

Decision 11-01-020 January 13, 2011

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Establish Rules
Governing the Transfer of Customers from
Competitive Local Carriers Exiting the Local
Telecommunications Market.

Rulemaking 03-06-020
(Filed June 19, 2003)

**DECISION GRANTING INTERVENOR COMPENSATION TO THE UTILITY REFORM
NETWORK FOR SUBSTANTIAL CONTRIBUTION TO DECISION 10-07-024**

Claimant: The Utility Reform Network (TURN)	For contribution to Decision (D.) 10-07-024
Claimed: \$19,003.50	Awarded: \$19,003.50
Assigned Commissioner: Michael R. Peevey	Assigned ALJ: Janice L. Grau

PART I: PROCEDURAL ISSUES**A. Brief Description of Decision:**

The Commission opened this rulemaking in 2003 to establish rules governing the transfer of customers from a Competitive Local Exchange Carrier (CLEC) exiting the local telecommunications market. In Phase 1 the Commission adopted Mass Migration Guidelines that apply when a CLEC voluntarily elects to exit the market. In Phase 2, culminating in D.10-07-024, the Commission focused on involuntary exits and CLEC to CLEC and Incumbent Local Exchange Carrier (ILEC) end-user migrations, and adopted rules and principles for both.

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:	N/A	Correct
2. Other Specified Date for NOI:	None specified	Correct
3. Date NOI Filed:		
4. Was the NOI timely filed?		Yes. TURN addressed the issues normally required in an NOI in its first request for compensation in Phase 1 of this proceeding. In D.07-03-032 at 4, the Commission found that “TURN met all the procedural requirements necessary to claim compensation in this proceeding.”
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:		
7. Based on another CPUC determination (specify):	D.07-03-032	Yes. D.07-03-032 was issued on March 15, 2007 in the first phase of this proceeding.
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:		
11. Based on another CPUC determination (specify):	D.07-03-032	Yes. D.07-03-032 was issued on March 15, 2007 in the first phase of this proceeding.
12. Has the claimant demonstrated significant financial hardship?		Yes. Rule 17.2 states that a party found eligible in one phase of

		a proceeding remains eligible in later phases, including rehearing, in the same proceeding.
Timely request for compensation (§ 1804(c)):		
13. Identify Final Decision	D.10-07-024	Correct
14. Date of Issuance of Final Decision:	August 4, 2010	Correct
15. File date of compensation request:	October 4, 2010	Correct
16. Was the request for compensation timely?		Yes

C. Additional Comments of TURN on Part I:

#	Claimant	CPUC	Comment
1	TURN		TURN has most recently received a finding of significant financial hardship in an ALJ’s Ruling issued on April 22, 2009, in A.08-05-023 (the PG&E Distribution Reliability Improvement Program (DRIP) application). TURN also has a request for a finding of significant financial hardship pending in A.09-12-020, the PG&E GRC for Test Year 2011. TURN recently renewed that request in A.10-03-028, the Sempra Firm Access Rights proceeding. To date, no ruling has issued on either request.

PART II: SUBSTANTIAL CONTRIBUTION

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

Contribution	Citation to Decision or Record	Showing Accepted by CPUC
1. TURN’s primary focus in Phase 2 of this proceeding was to have the Commission develop a set of guidelines for involuntary exits that affords consumers the maximum protection from service terminations similar to what the Commission has provided in voluntary exits situations. Key to such protection, from TURN’s perspective, was the creation of an early notification system that would give those customers	TURN Reply Comments, at 3-5 (2/16/07); TURN Comments, at 5-9 (6/1/09); TURN Reply Comments, at 3-4 and 6-10 (6/15/09); TURN Comments, at 2-5 (1/15/10); TURN Comments, at 2-5 (2/18/10).	Yes

<p>whose service may be interrupted by an exiting carrier sufficient time to investigate and choose a replacement carrier. In addition, TURN argued vigorously for the imposition of a default carrier requirement similar to that required in voluntary exit situations.</p> <p>While TURN was not successful in convincing the Commission to adopt its recommendations, the issues addressed by TURN were specifically in response to the ALJ and Assigned Commissioner's rulings.</p> <p>Furthermore, although D.10-07-024 rejected imposing a default carrier requirement, the decision recognized that a default carrier may be required in certain circumstances and provided a process for the Commission to seek a default carrier as necessary.</p>	<p>See ALJ Ruling (1/2/2007); ALJ Ruling (9/11/2008); ACR and Scoping Ruling (4/20/2009); ALJ Ruling (12/30/2009); and ALJ Ruling 2/4/2010.</p> <p>D.10-07-024, at 14-15 "The lack of a default carrier requirement would not prevent Commission staff from initiating proceedings to obtain an acquiring LEC, to order a CLEC to continue to provide service to critical end-user customers, such as hospitals, nursing home, fire stations and police stations or to order a carrier of last resort to migrate critical service customers. Although these end-user customer safeguards are not as strong as a full default carrier requirement, they would continue critical local exchange service in involuntary exits." See also, Attachment A to D.10-07-024, "Guidelines for CLEC Involuntary Exits from Local Exchange Services Market," Section IV. Involuntary Exit Process.</p>	
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<p>2. Another issue in the scope of this proceeding was whether the Commission should apply the Mass Migration Guidelines adopted in Phase 1 in D.06-10-021 to ILEC voluntary exits. TURN supported deferring consideration of this issue until the resolution of the reverse auction process being considered in R.09-06-019. The Commission agreed.</p>	<p>TURN Opening Comments, at 2-4 (9/26/08). D.10-07-024, at 15-17; COL 1.</p>	<p>Yes</p>
<p>3. TURN also participated in the workshop and follow-up meetings requested by the ALJ to attempt to reach a consensus on some of the issues presented in this proceeding. These issues were fairly technical and focused on end-user migration principles and procedures. TURN’s focus in this aspect of the proceeding was to create principles and processes to permit consumers who choose to switch between carriers to be able to do so with minimum disruption and that the information necessary to accomplish such switching be communicated as quickly as possible between respective carriers. To this end, TURN generally supported the position taken by Verizon. TURN also supported policies such as an FCC requirement that all carriers subject to LNP rules complete wireline-to-wireline and intermodal port requests within one business day.</p> <p>The Commission did not adopt any one party’s position on these issues but did agree with the general principle, supported by TURN, that the focus of procedures and guidelines should be on the “right of end-users to migrate their local service...”.</p>	<p>TURN Comments, at 5-6 (6/1/09).</p> <p>D.10-07-024, at 27-28; FOF 29.</p>	<p>Yes</p>

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	Yes
b. Were there other parties to the proceeding?	Yes	Yes
c. If so, provide name of other parties: AT&T, Verizon, CALTEL, Cox, tw telecom, Time Warner Cable Information Services.		Yes
d. Claimant’s description of how it coordinated with DRA and other parties to avoid duplication or how claimant’s participation supplemented, complemented, or contributed to that of another party: There was little duplication in this phase of the proceeding since DRA only participated in a limited way filing only one pleading while TURN participated in all aspects of Phase 2.		Yes

PART III: REASONABLENESS OF REQUESTED COMPENSATION

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

Claimant’s explanation as to how the cost of claimant’s participation bore a reasonable relationship with benefits realized through claimant’s participation	CPUC Verified
<p>As with many quasi-legislative proceedings, the precise benefits to consumers from TURN’s participation in this docket are difficult to quantify. However, the issues at stake in this proceeding and the rules promulgated by the Commission directly impact the effective working of a competitive marketplace where carriers may exit, on a voluntary or involuntary basis, and where consumers should have a reasonable ability to switch carriers on a timely basis.</p> <p>TURN’s participation focused on the plight of consumers who, through no fault of their own, could find themselves without telephone service due to a carrier leaving the market. While, TURN did not achieve its goal of getting the Commission to impose a default requirement, TURN’s participation ensured a reasonable consideration of these important concerns and issues. In fact, through TURN’s dogged pursuit of the default requirement, D.10-07-024 ensured that at a minimum the Commission is prepared to consider the default issue on a case-by-case basis and the decision also highlights the importance of preserving telephone service for “critical end-user customers.”</p>	TURN’s hours and costs are reasonable and should be compensated.

<p>The total hours included in this request represent slightly more than one 40-hour week of attorney time. In light of the importance and complexity of the policy issues addressed, the Commission should find TURN's request for less than \$20,000 in intervenor compensation to be reasonable.</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 \$
W. Nusbaum	2007	3.00	405	D.08-04-019	1,215.00	2007	3.00	405	1,215.00
W. Nusbaum	2009	28.25	435	D.09-08-020	12,288.75	2009	28.25	435	12,288.75
W. Nusbaum	2010	5.50	435	D.10-07-012	2,392.50	2010	5.50	435	2,392.50
C. Mailloux	2008	3.75	390	D.09-02-024	1,462.50	2008	3.75	390	1,462.50
C. Mailloux	2009	1.75	390	D.10-06-016	682.50	2009	1.75	390	682.50
Subtotal: \$18,041.25						Subtotal: \$18,041.25			
INTERVENOR COMPENSATION CLAIM PREPARATION **									
Item	Year	Hours	Rate \$	Basis for Rate*	Total \$	Year	Hours	Rate \$	Total \$
W. Nusbaum	2010	4.90	217.50	½ adopted rate	870.00	2010	4.90	217.50	870.00
Subtotal: \$870.00						Subtotal: \$870.00			
COSTS									
Item	Detail				Amount \$	Amount \$			
Copies	Various Pleadings				31.60	31.60			
Lexis	Legal Research				35.54	35.54			
Phone	Conference Calls				23.01	23.01			
Postage	Mailing Pleadings				2.10	2.10			
Subtotal: \$92.25						Subtotal: \$92.25			
TOTAL REQUEST: \$19,003.50						TOTAL AWARD: \$19,003.50			

**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. Comments Documenting Specific Claim:

Comment #	Description/Comment
#4	<p>TURN has allocated its time entries by activity codes. The list of codes and their description:</p> <p>GP - General Preparation: time for activities necessary to participate in the docket.</p> <p>ED - Issues associated with the need for an early notification process for consumers whose carrier is exiting the market and default carrier issues.</p> <p>R - Issues associated with reverse auction.</p> <p>CP - Issues associated with consensus positions on end-user migration principles and procedures including workshop and conference calls re consensus process.</p> <p># - 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: ED 75%, R 5%, CP 20%.</p>
#5	<p>The hours for Christine Mailloux were devoted to a specific issue – whether the Commission should defer consideration of ILEC voluntary exits until the resolution of the reverse auction process being considered in R.09-06-019. Ms. Mailloux worked on that issue since she is TURN’s subject matter expert on reverse auctions. Her hours should be deemed reasonable and not duplicative of Mr. Nusbaum’s hours.</p>

D. CPUC Disallowance: None

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.)10-07-024.
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 \$19,003.50.

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 \$19,003.50.
2. Within 30 days of the effective date of this decision, the CPUC Intervenor Compensation Fund 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 18, 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

APPENDIX**Compensation Decision Summary Information**

Compensation Decision:	D1101020	Modifies Decision? No
Contribution Decision(s):	D1007024	
Proceeding(s):	R0306020	
Author:	ALJ Janice L. Grau	
Payer(s):	CPUC Intervenor Compensation Fund	

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Multiplier?	Reason Change/Disallowance
The Utility Reform Network	10-04-10	\$19,003.50	\$19,003.50	No	None

Advocate Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
William	Nusbaum	Attorney	The Utility Reform Network	\$405	2007	\$405
William	Nusbaum	Attorney	The Utility Reform Network	\$435	2009-2010	\$435
Christine	Mailloux	Attorney	The Utility Reform Network	\$390	2008-2009	\$390

(END OF APPENDIX)