Decision _____

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

| | |
|---|---|
| Order Instituting Rulemaking to Review Policies Concerning Intrastate Carrier Access Charges. | Rulemaking 03-08-018 (Filed August 21, 2003) |

# OPINION GRANTING INTERVENOR COMPENSATION TO THE UTILITY REFORM NETWORK FOR SUBSTANTIAL CONTRIBUTIONS TO DECISION (D.) 04-12-022, D.06-04-071, AND D.07-12-020

This decision awards The Utility Reform Network (TURN) $83,223.00 in compensation for its substantial contributions to D.04-12-022, D.06-04-071, and D.07-12-020.

## 1. Background

On October 4, 2001, AT&T Communications of California (old AT&T)[1] filed a petition pursuant to § 1708.5[2] seeking a reduction in intrastate access charges.[3] In D.03-08-018, the Commission granted old AT&T's petition and

[1] This refers to AT&T prior to its merger with SBC.

[2] All section citations are to the Public Utilities Code, unless otherwise indicated.

[3] The term "access charges" refers to charges imposed by local exchange carriers for use of the local network by interexchange or long distance carriers, which use this switched access to originate and terminate long distance calls to the vast majority of California residential and business customers. For purposes of this decision, intrastate access charges are defined as the following switched access rate elements: end office switching, which may include a set up fee, tandem transport and switching, and information surcharge.

noted that certain components of the access charges are not cost-based or associated with the costs of any specific transport function. In the decision resolving the first phase of the proceeding, D.04-12-022, the Commission decided that should it authorize local exchange carriers to decrease access charges, these carriers would also be authorized to offset any decrease in access charge revenue with comparable increases in revenue for local services by imposing a surcharge on local telephone service.

The Commission resolved Phase II of this proceeding with D.06-04-071, which eliminated the non-cost-based elements of the access charges assessed by the two largest incumbent local exchange carriers, Pacific Bell Telephone Company (now merged with AT&T) and Verizon. That decision also directed the small, mid-sized, and competitive local exchange carriers to submit comments on whether any non-cost-based elements of their respective access charges should also be modified in a Phase III decision.

On December 6, 2007, the Commission issued D.07-12-020 which reduced intrastate access charges by requiring all mid-size incumbent local exchange carriers to remove the non-cost-based element or its equivalent, effective January 1, 2009. With that effective date, no surcharges would be necessary for the mid-size incumbent local exchange carriers.

The 2007 decision also ordered that the surcharges authorized by D.06-04-071 for Pacific Bell Telephone Company, now doing business as AT&T (AT&T), and Verizon California Inc. (Verizon) would expire on the date the rate freeze on basic residential telephone service is lifted, currently scheduled for January 1, 2009.

D.07-12-020 also ordered competitive local exchange carriers to reduce their intrastate access charges to $0.025 per minute effective April 1, 2008, and

then to the higher of AT&T's or Verizon's intrastate access charges, plus 10%, effective January 1, 2009. Small local exchange carriers that do not opt into the Uniform Regulatory Framework were ordered to phase out non-cost-based elements over their next two rate case cycles.

## 2. Requirements for Awards of Compensation

The intervenor compensation program, enacted in Pub. Util. Code §§ 1801-1812, requires California jurisdictional utilities to pay the reasonable costs of an intervenor's participation if the intervenor makes a substantial contribution to the Commission's proceedings. The statute provides that the utility may adjust its rates to collect the amount awarded from its ratepayers. (Subsequent statutory references are to the Public Utilities Code unless otherwise indicated.)

All of the following procedures and criteria must be satisfied for an intervenor to obtain a compensation award:

1. The intervenor must satisfy certain procedural requirements including the filing of a sufficient notice of intent (NOI) to claim compensation within 30 days of the prehearing conference (or in special circumstances, at other appropriate times that we specify). (§ 1804(a).)

2. The intervenor must be a customer or a participant representing consumers, customers, or subscribers of a utility subject to our jurisdiction. (§ 1802(b).)

3. The intervenor must file and serve a request for a compensation award within 60 days of our final order or decision in a hearing or proceeding. (§ 1804(c).)

4. The intervenor must demonstrate "significant financial hardship." (§§ 1802(g), 1804(b)(1).)

5. The intervenor's presentation must have made a "substantial contribution" to the proceeding, through the adoption, in whole or in part, of the intervenor's contention or recommendations by a Commission order or decision. (§§ 1802(i), 1803(a).)

6. The claimed fees and costs must be reasonable (§ 1801), necessary for and related to the substantial contribution (D.98-04-059), comparable to the market rates paid to others with comparable training and experience (§ 1806), and productive (D.98-04-059).

For discussion here, the procedural issues in Items 1-4 above are combined, followed by separate discussions on Items 5-6.

## 3. Procedural Issues

TURN filed its NOI on December 16, 2003, and was found eligible for compensation in a February 17, 2004 ruling which also affirmed TURN's significant financial hardship.

Section 1802(b)(1) defines a "customer as: (a) a participant representing consumers, customers or subscribers of a utility; (b) a representative who has been authorized by a customer; or (c) a representative of a group or organization authorized pursuant to its articles of incorporation or bylaws to represent the interests of residential or small business customers. In this case, TURN is a customer as defined in § 1802(b)(1)(C): it is an organization authorized by its articles of incorporation[4] to represent the interests of consumers, a portion of which are residential customers.

---

[4] D.98-04-059 directed intervenors either to file their articles of incorporation with the NOI, or to provide a reference to a previous filing. (*Id.* at 30.) TURN chose the latter alternative, referring to articles of incorporation it filed with its NOI in Application

*Footnote continued on next page*

TURN filed its request for compensation on February 8, 2008, within 60 days of D.07-12-020 being issued on December 10, 2007.[5] In view of the above, we find that TURN has satisfied all the procedural requirements necessary to make its request for compensation.

### 4. Substantial Contribution

In evaluating whether a customer made a substantial contribution to a proceeding, we look at several things. First, we look at whether the Commission adopted one or more of the factual or legal contentions, or specific policy or procedural recommendations put forward by the customer. (See § 1802(i).) Second, we look at if the customer's contentions or recommendations paralleled those of another party, did the customer's participation materially supplement, complement, or contribute to the presentation of the other party or to the development of a fuller record that assisted the Commission in making its decision. (See §§ 1802(i) and 1802.5.) As described in § 1802(i), the assessment of whether the customer made a substantial contribution requires the exercise of judgment.

> In assessing whether the customer meets this standard, the Commission typically reviews the record, composed in part of pleadings of the customer and, in litigated matters, the hearing transcripts, and compares it to the findings, conclusions, and orders in the decision to which the customer asserts it

---

(A.) 98-02-017 and again in A.99-12-024. TURN has approximately 30,000 dues-paying members, the majority of which it believes to be residential ratepayers. TURN does not poll its members to determine whether they are residents or small businesses, so no percentage split is available as required by D.98-04-059, Finding of Fact 12.

[5] No party opposes the request.

> contributed. It is then a matter of judgment as to whether the customer's presentation substantially assisted the Commission.[6]

Should the Commission not adopt any of the customer's recommendations, compensation may be awarded if, in the judgment of the Commission, the customer's participation substantially contributed to the decision or order. For example, if a customer provided a unique perspective that enriched the Commission's deliberations and the record, the Commission could find that the customer made a substantial contribution. With this guidance in mind, we turn to the claimed contributions TURN made to the proceeding.

TURN states that its involvement was extensive throughout this multi-phase proceeding but that the majority of its time (75%) was devoted to the first phase where the Commission considered whether other customers should make up the difference of any decreases in intrastate access charges. According to TURN, while not successful on every argument it presented, TURN provided a strong counterpoint to the local exchange carriers' arguments for offsetting rate increases for other customers. TURN successfully argued that such rate increases were not a matter of right, pursuant to the New Regulatory Framework, although the Commission did exercise its discretion to grant the increases. TURN also successfully advocated for delaying any similar rate increases for the mid-sized, small, and competitive local exchange carriers.

In the next phase of the proceeding, the proposed decision reflected TURN's limitation on a rate surcharge, although the Commission's final decision did not adopt that provision. Similarly, TURN advocated for including affiliate

---

[6] D.98-04-059, 79 CPUC2d 628 at 653.

transactions in determining lost revenues, which was included in the proposed decision but not adopted by the Commission. TURN cites to Commission precedent showing that a substantial contribution can be demonstrated by contributions to the proposed decision.

In the final phase of the proceeding, which resulted in D.07-12-020, TURN argued that customers of the small carriers could experience rate shock if access charge reform were instituted abruptly, and the Commission adopted a policy of phasing in the rate changes over a six-year period. For competitive carriers, TURN supported continuing to exempt them from access charge reform, but, in the alternative, to adopt a cap similar to that applicable to federal interstate access charges. The Commission adopted a two-step cap for these carriers. Finally, TURN pointed out that the Commission's decision in the Uniform Regulatory Framework docket which allowed full pricing flexibility for residential services effective January 1, 2009, obviated the need for any Commission-authorized rate rebalancing surcharge after that date. The Commission adopted TURN's position and limited any surcharge authorization to the date of full pricing flexibility.

TURN demonstrates that its involvement in this proceeding resulted in important consumer protections being identified and clarified. In the areas where we did not adopt TURN's position, we benefited from TURN's analysis and discussion of all of the issues which it raised because the ultimate decision was required to address the issues and more effectively articulate the rationale for the decision. TURN made a substantial contribution as described above.

After we have determined the scope of a customer's substantial contribution, we then look at whether the compensation requested is reasonable.

## 5. Reasonableness of Requested Compensation

TURN requests $83,673.00 for its participation in this proceeding, as follows:

| Attorney Fees | Year | Rate ($/hour) | Hours | Annual Total ($) |
|---|---|---|---|---|
| William Nusbaum | 2003 | 340.00 | 103.5 | 35,190.00 |
| | 2004 | 365.00 | 42.75 | 15,604.00 |
| | 2005 | 365.00 | 26.00 | 9,940.00[7] |
| | 2006 | 375.00 | 25.75 | 9,656.00 |
| | 2007 | 405.00 | 3.00 | 1,215.00 |
| Comp | 2003 | 170.00 | 2.00 | 340.00 |
| Comp | 2008 | 202.50 | 15.00 | 3,037.00 |
| Regina Costa | 2003 | 215.00 | 16.00 | 3,440.00 |
| | 2004 | 230.00 | 7.25 | 1,668.00 |
| | 2005 | 230.00 | 1.25 | 288.00 |
| Robert Finkelstein | 2003 | 365.00 | 5.00 | 1,825.00 |
| Christine Mailloux | 2003 | 300.00 | 0.50 | 150.00 |
| | 2004 | 325.00 | 2.75 | 894.00 |
| **Subtotal** | | | | **$83,247.00** |
| **Other Reasonable Costs** | | | | |
| Photocopying | | | | 171.00 |
| Lexis | | | | 253.00 |
| Phone | | | | 2.00 |
| **Grand Total** | | | | **$83,673.00** |

In general, the components of this request must constitute reasonable fees and costs of the customer's preparation for and participation in a proceeding that resulted in a substantial contribution. The issues we consider to determine reasonableness are listed below, followed by a separate discussion on each:

1. The hours and costs for which compensation is requested must be related to the customer's work, and necessary for the substantial contribution, as set forth in D.98-04-059.

[7] TURN makes a computation error here: 26 hours multiplied by $365.00 should equal $9,490.00, not $9,940.00. We correct this error in our award.

2. The hourly rates requested must be reasonable under the "market rate" standard set forth in Pub. Util. Code § 1806.

3. Any other costs or expenses must be reasonable, directly incurred by the customer, and directly related to the substantial contribution (§ 1802(d)).

4. The participation must be productive, as set forth in D.98-04-059, in that the amount requested is reasonable in relation to the benefits accruing to ratepayers by virtue of the substantial contribution.

### 5.1. Hours and Costs Related to and Necessary for Substantial Contribution

We first assess whether the hours claimed for the customer's efforts that resulted in substantial contributions to Commission decisions are reasonable by determining to what degree the hours and costs are related to the work performed and necessary for the substantial contribution.

TURN documented its claimed hours by presenting a daily breakdown of the hours of its attorneys, accompanied by a brief description of each activity. TURN provided a monthly summary of hours for its consultants. The hourly breakdown reasonably supports the claim for total hours.[8] Since we found that TURN's efforts made a substantial contribution to the delineated decision, we need not exclude from TURN's award compensation for certain issues. However, we note that TURN broke down its efforts by types of pleading and had we needed to eliminate certain hours from the award, this breakdown would have facilitated the process.

---

[8] TURN separated the hours associated with preparation of this compensation request and requests compensation at half the usual hourly rate for this time.

### 5.2. Market Rate Standard

We next take into consideration whether the claimed fees and costs are comparable to the market rates paid to experts and advocates having comparable training and experience and offering similar services.

TURN seeks the hourly rates for its attorneys that the Commission has previously set, as follows:

| Attorney | Year | Rate Requested ($/hour) | Commission Decision Approving |
|---|---|---|---|
| William Nusbaum | 2003 | 340 | D.04-12-054 |
| | 2004 | 365 | D.05-04-014 |
| | 2005 | 365 | D.06-04-026 |
| | 2006 | 375 | D.06-11-009 |
| | 2007 | 405 | D.08-04-019 |
| | 2008 | 405 | D.08-04-019 |
| Regina Costa | 2003 | 215 | D.04-12-054 |
| | 2004 | 230 | D.04-12-054 |
| | 2005 | 230 | D.06-09-008 |
| Robert Finkelstein | 2003 | 365 | D.03-08-041 |
| Christine Mailloux | 2003 | 300 | D.04-12-054 |
| | 2004 | 325 | D.04-12-054 |

We confirm these rates here.

### 5.3. Direct Expenses

The itemized direct expenses submitted by TURN include costs for photocopying, telephone, and legal research and total $426. The cost breakdown included with the request shows the miscellaneous expenses to be commensurate with the work performed. We find these costs reasonable.

### 5.4. Productivity

D.98-04-059 directed customers to demonstrate productivity by assigning a reasonable dollar value to the benefits of their participation to ratepayers. The

costs of a customer's participation should bear a reasonable relationship to the benefits realized through their participation. This showing assists us in determining the overall reasonableness of the request.

TURN states that the AT&T and Verizon were seeking to recover over $170 million per year that the carriers asserted would be "lost" due to intrastate access charge reform. TURN contends that had its arguments prevailed, customers would not have been assessed these costs. TURN concludes that the amount at issue was greatly in excess of its claimed compensation and its participation was, therefore, productive.

We also agree and find that TURN's efforts have been productive.

## 6. Award

As set forth in the table below, we award TURN $83,223.00:

| Attorney Fees | Year | Rate ($/hour) | Hours | Annual Total ($) |
|---|---|---|---|---|
| William Nusbaum | 2003 | 340 | 103.5 | 35,190.00 |
| | 2004 | 365 | 42.75 | 15,604.00 |
| | 2005 | 365 | 26.00 | 9,490.00 |
| | 2006 | 375 | 25.75 | 9,656.00 |
| | 2007 | 405 | 3.00 | 1,215.00 |
| Comp | 2003 | 170 | 2.00 | 340.00 |
| Comp | 2008 | 202.50 | 15.00 | 3,037.00 |
| Regina Costa | 2003 | 215 | 16 | 3,440.00 |
| | 2004 | 230 | 7.25 | 1,668.00 |
| | 2005 | 230 | 1.25 | 288.00 |
| Robert Finkelstein | 2003 | 365 | 5 | 1,825.00 |
| Christine Mailloux | 2003 | 300 | 0.5 | 150.00 |
| | 2004 | 325 | 2.75 | 894.00 |
| **Subtotal** | | | | **$82,797.00** |
| **Other Reasonable Costs** | | | | |
| Photocopying | | | | 171.00 |
| Lexis | | | | 253.00 |
| Phone | | | | 2.00 |

| Attorney Fees | Year | Rate ($/hour) | Hours | Annual Total ($) |
|---|---|---|---|---|
| | | | | $83,223.0 |
| **Grand Total** | | | | 0 |

Consistent with previous Commission decisions, we order that interest be paid on the award amount (at the rate earned on prime, three-month commercial paper, as reported in Federal Reserve Statistical Release H.15) commencing on April 23, 2008, the 75th day after TURN filed its compensation request, and continuing until full payment of the award is made.

The award should be paid by the intervenor compensation fund because this proceeding affected all local exchange carriers.

We remind all intervenors that Commission staff may audit their records related to this award and that intervenors must make and retain adequate accounting and other documentation to support all claims for intervenor compensation. TURN's records should identify specific issues for which it requested compensation, the actual time spent by each employee or consultant, the applicable hourly rate, fees paid to consultants, and any other costs for which compensation was claimed.

## 7. Waiver of Comment Period

This is an intervenor compensation matter. Accordingly, as provided by Rule 14.6(c)(6) of the Commission's Rules of Practice and Procedure, we waive the otherwise applicable 30-day public review and comment period for this decision.

## 8. Assignment of Proceeding

Michael R. Peevey is the assigned Commissioner and Maribeth A. Bushey is the assigned ALJ in this proceeding.

## Findings of Fact

1. TURN has met the eligibility requirements of § 1804(a). TURN is a customer as that term is defined in § 1802(b) and is a group or organization that is authorized to represent the interests of residential ratepayers.

2. TURN has established that it will face a significant financial hardship in this proceeding, as set forth in § 1802(g).

3. TURN made a substantial contribution to D.04-12-022, D.06-04-071, and D.07-12-020 as described herein.

4. TURN requested hourly rates for attorneys and experts that, as adjusted herein, are reasonable when compared to the market rates for persons with similar training and experience.

5. The total of the reasonable compensation is $83,223.00.

6. The appendix to this opinion summarizes today's award.

## Conclusions of Law

1. TURN has fulfilled the requirements of Pub. Util. Code §§ 1801-1812, which govern awards of intervenor compensation, and is entitled to intervenor compensation for its claimed compensation, as adjusted herein, incurred in making substantial contributions to D.04-12-022, D.06-04-071, and D.07-12-020.

2. TURN should be awarded $$83,223.00 in compensation for its substantial contributions to D.04-12-022, D.06-04-071, and D.07-12-020.

3. Pursuant Rule 77.7(f)(6), the comment period for this compensation decision may be waived.

4. This order should be effective today so that TURN may be compensated without further delay.

## O R D E R

**IT IS ORDERED** that:

1. The Utility Reform Network (TURN) is awarded $83,223.00 as compensation for its substantial contributions to Decision (D.) 04-12-022, D.06-04-071 and D.07-12-020.

2. Within 30 days of the effective date of this decision, TURN's award shall be paid by the intervenor compensation fund. 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 April 23, 2008, the 75th day after the filing date of TURN's request for compensation, and continuing until full payment is made.

3. The comment period for today's decision is waived.

4. Rulemaking 03-08-018 is closed.

This order is effective today.

Dated _____, at San Francisco, California.

## APPENDIX

## Compensation Decision Summary Information

| | | |
|---|---|---|
| **Compensation Decision:** | | **Modifies Decision? No** |
| **Contribution Decision(s):** | D0412022, 0604071, and 0712020 | |
| **Proceeding(s):** | R0308018 | |
| **Author:** | ALJ Bushey | |
| **Payer(s):** | | |

## Intervenor Information

| Intervenor | Claim Date | Amount Requested | Amount Awarded | Multiplier? | Reason Change/Disallowance |
|---|---|---|---|---|---|
| The Utility Reform Network | 2/8/08 | $83,673.00 | $83,223.00 | No | Computation error |

## Advocate Information

| First Name | Last Name | Type | Intervenor | Hourly Fee Requested | Hourly Fee Adopted | Year Hourly Fee Requested |
|---|---|---|---|---|---|---|
| William | Nusbaum | Attorney | TURN[1] | $340 | 2003 | $340 |
| William | Nusbaum | Attorney | TURN | $365 | 2004 | $365 |
| William | Nusbaum | Attorney | TURN | $365 | 2005 | $375 |
| William | Nusbaum | Attorney | TURN | $375 | 2006 | $375 |
| William | Nusbaum | Attorney | TURN | $405 | 2007 | $405 |
| William | Nusbaum | Attorney | TURN | $405 | 2008 | $405 |
| Regina | Costa | Attorney | TURN | $215 | 2003 | $215 |
| Regina | Costa | Attorney | TURN | $230 | 2004 | $230 |
| Regina | Costa | Attorney | TURN | $230 | 2005 | $230 |
| Robert | Finkelstein | Attorney | TURN | $365 | 2003 | $365 |
| Christine | Mailloux | Attorney | TURN | $300 | 2003 | $300 |

[1] The Utility Reform Network

**(END OF APPENDIX)**

| | | | | | | |
|---|---|---|---|---|---|---|
| Christine | Mailloux | Attorney | TURN | $325 | 2004 | $325 |