

Decision 11-01-022 January 13, 2011

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Petition to Adopt, Amend, or Repeal a Regulation Pursuant to Cal. Pub. Util. Code § 1708.5, specifically to Review the Assessment of Surcharges for The Commission's Public Policy Programs with Respect to Prepaid Wireless Services.

Petition 09-12-018
(Filed December 11, 2009)

**DECISION AWARDING INTERVENOR COMPENSATION TO
DISABILITY RIGHTS ADVOCATES FOR SUBSTANTIAL CONTRIBUTION
TO DECISION 10-07-028**

Claimant: Disability Rights Advocates (DisabRA)	For contribution to Decision (D.) 10-07-028
Claimed: \$11,241.50	Awarded: \$8,683 (reduced 23%)
Assigned Commissioner: Dian M. Grueneich	Assigned ALJ: Regina M. DeAngelis

PART I: PROCEDURAL ISSUES

A. Brief Description of Decision: Denies without prejudice Verizon's petition to review the assessment of surcharges for the Commission's Public Purpose Programs with respect to prepaid wireless services.

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

	Claimant	CPUC Verified
Timely filing of Notice of Intent (NOI) to claim compensation (§ 1804(a)):		
1. Date of Prehearing Conference:	March 4, 2010	Correct
2. Other Specified Date for NOI:		
3. Date NOI Filed:	February 10, 2010	Correct
4. Was the notice of intent timely filed?		Yes
Showing of customer or customer-related status (§ 1802(b)):		
5. Based on ALJ ruling issued in proceeding number:	N/A	Correct
6. Date of ALJ ruling:	N/A	Correct

7. Based on another CPUC determination (specify):	See Part I, Section C	D.10-07-028 @ 5
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 number:	N/A	Correct
10. Date of ALJ ruling:	N/A	Correct
11. Based on another CPUC determination (specify):	See Part I, Section C	D.10-07-028 @ 5
12. Has the claimant demonstrated significant financial hardship?		Yes
Timely request for compensation (§ 1804(c)):		
13. Identify Final Decision	D.10-07-028	Correct
14. Date of Issuance of Final Decision:	July 30, 2010	Correct
15. File date of compensation request:	September 28, 2010	Correct
16. Was the request for compensation timely?		Yes

C. Additional Comments on Part I:

#	Claimant	CPUC	Comment
7, 11	X		DisabRA timely filed its Notice of Intent (“NOI”) to Claim Intervenor Compensation in this proceeding on February 10, 2010. While the Administrative Law Judge (ALJ) did not specifically rule on this NOI, the Commission’s Final Decision states that DisabRA and The Utility Reform Network (TURN) “separately filed timely notices of intent to claim intervenor compensation pursuant to § 1801 <i>et. seq.</i> which demonstrates compliance with certain preliminary requirements needed to request compensation in this proceeding.” (D.10-07-028 at 5).

PART II: SUBSTANTIAL CONTRIBUTION

A. Claimant’s claimed contribution to the final decision

Contribution	Citation to Decision or Record	Showing Accepted by CPUC
1. DisabRA intervened in this proceeding to ensure that Verizon’s Petition was not granted. DisabRA, in conjunction with TURN, argued that Verizon’s Petition requesting that the Commission develop guidelines for calculating and collecting Public Purpose Program (“PPP”) surcharges for prepaid wireless outside the context	Joint Response of TURN and DisabRA to the Verizon Wireless Petition for Rulemaking (“Joint Response”) at 1-2, filed January 11, 2010; Transcript of Prehearing Conference (PHC) in Petition (P.) 09-12-018 (“Transcript”), p. 14, line 19 – p. 16, line 4, March 4, 2010; Decision Denying Petition by Verizon	Yes

<p>of the comprehensive review of PPP in Rulemaking (R.) 06-05-028 was problematic. DisabRA/TURN pointed out in their Joint Response that a separate proceeding regarding prepaid wireless PPP surcharges would (1) put unnecessary demands on the Commission, carriers, and customers and (2) risk results that treat PPP surcharges for prepaid wireless services in a manner that is inconsistent and unfair based on how other carriers and wireless services are treated for the purpose of PPP surcharges.</p> <p>In D.10-07-028, the Commission denied Verizon’s Petition without prejudice. The Commission agreed “that broad issues of industry-wide importance exist regarding prepaid wireless services that should be addressed. However, rather than address these issues in a piecemeal fashion, which would result if the petition is granted, we intend to issue a rulemaking on the Commission’s own motion that will seek to incorporate these issues presented by the petition into a broader discussion of prepaid wireless service issues.”</p>	<p>Wireless to Review the Assessment of Surcharges for the Commission’s PPPs with Respect to Wireless Services (“D.10-07-028”) at 5, filed July 29, 2010.</p>	
<p>2. DisabRA, in conjunction with TURN, also pointed out that the overall health of the Lifeline program was at risk if the Commission considered Verizon’s Petition outside the context of the broader PPP proceeding, R.06-05-028. DisabRA articulated that prepaid wireless carriers should contribute fairly to the fund supported by PPP surcharges, especially if Lifeline expands to include wireless service.</p> <p>In D.10-07-028, the Commission reiterated, in denying Verizon’s Petition, its refusal to make a piecemeal decision on “broad issues of industry-</p>	<p>Joint Response at 2; D.10-07-028 at 5.</p>	<p>Yes</p>

wide importance.”		
3. DisabRA, in conjunction with TURN, encouraged the Commission to address the application of PPP surcharges to prepaid wireless in a broader context than set forth Verizon’s Petition, (namely the PPP proceeding, R.06-05-028). While declining to incorporate the issues raised in the Petition into R.06-05-028, the Commission agreed that a broader context would be more appropriate and in its Decision, indicated that “such information will be forthcoming in a future rulemaking.”	Comments of The Utility Reform Network and DisabRA on the Proposed Decision of Commissioner Grueneich (“Comments”) at 1, filed July 14, 2010; Decision Denying Petition by Verizon Wireless to Review the Assessment of Surcharges for the Commission’s PPPs with Respect to Wireless Services (“D.10-07-028”), P.09-12-018, July 30, 2010 at 6.	Yes

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

	Claimant	CPUC Verified
a. Was Division of Ratepayer Advocates (DRA) a party to the proceeding?	Yes	Correct
b. Were there other parties to the proceeding?	Yes	Correct
c. If so, provide name of other parties: Calaveras Telephone Company, Cal-Ore Telephone Co., Ducor Telephone Company, Foresthill Telephone Co., Happy Valley Telephone Company, Hornitos Telephone Company, Kerman Telephone Company, Pinnacles Telephone Co., The Ponderosa Telephone Co., Sierra Telephone Company, Inc., The Siskiyou Telephone Company, Volcano Telephone Company, and Winterhaven Telephone Company (collectively “Small LECs”), AT&T Mobility LLC2 and Pacific Bell Telephone Company d/b/a AT&T California (collectively “AT&T”), SureWest Telephone (“SureWest”), TracFone Wireless, Inc. (“TracFone”), The Utility Reform Network (“TURN”), and Disability Rights Advocates (“DisabRA”).		Correct
d. Describe how you coordinated with DRA and other parties to avoid duplication or how your participation supplemented, complemented, or contributed to that of another party: DisabRA was the only party in this proceeding that represented the unique interests of residential consumers with disabilities. Disabled customers have a direct interest in the question of who pays into the PPP fund, since the smaller the pool of consumers who pay into the fund, the larger the surcharge is on the remaining participants. People with disabilities are disproportionately low-income, and as primary beneficiaries of these PPP subsidies, they have a		We agree that DisabRA took reasonable steps to avoid duplication of efforts of

<p>strong interest in the health of the fund and thus in the Commission’s decision on this Petition.</p> <p>From an early stage of this proceeding, DisabRA closely coordinated its efforts with TURN to articulate that, to the extent the Commission addressed the application of PPP surcharges to prepaid wireless, it should be done so in a broader context than set forth in Verizon’s Petition (<i>See</i> Joint Response at 1; Transcript at 14, line 19 –16, line 4; Comments at 1). To that end, DisabRA and TURN collaborated in drafting a Joint Response to Verizon’s Petition (1/11/10), appeared together at the prehearing conference in which TURN attorney Bill Nusbaum spoke for both organizations (3/4/10), and jointly filed Comments on the Proposed Decision (7/14/10). Throughout this proceeding, TURN and DisabRA attorneys collaborated on teleconferences to gather relevant information about the Petition and the responses of consumer groups and the drafting of Joint Response and Comments.</p> <p>DisabRA also coordinated with DRA throughout this proceeding. Specifically, DisabRA attorney Melissa Kasnitz had a teleconference with Denise Mann of DRA on January 8, 2010 in preparation for drafting our Joint Response to Verizon’s Petition. DRA also shared a draft of its Response with DisabRA. Before filing a Joint Response, TURN attorney Christine Mailloux conferred with DRA on behalf of both TURN and DisabRA regarding the scope of our Joint Response.</p> <p>Where people with disabilities shared overlapping concerns with other communities of consumers at large, DisabRA worked in conjunction with TURN and DRA. Even with this overlapping perspective, however, DisabRA participated to address the needs of persons with disabilities. In light of the foregoing, DisabRA’s compensation should not be reduced based on unnecessary duplication.</p>	<p>other parties and coordinated with other parties when appropriate to supplement or complement the position of that party.</p>
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PART III: REASONABLENESS OF REQUESTED COMPENSATION

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

Claimant’s explanation of how it’s participation bore a reasonable relationship with benefits realized through claimant’s participation	CPUC Verified
<p>DisabRA in conjunction with TURN intervened to advocate that the Commission deny Verizon’s Petition. To that end, DisabRA and TURN collaborated in drafting a Joint Response to Verizon’s Petition (1/11/10), appeared together at the prehearing conference (3/4/10), and jointly filed Comments on the Proposed Decision (7/14/10). Throughout this proceeding, TURN and DisabRA attorneys collaborated on research and drafting.</p>	<p>After the disallowances and adjustments we make to this claim, the remainder of DisabRA’s hours are reasonable and should be compensated.</p>

<p>This proceeding was generally staffed by one senior attorney (Melissa Kasnitz, who manages all of DisabRA’s work before the Commission) and one junior attorney (transitioning in 2010 from Karla Gilbride to Rebecca Williford), and assisted as appropriate by paralegals. In its NOI, DisabRA estimated spending a total of 55 hours on this proceeding. In fact, DisabRA spent a total of 30.7 hours on the merits of this proceeding, considerably less than the 55 anticipated in the NOI filed on February 10, 2010, making this request for compensation reasonable in relation to actual work done on this proceeding.</p>	
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B. Specific Claim:

CLAIMED						CPUC AWARD			
ATTORNEY AND ADVOCATE FEES									
Item	Year	Hours	Rate \$	Basis for Rate*	Total \$	Year	Hours	Rate \$	Total \$
M. Kasnitz	2009	1.1	420	D.10-04-024	462	2009	1.1	420	462
M. Kasnitz	2010	17.4	420	D.10-07-013	7,308	2010	15.6	420	6,552
K. Gilbride	2009	0.3	160	D.10-04-024	48	2009	0.3	160	48
K. Gilbride	2010	2.5	220	D.10-07-013	550	2010	1.5	200 ¹	300
R. Williford	2010	5.2	175	Adopted here ²	910	2010	3.4	150	510
Subtotal: \$9,278						Subtotal: \$7,872			
OTHER FEES (paralegal):									
Item	Year	Hours	Rate \$	Basis for Rate*	Total \$	Year	Hours	Rate \$	Total \$
Paralegal	2009	0.3	110	D.10-04-024	33	2009	0.3	110	33
Paralegal	2010	3.0	120	D.10-07-013	360	2010	1.4	110 ³	154
Subtotal: \$393						Subtotal: \$187			
INTERVENOR COMPENSATION CLAIM PREPARATION **									
Item	Year	Hours	Rate \$	Basis for Rate*	Total \$	Year	Hours	Rate \$	Total \$
M. Kasnitz	2010	3.2	210	½ D.10-07-013	672	2010	0.3	210	63
M. Kasnitz	2009	0.1	210	½ D.10-04-024	21	2009	0.1	210	21
R. Williford	2010	9.0	87.50	½ rate adopted here	787.50	2010	6.1	75	457.50
Paralegal	2010	1.5	60	½ D.10-07-013	90	2010	1.5	55	82.50
Subtotal: \$1,570.50						Subtotal: \$624			
TOTAL REQUEST: \$11,241.50						TOTAL AWARD: \$8,683			

¹ See Section D at 6.

² Ibid.

³ Ibid.

****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. 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.

C. DisabRA Comments Documenting Specific Claim:

Comment #	Description/Comment
1	DRA seeks no compensation for costs in this proceeding because costs were negligible.

D. CPUC Adoptions, Adjustments and Disallowances:

Item	Adoptions
2010 rate request for Karla Gilbride	We apply the same hourly rate of \$200 previously adopted for Gilbride’s work in D.10-07-013. The rate adopted for her 2010 work in that decision considered the same justification that DisabRA submits here.
2010 rate request for Rebecca Williford	DisabRA requests an hourly rate of \$175 for Rebecca Williford. Williford was admitted to the California BAR Association in June 2010. Williford is a 2009 graduate of the University of North Carolina School of Law. Williford worked as a summer associate for DisabRA in 2008 and joined DisabRA in September 2009 as a LD Access/Ryder Foundation Fellow. Williford has no previous work before the Commission as an attorney admitted to practice. Williford’s work on the merits of this proceeding spanned a period of less than a month. We adopt an hourly rate of \$150 for her work here. This is within the range of \$150-\$205 approved for attorneys with 0-2 yrs of experience as provided in D.08-04-010.
2010 rate for paralegals	DisabRA requests an hourly rate of \$120 for its paralegals Anderson and Brumfield. Paralegals are not subject to “step-increases” afforded to attorneys and experts. In addition, ALJ 247 disallows COLA increases for 2010 intervenor work. As such, we apply the hourly rate of \$110 approved for paralegals in D.10-07-013.
Item	Adjustments and Disallowances
2010 hours for paralegals	We disallow a combined total of 1.6 hr. for “calendarizing fee petition” and the “filing and serving of DisabRA’s compensation request”. These tasks are clerical in nature and subsumed in the fees paid to attorneys.
2010 hours for Kasnitz	We disallow 1 hr. of Kasnitz time for “travel to and from Verizon’s petition prehearing conference”. DisabRA is located in Berkeley with one-way travel of less than 120 miles. This time relates to routine commuting which is non-compensable.

2010 hours for Gilbride	We disallow 1 hr. of Gilbride’s time for “travel to and from PHC”. DisabRA is located in Berkeley with one-way travel of less than 120 miles. This time relates to routine commuting which is non-compensable.
2010 hours for Williford	We disallow 1.3 hr. of Williford’s time spent “reviewing PD” as being duplicative of Kasnitz’s time for which compensation has been provided. This time also includes request for compensation for the “calendar deadline for comments”. This is a clerical task which is non-compensable.
2010 hours for Kasnitz	We reduce .20 hr. for “email exchange with C. Mailloux and O. Wein regarding comments on PD”. We have previously compensated Williford for this same task.
2010 hours for Kasnitz	We reduce .60 hr. for “reviewing and editing draft comments on Verizon PD” as being duplicative of the same efforts previously compensated on 7/13/10,
2010 hours for Williford	We reduce by .50 hr. the time spent “reading other parties comments in preparation for deciding whether to submit reply comments”. This task duplicates of Kasnitz’s work for which compensation has been granted.
Time spent on compensation preparation	DisabRA requests a total of 13.8 hrs. of compensation preparation matters. This time is excessive given the fact that the claim is not complicated and relates to only one decision. We approve a total of 8 hrs. for this task. To achieve this adjustment, we reduce both Kasnitz’s and Williford’s total hours for this task by 2.9 hrs. The adjusted total more closely represents our standards on reasonableness of hours.

PART IV: OPPOSITIONS AND COMMENTS

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 Decision (D.)10-07-028.
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 contribution is \$8,683.

CONCLUSION OF LAW

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

ORDER

1. Claimant is awarded \$8,683.
2. Within 30 days of the effective date of this decision, Verizon Wireless⁴ 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 December 22, 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.

This decision is effective today.

Dated January 13, 2011, at San Francisco, California.

MICHAEL R. PEEVEY
President
TIMOTHY ALAN SIMON
NANCY E. RYAN
Commissioners

⁴ The following entities are doing business as Verizon Wireless in California: Cellco Partnership, California RSA No. 4 Limited Partnership, Fresno MSA Limited Partnership, GTE Mobilnet of California Limited Partnership, GTE Mobilnet of Santa Barbara Limited Partnership, Los Angeles SMSA Limited Partnership, Modoc RSA Limited Partnership, Sacramento Valley Limited Partnership, and Verizon Wireless (VAW) LLC.

APPENDIX

Compensation Decision Summary Information

Compensation Decision:	D1101022	Modifies Decision? No
Contribution Decision(s):	D1007028	
Proceeding(s):	P0912018	
Author:	ALJ Regina M. DeAngelis	
Payer(s):	Verizon Wireless ⁵	

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Multiplier?	Reason Change/Disallowance
Disability Rights Advocates	09-28-10	\$11,241.50	\$8,683	No	adjusted hourly rates; disallowance of routine travel; disallowance of clerical tasks; duplication of effort and excessive hours for compensation preparation.

Advocate Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
Melissa	Kasnitz	Attorney	Disability Rights Advocates	\$420	2009	\$420
Melissa	Kasnitz	Attorney	Disability Rights Advocates	\$420	2010	\$420
Karla	Gilbride	Attorney	Disability Rights Advocates	\$160	2009	\$160
Karla	Gilbride	Attorney	Disability Rights Advocates	\$220	2010	\$200
Rebecca	Williford	Attorney	Disability Rights Advocates	\$175	2010	\$150
Paralegals			Disability Rights Advocates	\$110	2009	\$110
Paralegals			Disability Rights Advocates	\$120	2010	\$110

(END OF APPENDIX)

⁵ The following entities are doing business as Verizon Wireless in California: Cellco Partnership, California RSA No. 4 Limited Partnership, Fresno MSA Limited Partnership, GTE Mobilnet of California Limited Partnership, GTE Mobilnet of Santa Barbara Limited Partnership, Los Angeles SMSA Limited Partnership, Modoc RSA Limited Partnership, Sacramento Valley Limited Partnership, and Verizon Wireless (VAW) LLC.