

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Cox California Telecom, LLC (U5684C) for Designation as an Eligible Telecommunications Carrier.

Application 12-09-014
(Filed September 25, 2012)

DECISION GRANTING COMPENSATION TO THE UTILITY REFORM NETWORK FOR SUBSTANTIAL CONTRIBUTION FOR DECISION 13-10-002

Claimant: The Utility Reform Network (TURN)	For contribution to Decision (D.) 13-10-002
Claimed: \$ 22,297.20	Awarded: \$22,028.45 (reduced 1%)
Assigned Commissioner: Sandoval	Assigned ALJ: Pulsifer

PART I: PROCEDURAL ISSUES

A. Brief Description of Decision:	The Decision adopts a settlement between Cox California Telcom, LLC (Cox), TURN and the Greenlining Institute (Greenlining). The settlement sets forth Cox’s rights and responsibilities once it is granted its Eligible Telecommunications Carrier (ETC) status by the Commission and the impact of that grant, if any, on Cox’s offering of LifeLine telephone service throughout its service areas. The Commission adopted the settlement and granted Cox its ETC designation pursuant to the conditions set forth in the settlement.
--	--

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

	Claimant	CPUC Verified
Timely filing of notice of intent to claim compensation (NOI) (§ 1804(a)):		
1. Date of Prehearing Conference:	January 28, 2013	Yes
2. Other Specified Date for NOI:		N/A
3. Date NOI Filed:	February 27, 2013	Yes
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.98-02-017; A.10-11-015	Yes
6. Date of ALJ ruling:	A.10-11-015: June 3, 2011	Yes
7. Based on another CPUC determination (specify):		
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:	R.11-11-008	Yes
10. Date of ALJ ruling:	January 3, 2012	Yes
11. Based on another CPUC determination (specify):		
12. Has the Claimant demonstrated significant financial hardship?		Yes
Timely request for compensation (§ 1804(c)):		
13. Identify Final Decision:	D.13-10-002	Yes
14. Date of Issuance of Final Order or Decision:	October 7, 2013	Yes
15. File date of compensation request:	December 6, 2013	Yes
16. Was the request for compensation timely?		Yes

PART II: SUBSTANTIAL CONTRIBUTION

A. In the fields below, describe in a concise manner Claimant's contribution to the final decision (*see* § 1802(i), § 1803(a) & D.98-04-059).

Intervenor's Claimed Contribution(s)	Specific References to Intervenor's Claimed Contribution(s)	CPUC Discussion
<p>1. <i>Settlement</i></p> <p>Cox filed its Application for Eligible Telecommunications Carrier (ETC) status after a series of communications with Commission staff. TURN coordinated with DRA and did not file a separate protest to Cox's Application. TURN was actively involved in the docket and, after a prehearing conference, motions, responses to motions, and ALJ rulings, the active parties in the case began settlement discussions. The ALJ and Assigned Commissioner suspended the briefing schedule to allow for settlement discussion to move forward.</p> <p>TURN, Greenlining and Cox filed a joint settlement that addressed several of the pending issues in the docket.</p> <p>All the parties to the case participated in settlement discussions to varying degrees. DRA was actively involved, but opposed the settlement based on concerns regarding applicability and enforcement of its terms due to possible preemption based on P.U. Code Section 710. Other parties, including CALTEL, AT&T and TimeWarner did not join the settlement, but did</p>	<p><i>Joint Motion to Approve Settlement Agreement</i>, filed June 3, 2013, at 7 (Settlement is in the public interest)</p> <p><i>TURN/Greenlining Reply Comments on Joint Settlement Motion</i>, July 18, 2013 at 5 (settlement in public interest); at 6 (Settlement properly binds parties); at 10 (just and reasonable regardless of what other parties would like to see); at 10-11 (strong policy favoring settlements and this one is in the public interest and reasonable. As a whole- produces just and reasonable outcome)</p> <p><i>Final Decision</i>- at 11 (Consumer interests represented by TURN and Greenlining); at 13 ("TURN and Greenlining believe that the Settlement Agreement appropriately bridges the gap between regulatory uncertainty and Commission authority. We agree.") at 15 (find no "reasonable basis to reject the settlement based on DRA's objections.")</p>	<p>Accepted</p>

<p>not oppose its adoption in light of its narrow applicability to the parties of the settlement.</p> <p>The Commission should find that the resulting settlement reflects TURN’s substantial contribution on each of the TURN-disputed issues covered by the settlement. As is often the case with settlements, the outcome may not explicitly address each issue raised by the parties, but represents a combination or blending of issues to create a mutually acceptable agreement that benefits customers, especially low income customers, throughout Cox’s service territory.</p>		
<p><i>2. Jurisdiction to grant ETC designation</i></p> <p>TURN urged the Commission to find that it had the authority to consider, review, and approve or deny Cox’s ETC application. While DRA raised concerns that the Commission may be preempted from even reviewing the application by Section 710, TURN argued that the Commission could move forward because ETC authority is delegated by the FCC. (<i>DRA Protest, at 3.</i>)</p> <p>Cox argued that the Commission’s authority to designate ETC status is limited to a very narrow set of criteria. TURN disagreed and noted that the Commission has imposed state-specific regulations on ETCs and could</p>	<p><i>Joint Motion to Accept Settlement Agreement, June 3, 2013 at 4 (Federal law delegates Commission to grant ETC and determine if such grant is in the public interest); at 5 (Consistent with Section PU Code Section 710)</i></p> <p><i>TURN/Greenlining Reply Comments on Joint Settlement Motion, July 18, 2013 at 10 (Commission should use authority to protect CA consumers and review Cox ETC application)</i></p> <p><i>Final Decision at 12 (Commission has the authority to make such designation [of ETC status] and determine if the designation is in the public interest and Section 710 allows Commission to apply federal law as delegated to it)</i></p>	<p>Accepted</p>

<p>and should do so again. (<i>Cox Application at 3-4.</i>)</p>		
<p>3. <i>Scope of the Docket</i></p> <p>There were two interrelated issues raised regarding the scope of the docket.</p> <p>TURN argued that a broad scope would create significant legal and policy issues that would impermissibly affect carriers other than Cox. TURN urged the Commission to be very explicit that the final resolution of the docket only would apply to Cox.</p> <p>However, TURN also opposed any attempt to create an overly narrow scope because the resulting decision might not adequately protect Cox's low-income customers. (<i>CALTEL Motion to Amend Scoping Memo, March 19, 2013.</i>)</p>	<p><i>TURN Response to CALTEL Motion, filed March 21, 2013.</i></p> <p><i>Prehearing Conf Transcript Vol. 1, at 16, "questions TURN has raised are within the scope of the application."</i></p> <p><i>Joint Motion to Accept Settlement Agreement, June 3, 2013, at 4.</i></p> <p><i>TURN/Greenlining Reply Comments on Joint Settlement Motion, July 18, 2013, at 8 (Settlement narrowly applies); at 12,18 (Settlement resolves the issue of scope to ensure settlement only applies to the parties to the agreement; not precedential)</i></p> <p><i>ALJ Ruling Denying Motion to Amend Scoping Memo, April 17, 2013 at 3 (TURN believes the edits create an "overly restrictive scope"); at 4 (all relevant issues must be considered)</i></p>	<p>Accepted; except as to the TURN /Greenlining Reply Comments on the Joint Settlement Motion, July 18, 2013 at 12 and 18. There is no page 18 and page 12 does not support the statement made.</p>
<p>4. <i>Cox's ETC designation</i></p> <p>Once the Commission determined it had the jurisdiction to move forward and to look more broadly at the public interest issues of Cox's application, the Commission must then make a determination whether to grant Cox ETC status.</p> <p>In the face of DRA's opposition to the Application, and Greenlining's initial unqualified support of the Application, TURN took a more nuanced position urging the Commission to grant ETC</p>	<p><i>TURN Response to CALTEL Motion, March 21, 2013 at 4.</i></p> <p><i>Prehearing Conf transcript, Vol. 1 at 8-9.</i></p> <p><i>Joint Motion to Accept Settlement Agreement, June 3, 2013, at 4 (Cox complies with T-17002); at 4 (Cox is a common carrier); at 6 (Commission rules and policy on universal service, plus statutory duties regarding universal service suggest VoIP should offer LifeLine)</i></p> <p><i>TURN/Greenlining Reply Comments on Joint Settlement Motion, July 18, 2013 at 2 (Brand X and DRA comments)</i></p>	<p>Accepted</p>

<p>status so that Cox could continue offering LifeLine, but to place several conditions and obtain commitments from the company to ensure the customer is protected.</p> <p>TURN also did not support Cox’s approach that its VoIP operations would “voluntarily” agree to abide by Commission rules. (<i>Cox Application at 5-6.</i>) TURN urged the Commission to require clarification and commitment regarding the interpretation and application of the federal rules for ETC providers, the federal universal service statutes, Cox’s tariff and CPCN authority and enforcement of these rules in light of Section 710 of the Public Utilities Code.</p>	<p>irrelevant here and create too restrictive an interpretation); at 3 (FCC intent to allow VoIP to be ETC)</p> <p><i>Final Decision</i> at 12 (Finding Cox is a common carrier); at 12, 15 (finding that Cox’s ETC status will enable it to continue to provide LL without interruption and will promote competition); at 13 (Cox agrees it offers “telephone exchange service.”); at 17 (no basis for DRA’s objections based on Brand X federal precedent); at 18 (Cox offers all services pursuant to a tariff regardless of the technology, treat it the same FOF 11)</p>	
<p><i>5. Terms and conditions of the ETC designation</i></p> <p>TURN argued for a broad application of the Commission’s consumer protection rules, LifeLine rules and procedural rules that would protect Cox’s LifeLine consumers.</p>	<p><i>TURN Response to the CALTEL Motion</i>, Filed March 21, 2013 at 3.</p> <p><i>Prehearing Conf Transcript</i>, Vol.1, at 14-16.</p> <p><i>TURN/Greenlining Reply Comments on Joint Settlement Motion</i>, July 18, 2013, at 5 (Cox will comply with all relevant rules)</p> <p><i>Joint Motion to Accept Settlement</i>, June 3, 2013, at 5, 7-8 (Cox will comply with all applicable LifeLine rules and Commission decisions)</p> <p><i>Final Decision</i> at 8 (TURN raised issues of consumer protection enforcement); at 9 (Noting that settlement states CPUC will have authority to “address and resolve” customer complaints and Cox</p>	<p>Accepted</p>

	<p>will comply with applicable Commission decisions and General Orders); at 10 (as a CPCN holder, must comply with Code and “all of the Commission’s rules, decisions, and orders); at 14 (Under settlement Cox agrees to comply with Commission’s requirements regardless of technology, need not reach issue of preemption under Section 710)</p>	
--	---	--

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

	Claimant	CPUC Verified
<p>a. Was the Office of Ratepayer Advocates (ORA) a party to the proceeding?¹</p>	Yes	Verified
<p>b. Were there other parties to the proceeding with positions similar to yours?</p>	Yes	Verified
<p>c. If so, provide name of other parties: Greenlining Institute</p>		Verified
<p>d. Describe how you coordinated with ORA and other parties to avoid duplication or how your participation supplemented, complemented, or contributed to that of another party:</p> <p>In this docket, TURN coordinated closely with both DRA and Greenlining to avoid duplication. As discussions with Cox progressed and official settlement talks began, it became clear that ORA and TURN did not have the same position on several issues. Therefore, both parties participated in settlement and drafted pleadings separately with no risk of duplication.</p> <p>At first, TURN and Greenlining presented very different positions on the issue of whether Cox’s ETC application should be granted. Once the scope of the docket expanded, TURN and Greenlining had similar positions and worked closely together to avoid duplication by filing joint pleadings and planning for settlement discussions, wherein each party focused on separate issues to spend time efficiently.</p>		Verified

¹ The Division of Ratepayer Advocates was renamed the Office of Ratepayer Advocates effective September 26, 2013, pursuant to Senate Bill No. 96 (Budget Act of 2013: public resources), which was approved by the Governor on September 26, 2013. TURN will refer to ORA in this Request as DRA, the name of the office during the time this docket was litigated.

PART III: REASONABLENESS OF REQUESTED COMPENSATION

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

	CPUC Verified
<p>a. Intervenor’s claim of cost reasonableness:</p> <p>This Application raised significant questions regarding the scope and applicability of the Commission’s authority to review applications for Eligibility Telecommunications Carrier (ETC) status. TURN’s total request of \$22,297 is a reasonable and efficient expense for TURN’s work to represent low-income consumer interests and ensure that the Commission’s authority was not weakened or misapplied.</p> <p>The Commission’s authority to review applications for ETC designations is a critical consumer protection tool. This delegated authority provides the Commission an opportunity to ensure that low-income consumers in California are being offered robust, comprehensive, affordable service plans that keep those consumers connected to the community. Without broad authority to impose specific conditions on these carriers, low-income consumers may be offered inferior service plans at unfair prices, suffer lower service quality or ineffective customer service. Through TURN’s work in the docket, along with other consumer representatives, the Commission reaffirmed its position that it maintains full authority through its ETC rules and it can continue to enforce its own rules and regulations upon Cox’s service offerings regardless of the fact that such offerings are provisioned using a variety of communications technologies. The settlement also secured commitments from Cox that it would offer LifeLine services in full compliance with Commission rules and regulations and provide customers with an opportunity to resolve complaints and exercise rights to other consumer protection rules.</p> <p>Although difficult to quantify the specific benefits to Cox’s customers, TURN’s work litigating this docket and negotiating a settlement created clear authority for the Commission that, in turn, benefits Cox’s low income consumers.</p>	<p>Accepted</p>
<p>b. Reasonableness of Hours Claimed.</p> <p>TURN’s total compensation request represents a reasonable and efficient work effort in light of the substantial benefits to low-income consumers.</p> <p>Ms. Mailloux was the lead attorney on this case. She was primarily responsible for TURN’s litigation efforts including drafting pleadings, research and representing TURN during exparte meetings. She also participated in all settlement discussions and worked with the parties to the settlement to draft and edit the Agreement. Ms. Mailloux actively coordinated with Greenlining Institute and worked with its representatives</p>	<p>After a minor adjustment as set forth in Section III.C below, the remainder of this request for compensation is reasonable and worthy of compensation.</p>

throughout the docket.

TURN is requesting 7 hours related to travel time for Ms. Mailloux. Ms. Mailloux's travel was for a series of ex parte meetings to support the Assigned Commissioner's proposed decision and the joint settlement agreement. In light of Ms. Mailloux's extensive knowledge and involvement in the settlement process, it was necessary to have Ms. Mailloux attend in person. Any time spent to get another TURN representative informed enough to effectively participate in these meetings would have been inefficient.

Mr. Nusbaum also initially participated in the docket and represented TURN at the prehearing conference and in-person at initial settlement meetings and assisted with development of TURN's litigation positions and strategy. Mr. Nusbaum served as an important source of information and research and support for Ms. Mailloux.

TURN submits that the recorded hours are reasonable in light of the significant procedural issues that had potential impact on the scope of the docket and, therefore, had to be addressed by each of the parties and the extensive settlement discussions and drafting of a comprehensive and detailed settlement agreement that accurately captured the active parties' concerns and mutual agreement.

NOI and Compensation Request Preparation Time: TURN is requesting compensation for approximately 7.75 hours devoted to preparation of its Notice of Intent to Claim Compensation and this request for compensation. While TURN spent less than an hour drafting its NOI, Ms. Mailloux spent additional hours addressing Cox's response to its NOI. TURN has included these two hours in the hours spent on compensation, which have an approved rate of \$215 representing half of Ms. Mailloux's approved 2013 rate. Ms. Mailloux was solely responsible for drafting this request and spent a reasonable time reviewing the record and advocate's time entries for accuracy and relevance of each issue discussed.

Hourly Rates of TURN Staff

Ms. Mailloux has an approved hourly rate for work performed in 2012 of \$420. While some hours in the request cover work performed in 2012, the majority of the work occurred in 2013. Pursuant to Resolution ALJ-287, TURN hereby requests a Cost of Living Adjustment in her rate to \$430 for hours in 2013. This represents a 2.2% increase in her approved 2012 rate, rounded up to the nearest \$5 increment.

Mr. Nusbaum

<p>Mr. Nusbaum has an approved hourly rate for work performed in 2013 of \$455. (<i>See</i>, D.13-10-065, I.12-04-010.)</p> <p><u>Reasonableness of Expenses</u></p> <p>TURN is requesting minimal expense reimbursement for this docket. In addition to a small amount of copying and postage that represents hard copies of pleadings sent to the Commission, TURN is requesting travel expenses for Ms. Mailloux to come up the Commission. The calculation of these expenses are detailed in the attached spreadsheet and comply with the Commission’s guidelines for intervenor expense reimbursement.</p>	
<p>c. Allocation of Hours by Issue</p> <p>TURN has allocated its time entries included in the attachments to this compensation request by the following codes:</p> <p>GP- GENERAL PREPARATION: work that generally does not vary with the number of issues that TURN addresses in the case.</p> <p>SP- SCOPE: issues relating to the scope of the docket, including the applicability of any final decision in this docket on other similarly situated carriers</p> <p>CP- CONSUMER PROTECTION: discussion of the need to impose consumer protection, procedural and other Commission regulations on Cox’s LifeLine services, and the impact of Cox’s tariff</p> <p>ETC- ELIGIBLE TELECOMMUNICATION CARRIER: issues relating to whether Cox should be granted eligible telecommunications carrier status including the jurisdiction of the Commission to grant the request and applicability of any state-specific rules and regulations on Cox’s VoIP provided LifeLine services</p> <p>#- INTERRELATED ISSUES: This code represents time entries where the work reflects the interrelationship between several distinct issues. The # signifies combined work on issues ETC (40%), CP (40%) and SP (20%).</p> <p>SETT- SETTLEMENT: work related to time spent in settlement discussions, drafting and review the settlement documents and coordinating with other parties on settlement-related strategy</p> <p>COMP- COMPENSATION: time spent on drafting compensation-related documents including the Notice of Intent to claim compensation, this compensation request and the rebuttal to Cox’s response to TURN’s NOI</p>	<p>TURN has properly allocated its time by major issue.</p>

B. Specific Claim:*

CLAIMED						CPUC AWARD		
ATTORNEY, EXPERT, AND ADVOCATE FEES								
Item	Year	Hours	Rate \$	Basis for Rate*	Total \$	Hours	Rate \$	Total \$
Christine Mailloux	2012	2.75	\$420	D.13-11-020; ALJ Res. 281	\$1,155.00	2.75	\$420	\$1,155.00
Christine Mailloux	2013	31.5	\$430	ALJ Res. 287	\$13,545.00	31.5	\$430 ²	\$13,545.00
Bill Nusbaum	2013	9.25	\$455	D.13-10-065	\$4,208.75	9.25	\$455	\$4,208.75
Subtotal: \$ 18,908.75						Subtotal: \$ \$18,908.75		
OTHER FEES								
Describe here what OTHER HOURLY FEES you are Claiming (paralegal, travel **, etc.):								
Item	Year	Hours	Rate \$	Basis for Rate*	Total \$	Hours	Rate	Total \$
Christine Mailloux	2013	7.0	\$215	Travel @half hourly rate	\$1,505.00	7.0	\$215	\$1,505.00
Subtotal: \$1,505.00						Subtotal: \$1,505.00³		
INTERVENOR COMPENSATION CLAIM PREPARATION **								
Item	Year	Hours	Rate \$	Basis for Rate*	Total \$	Hours	Rate	Total \$
Christine Mailloux	2013	8.25	\$215	Comp matters @ half hourly rate	\$1,451.25	5.5	\$215	\$1,182.50
Subtotal: \$1,451.25						Subtotal: \$1,182.50		
COSTS								
#	Item	Detail			Amount	Amount		
	Postage	Sending hard copies of pleadings to CPUC			\$10.00	\$10.00		
	Copies	Sending hard copies of pleadings to CPUC			\$6.40	\$ 6.40		
	Travel	Mailloux attendance at ex parte meetings			\$415.80	\$415.80		

² Based on the 2013 hourly rate for Mailloux in D.14-04-021.

³ The Commission finds that Mailloux's travel time is properly identified by TURN as non-routine and approves the travel costs and direct expenses. (See e.g. D.09-07-016 at 10.)

TOTAL REQUEST: \$22,297.20		TOTAL AWARD: \$ \$22,028.45	
<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. Intervenor'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 ½ of preparer's normal hourly rate</p>			
Attorney	Date Admitted to CA BAR ⁴	Member Number	Actions Affecting Eligibility (Yes/No?) If "Yes", attach explanation
William Nusbaum	June 7, 1983	108835	No; Please note that from January 1, 1997 until October 4, 2002 Mr. Nusbaum was an inactive member of the California Bar.
Christine Mailloux	December 10, 1993	167918	No

C. CPUC Disallowances and Adjustments:

Item	Reason
III.B	Christine Mailloux's hours spend on preparing the intervenor compensation request are adjusted from 8.25 to 5.5 to reflect the time spent on this task as listed in the attached timesheets.

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

- The Utility Reform Network has made a substantial contribution to D.13-10-002.

⁴ This information may be obtained at: <http://www.calbar.ca.gov/>.

2. The requested hourly rates for The Utility Reform Network's representatives are comparable to market rates paid to experts and advocates having comparable training and experience and offering similar services.
3. The claimed costs and expenses, as adjusted herein, are reasonable and commensurate with the work performed.
4. The total of reasonable compensation is \$22,028.45.

CONCLUSION OF LAW

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

ORDER

1. The Utility Reform Network is awarded \$ 22,028.45.
2. Within 30 days of the effective date of this decision, Cox California Telcom, LLC, shall pay The Utility Reform Network the award. Payment of the award shall include interest at the rate earned on prime, three-month non-financial commercial paper as reported in Federal Reserve Statistical Release H.15, beginning February 19, 2014, the 75th day after the filing of The Utility Reform Network'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 _____, at San Francisco, California.

APPENDIX**Compensation Decision Summary Information**

Compensation Decision:		Modifies Decision? No
Contribution Decision(s):	D1310002	
Proceeding(s):	A1209014	
Author:	ALJ Pulsifer	
Payer(s):	Intervenor Compensation Program Fund	

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Multiplier	Reason Change/Disallowance
The Utility Reform Network	12/6/2013	\$22,297.20	\$22,028.45	N/A	Correct error in hours claimed to prepare intervenor compensation request.

Advocate Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
Christine	Mailloux	Attorney	The Utility Reform Network	\$420	2012	\$420
Christine	Mailloux	Attorney	The Utility Reform Network	\$430	2013	\$430
William	Nusbaum	Attorney	The Utility Reform Network	\$455	2013	\$455

(END OF APPENDIX)