject to safeguards. TURN continued that advocacy in the instant proceeding. The Commission has agreed; instituted this proceeding to implement rules to permit non-telephone company eligibility; and has sought legislative approval all consistent with TURN’s advocacy.	TURN Reply Comments on Phase II Issues Relating to the CASF (10/3/07), pp. 4-6 in R.09-06-019.  TURN Comments on OIR in R.12-10-012 (12/3/12), pp. 1-2.  OIR R.12-10-012, pp. 6-7; 16.  D.14-02-018, pp7-11.	Verified
2. In support of the Commission’s intent to permit non-telephone companies to be eligible for CASF grants, TURN met with several such	TURN Comments on OIR in R.12-10-012 (12/3/12), p. 2 and Attachment A.  TURN Reply Comments on OIR in	Verified



<p>argued for the Commission to waive a performance bond requirement for governmental entities. The Commission adopted a performance bond requirement. However, the Commission did not agree with TURN re governmental entities.</p>	<p>D.14-02-018, p.17.</p>	
<p>4. Another safeguard considered by the Commission was a liquidity requirement. TURN fully supported the requirement that entities be able to demonstrate the financial, technical and operational capability to successfully operate and maintain a broadband system. As such, TURN also supported a liquidity requirement. However, TURN urged the Commission to only adopt safeguards, such as liquidity, that are not so onerous as to discourage participation.</p> <p>The Commission adopted a liquidity requirement but only for those entities that have not been providing broadband service for less than 12 months. The Commission also positively cited TURN's concerns as part of its rationale.</p>	<p>TURN Comments on OIR in R.12-10-012 (12/3/12), p. 2.</p> <p>TURN Reply Comments on OIR in R.12-12-012 (12/18/12), pp. 2-6.</p> <p>TURN Additional Reply Comments (4/23/13), pp. 3-4.</p> <p>D.14-02-018, p. 28-30.</p>	<p>Verified</p> <p>TURN's claim slightly mistakes the liquidity requirement, but the rest of the decision makes clear that the adopted requirement relies on part on TURN's position.</p>
<p>5. The Commission raised the issue of its legal authority to hold non-telephone company CASF grantees accountable and to impose penalties. TURN argued that the Commission had the authority to contractually obligate those CASF grantees as well as had the statutory regulatory</p>	<p>TURN Additional Reply Comments (4/23/13), pp. 4-5.</p>	<p>Verified</p>

<p>authority to do so. The Commission held that it had requisite statutory power consistent with TURN’s advocacy although it did not adopt TURN’s other rational of contract law.</p>	<p>D.14-02-018, pp. 33-37.</p>	
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**B. Duplication of Effort (§§ 1801.3(f) & 1802.5):**

	Claimant	CPUC Verified
<p><b>a. Was the Office of Ratepayer Advocates (ORA) a party to the proceeding?<sup>1</sup></b></p>	<p>Yes</p>	<p>Verified</p>
<p><b>b. Were there other parties to the proceeding with positions similar to yours?</b></p>	<p>Yes</p>	<p>Verified</p>
<p><b>c. If so, provide name of other parties:</b> Institute for Local Self Reliance; Valley Vision; Tulare County office of Education; CA Partnership for the San Joaquin Valley; CA State University, Monterey Bay; San Diego Imperial Regional Broadband Consortium; CalNet; Access Humboldt; Regional Council of Rural Counties; Sierra Economic Development Corp.; Broadband Policy Network; Tellus Ventures Assoc.; and Rural Broadband Policy Group.</p>		<p>Verified</p>
<p><b>d. Describe how you coordinated with ORA and other parties to avoid duplication or how your participation supplemented, complemented, or contributed to that of another party:</b> TURN coordinated with several of the parties, assisted them in understanding the issues and encouraged them to participate in the proceeding. Many of these parties filed general comments supporting the inclusion of non-telephone companies in the CASF program. TURN’s pleadings were generally more detailed than these parties while supporting their general position. With respect to ORA, TURN &amp; ORA had different positions with ORA reluctant to have non-telephone companies participating in the CASF program. Under these circumstances, the Commission should find that TURN made all reasonable efforts to avoid duplication.</p>		<p>Verified</p>

<sup>1</sup> The Division of Ratepayer Advocates was renamed the Office of Ratepayer Advocates effective September 26, 2013, pursuant to Senate Bill No. 96 (Budget Act of 2013: public resources), which was approved by the Governor on September 26, 2013.

**PART III: REASONABLENESS OF REQUESTED COMPENSATION**

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

<b>a. Intervenor’s claim of cost reasonableness:</b>	<b>CPUC Verified</b>
<p>As with many quasi-legislative proceedings, the precise benefits to consumers from TURN’s participation in this docket are difficult to quantify. However, the issues at stake in this proceeding directly impact consumers who are unserved or underserved by broadband service. This proceeding has the potential of bringing reasonably priced broadband to these consumers. TURN has been as advocate for permitting non-telephone companies to be eligible for CASF grants since the program’s inception.</p>	<p>Verified</p>
<p><b>b. Reasonableness of Hours Claimed.</b></p> <p>The total hours included in this request represent less than one 40-hour week of attorney 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>Mr. William Nusbaum was TURN’s lead attorney in this proceeding. Ms. Regina Costa, TURN’s Telecommunications Policy Director, spent a small amount of time assisting Mr. Nusbaum especially in the area of rural broadband and municipal broadband development.</p>	<p>Verified</p>
<p><b>c. Allocation of Hours by Issue</b></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 – Issues associated with safeguards including performance bonds, liquidity and penalties and associated legal/jurisdictional issues</p> <p>M – Issues associated with demonstrating that municipal broadband can be viable and successful and non-telephone companies participation in CASF can help bridge the digital divide</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:</p> <p>S 60%, M 40%</p>	<p>Verified</p>

**B. Specific Claim:\***

CLAIMED						CPUC AWARD		
ATTORNEY, EXPERT, AND ADVOCATE FEES								
Item	Year	Hours	Rate \$	Basis for Rate*	Total \$	Hours	Rate \$	Total \$
William Nusbaum	2012	21.75	\$445	D.13-03-024	\$9,678.75	21.75	\$445	\$9,678.75
William Nusbaum	2013	5	\$445	D.13-10-065	\$2,225.00	5	\$445	\$2,225.00
William Nusbaum	2014	4	\$455	D.13-10-065	\$1,820.00	4	\$455	\$1,820.00
Regina Costa	2012	6.75	\$280	ALJ - 281	\$1,890.00	6.75	\$285 <sup>2</sup>	\$1,923.75
<b>Subtotal: \$15,613.75</b>						<b>Subtotal: \$15,647.50</b>		
INTERVENOR COMPENSATION CLAIM PREPARATION **								
Item	Year	Hours	Rate \$	Basis for Rate*	Total \$	Hours	Rate	Total \$
William Nusbaum	2013	1	\$222.50	Half of approved hourly rate ALJ287	\$222.50	1	\$222.50	\$222.50
William Nusbaum	2014	4	\$227.50	Half of approved hourly rate ALJ287	\$910.00	4	\$227.50	\$910.00
<b>Subtotal: \$1,132.50</b>						<b>Subtotal: \$1,132.50</b>		
COSTS								
#	Item	Detail			Amount	Amount		
1	Photocopies	Copies for pleadings served on ALJ and Assigned Commissioner			\$6.60	\$6.60		
2	Postage	Postage for pleadings served on ALJ and Assigned Commissioner			\$10.80	\$10.80		
<b>Subtotal: \$17.40</b>						<b>Subtotal: \$17.40</b>		
<b>TOTAL REQUEST: \$16,763.65</b>						<b>TOTAL AWARD: \$16,797.40</b>		
<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 seeks 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>**Travel and Reasonable Claim preparation time typically compensated at ½ of preparer's normal hourly rate.</p>								

<sup>2</sup> Adopted in D.12-09-016.

<b>ATTORNEY INFORMATION</b>			
<b>Attorney</b>	<b>Date Admitted to CA BAR<sup>3</sup></b>	<b>Member Number</b>	<b>Actions Affecting Eligibility (Yes/No?) If "Yes", attach explanation</b>
William Nusbaum	June 7, 1983	108835	No; Please note from January 1, 1997 until October 4, 2002 Nusbaum was an inactive member of the California State Bar.

**C. Attachments Documenting Specific Claim and Comments on Part III:**

<b>Attachment or Comment #</b>	<b>Description/Comment</b>
1	<b>Certificate of Service</b>
2	<b>Time Sheets for Attorney</b>
3	<b>Expenses</b>
4	<b>TURN hours allocated by issue</b>

**PART IV: OPPOSITIONS AND COMMENTS**

<b>A. Opposition: Did any party oppose the Claim?</b>	No
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<b>B. Comment Period: Was the 30-day comment period waived (see Rule 14.6(2)(6))?</b>	Yes
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**FINDINGS OF FACT**

1. The Utility Reform Network has made a substantial contribution to D.14-02-018.
2. The requested hourly rates for The Utility Reform Network’s representatives are comparable to market rates paid to experts and advocates having comparable training and experience and offering similar services.
3. The claimed costs and are reasonable and commensurate with the work performed.
4. The total of reasonable compensation is \$16,797.40.

<sup>3</sup> This information may be obtained at: <http://www.calbar.ca.gov/>.



5. This rulemaking is a quasi-legislative proceeding with no named respondents. The proceeding broadly impacts communications utilities as well as non-utility communications service providers.

**CONCLUSION OF LAW**

1. The Claim, with any adjustment set forth above satisfies all requirements of Pub. Util. Code §§ 1801-1812.
2. The claim should be paid from the Intervenor Compensation Fund.
3. Comments on today's decision should be waived, and the decision should be made effective immediately.

**ORDER**

1. The Utility Reform Network is awarded \$16,797.40.
2. Within 30 days of the effective date of this decision, the Commission's Fiscal Office shall disburse the awarded compensation from the Commission's Intervenor Compensation Fund. Payment of the award shall include interest at the rate earned on prime, three-month non-financial commercial paper as reported in Federal Reserve Statistical Release H.15, beginning July 19, 2014, the 75<sup>th</sup> 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 is waived.
4. This decision is effective today.

Dated March 26, 2015, at San Francisco, California.

MICHAEL PICKER  
President  
MICHEL PETER FLORIO  
CATHERINE J.K. SANDOVAL  
CARLA J. PETERMAN  
LIANE M. RANDOLPH  
Commissioners

**APPENDIX****Compensation Decision Summary Information**

<b>Compensation Decision:</b>	D1503036	<b>Modifies Decision?</b>	
<b>Contribution Decision(s):</b>	D1402018		
<b>Proceeding(s):</b>	R1210012		
<b>Author:</b>	ALJ Colbert		
<b>Payer(s):</b>	Commission's Intervenor Compensation Fund		

**Intervenor Information**

<b>Intervenor</b>	<b>Claim Date</b>	<b>Amount Requested</b>	<b>Amount Awarded</b>	<b>Multiplier?</b>	<b>Reason Change/Disallowance</b>
The Utility Reform Network	5/5/2014	\$16,763.65	\$16,797.40	N/A	N/A

**Advocate Information**

<b>First Name</b>	<b>Last Name</b>	<b>Type</b>	<b>Intervenor</b>	<b>Hourly Fee Requested</b>	<b>Year Hourly Fee Requested</b>	<b>Hourly Fee Adopted</b>
William	Nusbaum	Attorney	TURN	\$445	2012	\$445
William	Nusbaum	Attorney	TURN	\$445	2013	\$445
William	Nusbaum	Attorney	TURN	\$455	2014	\$455
Regina	Costa	Expert	TURN	\$280	2012	\$285

**(END OF APPENDIX)**