

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIAApplication of TracFone Wireless, Inc. (U4231C) for
Rehearing of Resolution T-17235.Application 10-01-015
(Filed January 19, 2010)**DECISION GRANTING INTERVENOR COMPENSATION
TO THE UTILITY REFORM NETWORK
FOR SUBSTANTIAL CONTRIBUTION TO RESOLUTION T-17235**

Claimant: The Utility Reform Network	For contribution to Resolution (R.) T-17235
Claimed (\$): \$16,162.50	Awarded (\$): \$16,162.50
Assigned Commissioner: N/A	Assigned ALJ: Legal Division

PART I: PROCEDURAL ISSUES

A. Brief Description of Decision: Resolution T-17235 denied TracFone's request to be designated an Eligible Telecommunications Carrier (ETC) in California for the purposes of receiving federal Lifeline support.

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

	Claimant	CPUC Verified
Timely filing of notice of intent to claim compensation (§ 1804(a)):		
1. Date of Prehearing Conference:	N/A	Yes
2. Other Specified Date for NOI:		
3. Date NOI Filed:	2/16/10, <i>see</i> Section C comment below	Yes
4. Was the notice of intent timely filed? See comment below		Yes

Showing of customer or customer-related status (§ 1802(b)):		
5. Based on ALJ ruling issued in proceeding number:	A.10-01-015	N/A
6. Date of ALJ ruling:	Today, <i>see</i> Section C comment below	N/A, <i>see</i> Section C, comment B 3/4 below
7. Based on another CPUC determination (specify):		
8. Has the claimant demonstrated customer or customer-related status?		Yes, <i>see</i> Section C, comment B 5/6 below
Showing of “significant financial hardship” (§ 1802(g)):		
9. Based on ALJ ruling issued in proceeding number:	A.07-12-021	Yes
10. Date of ALJ ruling:	April 18, 2008	Yes
11. Based on another CPUC determination (specify):		
12. Has the claimant demonstrated significant financial hardship?		Yes
Timely request for compensation (§ 1804(c)):		
13. Identify Final Decision	Resolution T-17235	Yes
14. Date of Issuance of Final Decision:	December 18, 2009	Yes
15. File date of compensation request:	February 16, 2009	Yes
16. Was the request for compensation timely?		Yes

C. Additional Comments on Part I (use line reference # as appropriate):

#	Claimant	CPUC	Comment
B 3/4	X		In D.98-11-049, the Commission determined that an NOI incorporated in the timely-filed Request for Compensation for work on an advice letter is itself timely filed. The Commission recently reaffirmed this in D.09-09-027. TURN has attached to this form compensation request our form NOI for this proceeding.
B 5/6		X	<p>Rule 17.1(d) requires an NOI to demonstrate that the intervenor is a “customer” as defined in Section 1802(b). One category of customer defined by Section 1802(b)(1)(C) is an organization that is authorized by its articles or bylaws to represent the interests of residential customers. Here, TURN states that it meets this definition of “customer” because it is authorized by its articles to represent the interests of residential customers. Copies of the relevant portion of TURN’s articles were attached to an NOI submitted in Application (A.) 98-02-017 and again in A.99-12-024. TURN’s articles have not changed since then.</p> <p>Decision 98-04-059, Finding of Fact 12, directs groups such as TURN to indicate the percentage of their members who are residential</p>

			<p>customers. TURN believes that most of its 20,000 dues-paying members are residential customers, but TURN cannot identify precisely the percentage of its membership that consists of residential customers.</p> <p>For the preceding reasons, this ruling finds that TURN is a “customer” as defined by Section 1802(b)(1)(C).</p>
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PART II: SUBSTANTIAL CONTRIBUTION

A. Claimant’s description of its claimed contribution to the final decision

(For each contribution, support with specific reference to final decision or record.)

Contribution	Citation to Decision or Record	Showing Accepted by CPUC
<p>1. TURN supported the Draft Resolution’s conclusion that the Commission had the authority to apply a public interest standard in deciding whether to grant Federal ETC status. TracFone strongly opposed this authority and argued that the FCC did not confer such discretion. TURN provided rebuttal to TracFone’s arguments, pointing out where it relied on faulty logic or misinterpretation of both the Draft Resolution and FCC ETC regulations. TURN also noted that long-existing CPUC ETC regulations should apply to TracFone, something that TracFone denied. The Final Resolution notes TURN’s argument regarding the existing regulations and seems to echo TURN and the Small LEC’s observation that those regulations apply to all ETC applications, not just high cost ETCs. Despite TracFone’s comments to the contrary, the Final Resolution finds that the Commission has jurisdiction.</p>	<p>TURN Opening Comments, pp. 2-3; TURN Reply Comments, p. 8; Resolution T-17235, pp. 8-11, 25 footnote 113, and COL 10</p>	<p>Yes</p>
<p>2. TURN argued that a reseller of wireless service such as TracFone who also offers pre-paid wireless service is a public utility as well as a</p>	<p>TURN Opening Comments, pp. 2-4; TURN Reply Comments, pp. 2-6; Resolution T-17235, pp. 16-19.</p>	<p>Yes</p>

<p>telecommunications corporation subject to the requirements of the Public Utilities Code and hence responsible for collecting and remitting public purpose surcharges. This was the lynchpin of TracFone’s argument. It had to prove that it was not subject to the requirements under the Public Utilities Code, so that it could then deny Commission jurisdiction over all aspects of its service offerings. TURN’s reply comments rebutted TracFone by demonstrating that the Commission’s interpretation of the Public Utilities Code should be afforded deference. TURN exposed the flaws in TracFone’s attempt to rely on the <i>Edison</i> case and further explained why TracFone has misinterpreted the statutory definitions at issue here. The Final Resolution maintains the arguments from the Draft that TracFone is subject to the Public Utilities Code and does not back down in the face of TracFone’s opposition. While the Draft Resolution acknowledges and discusses TURN’s arguments, it does not explicitly cite to or rely on any parties’ opening or reply comments in its substantive reasoning. However, TURN’s rebuttal could only serve to bolster the record on these points.</p>		
<p>3. TURN also expressed concern that granting TracFone’s ETC request could prematurely determine issues in R.06-05-028 relating to changes in the LifeLine program and, in addition, could establish a poor model for acceptable wireless LifeLine service in California. The Final Resolution made note that TURN’s comments corroborate previous comments and that “we agree that these comments address an issue of legitimate concern, namely the granting to one wireless company ... the ability to operate a</p>	<p>TURN letter to Commissioners, 7/7/09; TURN Opening Comments, p. 5; Resolution T-17235, p. 24- 25, footnote 110.</p>	<p>Yes</p>

<p>LifeLine service in California, without resolution or definition of the framework in which wireless LifeLine will be offered.” While the Draft Resolution declined to address the “timing issues,” TURN’s comments put this issue in larger context for the Commission. The Commission declined to deal with these issues since it found that TracFone’s “ongoing violation of statutory obligations to collect and remit public purpose surcharges and user fees is dispositive of the ETC Petition.”</p>		
<p>4. In both our opening and reply comments on the Draft Resolution, TURN urged the Commission to ignore TracFone’s insistence that a denial of the ETC Petition would be bad for low income consumers. TracFone seemed to be arguing that any carrier offering a unique service should be granted ETC status. TURN argued that the actual substance of TracFone’s SafeLink offering was not relevant because the concerns about TracFone’s previous behavior and its failure to acknowledge Commission jurisdiction on several issues should take precedence and support the denial of the Petition. The Final Resolution states that it does not address arguments on the affordability of the service, for example, because “TracFone’s ongoing violation of statutory obligations...is dispositive of the ETC Petition.” The Final Resolution refused to become distracted by feel-good arguments about the importance of LifeLine but instead sticks to the law and public policy implications for all public purpose programs as TURN urged.</p>	<p>TURN Opening Comments at p. 5; TURN Reply at p. 1-2; Draft Resolution at p. 25</p>	<p>Yes</p>

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

	Claimant	CPUC Verified
a. Was DRA a party to the proceeding?	Yes	Yes
b. Were there other parties to the proceeding?	Yes	Yes
c. If so, provide name of other parties: Verizon; Small LECs; and DRA		Yes
<p>d. Claimant’s description of how it coordinated with DRA and other parties to avoid duplication or how its participation supplemented, complemented, or contributed to that of another party:</p> <p>TURN coordinated with DRA to minimize any overlap in issues considered and to ensure that where such overlap occurs each party presented as unique an analysis as possible. For example, TURN focused its research and the substance of its comments on the legal issues regarding state jurisdiction and interpretation of the Public Utilities Code. DRA did not file opening comments on the Draft Resolution and in its reply comments, and previously filed comments was more critical of TracFone’s previous behavior as a certificated carrier in California and focused on the factual analysis of the usefulness and value of TracFone’s SafeLink service to low income consumers. TURN did not believe that this was the forum to address those detailed issues. Other parties, such as the Small LECs, focused on issues that directly affected their interests such as the requirements for ETC applications that include service territory in rural areas.</p>		Yes

PART III: REASONABLENESS OF REQUESTED COMPENSATION

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

Claimant’s explanation of how the cost of claimant’s participation bears a reasonable relationship with benefits realized through its participation (include references to record, where appropriate)	CPUC Verified
<p>The issues highlighted by TracFone’s request for ETC status are significant for California’s ratepayers. TracFone requested authority to receive federal subsidy money to provide wireless phone service to low income Californian’s who are eligible for universal service discounts. However, TracFone refused to acknowledge the Commission’s jurisdiction on two crucial matters. First, TracFone argued that it did not have to pay into California’s public purpose programs because it was a reseller and not a “telecommunications carrier.” If successful, this argument would threaten the viability of these programs and provide TracFone and other wireless resellers with a competitive advantage over those carriers that do pay into these funds. The ratepayers of those carriers that currently pay into the funds would be disadvantaged.</p> <p>Second, TracFone argued that the Commission could not apply a public interest analysis to the ETC qualifications, thereby handicapping this Commission in its</p>	Yes

ability to protect consumers. The FCC provided significant authority to states with the understanding that states are in the best position to determine which carriers should receive this subsidy money and serve these at-risk consumers. The Resolution acknowledges that ETC authority must be closely scrutinized because of the “vulnerable” low income communities they serve. (at p. 8) TracFone’s positioning would have emasculated the state commission’s authority. TURN’s participation in this proceeding supported these important principles by adding to the record and providing additional legal rationale thereby helping the Commission staff protect its public purpose programs. TURN discussed this matter with TracFone itself and Commission staff and we filed opening and reply comments on the Draft Resolution. We did not directly intervene in the process until we saw that broad legal issues with potential impact on all California ratepayers were at issue. We participated with the minimal amount of resources as possible. TURN’s compensation request is reasonable given the significance of the issues.

B. Specific Claim:

CLAIMED						CPUC AWARD			
ATTORNEY AND ADVOCATE FEES									
Item	Year	Hours	Rate \$	Basis for Rate*	Total \$	Year	Hours	Rate \$	Total \$
C. Mailloux	2009	34.75	390	D.09-04-028 and Res. ALJ-235	13,552.50	2009	34.75	390	13,552.50
W. Nusbaum	2010	4.25	435	D.09-08-020 and Res. ALJ-235	1,848.75	2010	4.25	435	1,848.75
Subtotal: \$15,401.25						Subtotal: \$15,401.25			
INTERVENOR COMPENSATION CLAIM PREPARATION **									
Item	Year	Hours	Rate \$	Basis for Rate*	Total \$	Year	Hours	Rate \$	Total \$
W. Nusbaum	2010	3.5	217.50	half 2010 rate	761.25	2010	3.5	217.50	761.25
Subtotal: \$ 761.25						Subtotal: \$ 761.25			
TOTAL REQUEST: \$16,162.50						TOTAL AWARD: \$16,162.50			

When entering items, type over bracketed text; add additional rows as necessary.
 *If hourly rate based on CPUC decision, provide decision number; otherwise, attach rationale.
 **Reasonable claim preparation time typically compensated at ½ of preparer’s normal hourly rate.
 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. CARE’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.

C. Attachments or Comments Documenting Specific Claim:

Attachment or Comment #	Description/Comment
1	Certificate of Service
2	Time sheets detailing attorney hours
3.	TURN has allocated its time entries by activity codes. The list of codes and their description: GP - General Preparation: time for activities necessary to participate in the docket L - Issues associated with Commission jurisdiction; application of public interest standard WLL – Issues associated with wireless LifeLine offerings and models # - 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, L 85%, WLL 15%,
4.	For this compensation request TURN is utilizing 2009 rates for the 2010 hours of William Nusbaum but reserve the right to seek a different rate for 2010 hours in other compensation requests.

D. CPUC Disallowances & Adjustments: None

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))

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. Claimant has made a substantial contribution to Resolution T-17235.
2. The claimed fees and costs are comparable to market rates paid to experts and advocates having comparable training and experience and offering similar services.
3. The total of reasonable contribution is \$16,162.50.

CONCLUSION OF LAW

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

ORDER

1. Claimant is awarded \$16,162.50.
2. Within 30 days of the effective date of this decision, TracFone Wireless, Inc shall pay claimant 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 May 2, 2010, the 75th day after the filing of claimant's request, and continuing until full payment is made.
3. The comment period for today's decision is waived.
4. Application 10-01-015 is closed.

This decision is effective today.

Dated _____, at San Francisco, California.

APPENDIX**Compensation Decision Summary Information**

Compensation Decision:		Modifies Decision? No
Contribution Decision(s):	Resolution T-17235	
Proceeding(s):	A1001015	
Author:	Legal Division	
Payer:	TracFone Wireless, Inc.	

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Multiplier ?	Reason for Disallowance
The Utility Reform Network	02-16-10	\$16,162.50	\$16,162.50	No	None

Advocate Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
Christine	Mailloux	Attorney	The Utility Reform Network	\$390	2009	\$390
William	Nusbaum	Attorney	The Utility Reform Network	\$435	2010	\$435

(END OF APPENDIX)