

Decision \_\_\_\_\_

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

Order Instituting Rulemaking to Consider Modifications to the California Advanced Services Fund Including those Necessary to Implement Loan Program and Other Provisions of Recent Legislation.

Rulemaking 10-12-008  
(Filed December 16, 2010)

**DECISION GRANTING COMPENSATION TO THE UTILITY REFORM NETWORK FOR SUBSTANTIAL CONTRIBUTION TO DECISIONS 11-06-038 AND D.12-02-015**

<b>Claimant: The Utility Reform Network</b>	<b>For contribution to D.11-06-038 and D.12-02-015</b>
<b>Claimed (\$): \$27,117.50</b>	<b>Awarded (\$): \$27,172.50</b>
<b>Assigned Commissioner: Michael Peevey</b>	<b>Assigned ALJ: Thomas R. Pulsifer</b>

**PART I: PROCEDURAL ISSUES**

**A. Brief Description of Decision:**

These decisions all address elements of the California Advanced Services Fund necessary to implement provisions of SB 1040:  
 D.11-06-038 implemented provisions of SB 1040 relating to the Rural Urban Regional Broadband Consortia Account.  
 D.12-02-015 implemented provisions of SB 1040 relating to the Broadband Infrastructure Grant Account and Revolving Loan Account.

While there were two separate decisions, there was overlap in issues and therefore the pleadings and issues in one decision are, in certain instances, relevant to the other decision.

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

	<b>Claimant</b>	<b>CPUC Verified</b>
<b>Timely filing of notice of intent to claim compensation (§ 1804(a)):</b>		
1. Date of Prehearing Conference:		
2. Other Specified Date for NOI:	30 days after the OIR was mailed, i.e. on January 21, 2011	Correct
3. Date NOI Filed:	February 3, 2011(see note #3)	Correct
4. Was the notice of intent timely filed?		Yes
<b>Showing of customer or customer-related status (§ 1802(b)):</b>		
5. Based on ALJ ruling issued in proceeding number:	A.09-09-013 (verified in D.10-05-012)	Correct
6. Date of ALJ ruling:	January 7, 2010 (verified in D.10-05-012)	Correct
7. Based on another CPUC determination (specify):		
8. Has the claimant demonstrated customer or customer-related status?		Yes
<b>Showing of “significant financial hardship” (§ 1802(g)):</b>		
9. Based on ALJ ruling issued in proceeding number:	P.10-08-016	Correct
10. Date of ALJ ruling:	November 22, 2010	Correct
11. Based on another CPUC determination (specify):		
12. Has the claimant demonstrated significant financial hardship?		Yes
<b>Timely request for compensation (§ 1804(c)):</b>		
13. Identify Final Decision	D.12-02-015	Correct
14. Date of Issuance of Final Decision:	February 8, 2012	Correct
15. File date of compensation request:	April 9, 2012	Correct
16. Was the request for compensation timely?		Yes

**C. Additional Comments on Part I:**

#	Claimant	CPUC	Comment
3	TURN	Verified	TURN's Motion Seeking permission to Late-File NOI was granted by ALJ Pulsifer on 2/28/11. No ruling was issued on the NOI.
15	TURN	Verified	The file date was calculated according to Rule 1.15, accounting for a weekend

**PART II: SUBSTANTIAL CONTRIBUTION****A. Claimant's claimed contribution to the final decision:**

Contributions to D. 11-06-038 and D.12-02-015	Citation to Decision or Record	Showing Accepted by CPUC
<p>1. Goals, Objectives and Role of Regional Consortia:</p> <p>TURN argued against CETF being part of the Commission's formal review &amp; approval process for CASF grants, loans or consortia. The Commission agreed</p> <p>TURN argued that the Consortium grants should not be used for construction of infrastructure facilities. The Commission agreed.</p> <p>TURN argued against parties' proposals that only existing regional consortium be eligible for funding. TURN supported a flexible approach to approving consortia and consortia-related projects that would allow for existing as well as new Consortia applicants. The Commission agreed with some of TURN's positions on these issues supporting a flexible</p>	<p>TURN Reply Comments (2/18/11), pp. 3-4.</p> <p>D.11-06-038, p. 12 ("The CETF partners or any other external Consortia grantees will have no formal role in the Commission's review of CASF applications for infrastructure loans or grants.").</p> <p>TURN Comments (1/21/11), p. 3.</p> <p>D.11-06-038, p. 12 ("...a Consortium grant shall not be used for construction of infrastructure facilities."); COL 2.</p> <p>TURN Reply Comments (2/18/11), pp. 3-4. TURN Comments (1/21/11), p. 2.</p> <p>D.11-06-038, p. 11("...we recognize that a one-size-fits all policy for establishing regional consortia is not practical"); p. 13 ("We conclude that</p>	<p><b>Yes</b></p>

<p>approach. D.11-06-038 also agreed with TURN's position regarding opening the process to existing and new consortia.</p> <p>TURN advocated that one of the elements that appeared to be absent from the Commission's proposals was a requirement and process that promotes the development of best practices and key learnings by those deploying and promoting broadband adoption. The Commission agreed with this principle.</p>	<p>Consortia funding should not be limited only to existing Consortia, but should be open both to existing and newly formed Consortia.”).</p> <p>TURN Comments (5/9/11), p. 5.</p> <p>D.11-06-038, p. 16.</p>	
<p>2. Endorsements</p> <p>TURN proposed that the Commission require Consortia applicants to get endorsements not just from governmental institutions as stated in the OIR, but also from other critical stakeholders such as community-based organizations, schools, hospitals, libraries, businesses and consumers. The Commission adopted TURN's recommendation.</p>	<p>TURN Comments (5/9/11), pp. 4-5.</p> <p>D.11-06-038, p. 27 (“We agree with TURN's recommendations that the applicant secure endorsements from critical stakeholders other than governmental institutions.”); COL 6.</p>	<b>Yes</b>
<p>3. Adoption Plans</p> <p>TURN advocated all CASF applicants, whether for Consortia or grants/loans, include an adoption plan detailing exactly how they proposed to enhance broadband adoption. In both D.11-06-038 and D.12-02-015 the Commission agreed with this requirement.</p>	<p>TURN Reply Comments (2/18/11), p. 12.</p> <p>D.11-06-038, p. 23; COL 7.</p> <p>D.12-02-015, p 26 (“We hereby require the submission of an adoption plan...”).</p>	<b>Yes</b>
<p>4. Non-Regulated Entities:</p> <p>In the OIR the Commission sought input on the role of non-CPUC-regulated entities in the various CASF accounts. TURN supported the ability</p>	<p>TURN Comments (1/21/11), p.6; TURN Reply Comments (2/18/11), pp. 4-5. D.11-06-038, pp. 12-13.</p>	<b>Yes</b>

<p>of non-certificated entities to participate as Regional Consortia. In D.11-06-038, the Commission specifically noted TURN’s advocacy on these issues in particular that non-regulated entities must acknowledge that by participating in CASF they are subjecting themselves to CPUC authority.</p> <p>With regards to CASF grants and loans, TURN has consistently supported the eligibility of non-CPCN entities for CASF funds so long as such applicants present a strong showing of financial, technical and operational capability to successfully construct, operate and maintain a broadband network.</p> <p>Although the Commission declined to approve expanded eligibility for non-CPCN holders, TURN was an important voice in providing response to the Commission’s questions on this important issue.</p>	<p>TURN Comments (1/21/11), p. 6; TURN Reply Comments (2/18/11), pp. 4-5); TURN Comments (9/12/11), p. 3.</p> <p>D.12-02-015, pp. 21-22.</p>	
<p>5. Transparency, Openness and Confidentiality of Information:</p> <p>TURN has consistently supported openness and transparency of CASF processes and in particular that Consortia’s processes, meetings should be widely noticed and open to public scrutiny. D.11-06-038 agreed.</p> <p>TURN has also advocated that the</p>	<p>TURN Reply Comments (2/18/11), p. 7. The TURN “proposal” for openness was first offered in response to a DRA Petition to Modify CASF Decision 07-12-054 (in the old CASF proceeding R.06-06-028). The Commission specifically sought comment on TURN’s proposal in the OIR in R.10-12-008, p. 11.</p> <p>In D.11-06-038, p. 13, the Commission endorsed, in part, TURN’s proposal holding that “We agree with TURN’s proposal that Consortia’s processes, meetings, etc., should be widely noticed and open to public scrutiny.”</p> <p>TURN Reply Comments (2/18/11),</p>	<p><b>Yes</b></p>

<p>CASF process could be more transparent by reducing the amount of information deemed confidential. While the Commission did not agree with TURN's assertions that the CASF process lacked transparency, D.12-02-015 did modify the CASF confidentiality rules requiring more information be publicly disclosed consistent with TURN's advocacy.</p>	<p>pp. 7-8; TURN Comments (9/12/11), p.3; TURN Reply Comments (9/26/11), p. 3.  D.12-02-015, pp. 39 and 41-43.</p>	
<p>6. Middle-Mile:  TURN supported CASF funding for middle-mile projects and clarification that construction projects related to and necessary for last-mile deployment are eligible for CASF funds. D.12-02-015 agreed.</p>	<p>TURN Comments (9/12/11), pp. 4-5; TURN Reply Comments (9/26/11), pp. 7-8.  D.12-02-015, pp.11-12.</p>	<b>Yes</b>
<p>7. Benchmark Speed:  TURN supported the assigned Commissioner's draft proposal to revise the definition of an "underserved" area to be where broadband is available, but where no facilities-based provider offers service at combined speeds of at least 10 mbps. TURN has consistently supported speeds that better reflect the capabilities of modern broadband networks.  While the Commission did revise the definition to require a 6 mbps download and 1.5 mbps upload, it was not as aggressive as TURN supported. However, the Commission did move in the direction TURN supported – an enhanced speed requirement.</p>	<p>TURN Comments (9/12/11), p. 3; TURN Reply Comments (9/26/11), pp. 4-5.  D.12-02-015, pp.17-18.</p>	<b>Yes</b>
<p>8. Provision for Basic Voice Service Offering:  In their comments the Small Local Exchange Carriers (Small LECs) raised the issue of modifying the existing CASF language regarding the offering by CASF applicants of basic voice service to change the language to</p>	<p>TURN Reply Comments (9/26/11), pp. 5-7.  D.12-02-015, pp. 29-30.</p>	<b>Yes</b>

<p>“voice grade service.” TURN strongly opposed such a change and the Commission agreed retaining the existing language reflected in Resolution T-17143.</p>		
<p>9. Open Access and Net Neutrality Requirements: TURN had argued that the Commission should require CASF networks built with public money be subject to net neutrality and open access requirements. While the Commission declined to implement any such requirements, this was an issue the Commission was seeking input on and TURN provided a consumer perspective for Commission consideration. In addition, the Commission did leave the possibility open that it may revisit these issues in the future.</p>	<p>TURN Reply Comments (2/18/11), pp. 10-12; TURN Comments (9/12/11), p.4.  D.12-02-015, pp. 43-45.</p>	<p><b>Yes</b></p>
<p>10. Scoring Criteria: TURN supported limited modifications of the CASF scoring criteria and opposed certain proposals such as those made by CENIC. The Commission made some limited changes rejecting the CENIC proposals. Reflecting the Commission support for the TURN proposal that applicants get endorsements from a broad array of stakeholders (see # 2 above), D.12-02-015 added a bonus of 5 points for applicants that received such endorsements.</p>	<p>TURN Reply Comments (2/18/11), pp. 8-9.  R.12-02-015, pp. 37-38.</p>	<p><b>Yes</b></p>

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

	<b>Claimant</b>	<b>CPUC Verified</b>
<b>a. Was DRA a party to the proceeding?</b>	<b>Yes</b>	<b>Correct</b>
<b>b. Were there other parties to the proceeding?</b>	<b>Yes</b>	<b>Correct</b>

<p><b>c. If so, provide name of other parties:</b></p> <p>There were parties representing various broadband initiatives, regional groups and communities seeking broadband deployment, industry parties including the ILECs, Small LECs, and cable companies. Please see service list for complete list of parties.</p>	<p><b>Correct</b></p>
<p><b>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:</b></p> <p>TURN's compensation in this proceeding should not be reduced for duplication of the showings of other parties. In a proceeding involving multiple participants (in this case 48 different parties), it is virtually impossible for TURN to completely avoid some duplication of the work of other parties. In this case, TURN took all reasonable steps to keep such duplication to a minimum, and to ensure that when it did happen, our work served to complement and assist the showings of the other parties.</p> <p>TURN and DRA were the only consumer representatives actively participating in the proceeding. Greenlining did file pleadings but only in response to the OIR. While our efforts overlapped to a limited degree, our showings were largely complementary. In contrast, a large number of parties represented the interests of carriers and various entities active in broadband issues.</p> <p>Any incidental duplication that may have occurred here was more than offset by TURN's unique contributions to the proceeding. Under these circumstances, no reduction to our compensation due to duplication is warranted given the standard adopted by the Commission in D.03-03-031.</p>	<p>Verified; we make no reductions to TURN's hours for duplication of efforts with other parties.</p>

**C. Additional Comments on Part II:**

#	Claimant	CPUC	Comment
	Partial Contribution	Correct	The Commission has interpreted the Section 1802 definition, in conjunction with Section 1801.3, so as to effectuate the legislature's intent to encourage effective and efficient intervenor participation. The statutory provision of "in whole or in part," as interpreted by multiple Commission decisions on intervenor compensation requests, has established as a general proposition that when a party makes a substantial contribution in a multi-issue proceeding, it is entitled to compensation for time and expenses even if it does not prevail on some of the issues. See, for example, D.98-04-028 (awarding TURN full compensation in CTC proceeding, even though TURN did not prevail on all issues); D.98-08-016, pp. 6, 12 (awarding TURN full compensation in SoCalGas PBR proceeding); D.00-02-008, pp. 4-7, 10 (awarding TURN full compensation even though we unsuccessfully

		<p>opposed settlement).</p> <p>In this proceeding, TURN was highly successful, even though the Commission did not adopt all of TURN’s recommendations (for example, not adopting net neutrality and open access requirements). TURN thus believes that our contributions warrant compensation for all of our time and expenses in this proceeding.</p>
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**PART III: REASONABLENESS OF REQUESTED COMPENSATION**

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

<b>Claimant’s explanation of how its participation bore a reasonable relationship with benefits realized through its participation. (include references to record, where appropriate)</b>	<b>CPUC Verified</b>
<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 consumers. The funds used by CASF are derived from surcharges levied on telephone ratepayers and the Commission must exercise extreme care in how these funds are spent. In addition, the purpose of CASF is to bridge the digital divide by bringing broadband capability to unserved and underserved communities. The rules promulgated in this proceeding are critical to the success of that endeavor.</p> <p>The total hours included in this request represent less than two 40-hour weeks of attorney and advocate time. In light of the importance and complexity of the policy issues addressed, the Commission should find TURN’s request for intervenor compensation to be reasonable.</p>	<p>Verified</p>

**B. Specific Claim:\***

<b>CLAIMED</b>						<b>CPUC AWARD</b>			
<b>ATTORNEY AND ADVOCATE FEES</b>									
<b>Item</b>	<b>Year</b>	<b>Hours</b>	<b>Rate \$</b>	<b>Basis for Rate*</b>	<b>Total \$</b>	<b>Year</b>	<b>Hours</b>	<b>Rate \$</b>	<b>Total \$</b>
William Nusbaum	2011	45.25	\$435	D.10-07-014; Resolution ALJ 247 (4/13/10)	\$19,683.75	2011	45.25	\$435	\$19,683.75
William Nusbaum	2012	3	\$435	Res. ALJ 247	\$1,305.00	2012	3	\$445	\$1,335
Regina Costa	2011	16.75	\$275	Res. ALJ 247	\$4,606.25	2011	16.75	\$275	\$4,606.25
<b>Subtotal:</b>					\$25,595.00	<b>Subtotal:</b>			\$25,625

EXPERT FEES										
Item	Year	Hours	Rate \$	Basis for Rate*	Total \$	Year	Hours	Rate \$	Total \$	
<b>Subtotal:</b>					\$	<b>Subtotal:</b>				
OTHER FEES										
Describe here what OTHER HOURLY FEES you are claiming (paralegal, travel, etc.):										
Item	Year	Hours	Rate \$	Basis for Rate*	Total \$	Year	Hours	Rate \$	Total \$	
[Person 1]										
[Person 2]										
<b>Subtotal:</b>						<b>Subtotal:</b>				
INTERVENOR COMPENSATION CLAIM PREPARATION **										
Item	Year	Hours	Rate \$	Basis for Rate*	Total \$	Year	Hours	Rate \$	Total \$	
William Nusbaum	2011	2	\$217.50	Res. ALJ 247	\$435.00	2011	2	\$217.50	\$435	
William Nusbaum	2012	5	\$217.50	Res. ALJ 247	\$1,087.50	2012	5	\$222.50	\$1,112.50	
<b>Subtotal:</b>					\$1,522.50	<b>Subtotal:</b>				\$1,547.50
COSTS										
#	Item	Detail			Amount	Amount				
<b>Subtotal:</b>						<b>Subtotal:</b>				
<b>TOTAL REQUEST \$:</b>					\$27,117.50	<b>TOTAL AWARD \$:</b>				\$27,172.50
<p>*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.</p> <p>**Travel and Reasonable Claim preparation time typically compensated at 1/2 of preparer's normal hourly rate.</p>										

**C. TURN's Comments on Part III:**

Attachment or Comment #	Description/Comment
Attach 1	<b>Certificate of Service – filed separately</b>
Attach 2	<p>Contemporaneous Time Sheets for Attorney and Advocate.</p> <p>A daily listing of the specific tasks performed by Mr. Nusbaum and Ms. Costa in connection with this proceeding is set forth in Attachment 2. TURN's staff maintained detailed contemporaneous time records indicating the number of hours devoted to work on this case. In preparing this appendix, Mr. Nusbaum reviewed all of the recorded hours devoted to this proceeding and included only those that were reasonable for the underlying task.</p>
<p>Attach 3 Comment 1 Time Allocation by Issue</p>	<p><b>Allocation of TURN Attorney and Consultant Hours by Issue/Activity Code:</b> TURN has allocated all of our attorney and advocate time by issue area or activity, as evident on our attached timesheets.</p> <p>The following codes relate to specific substantive issue and activity areas addressed by TURN:</p> <p>GP - General Preparation: time for activities necessary to participate in the docket</p> <p>RCG – Regional Consortia goals, objectives and role (includes issues associated with the role of CETF, use of funds, new vs. existing Consortia, best practices)</p> <p>E – Endorsements</p> <p>A – Adoption</p> <p>Non-Reg – Issues associated with eligibility and process for non-regulated entities</p> <p>T – Transparency, openness and confidentiality issues</p> <p>M – Issues associated with “middle-mile” infrastructure deployment</p> <p>S - Benchmark speeds</p> <p>B - Revisions to definition of basic service</p> <p>ON - Open access and net neutrality requirements</p> <p>SC –Scoring criteria</p> <p>COMP - Preparation of compensation request and TURN's notice of intent.</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: RCG 10%, E 10%, A 10%, Non-Reg 10%, T 10%, M10%, S 10%, B 10%, ON 10%, SC 10%.</p> <p>There were a large number of “GP” hours in this proceeding due to the unusually large number of parties and associated pleadings requiring analysis.</p>

Comment 2 Compensation Request	TURN used 50% of the authorized 2011 hourly rate as the billing rate for the compensation request, prepared by Mr. Nusbaum in 2012.
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**D. CPUC Disallowances & Adjustments:**

#	Reason
1. Increase in 2012 hourly rates	TURN's increased award amount is due to the Commission approved Cost-of-Living Adjustment [COLA] adopted by Resolution ALJ-281. Abiding by the Resolution, Mr. Nusbaum's 2012 hourly rates have been raised to reflect the 2.2% COLA for intervenor hourly rates.

**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(2)(6))?**

Yes

**FINDINGS OF FACT**

1. TURN has made a substantial contribution to Decisions D.11-06-038 and D.12-02-015.
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 \$27,172.50.

**CONCLUSIONS OF LAW**

1. The claim, with any adjustment set forth above, satisfies all requirements of Public Utilities Code Sections 1801-1812.
2. This proceeding affects all regulated telecommunications carriers. As such, it is appropriate to pay the award from the Commission's Intervenor Compensation Fund

**ORDER**

1. TURN is awarded \$27,172.50.
2. Within 30 days of the effective date of this decision, the Commission's Fiscal Office shall disburse the awarded compensation from the Commission's 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 June 23, 2012, the 75<sup>th</sup> day after the filing of the claimant's request, and continuing until full payment is made.

3. The comment period for today's decision is waived.
4. This proceeding closed.

This decision is effective today.

Dated \_\_\_\_\_, at San Francisco, California.

**APPENDIX****Compensation Decision Summary Information**

<b>Compensation Decision:</b>		<b>Modifies Decision?</b>	<b>No</b>
<b>Contribution Decision(s):</b>	D1106038 and D1202015		
<b>Proceeding(s):</b>	R1012008		
<b>Author:</b>	ALJ Pulsifer		
<b>Payer(s):</b>	Intervenor Compensation Fund		

**Intervenor Information**

<b>Intervenor</b>	<b>Claim Date</b>	<b>Amount Requested</b>	<b>Amount Awarded</b>	<b>Multiplier?</b>	<b>Reason Change/Disallowance</b>
TURN	4/9/12	\$27,117.50	\$27,172.50	No	2.2% COLA established in Res. ALJ-281

**Advocate Information**

<b>First Name</b>	<b>Last Name</b>	<b>Type</b>	<b>Intervenor</b>	<b>Hourly Fee Requested</b>	<b>Year Hourly Fee Requested</b>	<b>Hourly Fee Adopted</b>
William	Nusbaum	Attorney	TURN	\$435	2011	\$435
William	Nusbaum	Attorney	TURN	\$435	2012	\$445
Regina	Costa	Expert	TURN	\$275	2011	\$275

**(END OF APPENDIX)**