

Decision 10-06-016 June 3, 2010

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Joint Application of Frontier Communications Corporation, New Communications Holdings, Inc., New Communications ILEC Holdings, Inc., New Communications of the Southwest Inc., Verizon West Coast Inc. (U1020C), Verizon California Inc. (U1002C), New Communications Online and Long Distance, Inc., Verizon Long Distance, LLC (U5732C) and Verizon Enterprise Solutions, LLC (U5658C) For Approval of the Sale of Assets, Transfer of Certificates and Customer Bases, and Issuance of Additional Certificates

Application 09-06-005
(Filed June 4, 2009)

DECISION GRANTING REQUEST OF THE UTILITY REFORM NETWORK FOR INTERVENOR COMPENSATION FOR SUBSTANTIAL CONTRIBUTION TO DECISION 09-10-056

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| Claimant: The Utility Reform Network | For contribution to D.09-10-056 |
| Claimed (\$): 23,154 | Awarded (\$): 20,816.50 |
| Assigned Commissioner: Peevey | Assigned ALJ: Barnett |

PART I: PROCEDURAL ISSUES

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| A. Brief Description of Decision: | Approves an Application filed by Verizon California, Inc., Frontier Communications and their affiliated companies. The Application requests approval for the sale of certain assets and transfer of customers from Verizon to Frontier. The Final Decision accepts a Settlement Agreement between the Division of Ratepayer Advocates (DRA), The Utility Reform Network (TURN) and the carriers that sets forth conditions for the approval of the sale. |
|--|--|

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

| | Claimant | CPUC Verified |
|---|---|----------------------|
| Timely filing of notice of intent (NOI) to claim compensation (§ 1804(a)): | | |
| 1. Date of Prehearing Conference: | August 12, 2009 | Correct |
| 2. Other Specified Date for NOI: | | |
| 3. Date NOI Filed: | September 10, 2009 | Correct |
| 4. Was the NOI timely filed? | | Yes |
| Showing of customer or customer-related status (§ 1802(b)): | | |
| 5. Based on ALJ ruling issued in proceeding number: | | A.08-06-001, et al. |
| 6. Date of ALJ ruling: | | 12/05/2008 |
| 7. Based on another CPUC determination (specify): | TURN provided the relevant portion of our articles of incorporation in the NOI submitted in A.98-02-017, and again in A.99-12-024. The articles of incorporation have not changed since the time of those earlier submissions. | Yes |
| 8. Has the claimant demonstrated customer or customer-related status? | | Yes |
| Showing of "significant financial hardship" (§ 1802(g)): | | |
| 9. Based on ALJ ruling issued in proceeding: | A.08-05-023 | Correct |
| 10. Date of ALJ ruling: | April 22, 2009 | Correct |
| 11. Based on another CPUC determination (specify): | TURN received a finding of significant financial hardship in an ALJ's Ruling issued on April 18, 2008, in A.07-12-021 (the PG&E Ruby Pipeline application), and in another ALJ Ruling issued April 22, 2009, in A.08-05-023 (the PG&E Distribution Reliability Improvement Program (DRIP) application). This proceeding commenced within one year of the dates of those findings, so the rebuttable presumption applies in this case. | Correct |

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| 12. Has the claimant demonstrated significant financial hardship? | | Yes |
| Timely request for compensation (§ 1804(c)): | | |
| 13. Identify Final Decision | D.09-10-056 | Correct |
| 14. Date of Issuance of Final Decision: | November 4, 2009 | Correct |
| 15. File date of compensation request: | December 18, 2009 | Correct |
| 16. Was the request for compensation timely? | | Yes |

C. Additional Comments on Part I:

| # | Claimant | CPUC | Comment |
|-------|----------|------|---|
| 7, 11 | TURN | | The ALJ has not yet issued a Ruling on TURN’s Notice of Intent to Claim Compensation, filed September 10, 2009 in this docket. Therefore, TURN relies upon previous Commission decisions to demonstrate its customer status and its significant financial hardship. |

PART II: SUBSTANTIAL CONTRIBUTION

A. Claimant’s description of its contribution to the final decision (*see* § 1802(i), § 1803(a) & D.98-04-059):

| Contribution | Claimant | Showing Accepted by CPUC |
|---|---|--------------------------|
| 1. In its Protest, TURN argued that the Commission should apply the criteria set forth in Pub. Util. Code § 854 (b) and (c) during its review of the merger. Verizon and Frontier (also known as the Applicants) argued that only § 854(a) should be applied. The Settlement Agreement directly addresses this issue by finding that there was enough information and “the transaction provides enough customer benefit to ensure it is in the public interest, consistent with the law including Section 854(b) and (c) and fair and reasonable in light of the whole record.” The Final Decision agrees with the Settlement and finds that the Settlement is in the public interest and consistent with § 854(b) and (c). | Settlement Agreement, paragraph 5. Final Decision at 3. | Yes |
| 2. In its Protest, TURN argued that the Applicants did not sufficiently address the components of the public interest test set forth in Pub. Util. Code § 854 (c). The Settlement Agreement supplements the Applicant’s showing on these issues with additional specificity to their commitments. The Final Decision specifically notes that, “The Settlement Agreement is in the public interest because its provisions provide added assurance that the public interest standard of § 854 is satisfied.” (emphasis added) | The Final Decision at 13. | Yes |
| 3. In its Protest, TURN raised concerns that the Application did not sufficiently discuss impacts to competitive local exchange carriers operating in either Verizon or Frontier territory, specifically whether Frontier will honor wholesale obligations of Verizon. | Final Decision at 16 and Finding of Fact 9. | Yes |

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|--|---|------------|
| <p>(Protest at 10). A small group of competitive local carriers subsequently intervened in this docket, but did not file a protest. Even though the Settlement Agreement does not address this issue, the Final Decision makes a specific Finding of Fact that:</p> <p>9. The transaction should not have any adverse impacts on wholesale service customers in California. Frontier will retain all obligations under Verizon’s current interconnection agreements and other existing arrangements.</p> <p>Although the Applicants make reference to their wholesale obligations in their Application, because the CLECs did not file a Protest it would have been unnecessary for the Commission to have made a specific finding as to the carriers’ wholesale obligations without the TURN Protest.</p> | | |
| <p>4. In its Protest, TURN raised concerns regarding service quality for those customers being transferred to Frontier from Verizon. In particular, TURN argued that because those customers are primarily in rural areas where their competitive choices are limited, the Commission must ensure those customers would be treated fairly and consistently. The Application itself made only vague promises that the service received by new Frontier Customers would be “substantially the same.” (Protest at 8.) The Settlement Agreement requires Frontier to report additional service quality data on installation intervals for the transferred exchanges beyond current Commission requirements for URF carriers.</p> | <p>Settlement Agreement at paragraph 4; Final Decision at 11-12, Ordering Paragraph 7.</p> | <p>Yes</p> |
| <p>5. TURN also raised concern with the Applicants’ vague promise that new Frontier customers will pay the same prices as they did when they were Verizon customers. (Protest at 9.) The Settlement Agreement creates a one-year price cap for basic exchange rates and services associated with basic exchange in the transferred exchanges, while Frontier would otherwise have authority to raise rates.</p> | <p>Settlement Agreement at paragraphs 1-3; Final Decision at 11-12, Ordering Paragraph 7.</p> | <p>Yes</p> |

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

| | Claimant | CPUC Verified |
|--|-----------------|----------------------|
| a. Was the Division of Ratepayer Advocates (DRA) a party to the proceeding? | Y | Correct |
| b. Were there other parties to the proceeding? | Y | Correct |
| c. If so, provide name of other parties: The Applicants, DRA, and a small coalition of competitive local exchange carriers. | | Yes |
| d. Claimant’s description of how Claimant coordinated with DRA and other parties to avoid duplication or of how Claimant’s participation supplemented, complemented, or contributed to that of another party: TURN and DRA worked together very closely on the issues in this proceeding. We discussed the issues to be raised in our protests, making sure we were not significantly overlapping our concerns. Once the protests were filed, we discussed strategy, and based on that strategy conducted joint settlement talks with the Applicants. TURN was also in direct contact with the CLEC parties, ensuring that our work was complementary and not duplicative. Indeed, even prior to TURN’s filing of our Protest we discussed these matters with the CLECs and assured the CLECs that our Protest would raise issues specifically related to wholesale carriers (where those carriers had interests consistent with consumer interests). Although the CLECs intervened in the case, they did not file a protest and did not oppose the Settlement. TURN believes that reaching a multi-party settlement in and of itself demonstrates a collaborative effort that avoids duplication and contributes to the overall effectiveness of the process. Once the Settlement was filed, all pleadings were done jointly to ensure efficiency and consistency to make it easier for the ALJ to draft a Proposed Decision. | | Yes |

PART III: REASONABLENESS OF REQUESTED COMPENSATION

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

| Explanation by claimant as to how the cost of claimant’s participation bears a reasonable relationship with benefits realized through participation | CPUC Verified |
|---|----------------------|
| The small number of hours recorded by TURN advocates in this case produced significant benefit for Frontier customers. Through TURN’s work in the docket with DRA and other parties, Frontier’s new customers in the transferred exchanges will be spared rate increases for essential services such as basic exchange and directory assistance for at least a year. Furthermore, the Commission will have additional service quality data to more closely monitor Frontier’s performance for these additional customers, most of whom are in rural areas of the state. The Final Decision addressed compliance with Pub. Util. Code § 854(b) and (c) in a manner consistent with conducting such review of future mergers, rather than finding that these statutes were inapplicable (the merger application position). Even though Verizon and Frontier tried to emphasize that this transaction affected only a small number of consumers, TURN and others made sure that the Commission reviewed the Application and Settlement Agreement closely. This transaction may have affected small numbers, but those customers were in mostly rural areas of the state where competition is limited at best. If Frontier could not | Yes |

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| handle its new obligations, these customers would have nowhere to go as they have few other choices for wireline phone service. | |
|---|--|

B. Specific Claim*:

| CLAIMED | | | | | | CPUC AWARD | | | |
|--|------|-------|-------|--|--------------------|------------------------|-------|-------|--------------------|
| ATTORNEY AND ADVOCATE FEES | | | | | | | | | |
| Item | Year | Hours | Rate | Basis for Rate | Total \$ | Year | Hours | Rate | Total \$ |
| Bob Finkelstein | 2009 | 3.25 | \$470 | D.08-04-010 principles; Resolution ALJ-235 adopting rates for 2009 | \$1,527.50 | 2009 | 0.75 | \$470 | \$352.50 |
| William Nusbaum | 2009 | 19.90 | \$435 | D.08-04-010 principles; Resolution ALJ-235 adopting rates for 2009 | \$8,656.50 | 2009 | 18.15 | \$435 | \$7,895.25 |
| Christine Mailloux | 2009 | 22.75 | \$390 | D.08-04-010 principles; Resolution ALJ-235 adopting rates for 2009 | \$8,872.50 | 2009 | 22.50 | \$390 | \$8,775.00 |
| Regina Costa ¹ | 2009 | 11.00 | \$275 | D.08-04-010 principles; Resolution ALJ-235 adopting rates for 2009 | \$3,025.00 | 2009 | 10.25 | \$275 | \$2,818.75 |
| Subtotal: | | | | | \$22,081.50 | Subtotal: | | | \$19,841.50 |
| INTERVENOR COMPENSATION CLAIM PREPARATION ** | | | | | | | | | |
| Item | Year | Hours | Rate | Basis for Rate | Total \$ | Year | Hours | Rate | Total \$ |
| Christine Mailloux | 2009 | 5.5 | \$195 | | 1,072.50 | 2009 | 5.00 | \$195 | \$975.00 |
| Subtotal: | | | | | 1,072.50 | Subtotal: | | | \$975.00 |
| TOTAL REQUEST \$: | | | | | \$ 23,154 | TOTAL AWARD \$: | | | \$20,816.50 |

¹ Although Regina Costa’s hours are included in the “Attorney and Advocate Fees” category, we believe that since she provided her professional expert advice in this proceeding, her role is closer to the “expert” rather than the “advocate” category. TURN explanation (see, a copy of TURN’s email of April 28, 2010, in the “Correspondence” file for this proceeding) that Costa is a Research Director at TURN does not contradict our approach.

* 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 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.

**Reasonable claim preparation time typically compensated at ½ of preparer’s normal hourly rate.

C. Claimant’s Comments on Specific Claim:

| Attachment or Comment # | Description/Comment |
|-------------------------|---|
| Comment | <p>Where possible, TURN has allocated its hours by issue area. For numerous entries in our time records, this issue-specific allocation was not possible (largely because the work occurred at such a relatively early stage of the proceeding, and a portion of the work was associated with settlement-related efforts that, by their nature, covered all issues). For those entries (marked with a “#” on the time sheets), TURN proposes the following allocation by issue area:</p> <p>Legal Issues (LI): The legal standard to be applied under Section 854 and the sufficiency of showing under the public interest standard. (30%)</p> <p>Rates (RA): Ensuring that transferred customers to Frontier do not experience a significant increase in rates. (20%)</p> <p>Service Quality (SQ): Ensuring that transferred customers to Frontier do not experience a diminution in service quality, including installation intervals. (20%)</p> <p>Wholesale Services (WH): Raising issues related to the legal obligations and possible conditions for Frontier in the transferred exchanges to ensure that competitive carriers can enter and operate in those territories (10%)</p> <p>General Preparation (GP) (20%)</p> |

D. CPUC Disallowances & Adjustments:

| # | Disallowances/Reason |
|---|--|
| <p>1. Hours Related to Protest/Disallowed:</p> <p>Costa: 0.75</p> <p>Finkelstein: 1.75</p> | <p>According to the timesheets, Nusbaum wrote the protest and Mailloux reviewed and finalized the document. In addition, Costa and Finkelstein then discussed and reviewed the same document. We disallow Costa’s and Finkelstein’s hours as being inefficient and duplicative of the efforts of others.</p> |

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|---|---|---|----------------------------------|------------------------------------|--|----------------------|----------------------------|-------------------------|------------------------|----------------------|--|---|--|--|--|----------------------|---------------------|------------------------|---------------------------|----------------|--|--|--|--|--|----------------------|----------------------------|---|--------------------------------|----------------------------------|------------------------------------|
| <p>2. Settlement Negotiations and Agreement/Disallowed: Mailloux: 0.25 Nusbaum: 1.75 Finkelstein: 0.75</p> | <p>Four TURN’s representatives were involved in the settlement negotiations and review of the settlement agreement. We identify below several areas where TURN’s efforts were duplicative and inefficient. In each area, we allow the time for one attorney and one expert. We believe this to be more than sufficient to complete each of the tasks. To reflect our concerns and achieve our expectation of efficiency, we disallow the remainder of TURN’s hours in each such case.</p> <table border="1" data-bbox="581 464 1562 1222"> <tr> <td colspan="4" data-bbox="581 464 1166 554"><i>Hour related to Conference with DRA re settlement</i></td> <td data-bbox="1166 464 1562 554">Disallowances</td> </tr> <tr> <td data-bbox="581 554 792 695">Costa 7/28/09 – 1.50</td> <td data-bbox="792 554 984 695">Mailloux 7/28 – 0.75</td> <td data-bbox="984 554 1166 695">Nusbaum 7/28 – 0.75</td> <td colspan="2" data-bbox="1166 554 1562 695">Nusbaum: 0.75 hours.</td> </tr> <tr> <td colspan="4" data-bbox="581 695 1166 785"><i>Hours related to the Telecom meeting re: settlement</i></td> <td data-bbox="1166 695 1562 785">Disallowances</td> </tr> <tr> <td data-bbox="581 785 773 894">Costa 8/4 – 0.25</td> <td data-bbox="773 785 964 894">Mailloux 8/3 – 0.25</td> <td data-bbox="964 785 1166 894">Finkelstein 8/4 – 0.75</td> <td colspan="2" data-bbox="1166 785 1562 894">Mailloux: 0.25</td> </tr> <tr> <td colspan="4" data-bbox="581 894 1166 1020"><i>Hours related to Discussing, Reviewing, Editing, and Revising the Settlement Agreement</i></td> <td data-bbox="1166 894 1562 1020">Disallowances</td> </tr> <tr> <td data-bbox="581 1020 711 1222">Costa 8/5-8/7 – 1.75</td> <td data-bbox="711 1020 862 1222">Mailloux 8/4, 8/5, 8/6, 8/11, and 8/19 - 6.50</td> <td data-bbox="862 1020 1013 1222">Nusbaum 8/4, 8/12 – 1.00</td> <td data-bbox="1013 1020 1166 1222">Finkelstein 8/5-8/6 – 0.75</td> <td data-bbox="1166 1020 1562 1222">Nusbaum: 1.00 Finkelstein: 0.75</td> </tr> </table> | <i>Hour related to Conference with DRA re settlement</i> | | | | Disallowances | Costa 7/28/09 – 1.50 | Mailloux 7/28 – 0.75 | Nusbaum 7/28 – 0.75 | Nusbaum: 0.75 hours. | | <i>Hours related to the Telecom meeting re: settlement</i> | | | | Disallowances | Costa 8/4 – 0.25 | Mailloux 8/3 – 0.25 | Finkelstein 8/4 – 0.75 | Mailloux: 0.25 | | <i>Hours related to Discussing, Reviewing, Editing, and Revising the Settlement Agreement</i> | | | | Disallowances | Costa 8/5-8/7 – 1.75 | Mailloux 8/4, 8/5, 8/6, 8/11, and 8/19 - 6.50 | Nusbaum 8/4, 8/12 – 1.00 | Finkelstein 8/5-8/6 – 0.75 | Nusbaum: 1.00 Finkelstein: 0.75 |
| <i>Hour related to Conference with DRA re settlement</i> | | | | Disallowances | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Costa 7/28/09 – 1.50 | Mailloux 7/28 – 0.75 | Nusbaum 7/28 – 0.75 | Nusbaum: 0.75 hours. | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| <i>Hours related to the Telecom meeting re: settlement</i> | | | | Disallowances | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Costa 8/4 – 0.25 | Mailloux 8/3 – 0.25 | Finkelstein 8/4 – 0.75 | Mailloux: 0.25 | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| <i>Hours related to Discussing, Reviewing, Editing, and Revising the Settlement Agreement</i> | | | | Disallowances | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Costa 8/5-8/7 – 1.75 | Mailloux 8/4, 8/5, 8/6, 8/11, and 8/19 - 6.50 | Nusbaum 8/4, 8/12 – 1.00 | Finkelstein 8/5-8/6 – 0.75 | Nusbaum: 1.00 Finkelstein: 0.75 | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| <p>3. Hours Spent on the Intervenor Compensation Request preparation. Mailloux: 0.50</p> | <p>While TURN requests 5.50 hours to prepare its NOI and request for compensation, its timesheets indicate the correct amount of hours should be 5.00 hours. We correct TURN’s error in our award.</p> | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |

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?

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| No |
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B. Comment Period: Was the 30-day comment period waived (see Rule 14.6(c)(6))?

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| Yes |
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FINDINGS OF FACT

1. Claimant has made a substantial contribution to Decision 09-10-056.
2. The claimed fees and costs, as adjusted herein, are comparable to market rates paid to experts and advocates having comparable training and experience and offering similar services.
3. The total of reasonable compensation is \$20,816.50.

CONCLUSION OF LAW

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

ORDER

1. Claimant is awarded \$ 20,816.50.
2. Within 30 days of the effective date of this decision, Verizon Communications Inc. and Frontier Communications Corporation shall pay claimant the equal shares of 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 March 3, 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. This proceeding is closed.

This decision is effective today.

Dated June 3, 2010, at San Francisco, California.

MICHAEL R. PEEVEY
President
DIAN M. GRUENEICH
JOHN A. BOHN
TIMOTHY ALAN SIMON
NANCY E. RYAN
Commissioners

APPENDIX**Compensation Decision Summary Information**

| | | |
|----------------------------------|---|------------------------------|
| Compensation Decision: | D1006016 | Modifies Decision? No |
| Contribution Decision(s): | D0910056 | |
| Proceeding(s): | A0906005 | |
| Author: | ALJ Robert Barnett | |
| Payer(s): | Verizon Communications Inc. and Frontier Communications Corporation | |

Intervenor Information

| Intervenor | Claim Date | Amount Requested | Amount Awarded | Multiplier? | Reason Change/Disallowance |
|----------------------------|-------------------|-------------------------|-----------------------|--------------------|---|
| The Utility Reform Network | 12/18/09 | \$23,154.00 | \$20,816.50 | No | Inefficient efforts; undocumented costs |

Advocate Information

| First Name | Last Name | Type | Intervenor | Hourly Fee Requested | Year Hourly Fee Requested | Hourly Fee Adopted |
|-------------------|------------------|-------------|----------------------------|-----------------------------|----------------------------------|---------------------------|
| Robert | Finkelstein | Attorney | The Utility Reform Network | \$470 | 2009 | \$470 |
| William | Nusbaum | Attorney | The Utility Reform Network | \$435 | 2009 | \$435 |
| Christine | Mailloux | Attorney | The Utility Reform Network | \$390 | 2009 | \$390 |
| Regina | Costa | Expert | The Utility Reform Network | \$275 | 2009 | \$275 |

(END OF APPENDIX)