Decision 16-09-033 September 15, 2016

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

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| In the matter of Joint Application of Charter Communications, Inc.; Charter Fiberlink CA-CCO, LLC (U6878C); Time Warner Cable Inc.; Time Warner Cable Information Services (California), LLC (U6874C) ; Advance/Newhouse Partnership; Bright House Networks, LLC; and Bright House Networks Information Services (California), LLC (U6955C) Pursuant to California Public Utilities Code Section 854 for Expedited Approval of the Transfer of Control of both Time Warner Cable Information Services (California), LLC (U6874C) and Bright House Networks Information Services (California), LLC (U6955C) to Charter Communications, Inc., and for Expedited Approval of a pro forma transfer of control of Charter Fiberlink CA-CCO, LLC (U6878C). | Application 15-07-009<br>(Filed July 2, 2015) |

**DECISION AWARDING INTERVENOR COMPENSATION TO CENTER FOR ACCESSIBLE TECHNOLOGY FOR SUBSTANTIAL CONTRIBUTION TO DECISION 16-05-007**

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| **Intervenor: Center for Accessible Technology (CforAT)** | **For contribution to Decision (D.) 16-05-007** |
| **Claimed: $49,881.00** | **Awarded: $49,881.00** |
| **Assigned Commissioner: Michael Picker** | **Assigned ALJ: Karl J. Bemesderfer** |

**PART I: PROCEDURAL ISSUES**

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| **A. Brief description of Decision:** | Decision grants application to transfer control of Time Warner Cable and Bright House entities to Charter Communications, subject to conditions. |

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

| | **Intervenor** | **CPUC Verified** |
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| **Timely filing of notice of intent to claim compensation (NOI) (§ 1804(a)):** | | |
| 1. Date of Prehearing Conference (PHC): | September 28, 2015 | Verified. |
| 2. Other specified date for NOI: | N/A | |
| 3. Date NOI filed: | October 26, 2015 | Verified. |

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| 4. Was the NOI timely filed? | | Yes, Center for Accessible Technology (CforAT) timely filed the notice of intent to claim intervenor compensation. |
| **Showing of customer or customer-related status (§ 1802(b)):** | | |
| 5. Based on ALJ ruling issued in proceeding number: | A.15-07-009 | Verified. |
| 6. Date of ALJ ruling: | November 20, 2015 | Verified. |
| 7. Based on another CPUC determination (specify): | N/A | |
| 8. Has the Intervenor demonstrated customer or customer-related status? | | Yes, CforAT demonstrated appropriate status in this proceeding. |
| **Showing of "significant financial hardship" (§ 1802(g)):** | | |
| 9. Based on ALJ ruling issued in proceeding number: | A.15-07-009 | Verified. |
| 10. Date of ALJ ruling: | November 20, 2015 | Verified. |
| 11. Based on another CPUC determination (specify): | N/A | |
| 12. Has the Intervenor demonstrated significant financial hardship? | | Yes, CforAT demonstrated significant financial hardship. |
| **Timely request for compensation (§ 1804(c)):** | | |
| 13. Identify Final Decision: | D.16-05-007 | Verified. |
| 14. Date of issuance of Final Order or Decision: | May 16, 2016 | Verified. |
| 15. File date of compensation request: | July 15, 2016 | Verified. |
| 16. Was the request for compensation timely? | | Yes, CforAT timely filed the intervenor compensation request. |

**PART II: SUBSTANTIAL CONTRIBUTION**

**A. Did the Intervenor substantially contribute to the final decision (*see* § 1802(i), § 1803(a), and D.98-04-059). (For each contribution, support with specific reference to the record.)**

| Intervenor's Claimed Contribution(s) | Specific References to Intervenor's Claimed Contribution(s) | CPUC Discussion |
|---|---|---|
| 1. Procedural Contribution: CforAT (in conjunction with the Greenlining Institute and TURN) argued that the Commission should evaluate the application using the factors in §854(a), (b), and (c), and that Applicants' have the burden of proof to show that the transaction would be in the public interest. Joint Consumer Protest at pp. 3-6. Applicants sought to limit the review to only §854(a). | The Commission found that it is appropriate to review the application under all provisions of §854. D.16-05-007 (Final Decision) at p. 20, and p. 69 (COL 1-2). | Verified. |
| 2. Procedural Contribution: CforAT (in conjunction with ORA and other intervenors) opposed efforts by Applicants to truncate the procedural schedule reviewing the proposed merger. Response by multiple parties, including CforAT, to Applicants' Motion to Alter Schedule, filed on January 22, 2016 at pp. 3-12. | While Applicants' motion was not formally denied, no action was taken to shorten the schedule despite the motion. | Verified. |
| 3. Public Interest/Mitigation CforAT addressed concerns about backup power and the need to ensure that vulnerable customers do not lose connectivity to the network during a power outage, as well as the need to provide effective information on backup power at the time of sale and in accessible formats. Belser Testimony at pp. 9-11, CforAT Opening Brief at pp. 3-11 | The Decision reiterates the Commission's requirements for customer education regarding backup power, adds explicit requirements that customer education material must be accessible, and requires an New Charter to provide "each existing or new Voice over Internet Protocol customer with a separate paper document devoted exclusively to proving information about the need for back-up power." Consistent with CforAT's recommendations, this document must be provided at the time of sale and in accessible formats. Final Decision at pp. 72-73 (Ordering Paragraphs 2.o and 2.p). | Verified. |

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| 4. Public Interest/Mitigation: CforAT addressed concerns about available and affordable broadband service, including the need for such service to be available to our constituency. Belser Testimony at pp. 3-8, CforAT Opening Brief at pp. 16-20. | While the Decision does not directly address CforAT's specific recommendations regarding broadband service, it generally acknowledges the importance of available and affordable broadband and the need to reduce the digital divide, and it evaluates the public interest benefit of the transaction in light of commitments to provide improved broadband service as contained in the CETF MOU. Final Decision at p. 26 (noting that the CETF MOU is "overwhelming devoted" to issues of broadband deployment and affordability), and pp. 51-54 (broadly evaluating consumer needs and potential benefits of transaction in conjunction with MOUs), and p. 70 (Ordering Paragraph 2.a (adopting CETF MOU)). While CforAT sought additional commitments, our participation on this issue informed both the context in which the MOU was negotiated and the Commission's consideration of the needs of communities with limited access to broadband, thus enhancing the record and the Commission's ability to evaluate the application. It is well established that a party may make a substantial contribution, even if tis positions are not adopted, as long as the party's input enhances the ability of the Commission to consider the issues before it. | Verified. |
| 5. Public Interest/Mitigation: CforAT addressed concerns about accessible communication with customers with disabilities. Belser Testimony at pp. 11-13, CforAT Opening Brief at pp. 11-15. | The Decision specifically requires that information regarding public safety, particularly backup power, must be provided in accessible formats. Final Decision at pp. 72-73 (Ordering Paragraphs 2.o and 2.p). | Verified. |
| 6. Public Interest/Mitigation: CforAT supported additional mitigation measures that were adopted by the Commission, including the need to offer LifeLine service to low income customers (Belser Testimony at p. 14, CforAT Opening Brief at pp. 20-21), and the need for investment in | The Decision requires New Charter to offer Lifeline phone service, consistent with all Commission rules, to all eligible households in its service territory. Final Decision at p. 72 (Ordering Paragraph 2.m). It further requires New Charter to adhere to all of the Commission's "service quality standards for voice communication established in General Order 133-C including any subsequent thereto [sic] and any successor service | Verified. |

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| service quality (Belser Testimony at p. 14, CforAT Opening Brief at p. 21). | quality order or rules." Final Decision at p. 72 (Ordering Paragraph 2.n). | |

**B. Duplication of Effort (§ 1801.3(f) and § 1802.5):**

| | Intervenor's Assertion | CPUC Discussion |
|---|---|---|
| **a. Was the Office of Ratepayer Advocates (ORA) a party to the proceeding?** | **Yes** | Verified. |
| **b. Were there other parties to the proceeding with positions similar to yours?** | **Yes** | Yes. |
| **c. If so, provide name of other parties:** Multiple parties in addition to CforAT opposed the proposed merger and/or sought mitigation measures in conjunction with the proposed merger. Thus CforAT took positions similar to multiple groups at various times in the proceeding. Most consistently, CforAT took positions similar to ORA and the Greenlining Institute, each of which consistently opposed the proposed merger and advocated for substantial mitigation.<br><br>Other parties that sought mitigation or otherwise had similar positions to CforAT at some time in the proceeding include California Emerging Technology Fund, Common Cause, Entravision Communications, National Diversity Coalition, Media Alliance, The Utility Reform Network (TURN), and Writers Guild of America, West. | | Verified. |
| **d. Intervenor's claim of non-duplication:** While CforAT took a similar overall position with regard to the merger as ORA and Greenlining, we were the only party to focus on the impact of the proposed merger on our constituency of people with disabilities, and to propose mitigation measures to address the concerns of this constituency. Even when our proposals overlapped in part with those of other parties, such as our focus on backup power which was also addressed by ORA, our work complemented or supplemented ORAs work, as ORA addressed the needs of consumers generally while CforAT addresses the needs of a uniquely vulnerable customer segment.<br><br>Additionally, in opposing the proposed merger, CforAT worked diligently to cooperate and avoid duplication, by preparing joint filings (for which different issues were assigned to different parties) where appropriate and through careful coordination with other parties. CforAT submits that these efforts successfully avoided or minimized any duplication and no reductions should be made to the time recorded. | | Agreed. CforAT's participation was not duplicative. |

**PART III: REASONABLENESS OF REQUESTED COMPENSATION (to be completed by Intervenor except where indicated)**

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

| **a. Intervenor's claim of cost reasonableness:**<br>During the course of this proceeding, CforAT articulated multiple harms that would impact our constituency of people with disabilities and thus would require | **CPUC Discussion** |
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| mitigation if the merger were allowed to move forward. Many of our concerns regarding this vulnerable customer segment were accepted by the Commission, and mitigation measures were included in an effort ensure that these customers benefit from the proposed transaction. While CforAT also pursued additional measures, numerous measures that were included in the Decision are intended to alleviate the harms identified by CforAT and are likely to make the merger less harmful than it would have been without such measures.<br><br>While it is difficult to assign a dollar figure to avoided harms, the Commission agreed with CforAT regarding the risk of harm that the proposed merger raised for our constituency. Overall, the adopted measures will reduce some harm, and this benefit outweighs the modest costs of CforAT's participation, particularly due to the fact the individual households including a person with a disability do not have resources to advocate for themselves before the Commission. | Verified. |
| **b. Reasonableness of hours claimed:**<br><br>In our NOI, CforAT estimated that we would expend 150 hours of attorney time and 30 hours of expert time, assuming that the proceeding would include an opportunity for testimony, an evidentiary hearing, and one or more rounds of briefing. Counsel specifically noted that "to the extent that the scope of the proceeding is more limited, CforAT expects to expend fewer hours than" were estimated. NOI at p. 5. In the Administrative Law Judge's Ruling on the Center For Accessible Technology's Showing of Significant Financial Hardship, issued on November 20, 2015, the ALJ cautioned that these estimates seemed high. Ruling at p. 6. In fact CforAT's actual expenditure of attorney time on the merits came in at approximately 101 hours, representing a substantial reduction from the estimated time (the time spent included preparation for a hearing which was planned, but was not subsequently held). The reduction in expert time was even greater, with an estimate of 30 hours and an actual expenditure of only 5.2 hours, including preparation of testimony and participation in (limited) settlement discussions.<br><br>The time spent represents effective participation by CforAT in all aspects of the proceeding, including discovery, testimony, briefing, active ex parte participation, review of agreements between applicants and other parties, and comments on a proposed decision. CforAT submits that this work was necessary and reasonable given the course of the proceeding. | Verified. |
| **c. Allocation of hours by issue:**<br><br>In our NOI, CforAT estimated that we would address three issues, namely Public Interest/Harm/Mitigation (70%), Jurisdiction (15%) and General Participation (15%).<br><br>As anticipated, our substantive participation focused virtually exclusively on questions of Public Interest/Harm/Mitigation (noted on time records as "**Public Interest/Mitigation**"). This includes issue spotting, discovery, preparation of testimony, and efforts at settlement. As described below, this issue was also our focus in briefing and work following issuance of a proposed decision, but these tasks are categorized separately.<br>Contrary to expectations at the time the NOI was prepared, we did not separately | Verified. |

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| focus on the issue of Jurisdiction, and this category is not used in our time records.<br><br>As anticipated, CforAT expended time allocated to General Participation (noted as "**General Participation**" on time records) for activities that are part of effective participation in a proceeding, such as attending the Prehearing Conference, reviewing rulings, and reviewing filings from other parties. Also included in this category is time spend addressing confidentiality and time spent reviewing substantive agreements between parties that included substantive items that addressed public interest/harm/mitigation, but which could not be easily classified into such other category.<br><br>CforAT added several additional categories that were not identified in our NOI, as follows:<br><br>**Hearing/Briefing:** This category includes procedural matters in preparation for an anticipated hearing, admission of testimony into the record, and review of other party filings as well as work drafting CforAT's own briefs. Substantively, CforAT's own briefing focused overwhelmingly on public interest/harm/mitigation.<br><br>**Decision:** This category includes work after the Proposed Decision was issued, including preparation of comments (with CforAT's own comments again focused on public interest/harm/mitigation), review of other party comments, ex parte participation (a small portion of which included efforts to get meetings on calendar in anticipation of the PD before it was actually released) and work on a still-pending Application for Rehearing.<br><br>Counsel's actually time records reflect the allocation among these issues as follows:<br><br>**Total: 101.4 hours**<br>Public Interest/Mitigation: 22.8 hours (22.5%)<br>General Participation: 24.3 hours (23.9%)<br>Hearing/Briefing: 30.5 hours (30.1%)<br>Decision: 23.8 hours (23.5%)<br><br>All time spent by CforAT's expert, Dmitri Belser (5.2 hours) was spent addressing substantive issues of public interest/mitigation/harm. | |

**B. Specific Claim:***

| CLAIMED | | | | | | CPUC AWARD | | |
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| **ATTORNEY, EXPERT, AND ADVOCATE FEES** | | | | | | | | |
| **Item** | **Year** | **Hours** | **Rate $** | **Basis for Rate*** | **Total $** | **Hours** | **Rate $** | **Total $** |
| Melissa W. Kasnitz | 2015 | 14.2 | $450 | D.14-12-046 | $6,435 | 14.30 | 450.00 | 6,435.00 |

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|---|---|---|---|---|---|---|---|---|
| Melissa W. Kasnitz | 2016 | 87.1 | $455 | COLA (1.28%) applied to 2015 rate per Res. ALJ-329, issued on April 5, 2016 | $39,630.50 | 87.1 | 455.00 | 39,630.50 |
| Dmitri Belser | 2016 | 5.2 | $240 | See below | $1,248 | 5.20 | 240.00 | 1,248.00 |
| | | | | | ***Subtotal:* $ $47,313.50** | | | ***Subtotal:* $ 47,313.50** |
| **INTERVENOR COMPENSATION CLAIM PREPARATION **** | | | | | | | | |
| **Item** | **Year** | **Hours** | **Rate $** | **Basis for Rate*** | **Total $** | **Hours** | **Rate** | **Total $** |
| Melissa W. Kasnitz | 2015 | 1.3 | $225 | ½ Standard hourly rate | $293 | 1.30 | 225.00 | 292.50 |
| Melissa W. Kasnitz | 2016 | 10.0 | $227.50 | ½ requested rate | $2,275 | 10.0 | 227.50 | 2,275.00 |
| | | | | | ***Subtotal:* $ $2,567.50** | | | ***Subtotal:* $2,567.50** |
| | | | | | **TOTAL REQUEST: $49,881.00** | | | **TOTAL AWARD: $49,881.00** |

**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. Intervenor'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.

**Travel and Reasonable Claim preparation time typically compensated at ½ of preparer's normal hourly rate

| ATTORNEY INFORMATION | | | |
|---|---|---|---|
| **Attorney** | **Date Admitted to CA BAR[1]** | **Member Number** | **Actions Affecting Eligibility** |
| Melissa W. Kasnitz | December, 1992 | 162679 | No, but inactive from January 1, 1993 until January 25, 1995 and from January 1, 1996 until February 19, 1997. |

**C. Intervenor's Comments on Part III**

| Comment # | CforAT's Comment |
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| Comment | **2016 Rate for Dmitri Belser:** In its most recent review of a rate for CforAT expert Dmitri Belser, the Commission awarded him a 2015 rate of $235/hr. For 2016, CforAT applied the 1.28% COLA, established in Resolution ALJ-329, to Mr. Belser's 2015 rate, which would result in a rate of $238.01/hr, and then rounded up to the next $5 increment. |

**D. PART IV: OPPOSITIONS AND COMMENTS**

**Within 30 days after service of this Claim, Commission Staff or any other party may file a response to the Claim (*see* § 1804(c))**

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| **A. Opposition: Did any party oppose the Claim?** | No. |
| **B. Comment Period: Was the 30-day comment period waived (*see* Rule 14.6(c)(6))?** | Yes. |

## FINDINGS OF FACT

1. CforAT has made a substantial contribution to D.16-05-007.

2. The requested hourly rates for CforAT's representatives, as adjusted herein, are comparable to market rates paid to experts and advocates having comparable training and experience and offering similar services.

3. The claimed costs and expenses are reasonable and commensurate with the work performed.

4. The total of reasonable compensation is $49,881.00.

[1] This information may be obtained through the State Bar of California's website at http://members.calbar.ca.gov/fal/MemberSearch/QuickSearch .

## CONCLUSION OF LAW

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

## ORDER

1. Center for Accessible Technology shall be awarded $49,881.00.

2. Within 30 days of the effective date of this decision Charter Communications, Inc. (Charter), Time Warner Cable Inc. (TWC), Time Warner Cable Information Services (California), LLC (TWCIS), Advance/Newhouse Partnership (ANP), Bright House Networks, LLC (BHN) and Bright House Networks Information Services (California), LLC (Bright House) shall pay Center for Accessible Technology their respective shares of the award, based on their California-jurisdictional telecommunications revenues for the 2016 calendar year, to reflect the year in which the proceeding was primarily litigated. Payment of the award shall include compound interest at the rate earned on prime, three-month non-financial commercial paper as reported in Federal Reserve Statistical Release H.15, beginning September 28, 2016, the 75th day after the filing of Center for Accessible Technology'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 September 15, 2016, at San Francisco, California.

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

Commissioner Carla J. Peterman, being necessarily absent, did not participate.

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

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| **Compensation Decision:** | D1609033 | **Modifies Decision?** | No |
| **Contribution Decision(s):** | D1605007 | | |
| **Proceeding(s):** | A1507009 | | |
| **Author:** | ALJ Bemesderfer | | |
| **Payer(s):** | Charter Communications, Inc. (Charter), Time Warner Cable Inc. (TWC), Time Warner Cable Information Services (California), LLC (TWCIS), Advance/Newhouse Partnership (ANP), Bright House Networks, LLC (BHN) and Bright House Networks Information Services (California), LLC (Bright House) | | |

**Intervenor Information**

| Intervenor | Claim Date | Amount Requested | Amount Awarded | Multiplier? | Reason Change/Disallowance |
|---|---|---|---|---|---|
| Center for Accessible Technology (CforAT) | 7/15/2016 | $49,881.00 | $49,881.00 | N/A | *N/A* |

**Advocate Information**

| First Name | Last Name | Type | Intervenor | Hourly Fee Requested | Year Hourly Fee Requested | Hourly Fee Adopted |
|---|---|---|---|---|---|---|
| Melissa W. | Kasnitz | Attorney | CforAT | $450.00 | 2015 | $450.00 |
| Melissa W. | Kasnitz | Attorney | CforAT | $455.00 | 2016 | $455.00 |
| Dmitri | Belser | Expert | CforAT | $240.00 | 2016 | $240.00 |

**(END OF APPENDIX)**